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THE EVOLUTION OF THE DEATH PENALTY IN KAZAKHSTAN¹

Abstract

This paper presents the evolution of the death penalty in Kazakhstan in its both legal and social aspects. The legal aspect includes analyses of the development and transformation of its regulations provided for in constitutions and criminal codes in the period from 1991 (i.e., the country's independence) to 2022 (i.e., the year of the abolition of the death penalty). The paper also presents the laws governing the execution of the death penalty while it was in effect. The social aspect, on the other hand, includes an analysis of the evolution of the Kazakh society's attitude toward the death penalty. The analyzed materials were the aforementioned legal acts and legal literature. They were obtained, among other things, during a study visit to the library of the Law Faculty of Kazakhstan State Law University in Astana.

KEYWORDS

death penalty, sentencing, Criminal Code of the Republic of Kazakhstan, Executive Penal Code of the Republic of Kazakhstan

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kara śmierci, skazanie, kodeks karny Republiki Kazachstan, kodeks karny wykonawczy Republiki Kazachstan

I. INTRODUCTION

‘The death penalty counts the years of its existence in millennia and its victims in millions’.² It is the most severe, cruel, and irreversible punishment.³ It involves depriving the convicted person of his or her life. It is controversial, gives rise to disputes in the countries where it is in force, and leads to pressure from the international community. Until recently, such a situation was in place in the Republic of Kazakhstan. It was not until 2022 that this punishment was removed from the catalog of penalties specified in the criminal code.

The purpose of this paper is to show the evolution of the death penalty in Kazakhstan’s law (since 1991, i.e., since the country’s independence), its scope, and the circumstances of its abolition. The analysis will cover legal acts (the Constitution and criminal codes) and legal literature.

For the purpose of the analyses, the following research hypothesis was formulated: ‘The evolution of the death penalty leading to its abolition in Kazakhstan’s criminal law was a multi-stage process forced by pressure from the international community’.

II. THE EVOLUTION OF THE REGULATIONS GOVERNING THE DEATH PENALTY IN THE CONSTITUTIONS OF THE REPUBLIC OF KAZAKHSTAN

In the Foundations of the Constitutional System, the 1993 Constitution of the Republic of Kazakhstan⁴ (RK) stated that: ‘The Republic of Kazakhstan recog-

² Mikhail N Gernet in Dinara .A Satenova, *Primeneniye smertnoy kazni v Yugo-Vostochnoy Azii*, https://repo.kspi.kz/bitstream/handle/123456789/4825/2010-3_93-95.pdf?sequence=1&isAllowed=y accessed 4 June 2025.

³ A.B. Bekmagambetov, V.P. Revin, *Ugolovnoye pravo Respubliki Kazakhstan. Obshchaya chast’*. *Uchebnik*, (Almaty 2015) 294.

⁴ *Konstitutsiya Respubliki Kazakhstan ot 28 yanvarya 1993 goda* <<https://adilet.zan.kz/rus/docs/K930001000>> accessed 4 June 2025.

nizes the human being, his or her life, freedom, and inalienable rights as the highest value and functions in the interest of citizens and society' (third foundation). In Chapter 3 titled 'The Rights and Freedoms of Citizens', in Article 8, it also confirmed the protection of life: 'The right to life is a natural and inalienable right of every human being. No one can be arbitrarily deprived of life' (sentences 1 and 2). However, in sentence 3, the Constitution allowed the use of the death penalty, stipulating that it could only be imposed in exceptional cases by court judgment. It allowed anyone sentenced to it to apply for clemency (sentence 4). Thus, the 1993 Constitution of the RK, i.e., the first in the independent state, provided for the death penalty.

Likewise, the 1995 Constitution of the Republic of Kazakhstan⁵, for many years thereafter contained analogous legal arrangements for this penalty.

As a result of the 2007 amendment to the Constitution,⁶ its Article 15(2) once again stipulated that it is prohibited to deprive another person of life. It allowed the use of the death penalty, treating it as an exceptional punishment established by law. It stipulated that this penalty is adjudicated for terrorist crimes resulting in the death of people, as well as for particularly grave crimes committed during wartime. It granted the convict the right to apply for clemency. Thus, the amendment indicated the scope of application of this penalty.

In December 2019, the President of the Republic of Kazakhstan instructed the Ministry of Foreign Affairs to start the procedure of accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted by the UN General Assembly on 15 December 1989. In September 2020, Kazakhstan's representative to the UN signed it, but with the exception of Article 2 (the right to use the death penalty for particularly serious crimes of a military nature committed during wartime).⁷

In December 2020, in response to questions from the President of the Republic of Kazakhstan to the Constitutional Council regarding the death penalty, the latter stated that Kazakhstan's Constitution and international acts recognize the right to life as a fundamental value of a democratic society, define its dominant status, and establish the state's obligations to ensure this right for all people regardless of

⁵ *Konstitutsiya Respubliki Kazakhstan ot 30 avgusta 1995 goda*, <<https://adilet.zan.kz/rus/docs/K950001000>> accessed 5 June 2025.

⁶ *Zakon Respubliki Kazakhstan ot 21 maya 2007 goda N 254 'O vnesenii izmeneniy i dopolneniy v Konstitutsiyu Respubliki Kazakhstan'* <https://adilet.zan.kz/rus/docs/Z070000254_#z0> accessed 5 June 2025.

⁷ Igor V Sleptsov, 'Smertnaya kazn' po zakonodatel'stvu Respubliki Kazakhstan' (2021) 16(2) *Ugolovno-ispolnitel'noye pravo* 213.

differences (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, and others). The Council stressed that according to Article 1(1) of the Constitution of the RK, man, as well as his or her life, rights, and freedoms are the highest values to the state, and Article 15(2) of the Constitution provides for the prohibition of depriving a person of life.⁸ In doing so, it pointed to the international legal basis for the protection of life as a reference point for future amendments to the law regarding the death penalty in Kazakhstan.

In January 2021, the country's president decided to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, drawn up in New York on 15 December 1989.⁹ This provided the impetus for the next major decision regarding the death penalty.

It was materialized in another amendment to the Constitution of the RK, made on 8 June 2022,¹⁰ which shaped the modern legal status of the penalty in question. As a result, Article 15(1) stipulates that everyone has the right to life, and paragraph 2 of that Article stipulates that no one has the right to arbitrarily deprive a person of life. It has been accepted that the death penalty is prohibited. This meant the abolition of this penalty in Kazakhstan. Eventually, it was deemed contrary to the principle of the right to life.¹¹

The actions presented above showed Kazakhstan's phased departure from the death penalty manifested in limiting its scope and minimizing its legal consequences.¹²

⁸ *Normativnoye postanovleniye Konstitutsionnogo Soveta Respubliki Kazakhstan ot 15 dekabrya 2020 goda № 4 'Ob ofitsial'nom tolkovanii punkta 2 stat'i 15 Konstitutsii Respubliki Kazakhstan'* <<https://adilet.zan.kz/rus/docs/S2000000004>> accessed 5 June 2025.

⁹ *Zakon Respubliki Kazakhstan ot 2 yanvarya 2021 goda № 404-VI 'O ratifikatsii Vtorogo Fakul'tativnogo protokola k Mezhdunarodnomu paktu o grazhdanskikh i politicheskikh pravakh, napravlennoyu na otmenu smertnoy kazni'* <https://online.zakon.kz/Document/?doc_id=Z34469292&pos=2;-106#pos=2;-106&sel_link=1008524051> accessed 5 June 2025.

¹⁰ *Zakon Respubliki Kazakhstan ot 8 iyunya 2022 goda 'O vnesenii izmeneniy i dopolneniy v Konstitutsiyu Respubliki Kazakhstan'* <<https://adilet.zan.kz/rus/docs/Z220000001K#z8>> accessed 6 June 2025.

¹¹ SR Yusubova, *Mezhdunarodno-pravovyye aspekty otmeny smertnoy kazni v Respublike Kazakhstan* in *Sbornik materialov XIII Mezhdunarodnoy nauchnoy konferentsii studentov i molodykh uchenykh 'Nauka i obrazovaniye – 2018'* (Astana 2018) 2050.

¹² ISh Borchashvili, *Kommentariy k ugolovnomu kodeksu Respubliki Kazakhstan, Obshchaya chast'*, vol 1 (Almaty 2021) 492.

III. THE EVOLUTION OF THE REGULATIONS GOVERNING THE DEATH PENALTY IN THE CRIMINAL CODES OF THE REPUBLIC OF KAZAKHSTAN

As a result of the collapse of the Soviet Union in 1991, Kazakhstan faced a new geopolitical and socioeconomic situation that required radical changes, including in the field of law. It should be recalled that the 1959 Criminal Code of the Kazakh Soviet Socialist Republic was still in effect at the time,¹³ in which, as in other criminal codes of the Soviet republics, the death penalty was provided for as an exceptional measure.¹⁴ The new situation of the country did not cause an immediate cessation of its use.¹⁵

It was only from 1994 that the Kazakh authorities' efforts began to focus on internationalizing cooperation with other countries, which meant, among other things, pursuing a policy of gradually abolishing the death penalty.¹⁶ Thus, they implemented a state law reform program aimed at reducing the number of crimes punishable by the death penalty.¹⁷ In practice, this has not been done properly, as according to *Amnesty International*, in 1995, Kazakhstan was among the world 'leaders' in the use of the death penalty, ranking 4th after China, Saudi Arabia, and Nigeria. In that year, 101 people were executed in Kazakhstan. In addition, at that time, up to 100 applications for pardon of persons sentenced to death annu-

¹³ *Ugolovnyy Kodeks Kazakhskoy SSR ot 22 iyulya 1959 g. (s izmeneniyami i dopolneniyami)*, <https://online.zakon.kz/Document/?doc_id=1004273&pos=3;-102#pos=3;-102> accessed 4 June 2025.

¹⁴ Article 22: 'As an exceptional measure of punishment, until it is completely abolished, the death penalty - shooting - is permitted for state crimes in cases provided for in the law of the USSR 'On Criminal Responsibility for State Crimes,' for premeditated murder under aggravating circumstances specified in the articles of the criminal laws of the Union of the SSR and the Kazakh SSR, establishing responsibility for premeditated murder, and in some cases specifically provided for by the legislation of the USSR, also for other particularly serious crimes. Persons under the age of eighteen before committing a crime and women who were pregnant at the time of the crime or at the time of the sentencing cannot be sentenced to death. The death penalty cannot be applied to a woman who is pregnant at the time of execution'.

¹⁵ Sleptsov (n 7) 210.

¹⁶ B Bermukhambetova, A Karipova, G Baydalina, 'Smertnaya kazn'. Za ili protiv' in *Aktual'nyye voprosy prava, ekonomiki i upravleniya* (Penza 2016) 20.

¹⁷ SN Isayeva, *Suzheniye sfery primeneniya smertnoy kazni v Respublike Kazakhstan* [in:] *Obe-specheniye verkhovenstva prava: novyye vozmozhnosti v svete global'nykh izmeneniy: Mater. mezhdunar. nauch.-prakt. Konferentsii (15 iyunya 2018 goda), posvyashchennaya pamyati vyday-ushegosya uchenogo-yurista, eks-ministra Yustitsii Respubliki Kazakhstan N.A. Shaykenova ('Shaykenovskiy chleniya'), priurochennaya k 25-letiyu Instituta zakonodatel'stva Respubliki Kazakhstan* (Astana 2018) 286.

ally were considered by the Commission for Pardons under the President of the Republic of Kazakhstan.¹⁸

The first stage of the legal reform involved the adoption of the 1997 Criminal Code of the Republic of Kazakhstan (CCRK),¹⁹ which regulated the death penalty in Article 49 (as amended in 2004²⁰ and 2009²¹).

Based on Article 49(1) of the CCRK, the death penalty was envisaged as an exceptional punishment, carried out by shooting. It was established for terrorist crimes resulting in people's death, as well as for particularly serious crimes committed during wartime. The convict's right to ask for clemency was assured. Paragraph 2 of that Article stipulates that the death penalty must not apply to women, as well as to persons who committed the crime under the age of eighteen, and men who have reached the age of sixty-five by the date the court pronounces the sentence. Paragraph 3 establishes that in the event the President of the Republic of Kazakhstan imposes a moratorium on the execution of the death penalty, its execution will be suspended for the duration of the moratorium. Paragraph 4 regulates the time limits for its execution. It was stipulated that it should be carried out no earlier than one year after the conviction became final, and no earlier than one year after the moratorium on the death penalty was lifted. Paragraph 5 provides that the death penalty may be replaced, by way of pardon, by life imprisonment or twenty-five years' imprisonment, served in a penal colony of special rigor. It has been accepted that persons sentenced to death, in the event that the moratorium on the death penalty is lifted, are entitled to apply for clemency, whether or not they have applied for it before the moratorium was imposed.

Unlike the 1959 Criminal Code of the Kazakh SSR, the scope of the death penalty has been significantly narrowed down. First, the group of those subject to this penalty has been limited (to exclude not only minors and pregnant women, but also all women, as well as men who are over 65 at the time of sentencing). Secondly, the scope of the crimes for which the death penalty is provided was severely reduced. The number of crimes for which the death penalty was prescribed was reduced by almost half.²² It was abolished as a penalty for theft, forgery, foreign

¹⁸ Sleptsov (n 7) 211.

¹⁹ *Ugolovnyy kodeks Respubliki Kazakhstan ot 16 iyulya 1997 goda N 167*, <<https://adilet.zan.kz/rus/docs/K970000167>> accessed 4 June 2025.

²⁰ *Zakon Respubliki Kazakhstan ot 10 marta 2004 goda N 529 'O vnesenii izmeneniy i dopolneniy v Ugolovnyy, Ugolovno-protsessual'nyy i Ugolovno-ispolnitel'nyy kodeksy Respubliki Kazakhstan v svyazi s vvedeniyem moratoriya na ispolneniye smertnoy kazni'* <https://adilet.zan.kz/rus/docs/Z040000529_#z0> accessed 6 June 2025.

²¹ *Zakon Respubliki Kazakhstan ot 10 iyulya 2009 goda № 175-IV 'O vnesenii izmeneniy i dopolneniy v nekotoryye zakonodatel'nyye akty Respubliki Kazakhstan po voprosam smertnoy kazni'* <https://adilet.zan.kz/rus/docs/Z090000175_#z4> accessed 6 June 2025.

²² Bermukhambetova, Karipova, Baydalina (n 16) 20.

exchange violations, banditry, disruptive activities in correctional facilities, rape, and bribery.²³ It is envisaged as a punishment for particularly serious crimes that endanger human life, as well as those committed in wartime or combat situations, treason, crimes against peace and the security of humanity, and serious military crimes. As a result, compared to the Criminal Code of the Kazakh SSR, which contained 27 articles providing for the possibility of the death penalty, the 1997 Criminal Code of the RK provided for it in 18 articles.²⁴

In the years that followed, Kazakhstan continued to gradually reduce the scope of the death penalty. This resulted, among other things, from the 2002 Concept of Legal Policy of the Republic of Kazakhstan. By presidential decree of 17 December 2003 'On the Introduction of a moratorium on the execution of the death penalty in the Republic of Kazakhstan',²⁵ an indefinite moratorium on its execution was introduced. According to the decree, the moratorium was in effect from 1 January 2004, until the death penalty was completely abolished. The execution of the penalty for those who were sentenced to it before the moratorium was adopted was suspended for the duration of the moratorium.²⁶

In reality, the decree did not abolish the death penalty, but suspended its execution. This decision was dictated by the results of an analysis of numerous sociological studies, which indicated the reluctance of Kazakh society to completely abolish this punishment. Such a decision was considered premature.²⁷ At the same time, the moratorium was put in place until the resolution of the issue of the complete abolition of the death penalty. The decree also referred to the need to resolve the issue of implementing, as of 1 January 2004, the provisions of the 1997 Criminal Code of the Republic of Kazakhstan on life imprisonment, which was done by the Act of 31 December 2003.²⁸ This penalty became an alternative to the death penalty.

Subsequently, the Act of 10 March 2004 established the legal status of convicts covered by the moratorium. In November 2005, Kazakhstan ratified the International Covenant on Civil and Political Rights, which stipulates that the right

²³ AA Benke, 'Smertnaya kazn' (2012) 1–2 Khabarshy – Vestnik Karagandinskoy akademii MVD Respubliki Kazakhstan 51.

²⁴ Sleptsov (n 7) 211.

²⁵ Ukaz Prezidenta Respubliki Kazakhstan ot 17 dekabrya 2003 goda N 1251 'O vvedenii v Respublike Kazakhstan moratoriya na smertnuyu kazn' <<https://adilet.zan.kz/rus/docs/U030001251>> accessed 6 June 2025.

²⁶ NA Abdikanov, KZh Baltabayev, 'Glava 15' in II Rogov, KZh Baltabayev (eds), *Ugolovnoye pravo Respubliki Kazakhstan. Obshchaya chast'*. Uchebnik dlya vuzov (Astana 2015) 268.

²⁷ Sleptsov (n 7) 211.

²⁸ Zakon Respubliki Kazakhstan ot 31 dekabrya 2003 goda N 514 'O vnesenii izmeneniy i dopolneniy v nekotoryye zakonodatel'nyye akty Respubliki Kazakhstan po voprosam nakazaniya v vide aresta, a takzhe vvedeniya v deystviye pozhiznennogo lisheniya svobody' <<https://zakon.uchet.kz/rus/docs/Z030000514>> accessed 6 June 2025.

to life is an inalienable right of every human being and is protected by law. In pursuit of its policy of abolishing the death penalty, Kazakhstan acceded to the Declaration of the European Union on the Abolition of the Death Penalty, adopted at the 61st session of the UN General Assembly on 19 December 2006. In 2007, as one of 104 countries, Kazakhstan supported the resolution adopted at the 62nd session of the UN General Assembly on a 'Moratorium on the Death Penalty with Further Consideration of the Abolition of the Death Penalty'.²⁹ The continuation of the course towards a gradual reduction of the scope of the death penalty was also indicated by the Concept of Legal Policy of the Republic of Kazakhstan for 2010–2020.³⁰ In 2010, the country joined the founders of the International Commission against the Death Penalty. In 2012–2014, during work on the preparation of the draft of the new Criminal Code, the need to completely abandon the death penalty was indicated;³¹ however, this did not happen in the 2014 Criminal Code.

The death penalty is regulated in Article 47 of the 2014 CCRK, which introduced several changes to the 1997 CCRK.

Based on Article 47(1) of the CCRK, as an exceptional punishment, the death penalty was carried out by a firing squad, and adjudicated for terrorist crimes resulting in the death of individuals and for particularly grave crimes committed during wartime. The convict had the right to apply for clemency. Article 47(2) of the CCRK indicated categories of persons who were not subject to the death penalty. They were people who committed crimes under the age of eighteen, women, and men who were sixty-three or older. According to Article 47(3) of the CCRK, an introduction by the President of the Republic of Kazakhstan of a moratorium on the execution of the death penalty would suspend its execution for the duration of the moratorium. According to Article 47(4) of the CCRK, the death penalty was to be carried out no earlier than one year after the relevant judgment became final, and no earlier than one year after the moratorium on the death penalty was lifted. Based on Article 47(5) of the CCRK, life imprisonment or a fixed-term prison sentence could be substituted for the death penalty by way of clemency. Its execution should take place in a penitentiary institution providing extraordinary security measures. In the event that the moratorium on the death penalty was lifted, the persons sentenced to death were entitled to apply for clemency, whether or not they had applied for it before the moratorium was imposed.

It should be noted that the execution of the death penalty by shooting, as provided for in this regulation, was a copy of Soviet and Russian solutions. The same method of execution was adopted for both civilians and soldiers.

²⁹ Isayeva (n 17) 287.

³⁰ Bermukhambetova, Karipova, Baydalina (n 16) 20.

³¹ Sleptsov (n 7) 212.

In connection with the basis for adjudication being ‘terrorist crimes resulting in the death of individuals and for particularly serious crimes committed during wartime’, the 2014 CCRK provides for this penalty in 17 articles:

- in Chapter 4, ‘Crimes against peace and security of humanity’, 5 Articles: planning, preparing, launching or waging a war of aggression (Article 160(2)); using prohibited means and methods of warfare (Article 163(2)); violating the laws and customs of war (Article 164(2)); genocide (Article 168(2)); mercenary activities (Article 170(4));
- in Chapter 5, ‘Crimes against the foundations of constitutional order and state security’ – 4 Articles: treason committed in time of war (Article 175 (3)); attempt on the life of the First President of the Republic of Kazakhstan – Leader of the Nation (Article 177); attempt on the life of the President of the Republic of Kazakhstan (Article 178); sabotage (Article 184);
- in Chapter 10, ‘Crimes against public security and order’ - 1 article: Act of terrorism (Article 255(4));
- in Chapter 18 ‘Military Crimes’ – 7 articles: disobedience or other failure to perform an order committed in time of war (Article 437(4)); defying a commander or forcing him to violate his official duties committed in time of war (Article 438(4)); violent actions against a commander committed in time of war (Article 439(4)); desertion committed in time of war (Article 442(4)); evasion or refusal to perform military service committed in time of war (Article 443(3)); violation of the principles of combat readiness committed in time of war (Article 444(3)); surrendering or leaving the means of warfare to the enemy (Article 455).

An analysis of this catalog raises doubts about certain military crimes committed in wartime (Articles 437, 438, 439, 442, 443, and 444). Some researchers stressed that while these acts ‘violate the established order of military service, the most important foundations of soldiers’ activities, cause chaos and disorganization in the conduct of combat tasks, and generally weaken the defense capabilities of the state’, they do not cause the death of a person. They noted that Kazakhstan has not been at war with any country for years, and there are no armed activities on its territory. Consequently, they saw no need to maintain the death penalty in the criminal law for the military crimes indicated. They asked about the proportionality of the punishments, ‘because completely different penalties were provided for the same act committed at different times’.³² Other researchers, however, were convinced of the need to impose the death penalty for the above-mentioned crimes.³³

³² Isayeva (n 17) 288.

³³ SS Karzhaubayev, NI Verchenko, ‘K voprosu o primenenii smertnoy kazni’ in *Razvitiye ugolovno-ispolnitel'noy sistemy: organizatsionnyye, pravovyye i ekonomicheskiye aspekty. Sbornik*

As mentioned earlier, the convict had the right to apply for clemency. According to Article 44(15) of the Constitution of the Republic of Kazakhstan³⁴ and Article 78(3) of the CCRK, the only person who could grant clemency was the President of the Republic of Kazakhstan.

The group of persons not subject to this penalty that was indicated was determined taking into account the criterion of gender and age. As explained, the death penalty was not imposed on persons under 18 years of age because of an incompletely formed psyche, little life experience, succumbing to the influence of others, the difficulty of assessing their behavior; against women (as well as older men) – because of the need to apply the principle of humanism and because of the need to ‘take into account the complexity of their psyche (significant emotionality)’.³⁵

As the information presented above shows, the death penalty could be imposed only in exceptional cases. An alternative to it was life imprisonment. In the list of sanctions, the death penalty was not in the first place, but in the second. Because of clemency, it might not have been carried out³⁶.

IV. EXECUTION OF THE DEATH PENALTY IN THE REPUBLIC OF KAZAKHSTAN

The procedure and conditions for the execution of the death penalty are regulated in Part 5 in Chapter 25 of the Executive Penal Code of the Republic of Kazakhstan of 5 July 2014 (EPCRK).³⁷ Article 158 of the General Provisions of the EPCRK guarantees enhanced security and solitary confinement for a person sentenced to death (paragraph 1). If the convict applies for clemency, provision is made for the suspension of the execution of the penalty until a decision is made by the President of the Republic of Kazakhstan (paragraph 2). A refusal to apply for clemency imposes on the administration of the institution where the convicted person is

materialov mezhdunarodnoy nauchno-prakticheskoy konferentsii, v ramkakh mezhdunarodnogo yuridicheskogo foruma ‘Pravo i ekonomika: natsional’nyy opyt i strategii razvitiya’ (Novokuznetsk 2021) 81.

³⁴ *Konstitutsiya Respubliki Kazakhstan prinyata na respublikanskom referendume 30 avgusta 1995 goda (s izmeneniyami i dopolnениyami po sostoyaniyu na 19.09.2022 g.)*, <https://online.zakon.kz/Document/?doc_id=1005029&pos=420;-50#pos=420;-50> accessed 6 June 2025.

³⁵ Borchashvili (n 12) 494.

³⁶ Ibid 492.

³⁷ *Ugolovno-ispolnitel’nyy kodeks Respubliki Kazakhstan ot 5 iyulya 2014 goda № 234-V ZRK (Arkhivnaya versiya)* <<https://adilet.zan.kz/rus/archive/docs/K1400000234/05.07.2014>> accessed 6 June 2025.

kept the obligation to draw up an appropriate document with the participation of a prosecutor (paragraph 3). The basis for the execution of the death penalty was a final court verdict, a decision of the Prosecutor General of the Republic of Kazakhstan that there were no grounds for an appeal against the court verdict, a decision of the President of the Supreme Court of the Republic of Kazakhstan that there were no grounds for hearing the case, as well as a notice of rejection of the request for clemency or a statement of the convict's refusal to apply for clemency (paragraph 4). A death penalty was to be carried out no earlier than one year after the relevant judgment became final, and no earlier than one year after the moratorium on the death penalty was lifted (paragraph 5).

The legal status of a person sentenced to death was regulated by Article 159 of the EPCRK, which provided for the right to apply for clemency under the appropriate procedure within a year of the sentence becoming final. It stipulated that if the President of the Republic of Kazakhstan imposes a moratorium on the death penalty, the convicted person also has the right, within one year of the lifting of the moratorium, to apply for clemency, whether or not he or she has applied for it before or during the moratorium (paragraph 1). While awaiting clemency or execution of the penalty, the convicted person was entitled to:

- 1) formalize civil and marital relations (as provided by law);
- 2) receive specialized legal assistance and hold private meetings with a lawyer, without limitation of their duration and number, under conditions ensuring their confidentiality;
- 3) receive the necessary medical care;
- 4) receive and send letters without restrictions;
- 5) make one monthly short-term visit to a spouse or close relatives;
- 6) hold meetings with a clergyman;
- 7) take daily thirty-minute walks;
- 8) spend money each month to purchase food and necessities in the amount provided for convicts residing in a full-security institution (paragraph 2).

It was assumed that those sentenced to death for whom the court's verdict had become final, but the issue of clemency had not been resolved, or whose request for clemency had been granted, were housed under the conditions provided for in Article 141 of the CCRK (guaranteeing extraordinary security measures) before being sent to an institution to continue serving their sentences (paragraph 3). On the other hand, those sentenced to death whose request for clemency was rejected were held under the conditions provided for Article 145(4) of the CC RK (i.e., particularly harsh) before being transferred to the relevant institutions for the execution of the penalty (paragraph 4).

The procedure for executing the death penalty was regulated by Article 160 of the EPCRK. It was carried out non-publicly by a firing squad. In the case of several convicts, the execution was carried out separately for each of them and in the absence of the others (paragraph 1). Those present at the execution of the death penalty were to be a prosecutor, a representative of the institution where the death penalty was carried out, and a physician (paragraph 2). The death of the convict was confirmed by a physician. The persons present during the execution then drew up and signed a report on the execution of the court verdict (paragraph 3). The administration of the institution that carried out the penalty notified the court that issued the sentence, as well as the spouse or one of the convicted person's relatives, that the death penalty had been carried out. It notified the spouse or relatives of the place of burial of the remains two years after the date of the burial (paragraph 4). It also sent information on an established form to the registry office and informed the spouse or relatives of the place where they could obtain a death certificate (paragraph 5).

As can be seen from the above information, since 2022, the death penalty in Kazakhstan has not been adjudicated or carried out, but the people who lost their lives during the period it was in force must not be forgotten. However, it is difficult to determine reliable and complete statistics on the death sentences and the number of sentences enforced. According to information provided by researchers, 61 people were sentenced to death in Kazakhstan in 1997, 63 in 1998, 63 in 1999, 40 in 2000, and 39 in 2001. During that period, a total of 266 people were sentenced to death, of which 150 were executed, 27 were granted clemency, and the fate of the remaining 89 people is unknown,³⁸ indicating that not all verdicts were enforced.³⁹ In subsequent years, the death penalty was carried out in Kazakhstan in the following numbers: 22 in 2002, 17 in 2003, 1 in 2004, 2 in 2005, and 3 in 2006. The basis for all death sentences was the perpetration of aggravated murder: the murder of two or more people.⁴⁰ According to other data, the number of people sentenced to this punishment in the period from 1998 to 2017 was 251, of which 112 people were executed. The last death sentence was carried out in relation to 12 people before the moratorium was adopted in 2003.⁴¹ According to other data, 536 death sentences were carried out in Kazakhstan from 1991 until the adoption of the moratorium. At the time of the adoption of the moratorium, 26 people were on death row. The courts stopped issuing death sentences only in 2007.⁴² It is difficult

³⁸ Aibolot T Yeshengaliyev, 'Smertnaya kazn' v Respublike Kazakhstan kak vid nakazaniya za soversheniye terroristicheskikh drugikh vidov prestupleniy' (2017) 1 Vestnik Karagandinskoy akademii Ministerstva vnutrennikh del Respubliki Kazakhstan 55.

³⁹ Bekmagambetov, Revin (n 3) 294.

⁴⁰ Abdikanov, Baltabayev (n 26) 268–269.

⁴¹ Isayeva (n 17) 286.

⁴² Sleptsov (n 7) 212.

to consider the figures reported as true and complete. The determination of reliable data is hindered by the long (developed in Soviet times) practice of concealing/hiding such information, as well as the lack of precision in the reported numbers of convictions and the numbers of death penalties carried out.

V. EVOLUTION OF THE SOCIETY'S ATTITUDE TOWARD THE DEATH PENALTY IN THE REPUBLIC OF KAZAKHSTAN

The attitude toward the death penalty is a question of each person's morality, while the society's attitude to it is 'an indicator of its morality and mentality, the depth of its understanding of the ideas of justice, humanism and civilization. Therefore, it should be recognized that the death penalty is not only a tool of criminal policy, but also a socio-cultural phenomenon'.⁴³

The proposal to abolish the death penalty in Kazakhstan, which has been present in the public forum for years, has generated widespread discussion. The arguments both for and against the death penalty were multifaceted: political, socio-economic, and criminological.⁴⁴

The following arguments were raised against the death penalty:

1. Failure to achieve the goal of the punishment – improvement of the convict.⁴⁵
2. The possibility of judicial errors due to the imperfect justice system. This meant that innocent people can be executed,⁴⁶ and the loss is irreversible.⁴⁷
3. Lack of possibility of rehabilitation of the perpetrator and reconciliation with the victim of the crime.⁴⁸
4. No effect of the death penalty on the level of crime, including a reduction of the phenomenon;⁴⁹ no correlation between changes in crime and the abolition of the death penalty.⁵⁰

⁴³ Satenova (n 2).

⁴⁴ VN Zhamul'dinov, 'Smertnaya kazn': istoriko-pravovyye aspekty' (2014) 8 Problemy sovremennoy nauki i obrazovaniya 2.

⁴⁵ Borchashvili (n 12) 492.

⁴⁶ Yeshengaliyev (n 38) 54.

⁴⁷ Yusubova (n 11) 2050.

⁴⁸ Karzhaubayev, Verchenko (n 33) 77.

⁴⁹ Yeshengaliyev (n 38) 54; Bekmagambetov, Revin (n 3) 294.

⁵⁰ II Rogov, KZh Baltabayev (eds), *Ugolovnoye Pravo Respubliki Kazakhstan. Obshchaya chast'* (Astana 2015) 271.

5. No effect of the death penalty on the social factors that cause crime.⁵¹
6. The use of the death penalty as an example of a tool for solving complex social problems in a primitive way. 'It is a sign of a culture of violence, not a way to get away from it. It violates the dignity of man'.⁵² The death penalty, having no preventive potential, in fact serves only a retaliatory purpose (a primitive revenge), which in a veiled form is referred to as 'restoration of social order' and 'justice'.⁵³
7. The occurrence of pressure from European countries indicating the need to humanize and liberalize criminal law.⁵⁴

For years, many Kazakh scholars have expressed the view that the death penalty should be abolished, but taking into account the opinion of the public. Some believed that 'the right conditions are needed for the abolition of the death penalty: a reduction in the increase in crime, a stabilized situation in the country, and the willingness of the majority of the population to accept the abolition of the death penalty'. In this regard, the need to educate the public in civilized ways to respond to crime and humanize criminal law was emphasized.⁵⁵ The need to take infrastructural (preparation of places for those sentenced to life imprisonment), legal (adaptation to this law), and financial measures was noted.⁵⁶

Arguments in favor of the death penalty were also presented:

1. High cost of keeping prisoners sentenced to life imprisonment as an alternative to the death penalty.⁵⁷ Some researchers noted that as of 1 January 2018, the Chernyi Berkut correctional colony for life prisoners housed more than 100 people, on whose upkeep the state spent more than on teachers' salaries. They considered it an economic injustice.⁵⁸
2. The low cost of carrying out the death penalty.⁵⁹
3. The right to just revenge by the victims and their families, for whom the death penalty is the realization of the right to just punishment.⁶⁰

⁵¹ Yeshengaliyev (n 38) 54.

⁵² Karzhaubayev, Verchenko (n 33) 77.

⁵³ Yusubova (n 11) 2053.

⁵⁴ Zhamul'dinov (n 44) 2.

⁵⁵ Karzhaubayev, Verchenko (n 33) 77.

⁵⁶ KA Mami, 'Smertnaya kazn': aspekty pravovogo analiza' (2003) 2 Pravo i gosudarstvo 55.

⁵⁷ Yeshengaliyev (n 38) 54.

⁵⁸ TK Bekishev, *Sovremennoye zakonodatel'stvo Kazakhstana. Smertnaya kazn'. Problemy i yeye resheniya* in *Nauka i praktika v reshenii strategicheskikh i takticheskikh zadach ustoychivogo razvitiya Rossii. Sbornik nauchnykh statey po itogam Natsional'noy nauchno-prakticheskoy konferentsii*, Sankt Petersburg 2019, 200.

⁵⁹ AT Yeshengaliyev (n 38) 54.

⁶⁰ Ibid 54.

4. Threats to security, including from terrorism, resulting in the need to maintain an appropriate legal response.⁶¹
5. The usefulness and effectiveness of the death penalty in the prevention of crime. Its necessity is related to the previous ineffectiveness of the influence of norms that prevent crime, both moral and religious, on the convict.⁶²

Over the years, the majority of Kazakhstan's public opinion surveyed was in favor of the death penalty as an exceptional punitive measure.⁶³ It viewed it as legitimate revenge against the perpetrator, and its use as a manifestation of the provision of security for the society.⁶⁴ That is why for many years, the Kazakh society considered the complete abolition of the death penalty premature.⁶⁵ This position was also supported by some lawyers, who believed that no matter how inhumane the death penalty may seem, its abolition in Kazakhstan is inappropriate, while pointing out its necessity in certain cases.⁶⁶

Others have proposed modifications to the adjudication and carrying out of the penalty that would involve limiting it to cases of murder, treason, acts of terrorism and sabotage, as well as 'corruption causing significant damage to society and the state'. They proposed that the court-imposed death penalty should be carried out no sooner than after 3 years, thus allowing the full civil rights of the convict to be exercised. They stressed that the death penalty should be carried out in such a way that it does not cause additional suffering to the convict and is not public.⁶⁷

Thus, despite the state's efforts, the results of many public opinion polls showed ambiguity in the public's attitudes toward the death penalty in Kazakhstan.

VI. CONCLUSION

The research hypothesis formulated at the beginning of the analyses, which assumed that 'The evolution of the death penalty leading to its abolition in

⁶¹ Zhamul'dinov (n 44) 2.

⁶² AN Agybayev, 'Smertnaya kazn' - isklyuchitel'naya mera nakazaniya' (2018) 1 Femida 2018 14.

⁶³ E.g., Bermukhambetova, Karipova, Baydalina (n 16) 22.

⁶⁴ NV Belorukov, 'Pravo na zhizn' i poetapnaya otmena smertnoy kazni: kazakhstanskiy put''

(2015) 2 Preduprezhdeniye prestupnosti 35.

⁶⁵ Benke (n 23) 51.

⁶⁶ Yeshengaliyev (n 38) 55.

⁶⁷ AB Skakov, *K voprosu o sokhraneni smertnoy kazni v sisteme nakazaniy*, 242, <<https://rep.barsu.by/server/api/core/bitstreams/5326d22a-2e6c-4d00-a0ed-b4fd69e1c5bc/content>> accessed 4 June 2025.

Kazakhstan's criminal law was a multi-stage process forced by pressure from the international community' was confirmed in the course of the research.

It should be stated that the criminal codes in force in Kazakhstan for many years broadly regulated the scope of this penalty. They covered from ten to several dozen crimes, the catalog of which was reduced rather slowly. The criminal codes indicated the groups of people excluded from the death penalty. They took into account age (minors and elderly men) and gender (women), which they also modified in favor of convicts. All of them, however, pointed to the military method of carrying out the penalty (execution by a firing squad) and provided for the possibility of applying the institution of clemency.

In general, the successive laws somewhat eased the scope of the death penalty. The changes introduced were the result of the intentional action of the state authorities, which, especially since the early 1990s, have tried to adopt a different philosophy of governance than before. Therefore, they did not do so fast, justifying this slow pace by the need to listen to the voice of public opinion and the will of the society, much of which was raised in the Kazakh Soviet Socialist Republic, i.e., in the spirit of restrictive and casuistic laws, and harsh penal policies. This attitude of the public, which suited those in power, determined the slow changes. However, the real driver of the changes was pressure from institutions and the international community indicating the need to make democratic changes in Kazakhstan, striving for liberalization and humanization of criminal legislation. It was they who, admittedly not very quickly, effectively required the adaptation of national criminal legislation to international regulations.

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