

# THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

## DECISION

**No. 1344-O-R, 19 November 2009**

regarding elucidation of Paragraph 5 of the operative part of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, in the case of review of constitutionality of provisions of Article 41 and Paragraph 3 of Article 42 of the RSFSR Code of Criminal Procedure, Paragraphs 1 and 2 of the Decree by the Supreme Soviet of the Russian Federation of 16 July 1993 «On the Procedure of Enactment of the Law of the Russian Federation “On Introduction of Amendments and Additions to the RSFSR Law ‘On the Court System of the RSFSR’, the RSFSR Code of Criminal Procedure, the RSFSR Criminal Code and the RSFSR Code of Administrative Offences”».

City of Saint Petersburg

19 November 2009

The Constitutional Court of the Russian Federation composed of President V.D. Zorkin, judges N.S. Bondar, G.A. Gadjiyev, Yu.M. Danilov, L.M. Zharkova, G.A. Zhilin, S.M. Kazantsev, M.I. Kleandrov, S.D. Knyazev, A.L. Kononov, L.O. Krasavchikova, S.P. Mavrin, N.V. Melnikov, Yu.D. Rudkin, N.V. Seleznyov, A.Ya. Sliva, V.G. Strekozov, O.S. Khokhryakova, V.G. Yaroslavtsev,

in attendance of judge of the Supreme Court of the Russian Federation V.A. Davydov, the representative of the Supreme Court of the Russian Federation, who had applied to the Constitutional Court of the Russian Federation with a request for an elucidation of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999,

being guided by Paragraph 1 of Article 21, Paragraphs 1 and 2 of Article 83 of the Federal constitutional law «On the Constitutional Court of the Russian Federation»,

examined in an open hearing the matter regarding elucidation of Paragraph 5 of the operative part of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, in the case of review of constitutionality of provisions of Article 41 and Paragraph 3 of Article 42 of the RSFSR Code of Criminal Procedure, Paragraphs 1 and 2 of the Decree by the Supreme Soviet of the Russian Federation of 16 July 1993 «On the Procedure of Enactment of the Law of the Russian Federation “On Introduction of Amendments and Additions to the RSFSR Law ‘On the Court System of the RSFSR’, the RSFSR Code of Criminal Procedure, the RSFSR Criminal Code and the RSFSR Code of Administrative Offences”».

Having heard the report by judge-rapporteur Yu.M. Danilov, statements by the representative of the Supreme Court of the Russian Federation V.A. Davydov, submissions by Permanent Representative of the State Duma before the Constitutional Court of the Russian Federation A.N. Kharitonov; Representative of the Federation Council, Doctor of Juridical Sciences Ye.V. Vinogradova; Plenipotentiary Representative of the President of the Russian Federation before the Constitutional Court of the Russian Federation M.V. Krotov; Plenipotentiary Representative of the Government of the Russian Federation before the Constitutional Court of the Russian Federation M.Yu. Barshchevsky; Commissioner for Human Rights in the Russian Federation V.P. Lukin, and representative of the Procurator General of the Russian Federation T.A. Vasilieva, from the Ministry of Justice of the Russian Federation Ye.A. Borisenko, from the Ministry of the Interior of the Russian Federation N.I.

Shelepanova, who had been invited to attend the hearing, the Constitutional Court of the Russian Federation

has found the following:

1. Paragraph 5 of the operative part of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, in the case of review of constitutionality of provisions of Article 41 and Paragraph 3 of Article 42 of the RSFSR Code of Criminal Procedure and Paragraphs 1 and 2 of the Decree by the Supreme Soviet of the Russian Federation of 16 July 1993 «On the Procedure of Enactment of the Law of the Russian Federation “On Introduction of Amendments and Additions to the RSFSR Law ‘On the Court System of the RSFSR’, the RSFSR Code of Criminal Procedure, the RSFSR Criminal Code and the RSFSR Code of Administrative Offences”» stipulates that from the moment when the above judgment by the Constitutional Court of the Russian Federation takes legal effect and until relevant federal law has been given legal effect, which affords in the entire territory of the Russian Federation every accused with a criminal offence punishable under the federal law by the death penalty as an exceptional penalty the right to jury trial, the punishment in the form of death penalty may not be imposed, regardless whether the case was tried by jury or by a court composed differently.

At the present time, jury trials are in operation in the entire territory of the Russian Federation with the exception of the Chechen Republic, where they will start functioning as of 1 January 2010: from that moment, according to Article 8 § 5 of the Federal law No. 177-FZ, 18 December 2001, «On Enactment of the Code of Criminal Procedure of the Russian Federation», in the Chechen Republic, Subparagraph 2 of Paragraph 2 of Article 30 of the Code of Criminal Procedure of the Russian Federation, which fixes the right of an accused to jury trial, including in cases where an accused is charged with a criminal offence punishable by the death penalty as an exceptional penalty, shall take legal effect.

The Supreme Court of the Russian Federation requests to elucidate the provision of Paragraph 5 of the operative part of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, since the Supreme Court of the Russian Federation deems that the provision may entail inconsistent law-application practice in the matter of possibility of imposition of the punishment in the form of death penalty after introduction of jury trials in the entire territory of the Russian Federation.

The applicant is of the opinion that a varied reading of this provision is preconditioned by the fact that the Russian Federation in relevant legal forms expressed its consent to international-law acts aimed at the abolishment of the death penalty in the time of peace: in particular, having signed, on 16 April 1997, Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation is obliged, as required by Article 18 of the Vienna Convention on the Law of Treaties, to refrain from acts which would defeat the object and purpose of the Protocol until the Russian Federation declares its intent not to become a Party to the Protocol; however by the present time the Russian Federation has not ratified Protocol No. 6, but it did not declare its intent not to become a Party to the Protocol.

2. According to Paragraph 3 of the reasoning part of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, the subject-matter of examination by the Constitutional Court of the Russian Federation in the case covered normative provisions contained in Article 41 and Paragraph 3 of Article 42 the RSFSR Criminal Code as well as in Paragraphs 1 and 2 of the Decree by the Supreme Soviet of the Russian Federation of 16 July 1993 «On the Procedure of Enactment of the Law of the Russian Federation “On Introduction of Amendments and Additions to

the RSFSR Law 'On the Court System of the RSFSR', the RSFSR Code of Criminal Procedure, the RSFSR Criminal Code and the RSFSR Code of Administrative Offences'». These normative provisions comprised the ground to deny implementation of the right to jury trial secured by Article 20 (Paragraph 2) of the Constitution of the Russian Federation to the accused of criminal offences punishable under the federal law by the punishment in the form of death penalty. The constitutionality of setting by the federal law of exceptional penalty in the form of death penalty was not challenged by the applicants and for that reason it was not reviewed by the Constitutional Court of the Russian Federation.

2.1. In the meaning of Article 83 of the Federal constitutional law «On the Constitutional Court of the Russian Federation», the Constitutional Court is empowered to give official elucidation of its earlier delivered decision only within the bounds of its content, on the subject-matter within the jurisdiction of the Constitutional Court of the Russian Federation, and the Court does it only where questions raised in the request call for a further interpretation of the decision on the merits.

The need to elucidate a judgment by the Constitutional Court of the Russian Federation may appear, in particular, where instructions regarding the execution of it, which pursuant to of Article 75 of the Federal constitutional law «On the Constitutional Court of the Russian Federation» are an integral part of the judgment itself and call for further interpretation with consideration of the content of legal relationships, in connection with which the Constitutional Court of the Russian Federation examined the case.

While setting the procedure of execution of its decision the Constitutional Court of the Russian Federation, proceeding from the fact that provisions regarding self-executing nature and strict observance of the Constitution of the Russian Federation contained in its Article 15 (Paragraphs 1 and 2) are addressed to all bodies of public power and their officials, is empowered to determine a regime of application of the legal norms, which were the subject-matter of its examination, as well as of the legal norms, which are in inseparable systemic unity with the former in order to preclude their unconstitutional interpretation in the law-application practice.

Legal position justifying this or that regime of application of the legal norms that were the subject-matter of examination by the Constitutional Court may become the subject-matter of elucidation of the relevant judgment, *inter alia*, with consideration of the temporal operation of this judgment and also proceeding from its systemic connection with other decisions by the Constitutional Court and other laws within the legal system of the Russian Federation.

2.2. According to Article 83 § 1 of the Federal constitutional law «On the Constitutional Court of the Russian Federation», a decision by the Constitutional Court of the Russian Federation may be officially elucidated only by the Constitutional Court of the Russian Federation itself in the plenary session or in the session of a Chamber that passed the decision. Thus it is assumed that a decision passed in the session of a Chamber of the Constitutional Court of the Russian Federation, as a general rule, is elucidated at the session of the same Chamber, although, taken the literal meaning of the above provision, a possibility that the matter of elucidation of decision passed in the session of a Chamber shall be examined by the Constitutional Court of the Russian Federation in the plenary session is not ruled out.

In the present case, the Constitutional Court of the Russian Federation, being guided by Article 21 § 1 of the Federal constitutional law «On the Constitutional Court of the Russian Federation», which vests in it the power to examine at the plenary session any matter within the jurisdiction of the Constitutional Court of the Russian Federation, deems it appropriate to examine the matter of elucidation of Paragraph 5 of

the operative part of the judgment No. 3-P, 2 February 1999, by the Constitutional Court of the Russian Federation in the plenary session.

3. The legal position expressed in the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, is the following.

It follows from Article 20 (Paragraph 2) of the Constitution of the Russian Federation, according to which the death penalty until its complete abolishment may be fixed by a federal law as an exceptional penalty for especially grave crimes against human life, an accused being afforded the right to jury trial, in conjunction with Articles 18 and 46 (Paragraph 1) of the Constitution of the Russian Federation, that in such cases the right of an accused to jury trial is a special criminal-procedure safeguard of judicial protection of everyone's right to life (as a fundamental and inalienable right to be enjoyed by everyone since his or her birth). By virtue of the Constitution's Article 19 (Paragraphs 1 and 2) the right must be provided on equal basis and to equal extent to all accused people regardless the place, where the criminal offence was committed, the territorial or other jurisdiction fixed by the federal law for such cases and any other such factors.

Accordingly, in those political subdivisions of the Russian Federation, where by the time of adoption of the above judgment jury trials have been set up, the accused of the criminal offences punishable by the death penalty, when being sentenced, should not be put in an unequal position as compared with the people accused of the same criminal offences in those political subdivisions of the Russian Federation, where jury trials are not functioning; in such a situation application of the exceptional penalty would twist the purpose and the essence of the right secured by Article 20 of the Constitution of the Russian Federation and, moreover, it would amount to a substantial breach of the equality principle fixed by Article 19 of the Constitution.

The Constitutional Court of the Russian Federation came to a conclusion that from the moment when the above judgment takes legal effect and until a federal law has been given legal effect, which affords in the entire territory of the Russian Federation each person accused of a criminal offence punishable under the federal law by the death penalty as an exceptional penalty, in any possible form of judicial process, the right to jury trial, the punishment in the form of death penalty may not be imposed regardless what composition of a court tries the case, be it jury trial, panel comprising three professional judges or panel comprising a judge and two People's Assessors.

Thus, the Constitutional Court of the Russian Federation, determining within the subject-matter of the case, the matter of possibility to impose the punishment in the form of death penalty, proceeded first of all from the need to secure equal right to jury trial in the entire territory of the Russian Federation to all citizens.

It does not follow from the above, however, the negation of the need to take into consideration other factors, in the presence of which countrywide introduction of jury trials in the Russian Federation would not mean automatic frustration of other conditions for non-application of the death penalty, including tendencies, which were not directly touched upon in the judgment, in resolving the matter of the death penalty, and which relate to international commitments of the Russian Federation regarding the moratorium on application of the death penalty. Having grounds to believe that the matter will be resolved during reasonable time, at least the time not exceeding setting up of jury trials in the entire territory of the Russian Federation, the Constitutional Court of the Russian Federation, following the subject-matter of the case, showed reasonable restraint while reflecting the factor in the text of the judgment.

4. According to Article 74 § 2 of the Federal constitutional law «On the Constitutional Court of the Russian Federation» the Constitutional Court of the Russian Federation renders a decision in a case, assessing both literal meaning of an act under consideration and also the meaning attached to it by official or by other interpretation or

by established law-application practice, as well as proceeding from its place in the system of legal acts including international treaties entered into by the Russian Federation, which, pursuant to Article 15 § 4 of the Constitution of the Russian Federation comprise an integral part of the legal system of the Russian Federation.

Accordingly, while working out the legal position expressed in the judgment No. 3-P, 2 February 1999, the Constitutional Court of the Russian Federation took into consideration that the right to jury trial afforded to a person accused of a criminal offence punishable by the death penalty as an exceptional penalty (until its abolishment) stemming from Article 20 (Paragraph 2) of the Constitution of the Russian Federation should be implemented considering universal principles and norms of the international law and provisions of the international treaties entered into by the Russian Federation. In providing an official elucidation of the judgment, the Constitutional Court of the Russian Federation also has to consider this factor.

Since the judgment No. 3-P, 2 February 1999, has been in force for rather long time and, moreover, it has extension as to time and circle of affected persons, as do commands of laws, the Constitutional Court of the Russian Federation, while elucidating the above judgment, proceeds from its interconnection with other legal acts, including those effective in the realm of the international human rights law on non-application of the death penalty and international treaties entered into by the Russian Federation, as well as from the dynamics of regulation of relevant legal relationships and tendencies in the world community, with our country realising itself to be a part of (the Preamble to the Constitution of the Russian Federation).

4.1. In the international law-making there is a stable tendency to ban the death penalty (Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty) right up to its full and unconditional abolishment, introduced by the Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which took legal effect in 2003. Resolutions No. 62/149 and No. 63/168 adopted by the United Nations General Assembly on 18 December 2007 and on 18 December 2008 respectively calling on the member States of the United Nations to limit the application of the death penalty and reduce the number of capital offences and introduce moratorium on execution of death sentences are also illustrative of this worldwide tendency.

The expressed intent of the Russian Federation to set moratorium on execution of death sentences and to take other measures with a view to abolish the death penalty was one of the substantial grounds for the Russian Federation to be invited to join the Council of Europe

It was with the notice of «the basis of the commitments and understandings», including the intent «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», that the Council of Europe Parliamentary Assembly has recommended to the Council of Europe Committee of Ministers to invite Russia to become a member of the Council of Europe (Opinion by the Council of Europe Parliamentary Assembly on Russia's request for membership of the Council of Europe No. 193, 25 January 1996, Paragraph 10, Subparagraph «ii»). This one and other intentions expressed by Russia have been considered by Resolution (96) 2 by the Council of Europe Committee of Ministers, by which Russia was invited to become a member the Council of Europe as «the commitments entered into and the

assurances for their fulfilment» and as an integral condition of inviting Russia to the Council of Europe, i.e. the intentions have substantial political and legal bearing.

Acceptance by the Russian Federation of the Council of Europe Committee of Ministers' invitation was statutorily formalised by federal laws No. 19-FZ, 23 February 1996, «On Accession of the Russian Federation to the Statute of the Council of Europe» and No. 20-FZ, 23 February 1996, «On Accession of the Russian Federation to the General Agreement on Privileges and Immunities of the Council of Europe and the Protocols Thereto». Having acceded to the statutory instruments of the Council of Europe, the Russian Federation thus reaffirmed its assurances and obligations, fulfilment of which was the condition for invitation of Russia for membership of the Council of Europe. Abolishment of the death penalty was referred to as a «serious commitment» of Russia also in the Address by the President of the Russian Federation before the Federal Assembly of 30 March 1999.

4.2. According to Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms the death penalty shall be abolished. No-one shall be condemned to such penalty or executed (Article 1); a State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law (Article 2); no derogation from the provisions of this Protocol or reservations shall be made under Articles 15 and 57 of the Convention (Articles 3 and 4); the Protocol shall be subject to ratification, acceptance or approval; instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe (Article 7).

As of 1 November 2009, Protocol No. 6 has been signed and ratified by 46 member States of the Council of Europe and took legal effect for them. The Russian Federation signed it on 16 April 1997 and it was supposed to be ratified (considering commitment expressed by Russia upon her joining the Council of Europe on 28 February 1996 to accede to the Protocol no later than in three years from the moment of Russia's joining the Council of Europe) until 28 February 1999.

On 6 August 1999 a draft law on ratification of Protocol No. 6 was introduced by the President of the Russian Federation in the State Duma (together with a draft law introducing amendments to criminal legislation, legislation on criminal procedure and penal legislation of the Russian Federation). The accompanying letter to the draft law stated: «Ratification of the above Protocol will reaffirm the commitment of the Russian Federation to principles of humanism, democracy and law and also it will facilitate implementation of the provisions set by the Constitution of the Russian Federation related to protection of the main natural human right, the right to life» (letter by the President of the Russian Federation No. Pr-1025, 6 August 1999). President of the Russian Federation by his Directive No. 462-rp, 28 August 2001, appointed his official representatives for consideration by the chambers of the Federal Assembly of the issue of ratification of Protocol No. 6. The State Duma, in its turn, in February 2002 adopted an appeal to the President of the Russian Federation, which concerned the matter of prematurity of ratification of that draft law. Nevertheless, the respective draft law was not voted down by the State Duma and therefore it is still pending.

4.3. The fact that Protocol No. 6 is not ratified yet, in the context of established legal realities, does not prevent from recognising it as an essential element of the legal regulation of the right to life.

In accordance with Article 18 of the Vienna Convention on the Law of Treaties of 23 May 1969 a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have

made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

Thus, the Russian Federation is bound by the requirement of Article 18 of the Vienna Convention on the Law of Treaties to refrain from acts which would defeat the object and purpose of Protocol No. 6, which was signed by the Russian Federation, until it officially declares its intent not to become a Party to the Protocol. Since the major commitment under Protocol No. 6 is complete abolishment of the death penalty, including removal from the law of this penalty for all criminal offences with the exception «of acts committed in time of war or of imminent threat of war» and refusal to apply it with the same exception, in Russia, from 16 April 1997 the death penalty may not be applied, i.e. the punishment in the form of death penalty must not be imposed or executed.

5. Fulfilment of the commitment not to defeat the object and purpose of Protocol No. 6, as a signed but not yet ratified international treaty, rests on the State in whole. If bodies representing a branch of government departs from the commitment, compliance with it may be secured by other branches of government proceeding from the principle of separation of powers and principle of coordinated functioning and interaction of bodies of the State power, guaranteed by the President of the Russian Federation (Article 10; Article 80 § 2, of the Constitution of the Russian Federation) in order that fulfilment of international obligations by the State in whole remained within the framework of Article 18 of the Vienna Convention on the Law of Treaties.

Even after Russia had been admitted to the Council of Europe and signed Protocol No. 6 Russia's, courts in some instances were imposing death sentences. Although rulings of the Plenum of the Supreme Court of the Russian Federation No. 8, 31 October 1995, and No. 5, 10 October 2003, directed the courts toward application of international treaties in force, the rulings, however, did not touch upon a legal situation emerging after signing an international treaty with the condition of its subsequent ratification. As regards the death penalty, the ruling by the Plenum of the Supreme Court of the Russian Federation No. 1, 27 January 1999, expressly stated that «the death penalty as an exceptional penalty may be applied for commission of especially grave criminal offence against life» (Paragraph 20).

Sentencing to death by the courts (and moreover, execution of death sentences) could have been amounted to a breach by Russia of her obligations under Article 18 of the Vienna Convention on the Law of Treaties, as regards Protocol No. 6, however, since every time the death penalty was replaced with some other penalty not related to deprivation of life, such replacement being carried out by way of pardoning by the President of the Russian Federation under Article 89 «B» of the Constitution of the Russian Federation, decisions by the judiciary were corrected without interference with its prerogatives, which allowed the State to avoid violating its international-law obligations. This was also facilitated by such generally binding domestic legal act as the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, which, although being delivered in connection with judicial procedures of imposition of the death penalty as a criminal punishment, by its nature not only was in harmony with the legal obligations assumed by the Russian Federation under Article 18 of the Vienna Convention on the Law of Treaties in relation to Protocol No. 6, but it even reinforced them.

Subsequently, the Constitutional Court of the Russian Federation also reviewed applications lodged by persons, whose punishment in the form of death penalty imposed by a court was replaced, by way of pardoning, with life imprisonment after Russia had signed Protocol No. 6 and who were referring not only to the Constitution of the Russian Federation, but to Protocol No. 6 as well. Beginning from 2006 the

Constitutional Court of the Russian Federation acting upon these applications delivered a number of decisions, stating that in view of the fact that the Russian Federation has signed Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty and that the Constitutional Court of the Russian Federation delivered the judgment No. 3-P, 2 February 1999, at the present time the punishment in the form of death penalty may not be imposed in the territory of the Russian Federation; hence the present legal situation is not in conflict with the meaning of constitutional provisions or with the meaning of the international-law obligations of the Russian Federation.

The legal position, which views Protocol No. 6 together with judgment No. 3-P, 2 February 1999, as the grounds for impermissibility of application of the punishment in the form of death penalty, still envisaged by criminal law, is contained in decisions by the Constitutional Court of the Russian Federation No. 434-O, 17 October 2006; No. 380-O-O, 15 May 2007; Nos. 682-O-O, 684-O-O, 686-O-O — 689-O-O, 692-O-O and 712-O-O, 16 October 2007; Nos. 935-O-O and 943-O-O, 18 December 2007; No. 54-O-O 24, January 2008. The above decisions by the Constitutional Court of the Russian Federation, considering varied reading in the court practice of signed but not ratified Protocol No. 6 barred the courts from possibility of imposition of the death penalty.

6. In connection with the Russian Federation's joining the Council of Europe and signing Protocol No. 6 it was supposed that the temporary moratorium on application of the death penalty based upon that ground introduced in the legal system of the Russian Federation after ratification of Protocol No. 6 (i.e. no later than on 28 February 1999) would transform to a permanently effective law, according to which no one may be sentenced to death or executed. At the same time with ratification of Protocol No. 6 corresponding amendments related to abolishment of the penalty should have been introduced in criminal legislation, legislation on criminal procedure and penal legislation, the evidence of which was the draft law sent to the State Duma by President of the Russian Federation.

Since Protocol No. 6 is not ratified yet, it *per se* may not be regarded as a normative legal act directly abolishing the death penalty in the Russian Federation in the meaning of Article 20 § 2 of the Constitution of the Russian Federation. The federal legislation still retains provisions regarding this form of punishment and, accordingly, procedures to impose and execute it.

However, as it follows from the legal positions expressed in the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, in conjunction with its other decisions, the death penalty as an exceptional penalty provided by the Criminal Code of the Russian Federation, in the meaning of Article 20 (Paragraph 2) of the Constitution of the Russian Federation, is permissible only as an exceptional penalty of provisional nature («pending its abolishment») during certain transitional period. At the present time, relevant provisions of the Criminal Code of the Russian Federation may not be applied, since legal regulation of the right to life formed in the Russian Federation based upon provisions of Article 20 of the Constitution of the Russian Federation in conjunction with its Articles 15 (Paragraph 4) and 17 and also including decisions by the Constitutional Court of the Russian Federation fix a ban on imposition of the death penalty and execution of earlier imposed sentences: as regards the ban on imposition of death sentences, the Russian Federation is bound by the constitutional-law obligations, which stem both from international-law treaties and from domestic legal acts adopted by the Federal Assembly — the parliament of the Russian Federation, by the President of the Russian Federation, and by the Constitutional Court of the Russian Federation.

It means that in the Russian Federation a comprehensive moratorium on application of the death penalty is in force. The moratorium makes guarantees of the



right to life fixed by the Constitution of the Russian Federation more concrete. In the meaning of comprising legal acts it initially was supposed to be a short-term measure. However this legal regulation has been retaining its legal effect for more than 10 years (from the time when Russia assumed relevant obligations upon joining the Council of Europe (28 February 1996) and signing Protocol No. 6 (16 April 1997). It also has been retaining its legal effect in view of the fact that the Constitutional Court of the Russian Federation imposed a direct ban (judgment No. 3-P, 2 February 1999), in the absence of due procedural safeguards, on imposition of the death penalty and in view of legitimately established law-application practice, including subsequent decisions by the Constitutional Court of the Russian Federation and decisions by the courts of general jurisdiction.

7. Thus, in the Russian Federation, based upon the Constitution of the Russian Federation and specifying it legal acts, the death penalty, as a punishment, has not been imposed and executed for a long time already. As a result of such a long-time operation of the moratorium on application of the death penalty, the judgment of the Constitutional Court of the Russian Federation 2 February 1999, No. 3-P in conjunction with other its decisions, being the element of the legal basis of the moratorium, stable safeguards of a human right not to be subjected to the death penalty have been formed; also legitimate constitutional-law regime has been set, within the framework of which — considering international-law tendency and obligations assumed by the Russian Federation, — an irreversible process is taking place. The process is aimed at abolishment of the death penalty as of an exceptional penalty of provisional nature («pending its abolishment») and permissible only during certain transitional period, i.e. the process is aimed at the goal fixed by Article 20 (Paragraph 2) of the Constitution of the Russian Federation.

This is not to infringe upon prerogatives of the Federal Assembly as regards ratification of Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

Proceeding from the above and being guided by Article 6, Article 71 § 4, Article 72 §§ 1 and 2, Article 79 and by Article 83 of the Federal constitutional law «On the Constitutional Court of the Russian Federation», the Constitutional Court of the Russian Federation

has determined:

1. In the system of current legal regulation, based upon which, as a result of the long-time moratorium on application of the death penalty, stable safeguards of a human right not to be subjected to the death penalty have been formed and the constitutional-law regime has been formed, within the framework of which — considering international-law tendency and obligations assumed by the Russian Federation, — an irreversible process is taking place, the process being aimed at abolishment of the death penalty as of an exceptional penalty of provisional nature («pending its abolishment») and permissible only during certain transitional period, i.e. the process is aimed at the goal fixed by Article 20 (Paragraph 2) of the Constitution of the Russian Federation, provisions of Paragraph 5 of the operative part of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, mean that the execution of the judgment in that part of it that concerns introduction of jury trials in the entire territory of the Russian Federation does not provide with an opportunity to apply the death penalty including the death penalty imposed by the sentence delivered pursuant to verdict by the jury.

2. The present decision, as containing an official elucidation of the judgment by the Constitutional Court of the Russian Federation No. 3-P, 2 February 1999, from the

moment of its pronouncement shall become a part of the elucidated decision and shall be applied in normative unity with it.

3. The present decision shall be final and not amenable to appeal.

4. The present decision is to be published in *Rossiyskaya Gazeta*, *Collection of Laws of the Russian Federation* and *Bulletin of the Constitutional Court of the Russian Federation*.

### **The Constitutional Court of the Russian Federation**

No. 344-O-R

*Перевод на английский язык.*

© Журнал «Права человека. Практика Европейского Суда по правам человека»

*Translation to English.*

© «Human Rights. Case-Law of the European Court of Human Rights» Journal

*Source: Rossiyskaya Gazeta, Federal Issue No. 5050 , 27 November 2009*