

MASHITOV. Satybek Ongarbeyev, the Deputy Procurator General of Kazakstan, reported at the January 1997 conference on the issue of the death penalty that Mashitov was sentenced to death by

the West Kazakstan Regional Court on 13 August 1996. He was found guilty of premeditated, aggravated murder (Article 88). The Procurator General refused to intervene in the case to seek a lesser punishment, and the sentence is assumed to have been upheld on appeal to the Supreme Court. The outcome of Mashitov's appeal to the Presidential Clemency Commission is not known; it is possible that it will be considered by the Commission in the next few months.

BOGATYRENKO. The deputy Procurator General also gave information on this death penalty case at the January 1997 conference, reporting that Bogatyrenko was sentenced to death on 5 July 1996 by the Pavlodar Regional Court for premeditated, aggravated murder (Article 88). The Procurator General again refused to intervene in the case to seek a lesser punishment, and the sentence is assumed to have been upheld by the Supreme Court. The case will probably be considered by the Presidential Clemency Commission in the near future.

DARZHANOV, Berik. Berik Darzhanov was sentenced to death by Aktyubinsk Regional Court in December 1996 (exact date not known) having been found guilty of premeditated, aggravated murder (Article 88). No further information is known about the case, but it is presumed to be pending consideration with the Supreme Court.

Background information: The death penalty in Kazakstan

The death penalty is allowed in Kazakstan's Constitution through an explicit restriction of the constitutional provision of the right to life. Article 15 of the Constitution states:

1. *Everyone has the right to life.*
2. *No one has the right arbitrarily to take the life of another person. The death penalty is provided by law as the exceptional measure of punishment for especially serious crimes, with the condemned person having the right to petition for clemency.*

Kazakstan is still using the Soviet-era criminal code, in force since 1960, with amendments. This retains the death penalty for 18 peacetime offences.¹ However, senior officials at the Ministry of Justice informed Amnesty International in April 1992 that no one had been executed for economic crimes in the past 10 years. Statistics shown to Amnesty International at that time revealed that between 1987 and 1991 the death penalty had been applied for only four offences: murder under aggravating circumstances, rape, threatening the life of a police officer, and banditry. The most recent official statements claim that in 1995 the death penalty was applied only for aggravated murder.

¹Treason (Article 50 of the Criminal Code); Espionage (Art. 51); Terrorist act (Art. 52); Terrorist act against a representative of a foreign state (Art. 53); Sabotage (Art. 54); Organizing the commission of any of the previously-listed offences (Art. 58); Commission of any of the previously-listed offences against another Working People's State (Art. 59); Banditry (Art. 63); Actions disrupting the work of corrective labour institutions (Art. 63-1); Counterfeiting (Art. 73); Violating currency rules (Art. 74); Large-scale theft of state property (Art. 76-5); Premeditated, aggravated murder (Art. 88); Aggravated rape (Art. 101); Taking a bribe (Art. 146); Threatening the life of a police officer (Art. 173-1); Hijacking an aircraft (Art. 223-1); Resisting a superior or compelling him to violate official duties, in conjunction with intentional homicide of a superior or any other person performing military duties (counts as a peacetime offence), or committed in wartime or a combat situation (counts as a wartime offence) (Art. 227/c).

A **death sentence** can be passed by the Regional Courts in any of Kazakhstan's 19 regions, and by the Almaty City Court. Cases are currently tried by a bench of three judges; introducing trial by jury has been the subject of limited official discussion, but there is currently little official support for this. A defence lawyer must assist in capital cases. A death sentence may not be passed on a person who was younger than 18 years old at the time of the commission of the crime, or on a pregnant woman. Prisoners can **appeal** against the verdict or sentence to the next highest court within seven days of receiving a written copy of the judgment. As their cases are heard at a higher level at first instance, however, prisoners under sentence of death have fewer opportunities to appeal than many other prisoners.

Death sentences may also be reduced by a **judicial review**. Under this procedure a higher court re-examines the case after it has received a protest against the judgment of the court of first instance or the court of appeal. Although death sentences are suspended pending appeal, they may still be carried out before a judicial review has been completed.

If these remedies fail the prisoner can petition for **clemency**. Petitions for clemency are reviewed by the Clemency Commission before being referred to the President of Kazakhstan for final confirmation (according to officials, the Commission also reviews cases where the prisoner has not submitted a petition for clemency, although it is not clear to Amnesty International whether a review is automatic or discretionary in such cases). The Commission meets once a month to review cases based on summary information about each case which is given to the Commission members three days before the meeting, and on statements on each case presented to the meeting by the Supreme Court and the Procuracy. In September 1996 changes were implemented in the composition and procedures of the clemency commission. Notably, the Minister of Internal Affairs, Chairman of the National Security Committee and Chairman of the Supreme Court ceased to be members of the commission, and instead the composition included members of parliament, heads of social affairs committees and an increased number of public figures. Furthermore, a tied vote in the commission would result in the petition being granted, not refused as previously. Finally, the period during which a petition could be submitted to the commission was extended from seven days to 30 days after sentence was upheld on appeal.

If clemency is refused, **execution** is carried out no later than four days after the decision. Execution is by shooting with a single shot in the back of the head. Amnesty International was informed in March 1996 that at the beginning of the year the responsibility for carrying out executions was transferred between departments of the Ministry of Internal Affairs, from the Main Department of the Criminal Executive System (GUUIS) to the State Investigation Committee (GSK).

On average, the period between the passing of a death sentence and execution, including appeal and clemency proceedings, takes one year.

Statistics for the application of the death penalty

In the absence of consistent official reporting of statistical data on the application of the death penalty in Kazakhstan Amnesty International's information is incomplete, but the available data suggests a steady increase in the number of death sentences passed since the late 1980s, and a drastic reduction in recent years in the number of death sentences being commuted to imprisonment.

Official statistics on the application of the death penalty in Kazakhstan were made available to Amnesty International in April 1992, when a delegation from the organization first visited Almaty. These statistics indicated that between 1987 and 1990 a total of 165 people received death sentences, but at least 41 of them benefited from commutation or pardon. In 1991, 67

death sentences were passed, at least 26 of which were subsequently commuted. Official statistics for 1992 were not made available to Amnesty International, but the organization received reports of six death sentences being passed and six executions carried out during that year; the true figures are assumed to be much higher. In 1993, 65 people were sentenced to death.

Statistics on the application of the death penalty in 1994 were disclosed in statements in March 1995 by President Nazarbayev and in April by the First Deputy Chairman of the Supreme Court. One hundred people had been sentenced to death in 1994. Of these, seven had subsequently had their punishment changed on appeal during the year to 15 years' imprisonment, as had 19 other people sentenced to death in previous years. One death sentence passed in 1994 had been commuted. The First Deputy Chairman of the Supreme Court reported that in cases where sentence had been passed towards the end of 1994 appeals and clemency petitions were still pending.

In March 1996 Amnesty International issued a statement condemning figures indicating that Kazakhstan had one of the highest known execution rates in 1995. Information recently received by the organization from official and unofficial sources indicated that 110 death sentences had been passed during 1995, and 101 executions had been carried out. In response, the Kazakstani authorities publicly stated that Amnesty International's statistics were incorrect, and that the number of executions carried out in 1995 was 63. However, they offered no explanation about how this figure of 63 executions related to the other limited statistical information they have provided at other times.

Similarly, Kazakstani officials have so far failed to provide reliable statistics for the application of the death penalty in 1996. In January 1997, during an open discussion on the issue of statistics at the conference on the death penalty in Almaty mentioned above, officials from different agencies were unable to provide a figure for the number of death sentences passed during 1996 or agree a figure for the number of executions, although execution figures of 68 and 71 were variously cited. The only figure on which officials were able to agree was that eight people under sentence of death had been granted clemency during the year (compared to only one in 1995). Furthermore, officials were still unable to provide reliable statistics for the number of executions in 1995, although they continued to dispute the figure of 101 executions previously cited by Amnesty International. Amnesty International continues to urge authorities in Kazakhstan to compile and publish comprehensive death penalty statistics. It has consistently pointed out to the Kazakstani authorities that United Nations Economic and Social Council (ECOSOC) resolution 1989/64, point 5, urges member states

"to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted".

As a member of the Organisation for Security and Co-operation in Europe, Kazakhstan has undertaken to "exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration", and to "make available to the public information regarding the use of the death penalty".² Moreover, as a member of the United Nations, Kazakhstan should provide information to the five-yearly studies on the use of the death penalty by the ECOSOC Commission on Crime Prevention and Criminal Justice.

² Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, paragraphs 17.7-17.8.

Official attitudes to the death penalty

On 18 March 1995, President Nazarbayev delivered a speech about crime in Kazakhstan in which he stated: "Although I am not a supporter of repressive measures, I would like to say that at present calls which are sometimes heard for the abolition of the death penalty are absolutely groundless, irrespective of whatever humanistic reasoning accompanies them. Possibly in future our society will reach the necessity of abolishing it and replacing it with life imprisonment as is accepted in states with a high level of a sense of justice, but so far it is too early to talk about it".

In discussions between Amnesty International and officials in Kazakhstan in February 1996 the main arguments given by officials for the need for the retention of the death penalty in Kazakhstan were: (i) the provision for the death penalty in the new Constitution of Kazakhstan and the lack of provision for life imprisonment in the Constitution; (ii) the economic impoverishment of the country, which means that the state cannot support a system of life imprisonment; (iii) the rapidly rising crime rate in Kazakhstan, and public opinion. Some officials rejected arguments about the risk of innocent people being wrongly convicted and executed, claiming that there were adequate judicial safeguards including the review the President makes of all cases.

There is no serious official initiative to abolish the death penalty in Kazakhstan at present. Currently, official initiatives are focused on improving existing procedures and safeguards against mistakes, although the number of offences carrying a possible death sentence is likely to be reduced in a new Criminal Code which is shortly to go to parliament for consideration.

In addition to the changes enacted in September 1995 in the composition and procedures of the Clemency Commission, officials have submitted proposals to the President for a delay of at least one year between the upholding of a death sentence on appeal and the consideration of a petition for clemency. In the view of Igor Rogov, an adviser to the President and Chairman of the Presidential Clemency Commission, this would help to avoid innocent people being executed by allowing more time for gathering evidence on which to base a clemency petition. The passage of time might also allow a clemency decision to be taken in an atmosphere less influenced by strong emotions aroused by the crime.