



Ref.: TG EUR 37/2006.04

Lech Kaczyński
President of the Republic of Poland
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POLAND

22 August 2006

Dear President Kaczyński,

As an organization dedicated to the protection and promotion of human rights, Amnesty International works among other things for an end to executions and the universal abolition of the death penalty.

Amnesty International is therefore deeply concerned about statements made by you on 28 July 2006, in which you called for the restoration of the death penalty in Poland and throughout Europe. You were reported to have stated on the Polish Public Radio Programme 1 that “*countries that give up this penalty award an unimaginable advantage to the criminal over his victim, the advantage of life over death.*” Amnesty International rejects this view. In modern times, it is widely accepted that it is not the role of a judicial system to repeat the offence of the perpetrator. Any society that uses the death penalty debases the value it places on human life and risks lowering itself to the moral equivalent of the murderer.

Amnesty International opposes the death penalty in all cases as a violation of fundamental human rights:

- The death penalty is the ultimate cruel, inhuman and degrading punishment.
- It violates the right to life.
- It is irrevocable and can be inflicted on the innocent.
- It has never been shown to deter crime more effectively than other punishments.

Those rights are recognized in the Universal Declaration of Human Rights, other international and regional human rights instruments such as the European Convention on Human Rights (ECHR), and national constitutions and laws.

As you know, Poland has signed the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) which provides for the total abolition of the death penalty. It is also a state party to the ECHR’s Protocol No. 6 which provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty only for crimes “in time of war or of imminent threat of war”. Furthermore, Poland is a signatory to the ECHR’s Protocol No. 13 which provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war.

On 2 August, the League of Polish Families (Liga Polskich Rodzin, LPR), a minority party in your governing coalition, announced a Europe-wide campaign to restore the death penalty and for a referendum on its reintroduction in Poland. LPR vice-president Wojciech Wierzejski called the ban on the death penalty across the European Union’s (EU) 25 member states “*anachronistic.*”

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Were Poland to take the retrograde step of reintroducing capital punishment, it would not only be in violation of its international obligations, but also in direct contradiction to the strong worldwide trend away from the use of the death penalty. Far from being anachronistic, progress in abolishing the death penalty has been dramatic. When Amnesty International convened an International Conference on the Death Penalty in Stockholm, Sweden, in 1977, just 16 countries had abolished capital punishment for all crimes. Today the figure stands at 88. A further 11 countries have abolished the death penalty for all but exceptional crimes such as wartime crimes, and 29 countries can be considered abolitionist in practice in that they retain the death penalty in law but have not carried out any executions for the past 10 years or more and are believed to have a policy or established practice of not carrying out executions. Thus, there are at present 128 countries that are abolitionist in law and practice, well over half the countries in the world (for further information see the Appendix attached to this letter).

On 3 August, also responding to these statements on behalf of the EU, the European Commission spokesman Stefaan de Rynck stated that *“the death penalty is not compatible with European values.”* The EU Guidelines on the death penalty state that *“abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights”*. The Guidelines establish as an EU objective *“to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states.”*

The President of the Parliamentary Assembly of the Council of Europe (PACE), René van der Linden, on 3 August wrote an open letter to you in your capacity as President of a Council of Europe member state that: *“In our view, the death penalty has no place in the criminal justice system of any modern, civilised country.”* He added: *“to suggest that its reintroduction could in any sense represent a positive development would be a direct attack on our common values, which are founded on respect for the basic human dignity of every person.”*

You may be interested to know that the Holy See is engaged in the pursuit of the abolition of capital punishment. In its Declaration to the First World Congress on the death penalty in Strasbourg in June 2001, the Holy See stated: *“Where the death penalty is a sign of desperation, civil society is invited to assert its belief in a justice that salvages hope from the ruin of the evils which stalk our world. The universal abolition of the death penalty would be a courageous reaffirmation of the belief that humankind can be successful in dealing with criminality and of our refusal to succumb to despair before such forces, and as such it would regenerate new hope in our very humanity”*.

The Holy See has consistently sought the abolition of the death penalty and the late Pope John Paul II personally and consistently appealed on numerous occasions to commute death sentences to a lesser punishment. In an address on 19 April 2004 he reiterated that *“...the ends of justice in today’s world seem better served by not resorting to the death penalty”*, and that *“modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform,”* repeating a teaching he articulated in his encyclical *“Evangelium Vitae”*. He also added: *“While civil societies have a duty to be just, they also have an obligation to be merciful.”*

Human rights violations cannot be justified by popular opinion. The authorities of Poland should provide human rights leadership and not mislead the public into believing that the death penalty serves a useful purpose.

Amnesty International would like to echo the call of many of those quoted above and urge the Polish government not to take the backward step of reintroducing the death penalty. It is incumbent upon governments to protect the citizens they serve from crime. However, the administration of state killing via the judicial system serves no useful purpose in preventing crime but can have a brutalising effect on societies that inflict it. The use of capital punishment as a crime prevention measure often prevents the formulation of positive measures that would have positively affected the situation by allowing politicians to appear to be taking strong action,

Amnesty International urges you to exercise all powers within your remit to ensure that the Polish authorities honour their international obligations and to uphold Poland's commitments on the abolition of the death penalty. We would in particular recall that:

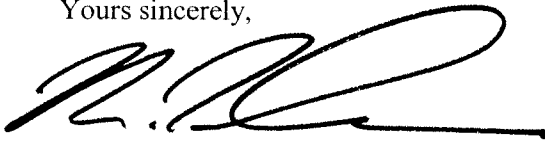
- As a member of the European Union, Poland has committed itself to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states;
- As a member of the Council of Europe, Poland has committed itself to abolish the death penalty. Restoration of the death penalty would constitute a blatant breach of your country's obligations under the ECHR, which enshrines the essential values of the Council of Europe;
- The reintroduction of death penalty would thus be totally incompatible with membership of both the EU European Union and Council of Europe.

Amnesty International would also take the opportunity to call the Polish authorities to:

- Ratify the Second Optional Protocol to the ICCPR which provides for the total abolition of the death penalty;
- Ratify the Protocol No. 13 to the ECHR which provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war.

We look forward to your response.

Yours sincerely,



for Irene Khan
Secretary General

APPENDIX – FURTHER INFORMATION ON THE DEATH PENALTY

In Europe, the trend toward abolition is especially remarkable: the Parliamentary Assembly of the **Council of Europe** (PACE) now requires a commitment to abolition as a **condition of entry into the organization**, and the European Union (EU) has adopted a far-reaching policy governing the promotion of abolition in non-member states. In resolution 727 of 22 April 1980, the PACE stated that “*capital punishment is inhuman*” and appealed to the parliaments of member states which retained the death penalty for peacetime offences to abolish it. It widened the appeal in resolution 1044 (1994) of 4 October 1994, calling “*upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states*”. It stated that it “*considers that the death penalty has no legitimate place in the penal systems of modern civilized societies, and that its application may well be compared with torture and be seen as inhuman and degrading punishment within the meaning of Article 3 of the European Convention on Human Rights.*”¹

At the October 1997 Council of Europe Summit, Heads of Government, including all EU member states at that time and the new member states, called for universal abolition of the death penalty. Poland abolished capital punishment in 1997, following a moratorium on executions imposed in 1988.²

Abolition of the death penalty is now a requirement of EU membership. This EU commitment was reaffirmed in December 2000 at the European Council Summit in Nice, with the solemn proclamation of the EU Charter on Fundamental Rights. The Charter reaffirms the right of everyone to life and the prohibition of the death penalty (Article II-2). All the EU member states and candidate countries have acceded to Protocol No. 6 to the European Convention on Human Rights, concerning the Abolition of the Death Penalty. In addition, EU member states are all signatories to Protocol 13 to the ECHR, concerning the abolition of the death penalty in all circumstances, which was adopted in Vilnius in May 2002. This treaty explicitly bans the death penalty in all circumstances, including in war-time. States are bound under international law to respect the provisions of treaties to which they are parties, and to do nothing to defeat the object and purpose of treaties which they have signed.

Within the **United Nations** (UN), the Commission on Human Rights has called on states that still maintain the punishment “*to establish a moratorium on executions, with a view to completely abolishing the death penalty*”.³

There has been constant progress towards worldwide abolition. There are at present **128** countries that are abolitionist in law and practice. Over **40** countries have abolished the death penalty for all crimes since 1990. They include countries in **Africa** (recent examples include Liberia, Côte d’Ivoire), the **Americas** (Canada, Paraguay, Mexico), **Asia and the Pacific** (Philippines, Bhutan, Samoa) and **Europe and Central Asia** (Armenia, Bosnia-Herzegovina, Cyprus, Serbia and Montenegro, Turkey, Turkmenistan).

The last three decades have witnessed the world turning its back on state killing, with an average of two to three countries abolishing the death penalty per year. Numerous other countries have significantly lessened their use of this punishment. For example, Japan and Nigeria have both scaled back the number of executions carried out; in 2005 Japan carried out a single execution and Nigeria none – neither county has executed to date in 2006. Only **24** countries carried out executions in 2005.

Once abolished, the death penalty is seldom reintroduced. During the same period only **four** abolitionist countries reintroduced the death penalty and **two** of them - Nepal and Philippines - have

¹ Recommendation 1246 (1994).

² Adopted by the *Sejm* (Polish National Assembly) in 1997, on 1 September 1998 came into force the new Penal Code.

³ Resolution 2005/59, adopted on 20 April 2005.

since abolished the death penalty again. There have been no executions in the other two (Gambia, Papua New Guinea).

The deterrence argument

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, concluded: "... *it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.*"⁴

There is no criminological justification for the death penalty which would outweigh the human rights grounds for abolishing it. The argument that the death penalty is needed to deter crime has become discredited by the consistent lack of scientific evidence that it does so more effectively than other punishments. The death penalty negates the internationally accepted penological goal of rehabilitating the offender.

Effect of abolition on crime rates

Reviewing the evidence on the relation between changes in the use of the death penalty and homicide rates, a study conducted for the UN in 1988 and updated in 2002 stated: "The fact that the statistics continue to point in the same direction is persuasive evidence that countries need not fear sudden and serious changes in the curve of crime if they reduce their reliance upon the death penalty".

Recent crime figures from abolitionist countries fail to show that abolition has harmful effects. In Canada, for example, the homicide rate per 100,000 population fell from a peak of **3.09** in 1975, the year before the abolition of the death penalty for murder, to **2.41** in 1980, and since then it has declined further. In 2003, 27 years after abolition, the homicide rate was **1.73** per 100,000 population, **44** per cent lower than in 1975 and the lowest rate in three decades.

Execution of the innocent

As long as the death penalty is maintained, the risk of executing the innocent can never be eliminated.

Since 1973, **123** prisoners have been released in the USA after evidence emerged of their innocence of the crimes for which they were sentenced to death. There were **six** such cases in 2004, **two** in 2005 and **one** so far in 2006. Some prisoners had come close to execution after spending many years under sentence of death. Recurring features in their cases include prosecutorial or police misconduct; the use of unreliable witness testimony, physical evidence, or confessions; and inadequate defence representation. Other US prisoners have gone to their deaths despite serious doubts over their guilt.

The then Governor of the US state of Illinois, George Ryan, declared a moratorium on executions in January 2000. His decision followed the exoneration of the **13th** death row prisoner found to have been wrongfully convicted in the state since the USA reinstated the death penalty in 1977. During the same period, **12** other Illinois prisoners had been executed. In January 2003 Governor Ryan pardoned four death row prisoners and commuted all 167 other death sentences in Illinois.

For further information on the death penalty, please visit Amnesty International's website

www.amnesty.org

⁴ Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, third edition, 2002, p. 230