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ON THE DEATH PENALTY IN RUSSIA

The article is dedicated to the moratorium on death penalty in Russia, as well as to the legal position of the Russian state bodies on that issue. On 19 November 2009 the Constitutional Court of Russia declared that after January 1, 2010 to impose the death penalty in Russia is impossible. Question of the death penalty in Russia for almost fifteen years, and started legal history for Russia 16 May 1996, when President Boris Yeltsin issued a decree “Phasing out of the death penalty in connection with Russia’s entry to the Council of Europe”, in which in accordance with the recommendations of the Parliamentary Assembly of the Council of Europe and subject to the provisions of Article 20 of the Constitution of the Russian Federation of the temporary nature of the death penalty as an exceptional punishment for especially grave crimes against life, charged with the RF Government.

Key words. History, moratorium, death penalty, Russia, power, Constitutional Cou

On November 19, 2009 Constitutional Court of Russian Federation recognized that after January 1, 2010, the imposition of death penalty in Russia is impossible.

The issue of the death penalty in Russia exists for nearly a dozen years, and while legal history of Russia started on May 16, 1996 , when Russian

President Boris Yeltsin issued a Decree “On phasing out the death penalty in connection with the entry of Russia in the Council of Europe“, which in accordance with the recommendations of the Parliamentary Assembly of the European Council and the provisions of Article 20 of the Constitution of Russian Federation on the temporary nature of death penalty as an exceptional measure of punishment for especially grave crimes against life, entrusted the Government of Russian Federation within a month to prepare for submission to State Duma of the Federal Assembly of Russian Federation a federal bill on the Accession of the Russian Federation to the Protocol # 6 of 22 November 1984 of the European Convention for Protection of Human Rights and Fundamental Freedoms of 4 November 1950. At the same time it was recommended to the chambers of the Federal Assembly of Russian Federation to speed up the adoption of the Criminal Code of Russian Federation, Criminal Procedural Code of Russian Federation and the Penal Code of Russian Federation. According to the Federal Law of June 13, 1996 N 64-FZ The Penal Code was enacted in January 1, 1997, which partially reduced formulations of crimes for which the death penalty may be imposed.

Furthermore, the Ministry of Internal Affairs of Russian Federation was instructed within three months to prepare and submit to the Government of Russian Federation proposals to bring the conditions of detention of persons sentenced to death, and persons whose death sentence commuted to life imprisonment, in accordance with requirements of the Standard Minimum Rules for Treatment of Prisoners, adopted by the Organization of the United Nations.

Prosecutor General of the Russian Federation was ordered to strengthen supervision compliance with the law on the conditions of detention of persons sentenced to death, and persons whose death sentence commuted to life imprisonment. The decree entered into force on the date of its signing.

Shortly after that, a moratorium on death penalty was imposed in Russia. The moratorium was supported by the decision of the Constitutional Court of Russian Federation. On February 2, 1999 the Constitutional Court of Russian Federation agreed that until the practice of sentencing by a jury is not introduced throughout the territory of Russian Federation, the death penalty shall not be imposed. The Constitutional Court has assumed that due to a paragraph 2 of Article 20 of the Constitution of the Russian Federation the death penalty is temporary and exceptional measure of punishment, and that the right to life (that is, the right not to be subjected to deprivation of life through death penalty) should be developed within the provisions of international treaties of the Russian Federation , as well as the generally recognized principles and norms of international law, which, in accordance with Article 15 of the

Constitution of the Russian Federation are a part of the legal system of the Russian Federation.

Thus, the Russian Federation represented by the President of the Russian Federation, the Federal

Assembly - the Russian parliament and the Constitutional Court of the Russian Federation expressed its consolidated intention to establish a moratorium on death penalty executions and to take other measures to abolish death penalty. At the same time federal authorities have demonstrated information and legal culture. [1, p. 23-24, 2, p. 34-40]

It should be emphasized that this commitment has been one of the major reasons for inviting Russia to the Council of Europe. It was based on the commitment, backed by government decisions and legal measures, including the intention to ratify the protocol number 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty, Russia joined the Council of Europe.

All this clearly indicates that the Russian Federation has committed not to take actions that distort the meaning of the Protocol number 6.

Over the years, Russia abided by this moratorium until on October 29th, 2009 the Constitutional Court of the Russian Federation received a petition of the Supreme Court for an official clarification of paragraph 5 of the resolution of the ruling of the Constitutional Court of 2 February 1999 # 3 -P. It was concerned with the question of whether Russia from January 1, 2010 can impose death penalty. Because of extreme urgency and importance of the question posed, this application was considered by the Constitutional Court of Russian Federation as high priority. A hearing was held on November 9, 2009 in an open plenary session of the Constitutional Court of Russian Federation, which has concluded that for the last 10 years there was a comprehensive moratorium on the death penalty in Russian Federation. During this time, stable guarantee of the right not to be subjected to the death penalty has formed. There was a legitimate constitutional and legal regime in which (taking into account the international legal trends and obligations assumed by Russia) an irreversible process has formed, aiming at the abolition of the death penalty as an exceptional measure of punishment of temporary character and intended only for a certain transitional period. Given the aforementioned, a fateful decision was made for modern Russia that after January 1, 2010 the imposition of the death penalty in Russia is impossible. The position of the Constitutional Court of Russian Federation, stated in its decision of November 19, 2010, reads as follows: "... execution of this Regulation in respect to the introduction of the jury on the entire territory of the Russian Federation does not open the possibility of imposition of the death penalty, including for convictions on the

basis of jury žs verdict . “ [3]

Recently, a question has arisen about the abolition of the death penalty, but opinions differ on this issue. Chairman of the Duma Committee on Constitutional Legislation and State Building Vladimir Pligin believes that the moratorium on death penalty should not be abandoned as judicial mistakes are possible.

“That practice, which we now adhere to, practice of life imprisonment, should be supported. At this moment it’s probably best not to change this practice. Emotionally, those evaluations, which given by the Minister of Interior Affairs, as well as public evaluations are often worthy of support. And no doubt that those people who have committed certain crimes deserve capital punishment “- told reporters Pligin . [4]

He noted that Russia’s position on the death penalty determined by the decision of the Constitutional Court and is currently maintained by a moratorium on it. At the same time, he said, the current practice does not guarantee the complete elimination of punishment for an innocent person”, and in our practice and in international practice this has happened before.”

«So you can imagine a horror when we are faced with a crime, and also need to imagine the horror of the other horror - when the state imposes death penalty to an innocent person”, - said Pligin .

Earlier, Interior Minister Vladimir Kolokoltcev began a discussion about the possibility of the return of the death penalty as punishment for particularly heinous crimes. He noted that as an ordinary citizen, and not as a head of the department, he does not see anything wrong in that.

This statement was made by the Russian Minister of Internal Affairs in an interview to “The final program” on NTV channel in response to a remark stating that after the murders of girls in Naberezhnye Chelny and the Irkutsk region the society again asking for the return of the death penalty as a punishment .

“I’m afraid of incurring the wrath of the opponents of the death penalty. But if not as a minister, but as a simple citizen, I would not see anything wrong for such criminals. But if you look at examples of different countries in Europe – there is one approach, in America - another approach exists; each state has its own approach to this problem, “- said Kolokoltchev . [5, p. 34-40]

He noted that in deciding in respect to whom the application of the death penalty shall be imposed, it is necessary to take into account the level of danger of the criminals and the crimes committed by them against the society.

“I believe that the death penalty in such cases - it is a normal reaction of society to a fait accompli,” - said the Minister.

How will the public debate and the discussion of officials of the legislative and executive bodies of state power will end remains to be seen.

In addition, the importance of the parliamentary ethics and the morality of laws. [6, p. 10-14]

The need for judicial protection of human rights and freedoms in Russia is increasing. [7, p. 3-5]

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O SMRTNOJ KAZNI U RUSIJI

Ovaj rad je posvećen moratorijumu o smrtnoj kazni u Rusiji kao i pravnoj poziciji državnih organa u Rusiji po tom pitanju. 19. novembra 2009. godine Ustavni sud Rusije proglasio je da će od prvog januara 2010. godine uvođenje smrtne kazne u Rusiji biti nemoguće. Pitanje smrtne kazne u Rusiji ppostavljeno je pre gotovo petnaest godina kada je 16. maja 1996 predsednik Boris Jelcin izdao uredbu "Povezanost ukidanja smrtne kazne sa ulaskom Rusije u Savet Evrope" koja je u skladu sa preporukama parlamentarne skupštine Saveta Evrope i vezano za odredbe Clana 20 Ustava ruske federacije o privremenosti smrtne kazne izuzetna kazna za narocito teške zlocine.

Kljucne reči: *Istorija, moratorijum, smrtna kazna, Rusija, moć, Ustavni sud.*