

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Decision

of 19 November 2009 No. 1344-O-II

On clarification of Section 5 of the holding of Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999 in the case concerning the review of the constitutionality of Article 41 and Section 3, Article 42 of the RSFSR Code of Criminal Procedure, Subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the RSFSR Law ‘On the Judicial System of the RSFSR’, the RSFSR Criminal Procedure Code, the RSFSR Criminal Code, and the RSFSR Administrative Offences Code””.

Saint Petersburg, 19 November 2009

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

in the attendance of V. A. Davydov, Representative of the Supreme Court of the Russian Federation, Judge of the Supreme Court of the Russian Federation who filed his request with the Constitutional Court of the Russian Federation concerning clarification of Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999,

pursuant to Section 1, Article 21, Sections 1 and 2, Article 83 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

examined in an open hearing the issue of clarification of Section 5 of the holding of Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999 in the case concerning the review of the constitutionality of the provisions of Article 41 and Section 3, Article 42 of the RSFSR Criminal Procedure Code, Subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the RSFSR Law ‘On the Judicial System of the RSFSR, the RSFSR Criminal Procedure Code, the RSFSR Criminal Code, and the RSFSR Administrative Offences Code””.

Having heard the report by Judge-Rapporteur Yu. M. Danilov, statement by the Representative of the Supreme Court of the Russian Federation V. A. Davydov, interventions by representatives invited to the hearing: A. N. Kharitonov, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation; Ye. V. Vinogradova, PhD in Law, Representative of the Council of the Federation; M. V. Krotov, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation, M. Yu. Barshchevsky, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation, V. P. Lukin, Commissioner for Human Rights in the Russian Federation, and T. A. Vasilyeva for the Prosecutor General of the Russian Federation, Ye. A. Borisenko for the Ministry of Justice of the Russian Federation, N. I. Shelepanova for the Ministry of Internal Affairs of the Russian Federation, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. Section 5 of the holding in Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999 in the case concerning the review of the constitutionality of the provisions of Article 41 and Section 3, Article 42 of the RSFSR Criminal Procedure Code, subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the RSFSR Law ‘On the Judicial System of the RSFSR’, the RSFSR Criminal Procedure Code, the RSFSR Criminal Code, and the RSFSR Administrative Offences Code”” establishes that from the date when the above Judgment of the Constitutional Court of the Russian Federation enters into force until the enactment of an appropriate federal law which guarantees the right to be tried by a jury to everyone accused of a crime for which a federal law imposes death penalty as an exceptional measure of punishment, no such punishment as death penalty shall be imposed regardless of whether the case was tried by a jury or another composition of a court.

At the present time, jury trials are in operation across the entire territory of the Russian Federation, except for the Chechen Republic where they shall be introduced on 1 January 2010. On that date, pursuant to Subsection 5, Article 8 of Federal Law No. 177-Φ3 “On Entry into Force of the Criminal Procedure Code of the Russian Federation” of 18 December 2001, in the Chechen Republic enters into force Subsection 2, Section 2, Article 30 of the Criminal Procedure Code of the Russian Federation, securing the right of an accused person to a trial by jury, including trial on charges of crimes punishable by death penalty as an exceptional measure of punishment.

The Supreme Court of the Russian Federation requests to clarify the imperative of Section 5 of the holding of Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999. The Supreme Court of the Russian Federation considers that it may be a basis of inconsistent law-enforcement practice regarding the possibility of imposing a death sentence after jury trials are in operation in the entire territory of the Russian Federation.

The applicant assumes that an ambiguous interpretation of this provision is predetermined by the fact that the Russian Federation expressed in due legal form its consent to international legal instruments aiming at abolishing the death penalty in times of peace. In particular, after having signed Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms on 16 April 1997, the Russian Federation is obliged under Article 18 of the Vienna Convention on the Law of Treaties to refrain from acts which defeat the object and purpose of the Protocol until the Russian Federation makes its intention clear not to become a Party to the Protocol. In the meantime, the Russian Federation has neither ratified Protocol No. 6 nor made its intention not to become its Party clear.

2. According to Section 3 of the reasoning of Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999, the subject matter of consideration in this case is the normative provisions laid down in Article 41 and Section 3, Article 42 of the RSFSR Criminal Code, and Subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 “On Entry into Force of the Law of the Russian Federation ‘On Amendments to the RSFSR Law ‘On the Judicial System of the RSFSR’, the RSFSR Criminal Procedure Code, the RSFSR Criminal Code, and the RSFSR Administrative Offences Code’”. These normative provisions constituted grounds for denial of the exercise of the right to a trial by jury guaranteed by Article 20 (Section 2) of the Constitution of the Russian Federation to persons accused of offences punishable under federal law by death penalty. The constitutionality of imposing, by federal law, of an exceptional measure of punishment in the form of death penalty was not challenged by the applicants and, accordingly, was not examined by the Constitutional Court of the Russian Federation.

2.1. Within the meaning of Article 83 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court may give official clarification of its decision delivered earlier only within the scope of this decision, on a matter within the jurisdiction of the Constitutional Court of the Russian Federation, and only when the questions raised in a request necessitate further interpretation of the decision on the merits.

The need to clarify a judgment of the Constitutional Court of the Russian Federation may rise, notably, if an imperative on a specific manner of its enforcement, as an integral part of the judgment pursuant to Article 75 of the Federal Constitutional Law “On the Constitutional Court

of the Russian Federation”, necessitates further interpretation in the light of the contents of the legal relations, in view of which the Constitutional Court of the Russian Federation considered the case.

Proceeding from the fact that the provisions on direct application and strict observance of the Constitution of the Russian Federation embodied in its Article 15 (Sections 1 and 2) are addressed to all public authorities and their officials, the Constitutional Court of the Russian Federation establishing a procedure for enforcement of its decision may determine a regime for application of the norms under review, and norms in an inseparable systemic unity with them, so as to preclude their unconstitutional interpretation in the law-enforcement practice.

A legal opinion substantiating a particular regime of applying legal norms reviewed by the Constitutional Court of the Russian Federation may become a matter for clarification of a respective judgment, *inter alia* considering its operation in time, and systemic interconnection with other decisions of the Constitutional Court of the Russian Federation and other normative legal acts within the legal system of the Russian Federation.

2.2. Pursuant to Section 1, Article 83 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, a decision of the Constitutional Court of the Russian Federation may be officially clarified only by the Constitutional Court of the Russian Federation itself sitting in a Plenary session or in a session of a Chamber that delivered the decision. Thus, it is assumed that the decision delivered at a Chamber session of the Constitutional Court of the Russian Federation is, in general, clarified at a session of the same Chamber. Although within the literal meaning of this norm the possibility of clarifying a decision adopted by a Chamber session of the Constitutional Court of the Russian Federation sitting as a Plenary Court cannot be excluded.

In the present case, the Constitutional Court of the Russian Federation, pursuant to Section 1, Article 21 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” authorizing it to examine in a [...] Plenary Session any issue within the jurisdiction of the Constitutional Court of the Russian Federation, presumes it expedient to consider the issue of clarifying Section 5 of the holding of Judgment No. 3-II of 2 February 1999 at a Plenary session of the Constitutional Court of the Russian Federation.

3. The legal opinion laid down in Constitutional Court of the Russian Federation Judgment No. 3-II of 2 February 1999 is the following.

Article 20 (Section 2) of the Constitution of the Russian Federation states that death penalty, until it is repealed, may be imposed by federal law as an exceptional measure of punishment for especially grave crimes against life, provided that the accused are guaranteed the right to be tried by a jury. It implies, in conjunction with Articles 18 and 46 (Section 1) of the

Constitution of the Russian Federation, that in such instances the right of the accused to be tried by a jury operates as a special criminal procedure guarantee of judicial protection of everyone's right to life (as a fundamental and inalienable right to be enjoyed by everyone since birth). Pursuant to Article 19 of the Constitution of the Russian Federation (Sections 1 and 2) this right must be guaranteed on an equal basis and to an equal extent to all accused persons regardless of the venue of the crime, territorial or other jurisdiction established by federal law for such cases or other similar factors.

Consequently, in subjects of the Russian Federation where trials by jury were already in operation at the time when this Judgment was adopted, persons accused of crimes punishable by death penalty should not be put in sentencing in a position unequal to that of persons accused of the same crimes in subjects of the Russian Federation where trials by jury are not yet in operation. Under such circumstances the use of capital punishment would distort the purpose and essence of the right guaranteed by Article 20 of the Constitution of the Russian Federation and, moreover, it would constitute a substantial breach of the principle of equality stipulated by Article 19 of the Constitution.

The Constitutional Court of the Russian Federation inferred that death penalty shall not be imposed from the time the Judgment entered into force until a respective federal law comes into force guaranteeing, across the entire territory of the Russian Federation, to every person accused of a crime for which a federal law imposes death penalty as an exceptional measure of punishment, the right to be tried by jury within any possible kind of judicial proceedings. Death penalty shall not be imposed, regardless of whether the case was tried by a jury, a panel of three professional judges, or a court consisting of a judge and two lay judges.

Thus, the Constitutional Court of the Russian Federation, ruling within the subject-matter under consideration on the possibility of imposing capital punishment, ultimately, proceeded from the need to guarantee citizens an equal right to be tried by a jury across the entire territory of the Russian Federation.

However, the above considerations do not imply lack of the need to take other factors into account, in the presence of which the nationwide introduction of jury trials shall automatically nullify other conditions preventing the use of death penalty, including the tendencies directly reflected in the Judgment addressing the issue of the death penalty, namely international obligations of the Russian Federation on a moratorium on the use of death penalty. Having grounds to presume that this issue shall be resolved within a reasonable time, at least not exceeding the time for ensuring trials by a jury across the entire territory of the Russian Federation, the Constitutional Court of the Russian Federation, within the limits of the subject-

matter under consideration, exercised reasonable restraint in reflecting this factor in the wording of the Judgment.

4. According to Section 2, Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation shall deliver decisions in cases considering both the literal meaning of the normative act under review and the meaning these norms acquire in official and other interpretations or in the law-enforcement practice and from the place of these acts within the hierarchy of legal acts, including international treaties of the Russian Federation which, pursuant to Article 15 (Section 4) of the Constitution of the Russian Federation, are an integral part of the legal system of the Russian Federation.

Consequently, in construing the legal opinion expressed in Judgment No. 3-II of 2 February 1999, the Constitutional Court of the Russian Federation could not fail to take into consideration that the right to be tried by a jury arising from Article 20 (Section 2) of the Constitution of the Russian Federation which guarantees to those accused of a crime punishable by death penalty as an exceptional measure of punishment (until it is repealed), should be exercised in the light of universally recognized principles and norms of international law and provisions of the international treaties of the Russian Federation. Providing an official clarification of this Judgment, the Constitutional Court of the Russian Federation must not fail to consider this factor either.

Since Judgment No. 3-II of 2 February 1999 has been effective for quite a long time and, moreover, in its application stable and applicable to persons in a way similar to normative provisions, the Constitutional Court of the Russian Federation clarifying this Judgment assumes that it is interconnected with other legal acts, including norms of international human rights law preventing the use of death penalty as a punishment and international treaties of the Russian Federation. Also, the Court shall consider the dynamics of the legal regulation of respective legal relations and tendencies in the world community, given that the Russian Federation recognizes itself as a part of it (Preamble to the Constitution of the Russian Federation).

4.1. In international regulation, there is a steady tendency to abolish 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) until it is completely and unconditionally abolished as stipulated by Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms in effect from 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, urging the member States of the United Nations to limit the use of death penalty, reduce the number of capital crimes and to introduce a moratorium on executions are indicative of this global tendency.

The expressed intention of the Russian Federation to institute a moratorium on executions and pursue other measures aiming at the abolition of the death penalty was one of the essential grounds for inviting the Russian Federation to join the Council of Europe.

Precisely relying “on the commitments and understandings”, including the intention “to sign within one year and ratify within three years from the time of accession Protocol No. 6 of the European Convention on Human Rights on the abolition of the death penalty in times of peace, and with effect from the day of accession to put into place a moratorium on executions”, the Parliamentary Assembly of the Council of Europe recommended to the Committee of Ministers of the Council of Europe to invite Russia to become a member of the Council of Europe (Sub-paragraph ii, Paragraph 10, Opinion of the Council of Europe Parliamentary Assembly on Russia’s request for membership of the Council of Europe No. 193 of 25 January 1996). This and other intentions expressed by Russia are considered in Resolution (96) 2 by the Committee of Ministers of the Council of Europe, by which Russia was invited to become a member the Council of Europe, as “the commitments entered into and the assurances for their fulfillment” and as an essential prerequisite for inviting Russia to the Council of Europe, and thus they have considerable political and legal significance.

The Russian Federation’s acceptance of the invitation by the Committee of Ministers of the Council of Europe was legislatively formalized through Federal Laws No. 19-Φ3 “On the Accession of the Russian Federation to the Statute of the Council of Europe” of 23 February 1996 and No. 20-Φ3 “On the Accession of the Russian Federation to the General Agreement on Privileges and Immunities of the Council of Europe and Subsequent Protocols Thereto” of 23 February 1996. By acceding to the statutory instruments of the Council of Europe, the Russian Federation reaffirmed its assurances and obligations fulfillment of which was the pre-condition for inviting Russia to membership in the Council of Europe. Also, the Address of the President of the Russian Federation to the Federal Assembly of 30 March 1999 referred to the abolition of the death penalty as Russia’s “serious obligation”.

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 a 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 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 was signed and ratified by 46 Member-States of the Council of Europe and entered into force for them. The Russian Federation signed it on 16 April 1997 and should have ratified it prior to 28 February 1999 (in line with the commitment expressed by Russia upon her joining the Council of Europe on 28 February 1996, to accede to the Protocol within three years upon accession to the Council of Europe).

On 6 August 1999, a draft law on the ratification of Protocol No. 6 was introduced by the President of the Russian Federation to the State Duma (along with a draft federal law envisaging amendments to criminal legislation, criminal procedure legislation, and penitentiary legislation of the Russian Federation). According to the cover letter, “the ratification of the above Protocol shall reaffirm the commitment of the Russian Federation to the principles of humanity, democracy, and law and facilitate the implementation of the provisions set forth by the Constitution of the Russian Federation for the protection of the basic natural human right – the right to life” (Letter of the President of the Russian Federation No. Pr-1025 of 6 August 1999). In his Executive Order No. 462-rp of 28 August 2001, the President of the Russian Federation appointed his official representatives for purposes of Protocol No. 6 ratification by the Federal Assembly. In February 2002, the State Duma, in its turn, adopted a petition to the President of the Russian Federation stating that ratification of the Protocol No. 6 was premature. However, the respective draft law was not rejected by the State Duma and, therefore, it is still pending.

4.3. The fact that Protocol No. 6 has not been ratified yet does not prevent, within the context of the existing legal realities, its recognition as an essential element of the legal regulation of the right to life.

Pursuant to 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 has 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 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 signed by the Russian Federation until it has officially made its intention clear not to become a

Party to the Protocol. Since the principal commitment under Protocol No. 6 is complete abolition of death penalty, including elimination of this penalty for any offence from the law, except for “acts committed in times of war or of imminent threat of war” and refusal to apply it with the same exception; since 16 April 1997, death penalty may not be applied in Russia, i.e. capital punishment must not be imposed or executed.

5. The fulfillment of the commitment not to deprive Protocol No. 6, as a signed but not yet ratified international treaty, of its object and purpose rests with the state in general. If bodies representing one branch of state power refuse to respect the commitment, compliance may be ensured by other branches. These latter branches shall proceed from the principle of separation of powers and the principle of coordinated functioning and interaction of bodies of state power guaranteed by the President of the Russian Federation (Article 10; Article 80, Section 2, of the Constitution of the Russian Federation), so that the fulfillment of international obligations by the State in general shall remain in conformity with Article 18 of the Vienna Convention on the Law of Treaties.

Even after Russia acceded to the Council of Europe and signed Protocol No. 6, in some instances Russian courts did impose death sentences. At the same time, Decrees of the Plenum of the Supreme Court of the Russian Federation No. 8 of 31 October 1995 and No. 5 of 10 October 2003 instructed the courts to apply international treaties in force although they did not touch upon the legal situation evolving from the signing of an international treaty conditioned by its subsequent ratification. With respect to death penalty, Decree of the Plenum of the Supreme Court of the Russian Federation No. 1 of 27 January 1999 explicitly states that “death penalty as an exceptional measure of punishment may be applied for commission of especially grave offences endangering life” (Subsection 20).

Sentencing to death (and moreover, execution of death sentences) could have constituted a violation by Russia of her obligations under Article 18 of the Vienna Convention on the Law of Treaties as regards Protocol No. 6. However, each time death sentences were commuted to another penalty not related to deprivation of life by the President of the Russian Federation exercising his power of pardon under Article 89 (Subsection “b”) of the Constitution of the Russian Federation. Therefore, decisions by the judiciary were corrected without encroaching upon its prerogatives, which allowed the State to avoid violating its international legal obligations. Also, this process was facilitated by such generally binding domestic legal act as Judgment of the Constitutional Court of the Russian Federation No. 3-II of 2 February 1999. While the Judgment was delivered in connection with court procedures for sentencing to death, by its trend it was not only in conformity with the legal commitments entered by the Russian

Federation under Article 18 of the Vienna Convention on the Law of Treaties with respect to Protocol No. 6, but even amplified them.

Subsequently, the Constitutional Court of the Russian Federation continued to consider complaints of individuals whose capital punishment imposed by a court was commuted to life imprisonment after Russia signed Protocol No. 6 and who referred not only to the Constitution of the Russian Federation, but to Protocol No. 6 as well. Since 2006, the Constitutional Court of the Russian Federation has delivered a number of decisions regarding these complaints stating that due to the fact that the Russian Federation had 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 Judgment No. 3-II of 2 February 1999, capital punishment may not be imposed within the territory of the Russian Federation and, therefore, the current legal situation does not contradict either the meaning of the constitutional norms or the meaning of the Russian Federation's international legal commitments.

The legal opinion considering Protocol No. 6 alongside Judgment No. 3-II of 2 February 1999 as grounds for considering application of capital punishment envisaged by criminal law as impermissible is outlined in Decisions of the Constitutional Court of the Russian Federation No. 434-O of 17 October 2006; No. 380-O-O of 15 May 2007; Nos. 682-O-O, 684-O-O, 686-O-O – 689-O-O, 692-O-O and 712-O-O of 16 October 2007; Nos. 935-O-O and 943-O-O of 18 December 2007; No. 54-O-O of 24 January 2008. In the light of the ambiguous understanding in judicial practice of Protocol No. 6 which was signed but not ratified, the above decisions of the Constitutional Court of the Russian Federation precluded the possibility of courts to impose death penalty.

6. In view of the Russian Federation's accession to the Council of Europe and signing of Protocol No. 6, it was assumed that the temporary moratorium on the use of the death penalty instituted on that basis within the legal system of the Russian Federation would, upon the ratification of Protocol No. 6 (i.e. no later than 28 February 1999), transform into a standing law under which no one may be sentenced to death or executed. Simultaneously with the ratification of Protocol No. 6, respective amendments related to the abolition of this penalty should have been introduced into the criminal legislation, criminal procedure legislation, and penitentiary legislation, as is clear from the draft law submitted by the President of the Russian Federation to the State Duma.

Since Protocol No. 6 is not ratified yet, *per se* it may not be regarded as a normative legal act immediately abolishing death penalty in the Russian Federation within the meaning of Article 20 (Section 2) of the Constitution of the Russian Federation. The federal legislation

retains provisions stipulating this type of punishment and, accordingly, procedures for its imposition and execution.

However, as follows from the legal opinions outlined in Judgment of the Constitutional Court of the Russian Federation No. 3-II of 2 February 1999 in conjunction with its other decisions, death penalty as an exceptional measure of punishment stipulated by the Criminal Code of the Russian Federation is permissible within the meaning of Article 20 (Section 2) of the Constitution of the Russian Federation only as an interim measure (“until it is repealed”) during a certain transitional period. At the present time, the respective provisions of the Criminal Code of the Russian Federation may not be applied, as the existing legal regulation of the right to life in the Russian Federation pursuant Article 20 of the Constitution of the Russian Federation in conjunction with Articles 15 (Section 4) and 17 and including decisions of the Constitutional Court of the Russian Federation institutes a ban both on imposing death penalty and executing earlier imposed sentences. In respect of the ban on the imposition of death sentences, the Russian Federation is bound by the obligations (constitutional in their essence), arising both from international treaties and domestic legal acts adopted by the Federal Assembly – the parliament of the Russian Federation, the President of the Russian Federation and the Constitutional Court of the Russian Federation.

Consequently, a complex moratorium on the use of death penalty determining guarantees of the right to life ensured by the Constitution of the Russian Federation is in force within the Russian Federation. Initially, this moratorium was meant to be short-term pursuant to the meaning of legal acts comprising it. However, this legal regulation has been in force for over a decade from the time when Russia assumed relevant obligations upon accession to the Council of Europe on 28 February 1996 and signed Protocol No. 6 on 16 April 1997 and when the Constitutional Court of the Russian Federation, in the absence of due procedural guarantees, introduced a direct ban on imposition of death penalty in Judgment No. 3-II of 2 February 1999. This regulation has been legitimized through established law-enforcement practice, including subsequent decisions of the Constitutional Court of the Russian Federation and decisions by courts of general jurisdiction.

7. Thus, pursuant to the Constitution of the Russian Federation and legal acts specifying it within the Russian Federation, death penalty as a punishment has not been imposed or executed for a long time. The long-term moratorium on the use of death penalty which is legally constituted in part by Judgment of the Constitutional Court of the Russian Federation No. 3-II of 2 February 1999 in conjunction with its other decisions, served as a basis for the formation of well-established guarantees of the right not to be subjected to the death penalty and establishment of the legitimate constitutional regime. Within the framework of this regime and in

the light of the international tendencies and obligations assumed by the Russian Federation there is an irreversible process aimed at abolishing death penalty as an exceptional measure of punishment of temporary nature (“until it is repealed”) which is acceptable only during a certain transitional period, i.e. achievement of the goal secured by Article 20 (Section 2) of the Constitution of the Russian Federation.

The prerogatives of the Federal Assembly as to the ratification of Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms are not affected by it.

Concluding from the above and pursuant to Article 6, Section 4, Article 71, Sections 1 and 2, Article 72, Section 1, Article 79, and Article 83 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. The provisions of Section 5 of the holding of Judgment of the Constitutional Court of the Russian Federation No. 3-II of 2 February 1999 within the system of effective legal regulation signify the following. Based on the above provisions, the long-term moratorium on the use of death penalty has served as a basis for the formation of well-established guarantees of the human right not to be subjected to death penalty and establishment of the constitutional regime. Within the framework of the regime and in the light of the international legal tendencies and obligations assumed by the Russian Federation, there is an irreversible process aimed at abolishing death penalty as an exceptional measure of punishment of temporary nature (“until it is repealed”) which is acceptable only during a certain transitional period, i.e. achievement of the goal secured by Article 20 (Section 2) of the Constitution of the Russian Federation. Therefore, the enforcement of this Judgment in what concerns the introduction of jury trials across the entire territory of the Russian Federation does not provide for the possibility of applying death penalty, including situations where the jury gives a verdict of guilty.

2. This Decision containing an official clarification of Judgment of the Constitutional Court of the Russian Federation No. 3-II of 2 February 1999 shall, from the pronouncement, become an integral part of the clarified Judgment and shall be applied in a normative unity with it.

3. This Decision shall be final and shall not be subject to any appeal.

4. This Decision shall be published in *Rossiyskaya Gazeta*, the Collection of Laws of the Russian Federation and the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 1344-O-II