THE ABOLITION OF THE DEATH PENALTY IN CENTRAL AND EASTERN EUROPE

INTRODUCTION

Undoubtedly abolitionists of the death penalty have kept a watchful eye on events in Central and Eastern Europe (CEE) since the collapse of Communism in 1989. They have not been disappointed. Indeed, the developments have been breathtaking. Most of the CEE countries have become abolitionist, citing ‘political will, official inquiry, and the influence of the United Nations policy’ as the most important reasons for choosing this course. The majority of CEE countries are state parties to the relevant international legal instruments, namely Protocol No. 6 of the European Convention on Human Rights (ECHR) and the Second Optional Protocol to the International Covenant for Civil and Political Rights (ICCPR), those

1 Such was the response of Poland. See ‘Crime Prevention and Criminal Justice’, (March 2000), UN Doc/E/2000/3.

2 Protocol No. 6 to the ECHR, concerning the abolition of the death penalty, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime; states parties may retain the death penalty for crimes ‘in time of war or of imminent threat to war’. Any state party to the ECHR can become party to the Protocol. For the purposes of this chapter, it is important to note that Albania, Bulgaria, and Poland have signed but not ratified; Bosnia-Herzegovina, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia, and Ukraine are states parties. See also A.M. Gross, Reinforcing the New Democracies: the European Convention on Human Rights and the Former Communist Countries — A Study of the Case Law, EUROPEAN JOURNAL OF INTERNATIONAL LAW, 7 (1996), pp. 103-111. Developments in the Russian Federation are treated in detail in this publication.

3 The Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty, adopted by the UN General Assembly in 1989, provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or
which have not yet ratified these agreements are signatories. Equally significant, CEE countries have substantially amended or adopted new criminal codes, in which the death penalty has been eliminated as a form of punishment, or have imposed a moratorium. Other countries have gone so far as to amend their constitutions to prohibit the reinstatement of capital punishment, such as Romania. Considering the Communist histories of these countries, and the role that the respective criminal justice systems played in controlling society (in which the death penalty had a key part), the relatively rapid and painless move to abolish the death penalty is a major achievement to this cause. It is worthwhile recalling that Communist rule generated, utilised, and eventually degenerated the law: scholars of totalitarian law have focused on various aspects with respect to the perversion of the law on the part of society and vice versa. The point to be made, briefly, as it is outside the scope of this chapter, is that the direct and indirect legacy of Communism manifests itself in dealing with the problems of the post-Communist heritage. This applies to the abolition of the death penalty and the discussions surrounding its reinstatement; proponents normally cite public support and attempt to reform the criminal law in ways which show that the perception of law continues to be affected by ideas sustained under the former regime. An important factor which has curtailed these efforts has been both the direct and indirect compliance with the norms set by Western Europe. Entry into the European Union requires that certain commitments are made with respect to the recognition of basic rights and freedoms.

Without question, the first post-Communist governments were faced with a number of daunting tasks of unprecedented magnitude, none other than reintroducing credibility and legitimacy into their respective legal systems; that these systems meet European standards and international norms inevitably includes addressing the especially delicate and controver-

6 Ibid., pp. x-xi.
7 An example is the proposal to have a list of defence counsel at the disposal of the Minister of Justice. See Andrzej Zoll, The New Polish Criminal Law Codification in Light of the Constitution, Polish Contemporary Law. (1998), pp. 89-99.