

URGENT ACTION

STAY OF EXECUTION LIFTED IN KENNETH BIROS CASE

A federal court has lifted the stay of execution in the case of Kenneth Biros, who is now due to be put to death in Ohio on 8 December under the state's new lethal injection procedures. The Ohio parole board has voted against clemency, but this vote is not binding on the governor.

On 25 November, a three-judge panel of the US Court of Appeals for the Sixth Circuit lifted the stay of execution that had been imposed on 19 October by a District Court judge in the context of ongoing litigation on Ohio's lethal injection protocol. On 13 November, the Ohio authorities announced that they had decided to change the execution procedure, from a three-drug process to one using a large dose of one chemical, thiopental sodium, an anaesthetic. The state also revealed that it had developed a "back-up procedure" for cases when a suitable vein could not be found in a condemned inmate, as happened in the case of Romell Broom in September (see UA 245/09, AMR 51/104/2009, and update AMR 51/109/2009). This back-up procedure would involve injecting a combination of two chemicals, midazolam and hydromorphone, into a large muscle of the prisoner, such as the thigh.

The state argued to the Sixth Circuit that Kenneth Biros' stay of execution should be lifted as the new lethal injection protocol rendered the District Court order moot. The Sixth Circuit agreed. It stated that "In granting a stay of execution, the district court based its reasoning on concerns related to the old procedure. Because the old procedure will not be utilized on Biros, no basis exists for continuing the stay previously in effect." The Court of Appeals added that "whether a stay is warranted under the new protocol is not before us at this time". If Kenneth Biros were to challenge the new protocol, it added, "the district court and we can consider whether he has met the requirements for granting a stay".

Another six Ohio inmates are also currently scheduled for execution: **Abdullah Sharif Kaazim Mahdi** (7 January 2010); **Mark Brown** (4 February); **Lawrence Reynolds** (9 March); **Darryl Durr** (20 April); **Michael Beuke** (15 May); and **Richard Nields** (10 June).

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Opposing the execution of Kenneth Biros, and calling on the governor to grant clemency;
- arguing that the death penalty can never be rendered humane, regardless of the method of execution;
- pointing out that a clear majority of countries have abandoned executions and that the death penalty is not an option even in international tribunals considering the crimes of genocide, war crimes, and crimes against humanity;
- expressing concern that another six inmates are scheduled for execution in Ohio, calling for their executions to be stopped, and for a moratorium on all executions in the state, pending abolition of the death penalty.

PLEASE SEND APPEALS BEFORE 8 DECEMBER 2009 TO:

Governor Ted Strickland
Governor's Office, Riffe Center,
30th Floor, 77 South High Street,
Columbus, OH 43215-6108, USA
Fax: +1 614 466 9354
Salutation: Dear Governor

Richard Cordray
Ohio Attorney General
30 E. Broad St., 17th Floor,
Columbus, OH 43215, USA
Fax: +1 614 728 7583
Email:
richard.cordray@ohioattorneygeneral.
gov
Salutation: Dear Attorney General

Terry J. Collins
Director, Department of
Rehabilitation and Correction
770 West Broad Street, Columbus,
Ohio 43222, USA
Fax: +1 614 752 1171
Salutation: Dear Director Collins

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date. This is the third update of UA 253/09 (AMR 51/107/2009). Further information: www.amnesty.org/en/library/info/AMR51/107/2009/en; www.amnesty.org/en/library/info/AMR51/109/2009/en and <http://www.amnesty.org/en/library/info/AMR51/117/2009/en>.

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ADDITIONAL INFORMATION

Kenneth Biros, aged 51, was sentenced to death for the murder of Tami Engstrom in 1991. In a report sent to Governor Strickland on 17 November 2009, the Ohio Parole Board recommended that the governor deny clemency. The recommendation is not binding on the governor. The Ohio Parole Board also voted against recommending a reprieve while the lethal injection litigation continues, adding that "the courts are the most appropriate place to decide whether additional time is warranted before execution to further litigate the issues surrounding lethal injection". The board previously denied clemency in 2007, but Kenneth Biros received a stay of execution at that time as a result of his case being included in the litigation already underway in relation to Ohio's then three-drug lethal injection protocol.

Amnesty International opposes the death penalty in all cases, unconditionally, regardless of the method chosen to kill the condemned prisoner. The death penalty is inherently cruel and degrading, a punishment that is incompatible with human dignity. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, to the public purse as well as in social and psychological terms. It has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it.

Further Information on UA: 253/09 Index: AMR 51/119/2009 Issue Date: 26 November 2009

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