

1-1-2013

# Death Penalty Politics and Symbolic Law in Russia

Olga B. Semukhina

Marquette University, [olga.semukhina@marquette.edu](mailto:olga.semukhina@marquette.edu)

John F. Galliher

# Death Penalty Politics and Symbolic Law in Russia

Olga B. Semukhina

*Department of Social and Cultural Sciences,  
Marquette University  
Milwaukee, WI*

John F. Galliher

*Department of Sociology, University of Missouri  
Columbia, MO*

**Abstract:** In contemporary Russia there is widespread support for the death penalty. Recent Russian presidents have endorsed the nation's entry into the European Community (EC). The dilemma is that the price of membership into the EC is total abolition of capital punishment. The Russian Duma is much less popular than the president, even though it sides with public opinion in supporting capital punishment. Since 1997, these conflicting political positions have been temporarily neutralized by leaving capital punishment legislation in place but allowing the Russian president to offer clemency to all sentenced to death. In 1999, the Constitutional Court of Russia placed a moratorium on all death sentences until jury trials are re-introduced throughout the nation.

## 1. Introduction

In 1996, the Russian Federation introduced a *de facto* moratorium on the death penalty in an effort to gain membership in the Council of Europe (CE) and to gain full integration into the European community after the breakdown of the USSR. Yet, thirteen years later, Russia is the only member of the CE that signed, but refused to ratify, Protocol No. 6 to the European Convention of Human

Rights (ECHR). Protocol No. 6 is a major legal instrument intended to create a death penalty-free European community. The *de facto* moratorium in Russia consists of numerous legal documents such as the Criminal Code (CC) of Russia, the Criminal Execution Code (CEC) of Russia, the Russian Constitution, various Presidential Decrees, and the Ruling of the Constitutional Court of Russia. Different political actors and institutions with contradictory agendas are involved. They include supporters of the death penalty, such as the State Duma, as well as the majority of the Russian population and opponents of capital punishment that comprise the Russian President and the Parliament Assembly of the Council of Europe (PACE), with the Constitutional Court of Russia<sup>1</sup> holding the middle ground.

The application of symbolic law theory to death penalty politics can provide insight into legislative acts that were previously considered "irrational" or chaotic and can better explain the dynamics of political actors (Edelman, 1971; Gaylord & Galliher, 1994; Gusfield, 1963). Symbolic law can have its impact by merely being on the statute books without actually being enforced. Pioneering research on symbolic law theory by Gusfield (1963) describes American alcohol prohibition as a means of satisfying protestant forces, epitomized by the Woman's Christian Temperance Union (WCTU), who felt threatened by Roman Catholic immigrant groups and their rapidly increasing numbers. These immigrant groups consumed alcohol and they seemed to be usurping Protestant political dominance. The solution to the problem was the passage of a national alcohol prohibition, which proclaimed that the Protestant way of life was superior. However, the prohibition was unenforced, allowing Catholic drinkers to continue their customary consumption. Similarly, Edelman (1971) found unenforced symbolic law to be a means of achieving agreement between parties with contradictory economic interests. Edelman draws on the example of the anti-trust legislation of early 20th century America. While the American public demanded control over the monopolistic practices of corporations, the powerful corporations wanted to be left alone to pursue maximum profits. Accordingly, anti-trust legislation was enacted, appeasing the masses, but was not enforced, thus satisfying corporate leaders. More to the point of the death penalty, Gaylord and Galliher (1994) found that unenforced death penalty legislation stretching over several decades in Hong Kong was a means of

attempting to mollify both the local Chinese population, which demanded this severe punishment, and the British government, which had ultimate legal authority that eschewed capital punishment. Local Hong Kong courts continued to sentence convicted murderers to death only to have the executions blocked by British authorities. In the light of the above examples, we seek here to explain unenforced death penalty legislation in contemporary Russia by using the symbolic theory of law.

## **2. Brief History of the Death Penalty in Russia**

The use of the death penalty in Russian politics has a long history. According to existing historic accounts, the death penalty in ancient Russia originated as a tribal vengeance for the crime of murder in the early 5th century (Malinovskyi, 1908). In the 11th century tribal vengeance was prohibited by the Grand Prince in an effort to weaken the tribes. Instead, the death penalty became a prerogative of the state and was repeatedly used for political oppression during the 11th-12th century (Budzinskyi, 1870; Tagantsev, 1912; Zagoskin, 1892).<sup>2</sup> Between the 14th and 16th centuries, the death penalty was introduced as an official punishment for crimes against the Grand Prince, crimes against the church and the state, for crimes of murder, and for some property offences (Adams, 1970; Kistyakovskiy, 1967; Mikhlin, 1997; Ponomarev & Mikhlin, 1995).<sup>3</sup>

In the 17th and 18th centuries the death penalty became instrumental for the politics of expansionist Russian monarchs. Executions were used by Ivan The Terrible and then by Peter The Great to strengthen and centralize their power and to defeat their political opponents (Moutchnik, 2006; Zagoskin, 1892).<sup>4</sup> During these periods, the number of capital offences increased and especially barbaric execution styles were often selected by the Tsar to produce the highest levels of fear among his subjects (Adams, 1970). Whereas the Court Code (Sudebnoe Ulozhenie) of 1649 introduced by Tsar Alexei Mikhailovich listed 63 crimes punishable by over 12 types of methods, the Military Articles (Voinskii Artikuly) of 1715 created by Peter The Great had already listed 123 capital offences and over 20 execution styles (Sergeevskiy, 1887). Under Chapters 1-3, 21-22 and 25 of the Court Code of 1649, capital punishment was prescribed for

all crimes against the state and the Tsar, crimes against church, and the crimes of murder, rape, and selling tobacco (Shargorodskiy, 1957). The Military Articles of 1715 added new crimes punishable by death including 13 new types of treason, interference with the administration of justice and the delivery of state mail, cutting down trees in the parks belonging to the Tsar, dueling, sodomy, and robbery (Kistyakovskiy, 1896). Nevertheless, only fifty years later, the Instructions of Catherine the Great (Nakaz, 1767) not only declared disapproval for the death penalty in general, but they also stated that the death penalty does not serve the purposes of deterrence and rehabilitation<sup>5</sup> (Feldshtein, 1909). Historians agree that the Instructions did not have any practical meaning and that they were mostly just considered a declaration of royal intentions and a sign of the royal family's adherence to the standards of the enlightenment (Shargorodskiy, 1957).

It was only in the second half of the nineteenth century that Russia took practical steps in limiting the use of the death penalty. In 1864, for the first time in Russia the Regulations of the Criminal Proceedings (Ustav Ugolovnogo Sudoproizvodstva) offered provisions for the appeal and pardon of death sentences (Rozin, 1913). In 1903, the new Criminal Code (Ugolovnoe Ulozhenie) eliminated the use of the death penalty for juveniles, the elderly, and female offenders (Sergeevskiy, 1910). The list of military laws of the 1870s-1880s that allowed the death penalty for non-capital crimes when committed during a declared state of emergency was also seriously truncated during 1902-1903 (Gordon et al., 1911; Rawson, 1984). In 1906, the first Russian parliament (Gosudarstvennaya Duma) attempted to abolish the death penalty for all crimes, including military and state offences. The draft of this law was unanimously approved by the lower chamber of the Duma on June 19 of 1906, but failed at the State Council, the upper chamber of the parliament (Mikhlin, 1997). The second Russian Duma drafted a proposal on death penalty abolition in 1907 but was dismissed before it was able to adopt the proposal (Nethercott, 2007). The third Duma sent the proposal to the legislative commission for further discussion, but decided against it in the end (Gernet 1913).<sup>6</sup> In all three Dumas the proposals to abolish the death penalty were drafted by a coalition of the socialist, constitutional-democratic, and labor parties, which suggests that both left and

centrist political forces in the early 20th century were united in the effort against the death penalty. However, on all three occasions, the conservative right, the executive government, and the royal family successfully blocked such attempts, justifying the need for the death penalty by pointing to spreading political crimes and instabilities (Adams, 1970). In his 1913 book, Gernet noticed that such a political situation around the death penalty issue was not unique to Russia. Reactionary political forces in power tended to advocate for the death penalty, even when the general population did not always support such views (Spasovich, 1863). Leading criminologists in late imperial Russia, who predominantly supported the abolition of the death penalty, suggested that the death penalty was used in the Russian Empire by conservatives as an instrument of "regime protection" when other means of securing its legitimacy were failing (Tagantsev, 1913; Viktorskii, 1912).

During the five years following the February revolution of 1917, the legislation on the death penalty in Russia was constantly changing. It was repeatedly abolished and then reinstated by both the Provisional<sup>7</sup> and Bolshevik governments. Just a month after the February revolution of 1917, the Provisional government abolished capital punishment for all criminal offences (Browder & Kerensky, 1961). The new Provisional government declared that the death penalty was an ineffective reactionary measure previously used by the conservative Tsar government and therefore should be abolished in the light of a new doctrine of revolutionary Russia (Browder & Kerensky, 1961). However, four months later, on July 12th of 1917, the death penalty was restored for all military crimes, murder, rape, and offences against the state committed during war time (Browder & Kerensky, 1961). This measure was adopted by the Provisional government as a result of the deteriorating political and economic situation in Russia due to its unsuccessful participation in WWI and associated civil disturbances (Naumov, 2002). Yet, in September of 1917, the Provisional government declared a moratorium on the use of the death penalty (Adams, 1970). Thus the struggle of the Provisional government with the issue of the death penalty was common. The Provisional government was torn apart by the contradictions between an ideological and populist need to abolish the death penalty and the

fear of growing political opposition that was attempting to take over the country.

After the Bolshevik's *coup d'état*, also known as the Red October Revolution of 1917, the death penalty was again abolished in October of 1917<sup>8</sup> as "a bourgeois measure contradicting the revolutionary consciousness of the socialist proletariat" (Belyaev & Shargorodskiy, 1970, p. 23). Yet four months later, on February 21 of 1918, it was reinstated by the Decree-declaration titled "Socialist Motherland is in Danger!" (Estrin, 1935). The Decree was adopted in response to the exigencies of a civil war and foreign intervention experienced by Russia during 1917-1919. The Decree authorized the extrajudicial "Emergency Commissions" to sentence the offenders who committed counter-revolutionary crimes, such as sabotage and treason, without trial or appeal (Estrin, 1935). A new Decree adopted on June 16 of 1918 also instructed the Revolutionary People's Courts<sup>9</sup> to use the death penalty as the only punishment for counter-revolutionary offences (Mikhlin 1997). Finally, in September of 1918, the Decree called "About Red Terror"<sup>10</sup> directed that "all persons having links with White Guard organizations,<sup>11</sup> or involved in conspiracies and revolts" were subject to immediate shooting based on decisions adopted by the Emergency Commissions, which allowed extrajudicial and immediate application of the death penalty (Feldbrugge, 1964). Based on these documents, the Bolshevik government launched an unprecedented campaign of violence resulting in both judicial and extrajudicial applications of the death penalty in Russia to more than 12,000 people during 1917-1920 (Naumov, 2002). Even the official Soviet statistics admit that at least 766 people were executed on the basis of judicial decisions of the Revolutionary tribunals between 1918 and 1920 (Juviler, 1976). This is almost twice as many people who were sentenced to the death penalty by the Tsarist government between 1876 and 1905 (Gernet 1906).<sup>12</sup> Soviet historians justified the massive use of the death penalty by Bolsheviks during 1917-1919 in accordance with the tenets of Marxism-Leninism ideology. They pointed out that it was the only available means to "reduce, localize and simplify the blood-thirsty agony of the old society and the bloody birth of the new society" (Shargorodskiy, 1958, p. 64).

On January 17, 1920<sup>13</sup>, the death penalty was abolished again since "the enemies of the Red Revolution were defeated in most

territories of Soviet Russia" (Piontkovskiy, Romashkin, & Chkhikvadze, 1970, p. 18). However, the Decree of 1920 allowed the use of the death penalty by the military tribunals and also provided a justification for the possible use of the death penalty in the future. The decree stated that "only renewed attempts . . . to disturb the steady position of Soviet power . . . by armed interventions or material support of . . . Tsarist generals can force the Soviet Government to revert again to terrorist methods" (Kucherov, 1970, p. 67). In the mid-1920s Soviet Russia entered a period called the New Economic Policy (NEP)<sup>14</sup>, and adopted two new Criminal Codes (CC) in 1922 and in 1926. The first CC of 1922 was an initial attempt to codify existing Soviet laws since 1917. Debates preceding the adoption of this document were focused, among other things, on whether the death penalty should be used in the new "classless" society. The drafts of the CC prepared by the Peoples Commissariat for Justice (Narkomyust) and the Institute of Soviet Law argued for the removal of the death penalty from the measures of criminal punishment since the enemies of the Red Revolution were no longer threatening the existence of the Soviet state (Gerzenzon, Gringauz, Durmanov, Isaev, & Utevskiy, 1948).<sup>15</sup> However, these views were thought to be erroneous and dangerous and the abolition of the death penalty was rejected by the "special commission" of the Small Council of People's Commissars (Malyi Sovnarkom) (Kuznetsov, 2002; Timasheff, 1953). As a compromise, the death penalty in the CC of 1922 was listed as a temporary and exceptional measure, a tradition that was later followed by all Soviet codes. The CC of 1922 allowed the death penalty in the form of shooting for 19 separate crimes, most of which were offences against the state (Zakhartsev, 2004).<sup>16</sup> However, in 13 out of 19 capital crimes, according to the CC of 1922, the judges had full discretion to replace the death sentence with only five years of imprisonment (Kuznetsov, 2002). The focus of the CC of 1922 was mostly rehabilitative, which diminished the use of the death penalty by the courts (Solomon, 1980).

The Constitution of the USSR, enacted in 1924, transferred the general principles of criminal law from the constituent Republics to the Union (Timasheff, 1953). This fact, together with the numerous imperfections of the CC of 1922, became an impetus for the development of new all-Soviet criminal codes, including the

Fundamental Principles of Criminal Law of USSR of 1924 and the new CC of Russian Soviet Federative Socialist Republic (RSFSR)<sup>17</sup> of 1926 (Zakhartsev, 2004). The new Code was adopted in 1926 and it retained capital punishment for all political crimes, but reduced the number of other capital offences (Krylenko 1934).<sup>18</sup> Both The Principles of 1924 and the CC of 1926 continued to declare that capital punishment was an exceptional measure temporarily restored only for the protection of the state and the people, and that it should be used only until its abolition by the All-Russian Central Executive Committee (Butler, 1999).<sup>19</sup> Despite this declaration, capital punishment was not abolished in the USSR. The end of the NEP period in the late 1920s marked a new era of political repression.

In the late 1920s the Politburo of the Communist party inserted itself in the judicial process to exercise significant political control over penal policy and proceedings resulting in the death penalty. The Special Commission for Political Cases was created in 1928 by the Politburo to oversee indictments of political importance where death penalty sentences were possible (Khlevniuk, 1997). Between 1929 and 1940, the CC of RSFSR of 1926 was supplemented by a number of new capital political offences. In 1929, amendments to the CC of RSFSR of 1926<sup>20</sup> provided that officials who defect or take bribes while in office should be treated equally with the perpetrators of crimes against the state and sentenced to death (Berman, 1972). In 1932, the Decree on "Socialistic property"<sup>21</sup> directed the People's Courts that a theft of goods transported by rail or water as well as a theft from collective farms or cooperative property should be considered counter-revolutionary crimes and could be punished by the death penalty (Berman, 1972). In 1934, the crimes against the state were supplemented by a notoriously known capital offence named the "betrayal of the Motherland"<sup>22</sup> (Ponomarev & Mikhlin, 1995). The principle of analogy<sup>23</sup> was allowed when applying these provisions, which made it possible to include all conceivable activities against the state and regular crimes under the umbrella of the "betrayal of the Motherland" offence (Feldbrugge, 1973). During World War II (WWII), the principle of analogy was also responsible for the criminal prosecution of numerous acts, which previously seemed harmless or of minor danger, without requiring amendment of the Criminal Code (Hazard, 1948). According to the official statistics between 1921 and

1953, 790 thousand people were executed for the counter-revolutionary offences by both judicial and extrajudicial agencies (Kuznetsov, 2002). However, many historians believe that the actual number of those executed is much higher and that Stalin's political repressions were responsible for the execution of millions of innocent people (Ponomarev & Mikhlin, 1995).

A new attempt to abolish the death penalty in respect to crimes committed during peacetime was undertaken in 1947. The abolition was intended to mark the "victorious conclusion of WWII by the glorious people of Soviet Union" and was introduced by Stalin without the consent of Soviet jurists or the leading criminal law scholars (Solomon, 1978).<sup>24</sup> The death penalty was substituted, according to this Decree by 25 years in prison (Piontkovskyi et al., 1970). In 1950, the death penalty was restored again for offences against the state, including treason, "betrayal of the Motherland," and espionage (Belyaev & Shargorodskyi, 1970). The new CC of RSFSR was adopted in 1960 as a result of "the Khrushchev thaw"<sup>25</sup>. This code banned the principle of analogy and eliminated the notorious "betrayal of the Motherland" crime. At the same time, the new criminal code contributed significantly to the expansion of the death penalty in Russia by adding new crimes to the list of capital offences (Kistyakovskiy, 1967). The CC of RSFSR (1960) included the death penalty for all state crimes, a murder committed under aggravated circumstances, felonies committed during war time, and selected property crimes such as money counterfeiting, unauthorized dealing of foreign currency, and aggravated robbery by an organized group (Belyaev & Shargorodskyi, 1970; Solomon, 1978). There were more than 30 capital offences in the CC of RSFSR of 1960 despite the fact that the death penalty was still declared an exceptional measure of punishment by the general part of the CC of RSFSR.

Starting from the mid-1980s, many capital offences were gradually excluded from the CC of RSFSR, leaving only a few crimes against the state and crimes against persons. By the end of the 1980s, the number of crimes punishable by the death penalty according to the CC of RSFSR decreased to 24 (Naumov, 2002). In 1991, only 16 capital offences were listed in the CC of RSFSR, five of which were related to crimes against persons (Kudryavtsev & Naumov, 1997).

Based on the available data, the number of defendants executed in the Soviet Union for crimes against the state gradually decreased since the mid-1970s. In 1962-1963, Berg estimated that about 2,200 people were annually executed in the Soviet Union for first-degree murder (Berg, 1985). At the same time, Mikhlin asserted that only 116 people were executed by the Russian Federation in 1998 (2000). In the late 1980s, Soviet scholars and jurists were actively discussing the new direction of long needed criminal law reform. Accordingly, the Model Fundamental Principles of Criminal Legislation and the Model Penal Code were drafted in 1985 and 1986 in an effort to reform the existing criminal law. These documents were never enacted, but they created a meaningful discussion on the major points of criminal law reform including the abolition of the death penalty in the late Soviet Union. Some authors of these drafts, such as Karelina and Sakarov were adamant opponents of capital punishment. However, faced with overwhelming public and scholarly support for the death penalty, they did not include the idea of abolition in either the Principles or the Criminal Code (Solomon, 1992). Instead, both documents supported an idea of limited death penalty application, available only for crimes against the state and the most heinous crimes against persons. The deep scholarly divide on the matter of the death penalty continued until the adoption of the new CC of Russia in 1996, with a large group of scholars arguing for the death penalty.<sup>26</sup> This historic overview illustrates that both the adoption and abolition of death penalty through the Russian history was not a question of mere instrumental necessity. Instead, it can be argued that death penalty law was used by both Tsars and Soviet leaders to communicate various messages to existing political agents. The processes of strengthening the government's authority were usually related in Russia to the adoption or expansion of death penalty laws, whereas the historic moments of liberalization and enlightenment can be connected to the attempts of death penalty abolition.

Available data on death penalty sentences and executions in Russia is scarce and contradictory. It is unclear how many people were executed in Soviet Russia and the Soviet Union between the 1920s and the mid-1950s. Pristavkin, the adviser to the President of Russia and the head of the Clemency Commission<sup>27</sup> (Pristavkin, 2004), asserted that approximately 20,000 were executed in the Soviet Union

for criminal activities each year between 1920 and 1954.<sup>28</sup> Data provided by Berg give some indication of death penalty executions in the Soviet Union during 1960s, but are also incomplete and based on a regional data set only (1985). His estimations suggest that at least 2,200 people were executed annually during the early 1960s in the Soviet Union (Berg, 1985).

The most comprehensive data about death sentences and executions in Russia for the last 37 years was provided by Mikhlin (2000). He used official statistics on executions provided by the Russian Ministry of Corrections and revealed that for the last four decades the number of executions performed in the Soviet Union was reduced from 2159 people in 1962 to 116 people in 1998. Data provided by Barry and Williams (1997) corroborates tendencies reported by Mikhlin, but offers a different number for executions conducted between 1985 and 1990. Barry and Williams suggest that 770 individuals were executed in the Soviet Union in 1985, and by the year of 1990, the number of executions dropped to 195. Since 1999, official statistics from the Russian Ministry of Justice show that no person was executed or sentenced to death. Nevertheless, the use of official statistics to estimate the scope of executions in the Soviet Union and Russia is problematic. The official Soviet and Russian statistics are known to have fundamental flaws, since they are manipulated for the purpose of plausible reports (Skomorokhov & Shikhanov, 2006). In the absence of other available data, researchers have to use the official statistics for death penalty executions in Russia but should exercise caution over their reliability (Terrill, 1997).

### **3. Looking West: The Death penalty under the Current Criminal Law in Russia<sup>29</sup>**

Since the dissolution of the Soviet Union in 1991, the attitudes of ruling political elites towards the death penalty in Russia have undergone significant change. Many of the "new democrats"<sup>30</sup> considered capital punishment an atrocity of the totalitarian past and were ready to abolish it. Thus, in the early 1990s the death penalty was often viewed as a temporary measure that would be discontinued in the very near future (Ignatov & Krasikov, 1999). This vision was

reflected in the Constitution of the Russian Federation adopted in 1993.

The Parliamentary Assembly of the Council of Europe (PACE) is one of the most prominent opponents of the death penalty in Europe. In 1980, this organization appealed to the members of the Council of Europe (CE) with a declaration to abolish the death penalty in the entire territory of Europe. In 1983, Protocol No. 6 to the European Court of Human Rights (ECHR) was created to eliminate the death penalty in Western Europe; it was signed by the 21 members of the CE. With time, the ratification of Protocol No. 6 to the ECHR became a necessary condition for membership in the CE (Barry & Williams 1997). In the effort to integrate into the European community, in 1992 Russia applied for membership in the Council of Europe. On January 25, 1996, membership was granted pending ratification of Protocol No. 6 by Russia within the next three years.<sup>31</sup> In Opinion # 193, the PACE declared that it was an understanding of the European community that Russia, as a member of the CE, would accept the international obligation to ratify Protocol No. 6.

In accordance with this international obligation, the President of Russia issued Decree # 724 "On the gradual decrease of the application of the death penalty in connection with accession to the CE."<sup>32</sup> President Yeltsin instructed the government of Russia to prepare and introduce a bill to the State Duma, which allowed Russia to sign and ratify Protocol No. 6. The appropriate draft was prepared by the government by the end of 1996, but was never passed by the State Duma.<sup>33</sup>

But also in 1996, the State Duma adopted a new Criminal Code of Russia (CC of Russia), which recognized the death penalty as one of the possible criminal punishments. Article 58 of the CC of Russia allowed the death sentence for five capital offences, all of which pertained to crimes against life (Butler, 1999).<sup>34</sup> What is more important, the CC of Russia of 1996 provided an opportunity to replace the death penalty by life imprisonment or imprisonment for a term of 25 years if clemency is granted.<sup>35</sup> According to the Constitution of Russia (1993), the only person who can grant clemency in such cases is the President of Russia.<sup>36</sup> The President created the Commission on

Pardon and Amnesty to process the clemency requests.<sup>37</sup> In order to bring the current penal law in accordance with the new CC of Russia, the new Criminal Executive Code of Russia (CEC of Russia) was adopted in 1997. Provisions in articles 184-186 of the CEC of Russia allowed the execution of the death sentence only after the President of Russia denied the defendant's application for clemency.<sup>38</sup> The combined provisions of these three documents—the Constitution of Russia, the CC of Russia of 1996, and the CEC of Russia of 1997—created a situation where the death penalty was at least partially *de facto* abolished, as long as the President of Russia granted clemency to all defendants sentenced to death.<sup>39</sup> In the absence of a binding directive to the Commission on Pardon and Amnesty, this situation still allowed the courts, at least theoretically, to carry out existing death penalty sentences, which made this *de facto* abolition incomplete.

The *de facto* partial abolition did not preclude Russia from executing convicted individuals after 1996. According to Report #7746, presented on January 28, 1997, PACE received a confirmation "that in the first half of 1996, at least 53 executions were carried out in Russia, in flagrant violation of the commitment entered into by the country upon accession to the Council of Europe to put into place a moratorium on executions immediately".<sup>40</sup> Based on this report, on January 29, 1997, the PACE adopted Resolution # 1111, which condemned Russia's actions and "warn[ed] the Russian authorities that it [would] take all necessary steps to ensure compliance with commitments entered into... The Assembly may consider the non-ratification of the credentials of the Russian parliamentary delegation at its next session".<sup>41</sup>

In response to this criticism, on February 27, 1997 the president of Russia issued an order instructing the Ministry of Foreign Affairs to sign Protocol No. 6. In compliance with this Order, Protocol No. 6 was signed by Russia on April 16, 1997 in Strasburg. At the same time, a group of pro-presidential representatives introduced a bill in the State Duma to declare a three-year moratorium on executions.<sup>42</sup> In the explanatory note to the bill the representatives argued that due to a high number of judicial errors and miscarriages of justice in Russia, and under international obligations of Protocol No. 6, it was the duty of the State Duma to declare a legislative moratorium on the

executions.<sup>43</sup> The bill was defeated by the State Duma with only 75 out of 257 representatives voting for it. Both communist and centrist political parties opposed the bill as "a document that does not reflect on the current Russian reality, where the crime rates are drastically increasing every year" (Pozdnov, 2003, p. 50). No word was made of PACE obligations during this defeat.

Soon after that, on January 8, 1998, new amendments were introduced to the provisions of articles 184-185 of the CEC of Russia.<sup>44</sup> These amendments allowed the President of Russia to pardon defendants sentenced to death, even if these defendants did not apply for clemency. This situation is sometimes described as a complete *de facto* abolition of the death penalty (Pozdnov, 2003). In 1999, the president of Russia made another attempt to abolish the death penalty. On August 6, 1999, he introduced a draft of a bill that entirely abolished the death penalty in Russia.<sup>45</sup> The bill was again defeated by the State Duma. The Duma made it impossible for Russia to ratify Protocol No. 6, which had been signed in 1997.

That same year, a third player was introduced into the conflict between the Russian parliament and the President of Russia. The Constitutional Court of Russia<sup>46</sup> decided to contribute to the death penalty debate by issuing a ruling on February 2, 1999.<sup>47</sup> In its ruling the Constitutional Court asserted that article 20 of the Russian Constitution guarantees a jury trial for every defendant who could face a death sentence. Since by 1999, the jury option in most of the regions was not available, the Constitutional Court ruled that the use of the death penalty in Russia is currently unconstitutional. The Constitutional Court also stated that the death penalty could not be applied even in the nine regions of Russia where the jury trials existed by 1999 because this would violate the principle of equal protection (Barry, 2002). The possibility of jury trials in all Russian regions was introduced by the new Criminal Procedural Code (CPC) adopted in December, 2001.<sup>48</sup> However, due to both organizational and financial difficulties, it was decided that jury trials would not be established simultaneously through the entire territory of Russia. In 2002, Russia had few judges who had any experience working with jury trials. Moreover, most of the courts had no funding and no experience dealing with the process of jury selection including the creation of

venire and *voir dire*. The Statute "On the effect of CPC of Russia of 2001"<sup>49</sup> provided that jury trials would resume in nine regions of Russian starting July 2002; in 62 regions starting January 2003; in thirteen regions starting July 2003; in four regions starting January 2004; and in one region, Chechen Republic, starting January 2007. In 2006, the State Duma extended the deadline to introduce jury trials in Chechen Republic until January, 2010.<sup>50</sup> As of now, jury trials exist in all regions of Russia except the Chechen Republic. Beginning in 2010, the Russian courts can again sentence defendants to death. However, existing provisions of Articles 184-185 of the CEC of Russia (1997) still allow the President to pardon every defendant sentenced to death. Since Russia is a Presidential Republic, the Presidential pardon will take over the court's prerogative. Thus the Russian Federation remains the only country out of 46 CE members who signed, but has not ratified the Protocol No. 6. Since 1997, fourteen former Soviet-bloc countries have signed and ratified this Protocol.

## **4. Attitudes and Reactions to the Death Penalty in Russia: People, the State Duma, and the President**

### *4.1. The Public*<sup>51</sup>

According to the available data, most Russians express overwhelming support for the death penalty.<sup>52</sup> Since the late 1980s, when Glasnost<sup>53</sup> was declared the principle of new post-Soviet Russia, a number of research companies have been allowed to measure public opinion on the death penalty. The first known study was conducted by the All-Russian Center of Public Opinion Research (VCIOM) in 1989. It revealed that 62% of all Russians believed that the application of the death penalty should be continued and even extended beyond the existing capital offences (the Foundation of Public Opinion, (FOM, 1997a)). Five years later, 65% of respondents in a representative sample of Russia agreed that the death penalty should be used and only 5% of Russians thought that capital punishment should be immediately abolished (VCIOM, 1994).

In 1997, according to a study by FOM, 70% of all Russians continued to think that the capital punishment should be used (FOM, 1997c). The study also discovered that 55% of all Russians thought that the moratorium declared on the death penalty in 1996 was a mistake, and 63% of all Russians argued for immediate restoration of capital punishment (FOM, 1997b).

In 2000, public support for the death penalty in Russia increased according to the study by VCIOM. Based on VCIOM data, 73% of all respondents favored capital punishment (VCIOM, 2000). The proportions of death penalty supporters were highest among respondents over 45 and those with less than a college degree (VCIOM, 2000). In 2001, VCIOM reported another increase in public support of capital punishment in Russia. According to their study, in 2001, 79% of all Russians believed that some heinous crimes in Russia should be punishable by death (VCIOM, 2001). The study by FOM, also conducted in 2001, corroborates these findings, showing that 63% believed that the moratorium on the death penalty should be revoked (FOM, 2001a).

Conducted in 2002, a study by VCIOM showed further growth in public support for the death penalty in Russia. According to this study, 82% of all respondents agreed that the death penalty should be restored (VCIOM, 2002). In a study by the Russian Public Opinion Research Group (ROMIR), 57.9% of all respondents were in favor of lifting the moratorium on the death penalty in Russia (2005a). The most recent studies by leading research centers show that public support for the death penalty in Russia remains strong. Data by FOM (2006) indicates that 74% of all respondents consider the death penalty an appropriate measure of social control and punishment. Finally, a study by Levada in 2007 shows that only 17% of all Russians believe that the death penalty is morally unacceptable (Levada, 2007). This number is much higher (36%) for users of the Internet, who tend to be younger and more educated than the general population (RuNet, 2008).

Differences observed over the years by the different polling companies can be, to a certain degree, attributed to differences in the questionnaire methodology used in each study. For a better understanding of the questionnaires used to assess public attitudes on

the death penalty in Russia, we provide a summary in English translation of the questions used by the various surveyors. None of the surveys provided respondents with questions on life imprisonment as an alternative to capital punishment. Please see Appendix 2 for details. Notwithstanding the observed differences, the public polls suggest that, despite the major changes in both political and economic systems of the former Soviet Union, public approval of the death penalty remains strong and stable.

## 4.2. *Russian Duma*

The opinion of the State Duma, the lower chamber of the Russian parliament, concurs with public opinion on the death penalty (Zveyagin, 1997). Since 1996, the Duma made every effort to avoid the *de jure* abolition of the death penalty in Russia despite continuous and strong pressure from the Russian President. The Duma defeated both bills to abolish the death penalty in 1997 and the legislative moratorium on the death penalty in 1999. On February 15, 2002, the Duma adopted a declaration addressed to the President of Russia expressing serious concerns over a possible abolition of the death penalty in Russia in a situation of rising crime rates. It stated that the abolition would contradict the repeatedly expressed popular will and would make Russian people feel insecure and abandoned.<sup>54</sup>

Only minority liberal parties that had never dominated the Russian legislative body favored abolition and attempted to ratify Protocol No. 6 (Pristavkin, 2004). Some researchers believe that the Duma's reluctance to abolish the death penalty in Russia is due to fear of adopting an unpopular law (Mikhlin, 2000). The Duma's approval ratings over the last ten years has remained very low (VCIOM, 2008). According to most polls, the Duma is one of the least popular and least trusted political institutions in Russia (FOM, 2000).<sup>55</sup> Some other researchers speculate that the Duma's actions represent the personal views of the Duma members along with the instrumental views of their parties (Mitroshenkov, 2004).<sup>56</sup> With the overwhelming public support for the pro-presidential "United Russia" party<sup>57</sup> and its victory in the last Duma's election, it is unclear whether the current Duma is still concerned with aligning its position on the death penalty with general public opinion (Gadjiev, 2008). It is possible to suggest that the

current Duma may change their opinion on the death penalty abolition to align their views with Prime Minister Putin, who plays a critical role in the party's public success.

### 4.3. *The President*

Unlike the public and the State Duma, both presidents Yeltsin and Putin of Russia<sup>58</sup> can be considered supporters of the abolition of the death penalty. President Yeltsin championed the idea of death penalty abolition by applying to the Council of Europe in 1992 in an effort to integrate Russia into the European community (Ritter, 2000). President Putin continued this line of foreign policy by creating the conditions for the *de facto* abolition of the death penalty in Russia.<sup>59</sup> Putin urged the State Duma to confirm international obligations taken on by Russia as a result of signing Protocol No. 6 in 1997.

Paradoxically, survey results confirm that the popular image of the Russian Presidents did not suffer from their unpopular views on abolition. In the study by FOM (FOM, 2001b), 55% of respondents reported that they were aware of the presidential idea to abolish the death penalty, and 60% of respondents said they disapproved. At the same time, the study conducted by ROMIR (2005b) suggests that the President remains the most trusted political figure in Russia.<sup>60</sup> A possible explanation for this paradox was reflected in interviews conducted by FOM in 2001. According to FOM's data, people in Russia believe that the official position of the Russian President is just a tribute to the European community, and that he is forced to hold these views under the pressure of current foreign policy (FOM, 2001b). Interviews conducted by FOM in conjunction with the survey showed that people believe that the abolition of the death penalty is an alien Western idea that was imposed on Russia due to its weak political and economic position in the world. For that reason, they "forgive" the President and believe that once Russia becomes politically stronger, the head of state will no longer seek to abolish the death penalty (FOM, 2001b).

## 5. Summary and Conclusions: The Way Ahead

When speculating over the potential number of death penalty executions that could take place in Russia if the death penalty were restored, one should probably rely on current statistics on murder convictions. The CC of Russia adopted in 1996 lists only two major categories of capital offence – crimes against the state and aggravated murder. Studies on the death penalty in the last two decades of Soviet Union's history show that over 90% of all people executed were offenders convicted on the charge of aggravated murder (Mikhlin, 2000). The number of people who were executed for crimes against the state diminished by the mid-1980s and remained insignificant (Duyunov, 2000; Turetskyi, 1985). Currently, such offenders receive life imprisonment terms as the only constitutionally allowable substitution for the death penalty (Kuznetsov, 2002). Official statistics from the Ministry of Justice and the Judicial Department of the Supreme Court show that, for the last five years, the number of people annually sentenced to life imprisonment in Russia for aggravated murder range from 45 to 96.<sup>61</sup> Assuming that the number of crimes against the state will not increase dramatically, it is safe to suggest that if Russia were to resume death penalty executions, they might apply to dozens of offenders annually.

The promise of the eventual abolition of capital punishment in Russia has kept Russia in the hunt for eventual membership in the European Community. Whatever happens after 2010, public opinion will not likely be the determining factor. Throughout Europe and the U.S., abolition has not been grounded in public opposition to capital punishment. If Russia resumes executions, even at a low level, CE membership will be forfeited. Even if *de facto* abolition is maintained, membership is unlikely. Finally, should Russia resume wholesale executions it will find a kindred soul in the Peoples' Republic of China (the PRC), its large and influential neighbor in the East.

The Soviet Union and Russia have a long tradition of frequent executions. Yet for over 100 years there has existed a slender reed of Russian abolitionist thought. As in other settings, symbolic, unenforced law in Russia serves the age-old goal of attempting to bridge the gap between incompatible parties. Frequent executions would incite an

adamant official response from the EC and make membership impossible while outright abolition would antagonize Russian citizens since. We have demonstrated conclusively that Russian opinion polls show solid support for the death penalty. On the other hand it must be said that this public opinion is not totally unlike that found in Western Europe, which has no capital punishment laws.

Yet public opinion is where the similarities between Russian and Western Europe end. In the past the Russian Duma seemed to be afraid to contradict public opinion and thus overwhelmingly supported the death penalty. However, in the recent election the pro-Presidential party of United Russia took over the Duma, which suggests that current Duma may reverse their opinion regarding support of the death penalty and align with the presidential position. The Duma remains very unpopular with the Russian electorate, even though the United Russia party has a strong public support. Recent Russian presidents Yeltsin and Putin, seem totally committed to improving the external relations of Russia with the West and hope for eventual integration into the EC. Such membership would facilitate trade relations and likely ease international tensions. The President alone has the legal authority to offer clemency to all who are sentenced to death and has pushed for the abolition of the death penalty. The President remains a very popular institution even with this support for abolition. The Russian public can have it both ways; they support the death penalty but also support a President who does not. Complicating matters further the Constitutional Court of Russia has ruled that no capital trials can occur without juries and yet juries will not be established throughout all regions of Russia until 2010. How long this stalemate will last, no one can predict. In Hong Kong local courts for several decades continued to sentence convicted murderers to death and complained bitterly about British interference with executions (Gaylord & Galliher 1994). This situation changed once unification with the PRC neared. Now Hong Kong politicians determined that formal abolition was superior to the threat of wholesale executions at the hands of the PRC. It may be that the Russian Duma will behave similarly after 2010 when Russian executions will again become a legal reality.

## References

- Adams, W. (1970). Capital Punishment in Imperial and Soviet Criminal Law. *The American Journal of Comparative Law*, 18(3), 575-594.
- Barry, D. D. (2002). Capital Punishment in Russia: the Post-Soviet Phase. In F. J. M. Feldbrugge & W. B. Simons (Eds.), *Human Rights in Russia and Eastern Europe* (pp. 3-14). The Hague, Lond & New York: Martinus Nijhoff Publishers.
- Barry, D. D., & Williams, E. J. (1997). Russia's Death Penalty Dilemmas. *Criminal Law Forum*, 8(2), 231-258.
- Belyaev, M. A., & Shargorodskiy, M. D. (1970). *Kurs sovetskogo ugolovnogogo prava. Chast' obschaya [The course of Soviet Criminal Law]* (Vol. 2). Leningrad: Leningrad State University Press.
- Berg, G. P. v. d. (1985). *The Soviet System of justice: figures and policy*. Dordrecht, Boston & Lancaster: Martinus Nijhoff Publishers.
- Berman, H. J. (1972). *Soviet Criminal Law and Procedure. Introduction*. Cambridge, MA: Harvard University Press.
- Boikov, A. (1999). Smertnaya kazn' -problema otmeny. *Zakonnost'*, 8, 32-43.
- Browder, R. P., & Kerensky, A. F. (1961). *The Russian Provisional Government: 1917. Documents*. Stanford, CA: Stanford University Press.
- Budzinskiy, S. (1870). *Nachalo ugolovnogogo prava [Beginning of criminal law]*. Warsaw: Glavnyi sklad v knizhnykh magazinakh Kozhanchikova v St. Peterburge, Varshave i Kazani
- Butler, W. E. (1999). *Russian law*. Oxford, UK: Oxford University Press.
- Duyunov, V. K. (2000). *Problemy ugolovnogogo nakazaniya v teorii, zakonodatel'stve i sudebnoi praktike*. Kursk: Press of Regional Open Social Institute.
- Edelman, M. (1971). *Politics as Symbolic Action*. Chicago: Markun Pub. Co.
- Estrin, A. Y. (1935). *Osnovy i istoriya sovetskogo ugolovnogogo prava. Chast' obschaya. Uchebnik. Vyp. 1 [The basics and history of Soviet criminal law. General part. Textbook. Volume 1]*. Moscow: Soviet Publisher.
- Feldbrugge, F. J. M. (1964). *Soviet Criminal Law. General part*. Leiden: A.A. Sythoff.
- Feldbrugge, F. J. M. (1973). *Encyclopedia of Soviet Law*. Leiden: Oceana Publications.
- Feldshtein, G. S. (1909). *Glavnye techeniya v istorii nauki ogolovnogogo prava Rossii [The major tendencies in the history of criminal law science in Russia]*. Yaroslavl': Tipografiya Gubernskogo Pravleniya.
- FOM. (1997a). Bol'shinstvo rossiyan po prezhnemu protiv otmeny smertnoi kazni [The majority of Russians are still against the death penalty abolition]. Retrieved 05.05.2008, from [www.fom.ru](http://www.fom.ru)

- FOM. (1997b). O smertnoj kazni [About death penalty]. Retrieved 05.05.2008, from [www.fom.ru](http://www.fom.ru)
- FOM. (1997c). Rossiya i tur'ma [The Russians and the jail]. Retrieved 05.05.2008, from [www.fom.ru](http://www.fom.ru)
- FOM. (2000). A komu iz etih organov vlasti, organizatsii, sotsial'nyh institutov Vy ne doveryaete [Whom from the following agencies, organizations and societal institutions you do not trust?]. Retrieved 05.05.2008, from [www.fom.ru](http://www.fom.ru)
- FOM. (2001a). O moratorii na smertnyu kazn' [About the moratorium on the death penalty]. Retrieved 05.05.2008, from [www.fom.ru](http://www.fom.ru)
- FOM. (2001b). Smertnaya kazn': za i protiv [Death penalty: for and against]. Retrieved 05.05.2008, from [www.fom.ru](http://www.fom.ru)
- FOM. (2006). O smertnoi kazni [About death penalty]. Retrieved 05.01.2008, from [www.fom.ru](http://www.fom.ru)
- Gadjiev, K. S. (2008). *Politologiya. Osnovnoi kurs*. Moscow: Yurait.
- Galiakbarov, R. R. (1997). *Ugolovnoe pravo Rossikoi Federatsii. Obschaya chast'*. Saratov: Saratovskaya Vysshaya Shkola MVD.
- Gaylord, M., & Galliher, J. (1994). Death Penalty Politics and Symbolic Law in Hong Kong. *International Journal of the Sociology of Law*, 22, 19-37.
- Gernet, M. N. (1906). *Obschestvennyaya prichiny prestupnosti: sotsialisticheskoe napravlenie v nauke ugolvnogo prava [Social reasons for crimes: sociological studies in the criminal law]*. Moscow: Izdanie S. Skirmunta.
- Gernet, M. N. (1913). *Smertnaya kazn' [Death penalty]*. Moscow: Tipografiya A. Dankin i Ya. Khomutov.
- Gerzenzon, A. A., Gringauz, S. D., Durmanov, N. D., Isaev, M. M., & Utevskiy, B. S. (1948). *Istoriya Sovetskogo ugolvnogo prava [History of Soviet criminal law]*. Moscow: Yuridicheskoe izdatel'stvo MYu SSSR.
- Gordon, V. M., Kisilev, A. D., Palienko, N. P., B. V., P., Raevskiy, A. A., Temnikovskiy, E. N., et al. (1911). *Ugolovnoe pravo iz kursa pravovedeniya po Narodno-entsiklopedii. Tom 1. Obschestvenno-yuridicheskie nauki [Criminal law according to the jurisprudence course from the People's encyclopedia. Volume 1. Social-legal sciences]*. Moscow: Tipografiya tovarishestva I. D. Sytina.
- Gusfield, J. R. (1963). *Symbolic Crusade*. Urbana, and Chicago, IL: University of Illinois Press.
- Hazard, J. N. (1948). Drafting New Soviet Codes of Law. *American Slavic and East European Review*, 7(1), 32-44.
- Ignatov, A. N., & Krasikov, Y. A. (1999). *Ugolovnoe pravo Rossii [Criminal law of Russia]*. Moscow: Norma-Infra.
- Juviler, P. H. (1976). *Revolutionary law and order*. New York & London: The Free Press & Collier Macmillan Publishers.

- Khlevniuk, O. V. (1997). The Politburo penal policy and "legal reforms in 1930s. In P. H. Solomon, Jr. (Ed.), *Reforming justice in Russia, 1864-1996* (pp. 190-206). New York & London: M.E. Sharpe.
- Kistyakovskiy, A. (1896). *Issledovanie o smertnoi kazni [Research about death penalty]*. St. Petersburg: Izdanie L.F. Panteleeva.
- Kistyakovskiy, A. (1967). *Issledovanie o smertnoi kazni [Research about death penalty]*. Kiev: Nauchna dumka.
- Kucherov, S. (1970). *The Organs of Soviet Administration of Justice: Their History and Operation*. Leiden: E.J. Brill.
- Kudryavtsev, V. N., & Naumov, A. V. (1997). *Rossiiskoe ugovnoe pravo. Obschaya chast'. Uchebnik. [Russian criminal law. General part. Textbook]*. Moscow: Spark.
- Kuznetsov, N. F. (2002). *Kurs urolovnogo prava. Tom 1. [Course of the criminal law. Volume 1]*. Moscow: Zertsalo.
- Levada. (2007). Moral'naya priemlimost' razlichnyh postupkov [The moral acceptability of different behavior]. 05.05.2008, from [www.levada.ru](http://www.levada.ru)
- Malinovskiy, I. A. (1908). *Krovavaya mest' i smertnyya kazni, Vyp 1. [Tribal vengeance and death penalty]. Issue 1*. Tomsk: Tomsk Imperial University.
- Mikhlin, A. (1997). *Smertnaya kazn'. Vchera, segodnya, zavtra. [Death penalty. Yesterday, today, tomorrow]*. Moscow: Legal literature.
- Mikhlin, A. (2000). *Vysshaya mera nakazaniya: istoria, sovremennost', budushee*. Moscow: Delo.
- Mitroshenkov, O. I. (2004). Otnoshenie naseleniya i gossluzhaschiih k suschestvuyushemu pravoporyadku [The attitudes of people and the public servants towards the law and order]. *Sociological research*, 5, 113-120.
- Moutchnik, A. (2006). Der Strelitzen-Aufstand von 1698. In H. v. H.-D. Löwe (Ed.), *Volksaufstände in Rußland Von der Zeit der Wirren bis zur „Grünen Revolution“ gegen die Sowjetherrschaft* (pp. 197-222). Wiesbaden: Harrassowitz Verlag
- Naumov, A. V. (2002). *Rossiiskoe ugovnoe pravo. Obschaya chast'. Uchebnik. [Russian criminal law. General part. Textbook]*. Moscow: Bek.
- Nethercott, F. (2007). *Russian Legal Culture before and after Communism*. London and New York: Routledge.
- Petrukhin, I. L. (1999). Pravo na zhizn' i smertnaya kazn'. *Zakonnost'*, 5(80-90).
- Piontkovskiy, A., Romashkin, P. S., & Chkhikvadze, V. M. (1970). *Kurs ugovnogo prava. Nakazanie. T.3 [The course of criminal law. Punishment]* (Vol. 3). Moscow: Nauka.

- Ponomarev, P., & Mikhlin, A. (1995). *Primenenie smertnoi kazni v istorii rossiiskogo gosudarstva. [The application of death penalty in the history of Russian state]*. Moscow: Delo.
- Pozdnov, M. S. (2003). Ponyatie i suschnost' smertnoi kazni [The understanding and the nature of death penalty]. *New legal thought, 1*, 45-53.
- Pristavkin, A. (2004). The Russian Federation and the death penalty. In R. Hood & R. Badinter (Eds.), *The Death Penalty Beyond abolition* (pp. 199-204). Haag: Council of Europe Press.
- Rawson, D. (1984). The death penalty in late tsarist Russia: an investigation of judicial procedures. *Russian history, 11*(1), 29-52.
- Ritter, K. L. (2000). The Russian Death Penalty Dilemma: Square Pegs and Round Holes. *Case Western Reserve Journal of International Law, 32*(129), 1-33.
- ROMIR. (2005a). Otnoshenie k smertnoi kazni [The attitude towards the death penalty]. Retrieved 05.05.2008, from [www.romir.ru](http://www.romir.ru)
- ROMIR. (2005b). Tsifry i facty [Numbers and facts]. Retrieved 05.05.2008, from [www.romir.ru](http://www.romir.ru)
- Rozin, N. N. (1913). *Ugolovnoe sudoproizvodstvo: posobie po lektsiyam [Criminal procedure: study guide for lectures]*. Tomsk: Tipografiya Tomskago Imperskogo Universiteta.
- RuNet. (2008). Opros RuNet. Fevral', 2008 [The survey of Russian Internet. February, 2008]. Retrieved 05.05.2008, from [www.runet.ru](http://www.runet.ru)
- Sergeevskiy, N. D. (1887). *Nakazanie v Russkom prave XVII veka [Punishment according to Russian law 17 century]*. St. Petersburg: Izdanie knizhnago magazina A.F. Zinzerlinga.
- Sergeevskiy, N. D. (1910). *Russkoe ugovnoe pravo. Chast' obschaya [Russian criminal law. General part]*. St. Petersburg: Tipografiya M.M. Stasyulevitcha.
- Shargorodskiy, M. D. (1957). *Nakazanie po ugovnomu pravu (Nakazanie po ugovnomu pravu ekspluatatorskogo obschestva) [Punishment according to the criminal law (Punishment under the law of exploiter society)]*. Moscow: Gosyurizdat.
- Shargorodskiy, M. D. (1958). *Nakazanie po ugovnomu pravu (Nakazanie po sovetскому ugovnomu pravu) [Punishment according to the criminal law (Punishment under the Soviet criminal law)]*. Moscow: Gosyurizdat.
- Skomorokhov, R. V., & Shikhanov, V. N. (2006). Ugovnaya statistika i problema sotsial'noi deformatsii organov vnutennikh del [Criminal statistics and the problem of professional deformation of the agencies of interior affairs]. *State and Law, 3*, 62-70.
- Solomon, P. H., Jr. (1978). *Soviet Criminologists and Criminal Policy*. New York: Columbia University Press.

- Solomon, P. H., Jr. (1980). Soviet Penal Policy, 1917-1934: A Reinterpretation. *Slavic Review*, 39(2), 195-217.
- Solomon, P. H., Jr. (1992). Reforming criminal law under Gorbachev: crime, punishment and the rights of the accused. In D. D. Barry (Ed.), *Toward the "Rule of Law" in Russia?* (pp. 235-256). London and New York: M.E. Sharpe.
- Spasovich, V. (1863). *Uchebnik ugovnogo prava. Tom 1. Vyp 1. [Textbook of criminal law. Volume 1. Issue 1]*. St. Petersburg: Tipografiya Iosafata Ogrizko.
- Tagantsev, N. S. (1912). *Russkoe ugovnoe pravo. Lektsii. Chast' obschaya. T.2 [Russian criminal law. Lectures. General part, Volume 2]*. Moscow: Nauka.
- Tagantsev, N. S. (1913). *Smertnaya kazn'. Sbornik statej/*. St. Petersburg: Gosudarstvennaya tipografiia.
- Terrill, R. J. (1997). *World criminal justice systems: a survey*. Cincinnati, Ohio: Anderson Publishing Company.
- Timasheff, N. S. (1953). The Impact of the Penal Law of Imperial Russia on Soviet Penal Law. *American Slavic and East European Review*, 12(4), 441-462.
- Turetskyi, M. V. (1985). *Osobo opasnye gosudartsvennye prestupleniya*. Moscow: Izdatel'stvo Moskovskogo Universiteta.
- VCIOM. (1994). Chelovek sovetskiy - pyat' let spustya [The Soviet person - five years later]. Retrieved 05.05.2008, from [www.wciom.ru](http://www.wciom.ru)
- VCIOM. (2000). Vserossiskaya vyborka. Vopros 57\_K [All-Russian survey. Item # 57\_K]. Retrieved 05.05.2008, from [www.wciom.ru](http://www.wciom.ru)
- VCIOM. (2001). Vserossiskaya vyborka. Vopros 36 [All-Russian survey. Item # 36]. Retrieved 05.05.2008, from [www.wciom.ru](http://www.wciom.ru)
- VCIOM. (2002). Vserossiskaya vyborka. Vopros 47 [All-Russian survey. Item # 47]. Retrieved 05.05.2008, from [www.wciom.ru](http://www.wciom.ru)
- VCIOM. (2008). Reiting obschestvennykh institutov [Rating of societal institutions]. Retrieved 05.05.2008, from [www.wciom.ru](http://www.wciom.ru)
- Viktorskii, S. N. (1912). *Istoriia smertnoi kazni v Rossii i sovremennoe eia sostoyanie [History of death penalty in Russia and its modern state]*. Moscow: Tipografiia Imperskago Moskovskago Universiteta.
- Zagoskin, N. P. (1892). Ocherk istorii smertnoi kazni v Rossii. Rech chitannaya na godichnomakte Imperatorskogo Kazanskogo Universiteta [The historic essay of the death penalty in Russia. Speech presented during the annual meeting of the Imperial Kazan' University] [Electronic Version]. *Izvestiya i uchennye zapiski kazanskogo universiteta [Bulletin and the study papers of the Kazan' University]*, 1. Retrieved 12.06.08, from <http://www.allpravo.ru/library/doc101p0/instrum2363/>

Zakhartsev, S. N. (2004). *Sovetskoe pravo v gody NEPa (1921-1929) [Soviet law during the NEP (1921-1929)]*. Tambov: Press of Tambov State Technical University.

Zveyagin, Y. (1997). Moratorii na smertnuy kazn' i positsiya deputatov [Moratorium of the death penalty and position of representatives]. *The Journal of Russian Law*, 7, 156-158.

## About the Authors

**Olga B. Semukhina** is an assistant professor of criminology and law studies at Marquette University. She received her MS in criminal justice from University of Central Florida (UCF) in 2001 and PhD in Public Affairs from UCF in 2007. She also holds LLB and LLM degrees from Law Institute of Tomsk State University in Russia. Her research interests include comparative criminal procedure, criminal procedure of international institutions, transnational crimes, comparative policing, and international standards of due process.

**John F. Galliher** is Professor of Sociology and Director of Peace Studies at Missouri University. He is interested in the history of drug laws as well as capital punishment and the biographies of progressive scholars. He also has studied how the U.S. government has abused its legal authority in administering drug laws and how some American states have done the same in executions. His overarching concern involves an increased understanding of human rights.

**Appendix 1.** Chronological list of important legislative acts related to the death penalty in post-tsarist and Soviet Russia, 1917-1991

<i>Agency and act</i>	<i>Date</i>	<i>Significance</i>
Provisional Government. The decree of the Provisional Government	3.12.1917	Death penalty was completely abolished.
Provisional Government. The decree of the Provisional Government	7.12.1917	Death penalty was restored for heinous crimes committed during war time.
Provisional Government. The decree of the Provisional Government	9.28.1917	The use of the death penalty was postponed until a "special order of Provisional Government."
Second Congress of Soviets. The decree of the Second Congress of Soviets. "Reinstated by Kerensky death penalty at the battle fields is abolished"	11.7.1917	Death penalty was completely abolished.
Council of People's Commissars. The Decree-declaration titled "Socialist Motherland Is in Danger!"	2.21.1918	Death penalty was allowed for selected counter-revolutionary crimes.
Peoples Commissariat for Justice. The Decree	6.16.1918	The Emergency Commissions were allowed to use the death penalty based on their "revolutionary consciences."
Council of People's Commissars. The Decree "About Red Terror"	9.05.1918	Death penalty was allowed for all counter-revolutionary crimes without the right to appeal. Sentenced defenders are subject to immediate execution.
Council of People's Commissars. The Decree to introduce "Leading Principles of criminal law"	12.12.1919	Death penalty was included in the system of criminal punishments according to Soviet criminal law. It was considered a temporary measure to be used until the full abolition by the government.
All-Russian Central Executive Committee and Council of People's Commissars. The Decree "About abolishing of the highest measure of punishment (shooting)"	1.17.1920	Death penalty was abolished, but the conditions for resuming it in future were stated.
All-Russian Central Executive Committee and Council of People's Commissars. The Decree "About Announcing Emergency Situation for Some Provinces"	5.11.1920	Military tribunals were allowed to sentence defendants to death in provinces under the emergency situation.
Third Congress of All-Russian Central Executive Committee (10th convocation). Criminal Code of Russian Soviet Federative Socialist Republic	7.01.1922	Death penalty was included in the system of criminal punishments as a temporary and exceptional measure.
Second Congress of All-Russian Central Executive Committee (11th convocation). "Fundamental principles of criminal legislation of USSR and Union Republics"	10.31.1924	Death penalty was not included in the major system of criminal punishments. It was listed separately as an exceptional measure. Principles also noted that the death penalty should be regulated by the Criminal Codes of the Union republics.
Second Congress of All-Russian Central Executive Committee (12th convocation). Criminal Code of Russian Soviet Federative Socialist Republic (RSFSR)	11.22.1926	Death penalty was declared an exceptional and temporal measure for protection of workers and law and order. It remained in the system of criminal punishments.
All-Russian Central Executive Committee and Council of People's Commissars. The Decree on the "Socialistic property"	8.07.1932	A theft of goods transported by the rail or water as well as a theft of collective farms or cooperative property were considered counter-revolutionary crimes and were punishable by the death penalty.

All-Russian Central Executive Committee. The Decree "About introduction of Amendments to the CC of RSFSR"	6.8.1934	Introduced new article 58 to the CC of RSFSR, "Betrayal of Motherland", punishable by death. This led to mass executions during 1930s.
Presidium of Supreme Soviet of USSR. The Decree "About Measures of Punishment for the German Fascists."	4.19.1943	Introduced death penalty for the crimes committed by Nazi's invaders during the German occupation of USSR.
Presidium of Supreme Soviet of USSR. The Decree "About Abolition of Death Penalty"	5.26.1947	Abolished death penalty for all crimes and supplemented it with 25 years of camp labor.
Presidium of Supreme Soviet of USSR. The Decree "About Application of Death Penalty to the Traitors of the Motherland, Spies, Diverters"	1.12.1950	The death penalty was reinstated for certain types of crime against the state.
Presidium of Supreme Soviet of USSR. "Fundamental principles of criminal legislation of USSR and Union Republics"	12.25.1958	Included death penalty as exceptional and temporal measure of criminal punishment. Crimes against the state and murder under aggravated circumstances were considered capital offences.
Third Congress of Supreme Soviet of RSFSR (5th convocation). Criminal Code of RSFSR	10.27.1960	Criminal Code included death penalty as an exceptional measure of criminal punishment and listed over 20 capital offences.
Presidium of Supreme Soviet of USSR. The Decree "About Strengthening the Struggle with very serious crimes against Socialist Property"	5.5.1961	Theft of socialist property was included in the list of capital offences.
Presidium of Supreme Soviet of USSR. The Decree. "About Strengthening Struggle against violations of Foreign Currency Transactions"	7.01.1961	Unauthorized foreign currency transactions were included in the list of capital offences.
Presidium of Supreme Soviet of USSR. The Decree. "About Strengthening Criminal Liability for Rape, Murder and other Heinous Crimes"	2.15.1962	Rape under aggravated circumstances and murder of a law enforcement officer were included in the list of capital offences.
Presidium of Supreme Soviet of RSFSR. The Decree. " About Strengthening Criminal Liability for Crimes Committed at the Air Transport"	4.17.1973	Hijacking of a plane included in the list of capital offences.

**Appendix 2.** Summary of questionnaires on death penalty cited in this study

**Study by FOM (1989). The majority of Russians are still against the death penalty abolition**

*Exact Russian wording:*

Как вы считаете, смертную казнь следует отменить или расширить ее применение?

Следует отменить (или постепенно идти к ее отмене)

Следует оставить (или даже расширить применение смертной казни)

*Author's English translation:*

Do you think that the death penalty should be abolished or should be expanded?

Should be abolished (or gradually abolished)

Should remain (or gradually increase) the use of the death penalty

### **Study by FOM (1997). The Russians and the Jail**

*Exact Russian wording:*

Как вы думаете, следует ли в России отменить смертную казнь?  
Да/нет

*Author's English translation:*

Do you think that Russia should abolish the death penalty?  
Yes/no

### **Study by FOM (1997). About death penalty**

*Exact Russian wording:*

В 1996 президент России принял решение о введении моратория на смертную казнь в России. Как вы относитесь к этому решению - одобряете его или нет?  
Одобряю/ Не одобряю/Затрудняюсь ответить

*Author's English translation:*

In 1996, the President of Russia made a decision to place a moratorium on death penalty in Russia. How do you feel about this decision?  
Approve /Disapprove /Don't know

### **Study by VCIOM (2000). All-Russian survey. Item # 57\_K**

*Exact Russian wording:*

В какой мере Вы согласны или не согласны что смертная казнь должна быть отменена?  
совсем согласен/ скорее согласен/ скорее не согласен/ совершенно не согласен

*Author's English translation:*

To what degree do you agree or disagree that the death penalty should be abolished?  
completely agree/ somewhat agree/ somewhat disagree/ completely disagree

### **Study by FOM (2001) About the moratorium on the death penalty**

*Exact Russian wording:*

Уже около пяти лет Россия соблюдает мораторий на исполнение смертных приговоров. Судя по нашим данным, осведомлены об этом 68% россиян. Как же следует поступать в дальнейшем?

привести в исполнение смертные приговоры  
не приводить вынесенные смертные приговоры в исполнение (соблюдать мораторий)  
вообще отменить смертную казнь

*Author's English translation:*

For about five years now, Russia has been complying with the moratorium on death penalty executions. According to our data, 68% of all Russians know about it. What should we do next?

Execute offenders that are sentenced to death

Don't execute offenders that are sentenced to death according to moratorium (comply with the moratorium)

Abolish the death penalty completely

**Study by VCIOM (2001). All-Russian survey. Item # 36**

*Exact Russian wording:*

Как Вы думаете должна ли существовать в России смертная казнь за тяжкие уголовные преступления?

Да/ нет

*Author's English translation:*

What do you think, should Russia have the death penalty for heinous (serious) crimes?

Yes/no

**Study by VCIOM (2002). All-Russian survey. Item # 47**

*Exact Russian wording:*

Как Вы думаете должна ли в нашей стране существовать смертная казнь?

Да/ нет

*Author's English translation:*

What do you think, should our country have death penalty?

Yes/no

**Study by ROMIR (2005). The attitude towards the death penalty**

*Exact Russian wording:*

Как Вы относитесь к смертной казни?

Мораторий на смертную казнь надо отменить

Смертная казнь недопустима

Затрудняюсь ответить

*Author's English translation:*

How do you feel about death penalty?

Moratorium should be lifted

Death penalty is unacceptable

Don't know

### **Study by FOM (2006). About death penalty**

*Exact Russian wording:*

По вашему мнению, в принципе допустимо или недопустимо приговаривать преступников к смертной казни?  
допустимо/ не допустимо/ не знаю

*Author's English translation:*

In your opinion, as a matter of principle, is it acceptable or not to sentence offenders to death?

acceptable/ unacceptable/ don't know

### **Study by Levada (2007) The moral acceptability of different behavior and Study by RuNet (2008). The survey of Russian Internet**

*Exact Russian wording:*

Пожалуйста, скажите, вы считаете морально приемлемым или морально неприемлемым смертную казнь?  
морально приемлемо/ морально неприемлемо

*Author's English translation:*

Do you think that death penalty is morally acceptable, or not?

morally acceptable/ morally unacceptable

### **Endnotes**

<sup>1</sup> - The Constitutional Court of Russia is the highest judicial institution, created for the sole purpose of enforcing the principles of the Russian Constitution. The Constitutional Court does not try any criminal or civil cases, but only reviews the situations when the existing laws are in possible violation of the Constitution.

<sup>2</sup> For example, mass executions were ordered for the crimes of treason and abstraction of religion in 1069, 1071 and 1157 (Budzinskyi, 1870; Tagantsev, 1912; Zagoskin, 1892).

- <sup>3</sup> -The death penalty was originally mentioned for the crimes of triple theft in Dvin's Charter (Dvinskaya Gramota) adopted in 1398; the Pskov Court Charter (Pskovskaya Sudnaya Gramota) issued in 1457 allowed the death penalty for four new crimes, including a treason, arson, theft from a church, and a theft of a horse; the Moscow Sudebniki of 1497 and 1550 introduced the death penalty for all crimes against the Grand Prince and the state.
- <sup>4</sup> -According to some historians, one of the most massive death penalty executions was conducted by Peter the Great in 1698 for the treason of 2000 men who participated in the Streltsy Uprising (Mouchnik, 2006). The historians also estimate that Ivan the Terrible executed over 4000 people during his reign and tsar Alexei Mikhailovitch executed over 7000 people (Shargorodkyi, 1957).
- <sup>5</sup> -Articles 209 and 210 of the Nakaz, cited from Feldstein (1909).
- <sup>6</sup> -The first two Dumas were predominantly comprised of the representatives of the socialist, liberal and centrist parties. The third Duma had a much larger proportion of right-wing and conservative representatives.
- <sup>7</sup> - In February of 1917, Russia experienced a democratic liberal revolution that was led by the middle-class intellectuals (named "intelligentsiya"). The Provisional government was formed after the revolution of February, 1917 and was replaced by the Bolshevik government in October of 1917.
- <sup>8</sup> - *Sobranie uzakonenii i rasporyazhenii rabocheho i krestyanskogo pravitel'stva RSFSR* [The collection of statutes and regulations issued by the Factory and Peasant Government of the Russian Soviet Federative Republic] (henceforth cited as *SU RSFSR*), #1, article 10
- <sup>9</sup> - The Revolutionary People's Courts were the first trial criminal courts, organized by the Bolshevik government. Unlike the "Emergency Commissions", the People's Courts were considered a judicial agency and were instructed to follow the provisions of the criminal proceedings.
- <sup>10</sup> - *SU RSFSR*, # 65, article 710
- <sup>11</sup> - The name "White Guard" refers to the imperial troops in Russia that did not accept the Bolshevik revolution and were fighting to restore the tsarist regime during the civil war of 1917-1919. The term "white" is contrasted with the term "red" that was often used by the Bolshevik military organization (e.g. Red Army).
- <sup>12</sup> -According to Tagantsev (1912), between 1866 and 1890, 134 people were sentenced to the death penalty and 44 of them were executed.
- <sup>13</sup> -The Decree "About abolishing the highest measure of punishment (shooting)" was adopted by the All-Russian Central Executive Committee and Council of People's Commissars (*SU RSFSR*, # 4-5, article 22).

- 14 - The New Economic Policy, also known as NEP, was a temporal liberalization of the state control policy over the market that was conducted in order to improve the overall economic situation in Russia after WWI and the civil war of 1917-1919.
- 15 -The two drafts did not have identical opinions on the death penalty. The draft by the Narkomyust allowed the use of the death penalty in territories where the state of emergency was declared. The Institute of Soviet Law advocated full abolition of the death penalty by the Soviet state.
- 16 -The crimes of murder and rape were not considered capital offences. The emphasis on the state interest is another legal tradition that was started by the CC of 1922 and continued through the entire Soviet period.
- 17 - Russian Socialist Federative Soviet Republic was used as an official title for Russia during the time when it was a part of the Soviet Union (1923-1991).
- 18 - According to Krylenko (1934), 7.6% of all crimes in the Criminal Code of RSFSR of 1922 were punishable by death penalty. In the Criminal Code of RSFSR of 1926 only 3.4% of all crimes were considered capital offences.
- 19 - Article 21 of the Criminal Code of 1926, cited from Belyaev and Shargorodskiy (1970).
- 20 - *Sobranie zakonodatel'stva* [ The code of laws] (henceforth cited SZ), (1929), #76, article 732.
- 21 - SZ, (1932) # 62, article 350.
- 22 - Included in the CC of RSFSR of 1926 by the Statute on Crimes against the State (SZ, 33, article 255).
- 23 -The principle of analogy, which allows the courts to use criminal law on their own discretion in situations that are similar to the situation described in the code, was originally introduced by the CC of 1922. It sparked a lot of debates and contradiction, but was not widely employed until the penal repressions of the late 1920s and 1930s. The use of the principle of analogy significantly diminished after the Stalin's death and was banned by the CC of 1960.
- 24 - *Vedomosti Verhovnogo Soveta SSSR* [The bulletin of the Supreme Counsel of USSR], (hence force cited as VVS SSSR), 1947, # 17.
- 25 - "Krushchev thaw" is a period of temporal political liberalization that occurred while Nikita Khrushchev was appointed the Head of the Communist Party and the state. The Khrushchev campaign was intended to debunk the cult of personality developed by Stalin and provide some restrictions over the political oppressions.
- 26 - Some Soviet and Russian jurists supported the death penalty from traditional standpoints: they argued that the death penalty reduces

homicide crime rates, restores social fairness in the society, and is the most effective measure of general deterrence (Galiakbarov, 1997; Mikhlin, 1997). Other jurists had more practical arguments including the fact that poor prison conditions in Russia would make the life sentence "more inhumane" than the death penalty itself (Boikov, 1999). At the same time, several leading legal scholar advocated the abolition of the death penalty, suggesting that this was a legal trend within all democratic societies that Russia should also follow (Petrukhin, 1999). For details on the important legislative acts adopted in relation to the death penalty during 1917-1991, please refer to Appendix 1.

<sup>27</sup> - See *Supra* note # 35

<sup>28</sup> -He made his estimation based on the fact that 640,000 people were executed in the Soviet Union between 1921 and 1954.

<sup>29</sup> - The information for this section was acquired from several sources. The texts of historic legal documents were taken primarily from the official sources on Soviet legislation, which include the Collection of Statutes and Regulations issued by the Factory and Peasant Government of the Russian Soviet Federative Republic, the Collection of Statues of the USSR, and the Bulletin of the Supreme Soviet of the USSR. The current Russian legislative documents and court decisions were provided by the official online depository of all Russian legislation run by a private company, "Consultant."

<sup>30</sup> - "New democrats" is a label used for political groups and parties organized in the early 1990s as a result of the democratic changes and transformations occurring in the Soviet Union. The new democrats were ideologically juxtaposed to the conservative communist party. Later, the new democrats split into different political groups and branches including the current ruling centrist party.

<sup>31</sup> - Such a conclusion can be drawn based on the language of Opinion # 193 by the PACE adopted on 01.25.1996. This document states in Article 10 that "The Russian Federation shares fully its understanding and interpretation of commitments entered into as spelt out in paragraph 7, and intends:... to sign within one year and ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace, and to put into place a moratorium on executions with effect from the day of accession". Cited from <http://assembly.coe.int>

<sup>32</sup> - Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08.

<sup>33</sup> - According to the recollections by Pristavkin (2004), one out of seven representatives in the Duma voted for the moratorium, but the Communist party strongly opposed such a decision.

- <sup>34</sup> - According to the CC of Russia of 1996, the following crimes are considered capital offenses: murder with aggravating circumstances, attempted assassination against the state or a public figure, attempt on the life of a person administering justice or preliminary investigations, attempt on the life of a law-enforcement officer, and genocide (Articles 105 (2), 277, 295, 317, and 357 of the CC of Russia).
- <sup>35</sup> - Par. 3 Article 58 of the CC of Russia of 1996. English translation is cited from Barry (1997).
- <sup>36</sup> - See Article 89, par. C of the Constitution of Russia of 1993. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08
- <sup>37</sup> - Clemency Commission is an advisory body to the President of Russian Federation. It was created in 1991 in order to assist the President with the decisions of pardon for criminal defendants. The Clemency Commission was dismissed after 1999, when the Constitutional Court of Russia temporarily banned the death penalty executions. For more information on the functioning of the Clemency Commission please see Mikhlin (2000).
- <sup>38</sup> - Par. 4 Article 184 of the CEC of Russia of 1997. The text of the CEC of Russia was retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08
- <sup>39</sup> - This abolition is sometimes called "partial" since under the law of 1997 the possibility of the execution still exists for the defendants who choose not to apply for the Presidential clemency
- <sup>40</sup> - Cited from Report # 7746 "Honouring of the commitment entered into by Russia upon accession to the Council of Europe to put into place a moratorium on executions of the death penalty" adopted by PACE on 01.28.97. Retrieved from <http://assembly.coe.int> on 4.23.08
- <sup>41</sup> - Cited from Resolution # 1111 "Honouring of the commitment entered into by Russia upon accession to the Council of Europe to put into place a moratorium on executions of the death penalty" adopted by PACE on 01.29.97. Retrieved from <http://assembly.coe.int> on 4.23.08
- <sup>42</sup> - The Draft of the Bill # 97803716-2 was introduced to the Duma on December 20, 1997. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08
- <sup>43</sup> - The explanatory note to the draft of the bill # 97803716-2. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08
- <sup>44</sup> - Amendments were introduced by Statute # 11-FZ on 01.08.98. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08
- <sup>45</sup> - The draft # 99077736-2 was introduced to the State Duma on 08.06.1999. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08
- <sup>46</sup> - See *Supra* Note # 1
- <sup>47</sup> - The Constitutional Court Ruling # 3-P "About the review of the constitutionality of articles 41 and 42 of the CPC of RSFRS, and provisions 1 and 2 of the Decree of Supreme Council adopted on

07.16.93 "About coming into the effect for the "Statute on court system", the CPC of RSFSR, the CC of RSFSR and the AC of RSFSR according with complaints of the citizens and by the inquiry of the Moscow city courts", adopted on 02.02.1999. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08

<sup>48</sup> - Article 30 of the CPC of Russia of 2001. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08

<sup>49</sup> - Article 8, par 2 of Statute # 177-FZ "On the effect of the CPC of Russia of 2001" adopted on 12.18.2001. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08

<sup>50</sup> - The amendment # 241-FZ to the Statute "On the effect of the CPC of Russia of 2001" was adopted on 12.27.2006. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08

<sup>51</sup>-The secondary data on public opinion about death penalty in Russia was available online from polling research companies such as VCIOM, FOM and ROMIR. VCIOM is a government research center created in the late 1980s. The data was retrieved from [www.vciom.ru](http://www.vciom.ru). FOM is an abbreviation for the Foundation of Public Opinion, an independent non-profit research organization. The data was retrieved from [www.fom.ru](http://www.fom.ru). ROMIR is an abbreviation for the Russian Public Opinion Research Group. It is an independent for-profit research organization. The data was retrieved from [www.romir.ru](http://www.romir.ru). Levada is the last name of the director of the Levada Center. Henceforward, Levada Center research will be referred to in this paper as Levada. All companies use similar sampling methodology. A representative sample of the Russian population is drawn by the multistage random cluster sampling technique. The sampling process is usually conducted in five stages. 1) A list of regions within federal circuits is commonly used as a sampling frame for the first stage. Regions are weighted using population demographics consisting of: gender, age, professional occupation, average income, and proportion of rural to urban population. According to the Russian Constitution, the 86 regions are geographically grouped into the larger fractions called "federal circuits." There are currently seven federal circuits in Russia. 2) In the second stage of sampling, the cities, towns, and villages are selected from the clustered regions. 3) In the third stage of sampling, the election districts are usually selected from the list of cities, towns, and villages. 4) In the fourth stage of sampling, households registered with each election district are selected. 5) In the fifth stage of sampling, individual respondents are selected within the households. In each of the three survey companies, the sampling selection varies by the number and type of stratification and selection methods used during each stage. However, for all data used for this paper, the sampling

- error does not exceed 5%, which allows us to assert that the public opinion data are representative of the entire Russian Federation.
- <sup>52</sup> - This conclusion is also supported by the content analysis of the Russian mass media. For example, according to a study conducted by Moscow Academy of MVD (Borovikova, 2002), 28.5% of all publications in the Russian newspapers are devoted to the death penalty. Within these publications, over 80% reflect support for the death penalty as the best method to deter offenders from committing heinous crimes.
- <sup>53</sup> - Glasnost is one of the principles of democratic change declared in the late 1980s by Gorbachev. It refers to the ideas of free press and information, in contrast to the control of information by the state used during the USSR period.
- <sup>54</sup> - See State Duma Decree # 2483-III-GD issued on 02.15.2002. Retrieved from [www.consultant.ru](http://www.consultant.ru) on 04.23.08.
- <sup>55</sup> - For example, according to the study by FOM (2000), the State Duma was among top three least trustworthy institutions in Russia in 2000.
- <sup>56</sup> - According to Mitroshenkov (2004), 70% of all public servants, including the representatives of the State Duma, believed that capital punishment in Russia should be restored.
- <sup>57</sup> -United Russia is a pro-presidential centrist party that was created in 2000. At the Duma's election of 2007, United Russia received an overwhelming majority of the seats in the Duma. For the last two years, according to the VCIOM data (2008), United Russia's approval rating has ranged from 45% to 62%. This is compared to approval ratings of less than 10% for all the other political parties. Liberal parties like Yabloko, who supports the abolition of death penalty, consistently received 1% of popular approval for the last two years. The literature on the current public situation in Russia suggests that the high ratings for the "United Russia" are directly resulting from the public approval for Prime Minister Putin. Surprisingly, the high approval ratings for the majority party in Duma, do not translate into the increase of public support for the Duma itself (Gadjiev, 2008).
- <sup>58</sup> - Here we are referring to presidents Yeltsin and Putin. As of now, the elected president Medvedev has not had a chance to express his opinion on the issue of death penalty abolition. However, his adherence to the public policy of president Putin allows us to suggest that Medvedev will remain a supporter of death penalty abolition, as did the presidents before him.
- <sup>59</sup> - Here we are referring to the adoption of the new CC of Russia in 1996, the new CEC of Russia in 1997 and the amendment to the new CEC of Russia in 1998.

**NOT THE PUBLISHED VERSION; this is the author's final, peer-reviewed manuscript.** The published version may be accessed by following the link in the citation at the bottom of the page.

<sup>60</sup> - In this study, 34% of respondents said that they trust the President, compared to only 8% who said they trust the government, and 4% who said they trust the State Duma.

<sup>61</sup> - The data is retrieved from <http://www.sopcourt.ru> and n 12.10.08.