

# Unlikely Downsizers: The Prison Service's Role in Reversing Mass Incarceration in Kazakhstan

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## Abstract

*Since the year 2000, the prison rate has significantly declined in Kazakhstan. This paper demonstrates that the Kazakhstani prison service, counter-intuitively, became a key advocate of prison downsizing due to a coalescence of norms and incentives in the 1980s and 1990s. In the process, the prison service elite maintained the loyalty of rank-and-file personnel through a focus on reform to performative and quantifiable measures of penal performance – such as rankings in the World Prison Brief – while qualitative changes to the service's identity and organization remained unchanged. Prison staff remained militarized and their livelihood and professional culture independent of the existence of prisons. In conclusion, we argue that the Kazakhstani case demonstrates the need for an integrative theory of penal change that focuses on the interplay of the macro, meso and micro-level factors in relationally shaping the norms, incentives and opportunities of penal policy actors.*

## Introduction

Why do some jurisdictions turn towards leniency, limit prison sentences and downsize their prison systems? In this paper, we analyse the rapidly declining use of prison in Kazakhstan, a former Soviet jurisdiction in Central Asia, an area of the world where greater punitiveness was predicted after the collapse of the Soviet Union (Christie 2000). Kazakhstan had many structural 'risk factors' (Webster and Doob 2007) that would predict prison upsizing: deregulated markets, high levels of inequality and poverty as well as a Soviet legacy of the capacity for and culture of mass incarceration (Piacentini 2004; Slade 2017; Wacquant 2001). Despite these inflationary penal pressures, two waves of decarceration occurred in Kazakhstan - from 2001 to 2005 and from 2010 onwards. By 2020, the prison population was 64% lower than it had been in 2000.

To explain the unexpected prison downsizing trend we adopt, and ultimately go beyond, an agonist framework. An agonist approach 'centers on the following axiom: penal development is the product of struggle between actors with different types and amounts of power' (Goodman et al. 2017, p. 8). In the case of Kazakhstan, executive bodies such as the Presidential Administration and Prosecution Service pushed for prison reductions, aided by the super-presidential and authoritarian system (Trochev and Slade 2019). This move went against public opinion (Van Dijk et. 2018), the judiciary and the preferences of law enforcement bodies. Yet, the move was supported, and to some degree led by, an unlikely downsizing agonist: the Kazakhstani Penitentiary System Committee, the prison service. Prison services and their employees' unions are usually theorized as status quo actors, combining with victims' groups to argue against prison downsizing (Page 2011a; 2011b; Eisenberg 2016). Thus, the paper aims to explain how in Kazakhstan the prison service became an influential pro-downsizing actor.

We argue that the prison service's position was taken partly due to a slowly building mobilization of bias in favour of smaller prison populations in the 1980s and 1990s and partly because of a lack of reform of the service in other areas. The Kazakhstani prison service remains militarized. As such prison officers are not allowed to form trade unions or political parties which could produce the collective action required to impede prison reform. Moreover, prison officers often have career trajectories that involve switching between military and policing roles. They do not necessarily associate their professional identity with prisons. Surveys suggest that the prison service rank-and-file could support downsizing as long as there was no wider expansion of prisoners' rights, improvement of prison conditions, or greater scrutiny of prison guards' work (Bastemiev, 2009). Fewer prisoners do not necessarily mean fewer jobs. However, empowered prisoners might mean jobs that are less desirable.

To demonstrate this argument, we utilize data from expert interviews with high-ranking or formerly high-ranking officials in the prison service, the Ministry of Interior, the Prosecution Service and the Presidential Administration. In conclusion, we highlight the interplay of macro, meso and micro-level factors analysed in the paper. We argue that future studies should shift the focus from structural and agonist-centred perspectives exactly onto this interplay, building what we call an integrative theory of penal change.

## Prison Services as Status Quo Actors

As a turn towards greater leniency and declining incarceration rates has emerged in certain states of the US and other Global North jurisdictions, scholarly interest has turned to explaining decarceration trends (Webster and Doob 2007; Meyer and O'Malley 2013; Gartner et al. 2011; Goodman et al. 2015; Webster et al. 2019). Explanations of decarceration in US states have emphasized the longer-term impact of the financial crisis of 2008. Austerity driven political agendas produced incentives among political elites to find savings on criminal justice expenditure (Aviram 2015; Gottschalk 2016). Yet, austerity on its own cannot explain penal reductionism outside the US where savings from prison downsizing are negligible (Brandariz 2022). Even in the US utilitarian economic calculations could only produce prison-downsizing policy outcomes given an emergent bipartisan 'value-based consensus' (Karstedt et al. 2019, p. 62) that challenged retributive rhetoric around the treatment of offenders (Green 2015; Dagan and Teles 2016; Clear and Frost 2014). Indeed, strong normative convictions are credited with driving prison downsizing in a number of cases outside the US. For example, a necessary, if insufficient condition, for declining youth incarceration in Canada concerns policy-makers' self-image and their beliefs about core Canadian values (Webster et al. 2019). In Finland, a desire to bring prison rates into line with neighbouring states to signal belonging to the Nordic family of inclusive nations produced penal reductionist convictions that were 'shared by civil servants, the judiciary, prison authorities and...the politicians' (Lappi-Seppala 2007, p. 241).

As Doob and Webster (2014, p. 556) state the first and most formidable challenge to penal reductionism lies in creating the political will to change the narrative on punishment and overcome the entrenched interests that a reimagined narrative may threaten. Alongside an aspirational shift in rhetoric and values, legislation and policy innovations must explicitly target the iron law that determines the size of prison populations – how many people are put in prison and how long they are kept there (Clear and Austin 2009). In explaining how this political will emerges, Goodman, Page and Phelps (2015; 2017) developed an agonist framework as a corrective to macro-level explanations that often remain blind to incremental transformation. They argue that penal politics should be seen

as a continually contested field, where struggle over ideas requires compromises that characterize even the most seemingly dominant of penal directions. Analysing penal change in this way requires a micro and meso-level focus on actors and institutions. The struggles of these actors are set against, but not determined by, international and national trends in politics, the economy, crime, public attitudes, social solidarity and demographics.

Various stakeholders can be identified in the field of penal contestation: victims' and offenders' rights groups, political parties and politicians, professional practitioners in areas such as parole and psychiatry, academics, journalists and media groups, private companies that sell services to the prison system and trade unions. Prison guard unions and associations appear as 'natural antagonists towards decarceration efforts' given the vested interests in maintaining jobs and working conditions (McCoy 2017, p. 78). Eisenberg (2016, p. 103-104) writes that in the US 'unions representing officers in many states have endorsed candidates and policies that support their "tough on crime" philosophy' (see also Crawley 2013; Shannon and Page 2014). In California, Page (2011a; 2011b) argues that the California Correctional Peace Officers' Union (CCPOA) engaged in a form of social movement unionism, protecting their members interests through collaboration with victims' groups and opposing policy such as reforms to Three Strikes laws. Prison officer unions in the US have also allied with businesses that lose cheap inmate labour if prisons are closed (Eisenberg 2016). Nevertheless, Thompson (2011) and McCoy (2017) identify cases where prison guard unions have stood aside or supported reductionist legislation. Such cases occurred when officers were offered certain benefits or a transition into other forms of social work. Moreover, there is clearly a lot of variation in prison officer attitudes to their work depending on position, level of stress on the job, professional solidarity, political messaging, wider cultural understandings and other contextual factors that might influence support for or resistance to prison downsizing (Downes 1993; Kruttschnitt and Dirkzwager 2011).

The agonistic approach, set against the backdrop of wider changes within political economy, politics and culture, informs this paper. However, we aim to make two further contributions to build on this approach. Firstly, we make the argument in conclusion that penal theorists should centre neither macro-structural nor micro-agonistic factors in their analyses of penal change and instead focus on the interplay of the two along with the

transactional meso-level of networks (relations) and institutions (embeddedness). We call this focus on processual interplay an integrative theory of penal change following similar theoretical moves in sociology (Ritzer 1981; Coleman 1994). Secondly, we move the geographic focus to the Global South and to a particularly overlooked site of decarceration – the countries formerly occupied by the Soviet Union.

Eastern Europe and Eurasia is a world area that has historically maintained high prison rates. However, in the fifteen republics of the former Soviet Union, those rates have been in decline since the year 2000 with the exceptions of Georgia and Turkmenistan. Russia, which had held the second largest prison population in the world behind the US for many years, almost halved its prison rate between 2000-2020. Juvenile detention has also witnessed steep declines almost uniformly across the region. As Nelken (2009) argues, political economic explanations are not particularly helpful for explaining these trends: Russia has embraced de-regulated markets and dismantled the state welfare protections of Soviet times while decreasing its prison rate. Moreover, as Brandariz (2022) notes, the causal argument that austerity constituted a driver of decarceration cannot apply to states such as Russia and Kazakhstan where state budgets have been growing.

This paper takes Kazakhstan as a case study. This Central Asian country of 19 million people has, between 2001 and 2020, reduced its prison rate by 64%, twice the average decrease across the former Soviet Union and quicker and deeper than anywhere in the region except war-torn Ukraine (see graph 1 and table 1 below). Neither a macro-level political economic nor historical-cultural approach help explain this. Kazakhstan is a deregulated market economy and autocracy (Charman, 2007; Slade 2017; Sorbello 2021). Around two-thirds of GDP is made up by the private sector and 10% comes from foreign direct investment. The country is marked by high levels of economic inequality (Gini coefficient of 28), while in the period since 1991 there has been an erosion of welfare provisions and the precarity of the labour market has increased (Slade 2017; Sorbello 2021). The hollowing out of welfare and workers' protections is theoretically expected to put inflationary pressure on prison populations (Wacquant 2001; 2009; Muller 2012). Moreover, many studies find that autocracies and post-autocracies maintain high prison populations (Cheliotis & Xenakis 2016; Sozzo 2016; Greenberg, 2002; Ruddell and Guevara Urbina, 2007).

GRAPH 1 HERE

TABLE 1 HERE

Historically, after Russia, Kazakhstan held and subsequently inherited more of the Soviet Union's physical penal capacity than any other country (Slade 2017). Soviet Kazakhstan hosted many of the camps and colonies of the Soviet Gulag (Barnes 2011). These institutions were inherited in their late Soviet form as prison colonies alongside administrative structures made to manage a large prison population, a population that produced goods with no competition in a command economy. A capacious understanding of prison as a means of solving social and political problems operated within these structures and society at large (Piacentini 2004). Once the Soviet Union collapsed, Kazakhstan was straight in at number three in the World Prison Brief table of prison rates. Indeed, through the 1990s prison rates continued to increase. From the year 2001 these trends reversed and a swing of the pendulum appeared to take place. There had been no change of government in the preceding years, Kazakhstan was governed by the same president from 1988 to 2019. How can we explain this seemingly significant swing, considering the economic, socio-cultural and political conditions in the country over this time?

The paper focuses on the emergence of a consensus among elite actors on the need for penal reductionism. Analyzing the most unlikely of these actors to emerge within this consensus – the prison service – the paper focuses on the interplay of utilitarian incentives and normative considerations to explain how a prison downsizing policy was adopted and pushed through. First, normatively, there was a slow-moving and incremental mobilization of bias towards reform and reduction of the prison system in the last years of the Soviet Union as the country tried to change course. Those who began their careers during reforms in the 1980s came to lead the prison service by the late 1990s. Second, instrumentally, prison downsizing was palatable and even desirable to the prison service by the 1990s due to financial and reputational pressure so long as layoffs and deeper reforms to the management of prisons, the power of prison officers, and the treatment of prisoners were not implemented. We thus argue that, ironically, a lack of qualitative reform of the prison

service's structure, self-image and role in performing correctional functions partly explains the service's support for quantitative downsizing.

We demonstrate this argument by drawing on original interview data from a range of actors who hold or held high ranking positions in the prison service, prosecutor's office, and presidential administration. In total, 24 interviews were conducted between April 2019 and May 2021 in the capital city of Astana, and the regional centres of Almaty, Karaganda, Petropavlovsk, and Ust'-Kamenogorsk. One interview was conducted in Moscow, Russia. We employed a snowball sampling method; key informants helped us to gain access to interviewees. The selection criteria required that interviewees had built a career in roles related to penal policy. Respondents were asked to describe in detail how policies emerged (when they first heard of them) and were formed. Respondents were also asked to name those who had impacted on the policy process. Those names were coded and a network of influencers was drawn in a qualitative data analysis program. All interviews were conducted face to face using participant information and informed consent forms; 23 interviews were recorded. Interviews were transcribed and coded. Proper names used in the text are actual names; consent was given to identify respondents. Where a respondent is cited we use R (respondent) plus a number (1-24). Appendix A provides a list of respondents. Where consent was not given to use real names these are listed as Anon.

We now analyse the policy changes through which the prison population decreased in Kazakhstan. We show that a declining prison population is the result of a shift from 'back end' downsizing processes, such as amnesty and early release, to 'front end' reforms. We then move to show how certain penal agonists, the prison service foremost among them, initiated, advocated for, and implemented these reforms.

### [Mechanisms of Prison Downsizing in Kazakhstan](#)

Two waves of decarceration can be observed in independent Kazakhstan's prison rate. The first occurred between 2001 and 2005. The second wave took place from 2010 to 2020. These waves were driven by policies that went beyond tried and tested yet short-term Soviet practices such as amnesties. The repeated use of such amnesties did not resolve systemic

issues such as the length of prison terms, as they were set in the 1997 Criminal Code. This code had attached longer sentences to many crime types than its Soviet-era predecessor had. The courts continued to fill up prison spaces vacated by amnesties with prisoners on extremely long sentences. For example, in 2002, 10,524 prisoners were released on amnesty. Yet in the first half of 2003 alone, the courts sentenced 10,862 defendants to imprisonment (Bastemiev 2009, p. 141). Those with access to then President Nazarbayev report that he understood the problem with amnesties and was vocal in his view that the prison population was too large and needed to be reduced systematically (Aitken 2012, p. 34). Thus, in 2002 a Legal Policy Concept Paper was adopted by the government. This paper laid the groundwork for expanding the use of non-custodial punishments for minor crimes and for first-time offenders, reducing the length of prison sentences in the Criminal Code, and for shortening the period before a prisoner could request release on parole. However, these legislative amendments did not change judicial incentives to mete out imprisonment as a penalty. Thus, more radical mechanisms were adopted to restructure the incentives of obstructive judges or sideline those judges altogether. We describe three of the most popular mechanisms below.

*Closing of criminal cases on the basis of reconciliation between the defendants and the victims of crimes.* Soviet-era criminal codes did not allow for reconciliation between the defendants and victims of crimes as a basis for closing criminal cases. In Kazakhstan, reconciliation – a form of restorative justice - became formally possible with Article 67 of the newly adopted 1997 Criminal Code. This article vaguely stated that first time offenders who had committed crimes of a lesser or medium gravity ‘may be released from criminal liability, if that person reconciled with the victim and made good for the harm caused’ (Slade 2017, p. 136). In terms of paperwork, all that is required for reconciliation is a short, written statement from the victim that they accept reconciliation, want the case to be closed, and have received compensation for the crime. The article was largely unused until the 2000s when the use of reconciliation in criminal cases increased. Between 2009 and 2014, judges closed every third criminal case on this basis - about 20,000 cases annually.

The judiciary argued that law enforcement agencies should further limit the number of criminal cases sent to overloaded courts (Slade 2017, p. 139). As a result, prosecutors also became key reconcilers. In 2013, the General Prosecutor’s Office changed the metrics for measuring prosecutorial performance. They now included reductions in the prison population and the number of cases closed through reconciliation. Accordingly, that year state



prosecutors closed some 40,000 cases based on reconciliation, or one out of every three criminal cases. As a result of these processes, the number of defendants brought to criminal trial halved between 2008 and 2019, and the number of those sentenced to prison also more than halved - from 17,161 in 2008 to 6,807 in 2019.

*Closing of criminal cases on exonerating grounds.* In 2012, targeting the strong pro-accusatory bias of judges, then Prosecutor General Zhakip Asanov began rewarding prosecutors for closing criminal cases on exonerating grounds. Prosecutors were incentivized to actively throw out cases based on shoddy work by police detectives and investigators. In 2013 alone, state prosecutors closed 18,346 criminal cases on exonerating grounds—more than in the previous six years combined. Since then, this number has not gone below 32,000 and even exceeded 170,000 cases in 2015. Asanov explicitly stated that one of the aims of exoneration was to reduce the prison population in the long term (Slade 2017:124).

*Reducing the use of pre-trial detention.* Prosecutors began to also deprioritize the use of pre-trial detention in line with the goal of reducing prisoner numbers. The overall number of pre-trial detainees declined almost four-fold from 16,498 in 2000 to 4,508 in the middle of 2021 (see Table 2 below).

TABLE 2 HERE

This particular mechanism was developed in response to international shaming about the number of pre-trial detainees and the state of pre-trial facilities (Slade 2017, p. 121), a few of which had been in use since Tsarist times. In the second wave of downsizing, which began in 2010, prosecutors began to send fewer pre-trial detention requests to judges. Moreover, prosecutors stopped rubber-stamping detention requests coming from investigators. For example, in 2016, prosecutors refused to support 31% (3,552) of detention requests, up from 10% in 2012 (1,090). A new Criminal Procedural Code in 2015 provided wider discretion for prosecutors and eased the use of bail and house arrest as alternatives to detention. Moreover, prosecutors released 74 wrongfully arrested persons from detention cells in 2015 and this increased to 462 persons in 2016. This trend indicates that prosecutors began, on the orders of Asanov, to scrutinize the work of investigators more attentively. Asanov advertised

these successes, taking credit for outcomes Nazarbayev had explicitly demanded. As late as 2018, the president repeated that ‘the reduction of the prison population is an issue that really speaks to me. We have to keep up this work’ (Forbes Kazakhstan, 2018).<sup>1</sup>

These legislative and procedural reforms constitute the mechanisms by which the prison population in Kazakhstan declined. The presidential administration and General Prosecutor’s Office played key roles in implementing these reforms. We now show that, unexpectedly, the prison service was also an initiator of, advocate for, and assistant to these reform measures. The next section looks at normative reasons, and the section after instrumental reasons, for why the prison service became an unlikely prison downsizer in Kazakhstan by the late 1990s.

### Mobilizing Moral Support for Penal Reductionism

At the September 1989 plenary meeting of the Central Committee of the Communist Party of the Soviet Union (CPSU), Nursultan Nazarbayev, then the leader of the Kazakh Soviet Socialist Republic, publicly blamed the Soviet leadership for transforming Kazakhstan into a Gulag camp (Zenkovich, 2017, p. 57). Indeed, during Stalinist times and excluding Russia, Kazakhstan had hosted the largest quantity of Gulag prisoners and camps of any Soviet republic. In the last years of the Soviet Union, with prison rates in decline, elites within the CPSU, the Union’s Federal Ministries and the Soviet prison service, formally part of the powerful Ministry of Interior, contested the purpose of incarceration. The Main Correctional-Labour Facility Directorate (GUITL, successor of the GULag) was searching for solutions to growing antagonism between those prison officers tasked with the goal of correction of prisoners and those tasked with increasing the productivity of forced labour (Shamsunov 2017).

Since the death of Stalin in 1953, the formal primary goal of prison colonies had shifted from labour productivity to rehabilitation (Hardy 2016), but the demands of the sluggish Soviet economy had kept pressure on prison governors to continue informally to privilege

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<sup>1</sup>[https://m.forbes.kz/news/2018/11/28/newsid\\_187356?utm\\_source=forbes&utm\\_medium=mlt\\_news\\_tab2&utm\\_source=forbes&utm\\_medium=mlt\\_news\\_tab2](https://m.forbes.kz/news/2018/11/28/newsid_187356?utm_source=forbes&utm_medium=mlt_news_tab2&utm_source=forbes&utm_medium=mlt_news_tab2)

economic output. In response to these conflicting interests the 'Yaroslavl' Experiment' was implemented at prison colony YuN-83/12 in Soviet Russia in January 1986, during the first year of Mikhail Gorbachev's reform programme known as *perestroika* (Shamsunov 2017). The goal of the experiment was to divide the colony into 'mini-colonies' of smaller prisoner units. This would reduce prisoner to staff ratios, provide greater discretion to unit heads, and improve correctional outcomes and economic outputs. The experiment failed, but before being scrapped it was repeated in other colonies including AP-162/5 in the Pavlodar region of the Kazakh Soviet Republic in October of 1986. Fourteen years later in now independent Kazakhstan a similar colony (AP-162/2) close by in the same region was the chosen location for another pilot policy, this time the introduction of advisory councils formed from civil society actors, a progressive move aimed at improving prison monitoring (Zhamuldinov 2017).

The various experiments with organizational optimization in Pavlodar's colonies demonstrate ongoing contestation over the purpose of imprisonment across the Soviet and post-Soviet periods. By the time of the post-Soviet pilot policy, forced labour had been scrapped yet inhumane conditions and poor treatment of prisoners remained. Partly in response to this problem, the prison service leadership was searching for policies that would improve the service's image. The leadership included those whose understanding of punishment had been shaped by working through the reforms of the 1980s. Nasikhat Sabitov, for example, had cut his teeth in Pavlodar during the experiments of the 1980s before he became a deputy chairman of the prison service in the 2000s:

*Sabitov: '[At AP-162/5 in 1986 during the Yaroslavl' experiment] I was head of a detachment and I had 22 officers under me...[the point of the experiment] was to give more attention to the prisoners, to take an individual approach to each of them.'*

Interviewer: When was the first time you recall hearing about 'humanization'?

*Sabitov: 'Probably it was still the Soviet times.'*

Interviewer: The idea was around during the experiment?

*Sabitov: 'Absolutely.'*

After the Soviet Union collapsed in 1991, Sabitov visited Poland three times in the 1990s with the explicit goal of learning about the model of prison reform there. Poland, which had quickly halved its prison population in the late 1980s and early 1990s, was considered a good case study for Kazakhstan. The country was suggested as a good model by Penal Reform International Central Asia Office led at the time by Vera Tkachenko. Poland was moving away from a prison system marked by communist ideology thanks to the political will of its new leaders, many of whom had been political prisoners. Reformist ideas and money from Western Europe also flowed into Kazakhstan at the end of the 1990s and 2000s, as the country's leaders embraced technical assistance from Western donors to carry out various reforms. Respondents named specific visitors from prisoners' rights circles. Nils Christie, Vivien Stern, Andrew Coyle, Monica Platok and Manfred Nowak played influential roles in respondents' recollections.

After his visits to Poland, Sabitov was made governor of Pavlodar's remand prison in the late 1990s. He applied what he had learnt from abroad. At that time, Pavlodar's remand facility held 800-900 prisoners in a prison with a 300-person capacity. Sabitov redesigned the prison layout and tried to reduce overcrowding. By the mid-2000s, Sabitov joined the service headquarters in a managerial capacity as deputy chairman of the prison service's operational division. The service was advocating for further prison downsizing, and by this time the prison population was already in decline. Sabitov joined working groups tasked with furthering this objective. He worked with both the presidential administration and prosecutor's office to adopt changes to the criminal and procedural codes to bring down the number of prisoners even further.

By this point, Kazakhstan's position in the World Prison Brief ranking of countries by prison rate was problematic for the country's image as a supposedly human rights respecting country attempting to open up to foreign direct investment. Kazakhstan's government had embraced the World Prison Brief as one among many international ranking tables that 'appeal to the status of states and state leaders' (Slade 2017; Snyder and Cooley, 2015). Expert respondents referred to the Brief when identifying the stimulus for reform: 'the government and the presidential administration, somehow everyone wanted to do this, to lower the [prison] population. We occupied third place in the world per 100,000 people. Number one America, second Russia, third – Kazakhstan' (R1). Prison service chiefs directly reported that

an improving position in the World Prison Brief could be a signal that Kazakhstan was safe to invest in: 'a low prison rate will show...the security of society and the investment attractiveness of the state' (Daulbayev 2016, p. 19).

The prison service had an important role to play in tackling the burgeoning prison population. As a former member of the Presidential Administration, who led the Legal Policy Council within that body, acknowledged: '[reforms] came from the prison service of course, they know what's best...[but] the questions to be asked come from the top [the presidential administration]' (R3). The broadest of these questions was the purpose of punishment in independent Kazakhstan now that the productive function of prisons within a wider Soviet command economy was lost: 'the function [of prison] depends on what we want, the aim. You know, these discussions were ongoing constantly, there were a lot of conferences. I ran the first [Prison] Forum [a governmental policy-discussion platform] and I brought non-governmental organizations in.' A representative of one such invited organization observed that the prison service had formulated the need to reduce the prison population in the 1990s because of the convictions of the then leadership. 'A whole galaxy of reformers couldn't agree on how Kazakhstan had to change...Peter Posmakov [the chairman of the prison service from 1997-2003] had a clear understanding that the prison population had to be reduced...he found [this idea] within himself. Where did it come from? I don't know' (R5).

Indeed, Posmakov had had a reputation for punitiveness. Directly before taking the top job in the service, he had been the prison governor of a colony in the tough working-class town of Semipalatinsk, which used to have direct links with the central Soviet Union authorities due to the nearby nuclear testing site, the Polygon. Yet, he recalled becoming a supporter of decarceration and broader humanization reforms during educational trips to Sweden in the 1990s. Posmakov's selection for the chairmanship was unusual, as no prison governors had ever risen to lead the national prison service. Yet Posmakov was tasked with managing a prison population bigger than it had ever been since the time of the Gulag, standing by 1996 at almost 95,000 people. Posmakov found a friend and inspiration in his counterpart in Russia, Yuri Kalinin. Kalinin had overseen the Russian prison system's move from the Ministry of Interior to the Ministry of Justice in 1998, fulfilling promises made to the Council of Europe, a body Russia had joined two years earlier and of which Kazakhstan remained, and remains, outside. Kalinin made multiple trips to Kazakhstan, and Posmakov formed a tight bond with him. On Posmakov's watch and in line with his wishes, Nazarbayev

announced in October 2000 that he planned to transfer the prison system from the Ministry of Internal Affairs to the Ministry of Justice.<sup>2</sup>

Russia held influence in its immediate 'near abroad' through the Commonwealth of Independent States. In the 1990s, civil servants from the countries of the CIS worked together, often at meetings in Russia, to draft new criminal and penal codes (R3). Dinara Ospanova, who worked closely with Posmakov during this time within the prison service, believes Russia provided a needed example for Kazakhstan's political class to make decisions regarding criminal justice reform: 'the political will, I still think the Russian experience...served as the push' (R23). Arguments at the local level also had to be made. During the first wave of downsizing and humanization, Ospanova was tasked by Posmakov with convincing the parliament and Presidential Administration to remove the death penalty from the Criminal Code. By April 2002, Nazarbayev announced his plan to introduce a moratorium on the death penalty. This decree came into effect by the end of 2003, seven years after a similar decision by Russian President Boris Yeltsin.

In 2011, the reform-minded Deputy General Prosecutor, Zhakip Asanov, was looking for ways to reverse a three-year uptick in the prison population that had occurred between 2007 and 2010 against the President's wishes. He watched a debate show on Astana TV in which the head of Penal Reform International's local office, Saule Mektepbayeva, promoted a 10-step plan to decrease the prison population. Asanov called her the next day and together they came to write a detailed policy paper which the Prosecutor's Office presented to the Presidential Administration. 'This paper was presented to the Legal Policy Council in the Presidential Administration...fortunately for all of us, it was supported as an approach. And the President signed to implement it based on the Council meeting' (R8). Once agreed by the President the policy was sent to a compliant legislature.

In understanding the emergence of the downsizing policy, the narratives of reformers such as Sabitov, Posmakov, Mektepbayeva, Ospanova, and Asanov all highlight the role of the prison service in advocating and supporting the reform as a normatively appropriate step. Downsizing was not a pendulum swing in 2001 but a gradual coalescence of norms emerging from the mobilization of opinion in favour of penal reductionism. This mobilization had

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<sup>2</sup> [https://www.akorda.kz/en/addresses/addresses\\_of\\_president/address-of-the-president-of-the-republic-of-kazakhstan-nursultan-nazarbayev-to-the-people-of-kazakhstan-september-3-2001](https://www.akorda.kz/en/addresses/addresses_of_president/address-of-the-president-of-the-republic-of-kazakhstan-nursultan-nazarbayev-to-the-people-of-kazakhstan-september-3-2001)

started decades earlier with experiences of reform in the Soviet period, gathered pace through the advocacy of national and international prisoner rights' activists, and was ultimately approved by authoritative actors in the Presidential Administration, the Prosecutor's Office, and the Ministries of Interior and Justice. Nevertheless, a very strong logic of instrumentality also runs through the narratives of how the prison service came to advocate for penal downsizing. The prison service had a strong reason to want fewer prisoners due to a funding crisis. Moreover, a lack of reform to the service's organization and function meant it had few incentives and even fewer opportunities to oppose predominant policy directions. We now look at the rational structuring of incentives and opportunities as regards prison service support for downsizing in detail.

### Incentivizing and Instrumentalizing Support for Penal Reductionism

During the 1990s Kazakhstan experienced a period of severe economic decline, increasing crime rates, and a public health crisis inside the prison system (Coyle, 2002, p. 25). The prison service was struggling to cope with its responsibilities. At that time Kairbolat Yeskaliev was the governor of a prison colony in Atyrau on the Caspian Sea in Western Kazakhstan. He remembers that 'we had 1800 prisoners, the staff's wages weren't paid, electricity was being turned off, debts were growing, we had no bread, people couldn't afford to come to visit their relatives...From those 1800 people, 500 were underweight. We survived how we could. The fish factory gave us their waste, we cleaned it and made fish soup' (R1). The integrated command economy had collapsed, prisoner work that had previously financed the running of the prison colonies in Soviet times had rapidly declined and now only 30% of prisoners at Yeskaliev's colony were working. Yeskaliev believes that his advocacy for smaller prisons through this difficult time led to a promotion within an organization whose elite was becoming more and more committed to downsizing. In 1999, Yeskaliev was promoted to Deputy Chairman of the Prison Service where he argued, alongside Posmakov, for fewer prisoners and broader humanization reforms.

Nevertheless, resistance to these reforms arose. Within the Prosecutor's Office there was fear that the liberalizing of criminal codes and expansion of reconciliation would weaken prosecutors' position within the criminal process. There was tension between the Prosecutor's Office and the Prison Service: the former punished prison officials for unlawful

early release of prisoners and even attempted to have Posmakov and his team of reformers removed during the first wave of downsizing (R24). Resistance was also present within the judiciary, since reconciliation meant that cases would be diverted away from the courts: '[judges] said that there is no word "prison population". Why are you inventing a new word? There is only one prison in Kazakhstan [the rest are technically called colonies], you are talking in stupid Western phrases, it [downsizing] will never happen here' (R8). Despite these complaints, the judiciary lacked power to act on its preference for imprisonment. It remained beholden to the presidential administration and a Prosecutor's Office empowered by the neo-inquisitorial criminal justice system (Solomon 2015). The General Prosecutor had been convinced of the new policies and so had the President: 'we had this argument that...this is a presidential task; we should do it. The President has decided...This is how you play to the audience' (R8).

One of those audiences is the public. Authoritarian governments are not as bound to public opinion as democratic ones. Some polls suggest that the Kazakhstani public is relatively punitive and has a strong preference for the use of prison as a form of punishment (Van Dijk et al. 2018; Horn et al. 2022). Respondents also expressed their sense that public opinion demanded prison: 'We are the successors of the Soviet Union...the Soviet Union was a punitive system, avenge, punish, severity, no quarter...It rubbed off on us all and many people believed [in punitiveness]' (R6). Yet, public opinion was not surveyed before, during or after downsizing emerged into the policy stream: 'to be honest we didn't ask public opinion, basically the prison service got on with it...and of course society understood...that millions were being spent on confinement, and that the state budget wins [from downsizing]' (R2). However, there was still a sensitivity to the potential for scandal that might affect government legitimacy. Igor Rogov, Nazarbayev's legal adviser and the Justice Minister in 2000-2001, repeatedly announced that humanization would not lead to a crime explosion (Rogov 2006). As the former head of the operational division of the prison service in the early 2000s explained: 'that first wave, it was the most difficult...To persuade the people of humanization...we approached it carefully, we tried not to [change punishments for] the gravest crimes...so we could explain to civilians [grazhdanskim] – it's his first time...let's not do this' (R6).

The last line of the above quotation describing a 'we' – the prison service – as distinct from them – 'civilians' – is revealing and helps to explain why rank-and-file workers in the



prison service itself did not push back against downsizing reforms as we might expect from research in other jurisdictions (Page 2011a; 2011b; Eisenberg 2016). The prison service in Kazakhstan has remained a militarized organization. Following international recommendations, and in emulation of Russia, the prison service was transferred from the Ministry of Interior to the Ministry of Justice in 2002. Under the Ministry of Justice, the prison service was supposed to demilitarize and focus on rehabilitative goals, eschewing all policing functions such as the collecting of incriminating information in prison for investigative purposes. However, while under the Ministry of Justice, the prison service did not demilitarize and maintained its previous role, identity and self-image. Though prison system funding quadrupled between 2003 and 2013, reaching 47.5 billion tenge annually (316 million USD at the 2013 exchange rate) new prison colonies were built according to Soviet-era standards with quarters for militarized garrisons on site. A set of security incidents, including prison breaks in the town of Aktau in 2010 (21 escapees) and Balkhash in 2011 (16 escapees), provided a pretext to move the prison service back to the Ministry of Interior that same year. Prison service officials, as military personnel, remained disbarred from creating or joining political parties, striking, or maintaining a trade union. Thus, prison officers had almost insurmountable barriers to collective action should they have wished to oppose the policy direction.

As well as lacking opportunities to oppose the downsizing policy, these officers also had few incentives to do so. Many prison service respondents have a general educational and occupational background in the police and military. A number of respondents had finished the same school in the Soviet period, the Ministry of Interior (MVD) higher school (now Academy) in Karaganda in Central Kazakhstan. They had then worked in the police before being moved to the prison service: 'I have a higher degree in law from the Higher School of the Ministry of Interior...I was in the army, then worked as a police sergeant. I worked in the MVD system up to the rank of Lieutenant Colonel, and head of division. And after that they invited me to work in this [prison] system...not that I wanted to leave [the police] but that's what destiny dictated' (R11). Some found that guarding prisons and prisoners was analogous to other work experience within the MVD: 'I worked in the police, guarding manufacturing facilities and entities, then I got my diploma in 1992 and then they offered me work in the [prison] department working with offenders' (R14).

Our respondents' career paths reveal the very few ways available into a career in the prison service. We find it reasonable to generalize therefore that prison officers in Kazakhstan have a wider identity that they share with other military and police officials due to common educational and work experiences. Downsizing does not threaten this identity because the job of securing a prison, a street, a factory or government building is perceived as being essentially the same work. Most prison personnel do not work on the socialization and correction of prisoners. As the former head of the prison service for Almaty region explained: 'we have officers who can move to a different office, department in the MVD...it's not an issue...others might take their pension...there was no resistance from the prison service officers [to downsizing], definitely not' (R2).

Some of those officers did object to other areas of reform aside from downsizing though. In particular, prison guards saw an expansion of prisoners' rights as a zero-sum game that would make their jobs harder if not impossible. A survey of 213 prison officers in Pavlodar region in September 2008 revealed punitive attitudes among officers as regards prison conditions and prisoners' rights but much more ambivalent attitudes towards downsizing. Selected results are provided in Table 3 below:

TABLE 3 HERE

While the survey results provide no ringing endorsement of further downsizing (58% against), it is notable that responses are much less ambiguous about other elements of reforms; they are overwhelmingly against 'humanization'. Our interview respondents supported this conclusion, highlighting that prison officers, particularly in the Karaganda region where a huge Gulag camp system – Karlag – had been located between 1931 and 1956, expressed resistance to any forms of leniency. This may be due to obstinate attitudes, passed on by older generations that had worked in the Soviet camps (R23). Legacy effects might partly account for attitudes in Pavlodar region too, an area that had also hosted the Gulag camp in which Alexander Solzhenitsyn was imprisoned for three years. Ospanova remembers how difficult it was to be taken seriously when she sent teams of trainers - herself included - to conduct seminars on prisoners' rights in 2001 to Karaganda's prisons. This was in part due to the gulf between the gender identity and status of some of the human rights trainers –

civilian women – in an environment dominated by military men. To be heard, the trainers toned down expectations: ‘in the end [the prison staff] understood that international standards do not demand anything extraordinary, they weren’t being asked to make the prison into a kindergarten – it’s minimal standards, human standards, that can completely have a place in our facilities’ (R23).

Perhaps partly due to resistance to humanization, any qualitative improvements in prison standards proceeded more slowly than decreases in the prison rate. In 2009, with the prison service under the Ministry of Justice, the UN Special Rapporteur, Manfred Nowak claimed that prisoners were victims of systemic mistreatment and torture within Kazakhstani prisons. While not denying instances of torture, the Ministry of Justice challenged Nowak’s report and the author agreed to remove the word ‘systemic’ (Aitken 2012). Yet, as late as 2020, Amnesty International criticized Kazakhstan for continued abuse in the prison system and a lack of impartial investigations into cases of torture (Amnesty 2020).<sup>3</sup> Leaked videos and prisoner testimony of ill-treatment and torture support these criticisms (Kalmurat & Reno 2021).<sup>4</sup> A quicker and easier solution to these problems than the complete reorganization and overhaul of the prison service’s structure, practices and professional identity was to put fewer people in prison and advertise this as a human rights win internationally. Thus, ironically, downsizing may have come at the cost of inertia in reforming the prison service’s broader moral performance, in improving prison conditions, and in improving the protection of prisoners’ rights.

### Conclusion: Towards an Integrative Theory of Penal Change

In explaining Kazakhstan’s rapid reduction of its prison population, this paper focused on an unlikely downsizing agent – the prison service. In line with an agonist perspective, we find that there was no swing of the pendulum in Kazakhstan’s downsizing movement. Instead, a slow coalescence of norms, incentives and opportunities occurred years prior to when actual reductions began. Certainly, this paper finds a great deal of utility in the agonist-centred perspective. Yet, in conclusion we argue that this paper reveals the

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<sup>3</sup> <https://eurasia.amnesty.org/kazakhstan/>

<sup>4</sup> <https://rus.azattyq.org/a/kazakhstan-torture-in-prisons/31322291.html>

need to incorporate agonist-centred approaches into an integrative theory of penal change beyond the privileging of the macro or the micro. An integrative theory of penal change makes three important analytical moves: firstly, instead of privileging one level of analysis it centres on the interplay of macro, meso and micro factors. Secondly, in incorporating a meso-level of analysis it focuses on relational processes, for example, the transmission of norms and the exchange of information in social networks. Thirdly, also at the meso-level, it analyses the embeddedness of actors within institutions that have orders of preferences, structured interests and bounded opportunities. In this paper, we have seen how macro-level processes - completely exogenous to penal policy itself - impacted norms, produced incentives and structured opportunities through meso-level relational networks, embedded within and across regional, national and international institutions and jurisdictions.

Thus, the Cold War arms race becomes part of this story since it partially brought on an economic crisis in the Soviet Union that led to the reforms of perestroika in the 1980s including liberalizing experiments within the prison system. During this time many of what was to become independent Kazakhstan's prison service elite came of age. The reforms socialized that elite, then only prison officers, into the idea that the Soviet prison system had been too large. Post-1991, independent Kazakhstan's reorientation towards an export-driven market economy with high levels of foreign direct investment produced incentives among political actors to improve the image of the country abroad in terms of human rights. In part because those export markets and sources for investment were often in Europe, it was Europeans and European jurisdictions that were overwhelmingly turned to for ideas of and investment in reform, including in penal reform. Even then, reductions in the prison rate were prioritized over improvements in prison conditions to appease militaristic security service personnel embedded within conservative institutions such as the Ministry of Interior. This trade-off was only made possible because of the existence of renowned prison system rankings such as the World Prison Brief's prison rate table. Such ranking systems enabled Kazakhstan's government to 'minimize actual institutional reforms by targeting the most malleable measures and indicators on which they are actually ranked, thereby improving their scores without adopting new norms or standards of behaviour' (Cooley and Snyder 2015, p. 5).

Finally, a normative impulse for reform came indirectly out of a seemingly distant event: the Russian Federation's accession to the Council of Europe. Russia's greater integration into the human rights architecture of Europe inadvertently strengthened prison downsizing processes in Kazakhstan due to the diffusion of norms through interpersonal networks of Russian-speaking prison officials across the two countries. Those officials had once worked in one institution, the Ministry of Interior of a third, by then extinct, country - the Soviet Union. A shared institutional background was not the only grounds for mutual attraction: both Russia and Kazakhstan were authoritarian jurisdictions. In such contexts, the presidential administration must take on the cause of decarceration, as a necessary if not sufficient condition for it to happen. In Kazakhstan, the dictator became convinced of the economic and reputational benefits of reducing the prison rate whilst political rights and freedoms remained limited. In such scenarios, supported by compliant prosecutors, authoritarian leaders can override any opposition from dependent security services, legislatures, judiciaries and the public. This process mirrors the logic of authoritarian modernization across many public policy spheres (Gelman 2017).

We provide this summary of the paper to bring the contours of an integrative theory of penal change to the fore and emphasise the interaction of macro, meso and micro-level factors, as well as the relationality and embeddedness of penal policy actors within networks and institutions that go beyond the particular jurisdiction that they work within. An integrative theory of penal change can help us to understand why prison downsizing took hold where it seemed least likely – an authoritarian regime with a history of mass incarceration – and thus further theoretical developments in this direction hold potential for other cases too.

[Appendix A: List of Respondents ABOUT HERE]

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