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**Review of implementation of the United Nations  
Convention against Corruption**

**Executive summary**

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## II. Executive summary

### Kazakhstan

#### 1. Introduction: Overview of the legal and institutional framework of Kazakhstan in the context of implementation of the United Nations Convention against Corruption

Kazakhstan ratified the Convention through Act No. 31-IV of 4 May 2008 on ratifying the United Nations Convention against Corruption. Kazakhstan deposited its instrument of ratification with the Secretary-General of the United Nations on 17 July 2008.

In accordance with article 4 of the Constitution of Kazakhstan, the universally recognized principles and rules of international law and international conventions, ratified and entered into force, are part of the legal system of Kazakhstan and override any contrary provisions in national legislation.

The national anti-corruption legislation includes the Constitution, the Criminal Code, the Code of Criminal Procedure, the Code of Administrative Offences (during the review process, Kazakhstan adopted new versions of the Criminal Code, the Code of Criminal Procedure and the Code of Administrative Offences; both previous and current versions of those instruments were taken into account in preparing the final review documents), the Civil Code, and specialized legislation, including the Anti-Corruption Act (1998), the Act on countering the legalization (laundering) of the proceeds of crime and the financing of terrorism (2009), the Public Service Act (1999), the Public Prosecutor's Office Act (1995), the Law Enforcement Service Act (2011), the Police Operations Act (1994), the Decree of the President of Kazakhstan on certain issues regarding the National Agency for Civil Service and Anti-Corruption Affairs and amending certain Decrees of the President of Kazakhstan (2014), and the Act amending and supplementing certain legislative acts of Kazakhstan on issues regarding the further strengthening of the system of public administration (2014).

Kazakhstan has adopted the sectoral programme to counter corruption in Kazakhstan 2011-2015 (Decision No. 308 of the Government of Kazakhstan of 31 March 2011) and the Anti-Corruption Strategy of Kazakhstan 2015-2025 (Presidential Decree No. 986 of 26 December 2014).

The country's institutional framework for preventing and combating corruption comprises agencies and bodies tasked with anti-corruption functions, namely the Presidential Commission on Combating Corruption, the National Agency for Civil Service and Anti-Corruption Affairs, the Public Prosecutor's Office, the Ministry of the Interior, the National Security Committee, the Financial Monitoring Committee, the State Revenue Committee of the Ministry of Finance, as well as units of the internal security services in the central executive and law enforcement authorities.

International cooperation in the field of extradition and criminal proceedings in Kazakhstan is governed by Section 12 of the Code of Criminal Procedure.

## **2. Chapter III: Criminalization and law enforcement**

### **2.1. Observations on the implementation of the articles under review**

#### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

At the time of the review, the bribery of public officials was criminalized in article 312 of the previous Criminal Code (hereafter referred to as the 1997 Criminal Code). Giving an advantage to a natural or legal person (other than an official) was not criminalized.

The giving of bribes through an intermediary was criminalized in part 1 of article 312 of the 1997 Criminal Code. In the new Criminal Code, in force since 1 January 2015, as revised on 3 July 2014 (N 1226-v), this shortcoming has been addressed, and bribery through an intermediary has been criminalized for all elements of the said offence in article 367 of the Criminal Code.

The promise and offering of bribes are not criminalized under the current Criminal Code. The representatives of Kazakhstan have noted that these elements were partially enshrined in article 24 of the 1997 Criminal Code. Thus, the offering of a bribe (without implying the existence of an agreement with a potential recipient of the bribe) could be regarded as preparation for an offence, and the promise of a bribe (implying the presence of such an agreement) as an attempt to commit a crime. Preparation for the main elements of bribery (article 312 (1) and (2) of the 1997 Criminal Code), that is, the offering of a bribe, did not incur criminal responsibility. The above elements remain unchanged in the current Criminal Code.

Passive bribery, direct or indirect, including in favour of third persons, was criminalized in article 311 of the 1997 Criminal Code. Preparation for distinct elements of passive bribery did not incur criminal responsibility, and this has remained unchanged in the current Criminal Code (article 366). Extortion within the meaning of article 15 (b) of the Convention, that is, illegal solicitation of bribes, is not criminalized under the current Criminal Code. That element is partially covered by preparation for an offence and attempts to commit an offence.

The new versions of the articles on bribery have introduced a system of fines calculated as multiples of the bribe amount, providing a flexible and balanced approach to punishments for bribery and significantly tougher sanctions.

Under Regulatory Decisions No. 9 of 1995 and No. 18 of 2001 of the Supreme Court of Kazakhstan, bribes may consist of money, securities, material assets, property-related services provided free of charge but normally subject to payment, and property-related privileges. Non-property-related benefits have not been included as bribes.

The 1997 Criminal Code contains a description of the functions of officials in a note to article 307. Article 3 of the new Criminal Code contains definitions of public officials, including persons authorized to carry out public functions or equivalent persons, and officials holding positions of public responsibility. This list, however, does not explicitly include any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as required in article 2 of the Convention.

Officials of foreign States and international organizations, who were indicated in point 4 of the Notes to article 311 of the 1997 Criminal Code, are included in the

main text of articles 366 and 367 of the current Criminal Code. The meaning of “foreign officials” is not clarified in the Criminal Code.

Bribery in the private sector was criminalized in article 231 of the 1997 Criminal Code. The experts conducting the review noted that this article criminalized bribery only in relation to individuals performing managerial or organizational functions. These elements remain unchanged in the current version of the Criminal Code (article 253 on commercial bribery).

The legislation of Kazakhstan does not contain a provision criminalizing trading in influence. Liability is incurred under various articles of the 1997 Criminal Code (articles 307, 311 et al.). The same approach is used in the new Criminal Code (articles 361, 366 et al.).

*Money-laundering, concealment (arts. 23 and 24)*

The legalization (laundering) of proceeds of crime was criminalized in article 193 of the 1997 Criminal Code. The experts conducting the review noted the absence of the following elements of article 23 of the Convention: [t]he concealment or disguise of the true nature, source, location, disposition, movement [...] or rights with respect to property (article 23 (1)(a)(ii) of the Convention); [t]he acquisition, possession or use of property, knowing [...] that such property is the proceeds of crime (article 23 (1)(b)(i) of the Convention).

The experts suggested considering the possibility of amending the definition of legalization of the proceeds of crime (specifically, to provide for conversion and transfer (article 23 (1)(a)(i) of the Convention) as forms of legalization of the proceeds of crime). Most of these elements are reflected in the current Criminal Code (article 218).

The elements contained in article 23 (1)(b)(ii) of the Convention are criminalized through the provisions on complicity (articles 27 and 28 of the Criminal Code), preparation and attempt (article 24 of the Criminal Code).

In Kazakhstan, administrative and criminal offences, including corruption offences, are regarded as predicate offences for money-laundering purposes.

The legislation of Kazakhstan does not require that the offences set forth in article 23 (1) may not be attributed to persons having committed the predicate offence.

Concealment (article 24 of the Convention) is partially criminalized by article 196 of the Criminal Code (article 183 of the previous Criminal Code). Furthermore, a person who gives a prior undertaking to conceal a criminal, the means or tools for committing a crime, the evidence of a crime or objects acquired by criminal means, or a person who gives a prior undertaking to acquire or sell such objects, is deemed an accomplice (article 28 of the Criminal Code).

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

Liability for misappropriation or embezzlement of another person’s property entrusted to the guilty person, in both the public and private sectors, is established in article 189 of the Criminal Code (article 176 of the previous Criminal Code). Commission of this crime by public officials is regarded as an aggravating

circumstance. Criminalization of the diversion of property is not clearly established in article 189 of the Criminal Code.

Abuse of official positions is covered in article 361 of the Criminal Code.

Kazakhstan has considered the possibility of criminalizing illicit enrichment. In its Anti-Corruption Strategy, the introduction of liability for illicit enrichment has been acknowledged as necessary for the future. The offence of illicit enrichment is included in a draft law on the amendment of the Anti-Corruption Act (to be introduced to Parliament at the end of 2015).

*Obstruction of justice (art. 25)*

Article 25 (a) of the Convention is partially covered by the Criminal Code.

Article 415 of the Criminal Code (article 347 of the previous Criminal Code) establishes liability for coercing a suspect, accused person, victim, or witness into giving evidence, for preventing a person from voluntarily giving evidence or from giving a statement on a crime that has been committed, for coercing a person into refusing to give evidence, or for coercing an expert into giving an opinion through the use of threats, blackmail or other illegal actions, limiting potentially liable persons to prosecutors or persons conducting the pretrial investigation (in the former Criminal Code potentially liable persons were limited to investigators or persons conducting the inquiry).

Article 422 of the Criminal Code (article 354 of the previous Criminal Code) establishes liability for bribery and coercion of a person into giving false testimony or refraining from testifying, through blackmail, the threat of murder, causing injury to health, or the destruction of property belonging to that persons or their relatives. However, the promise and offering of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence are not criminalized.

Article 25 (b) of the Convention is covered in articles 407, 408 and 409 of the Criminal Code (articles 339, 340 and 341 of the 1997 Criminal Code).

*Liability of legal persons (art. 26)*

The civil and legal liability of legal persons for corruption is subject to the general provisions of the Civil Code.

Administrative liability is established in accordance with article 678 of the Code of Administrative Offences (article 534 of the former Code of Administrative Offences) for the giving by legal persons to persons authorized to carry out public functions, or persons equivalent thereto, of illicit material remuneration, gifts, benefits or services, provided such actions do not contain any features of a criminally punishable action.

The need to introduce the administrative liability of legal persons for corruption offences is noted in the Anti-Corruption Strategy. The criminal liability of legal persons is considered inappropriate on account of its non-compliance with the principle of fault-based individual responsibility.

Kazakhstan has explained that the imposition on a legal person of sanctions for corruption offences does not exempt a guilty natural person from liability, and vice versa.

*Participation and attempt (art. 27)*

Participation in a crime as perpetrator, organizer, assistant or instigator contains elements of complicity in a crime (articles 27 and 28 of the Criminal Code).

“Attempt” is defined in article 24 of the Criminal Code. Criminal liability is incurred for an attempt to commit an offence of intermediate gravity, a serious or particularly serious crime, as well as for an attempt to commit a terrorist offence. Offences are divided into categories depending on the maximum sentence imposed for the offence. Thus, offences for the commission of which the maximum penalty does not exceed two years’ imprisonment are minor offences. The threshold for the commission of offences of intermediate gravity is five years’ imprisonment, for serious crimes twelve years’ imprisonment, and for particularly serious crimes over twelve years’ imprisonment. Most of the basic elements of offences implementing the provisions of the Convention relate to offences of intermediate gravity.

Kazakhstan has also criminalized preparation to commit an offence (article 24 of the Criminal Code). Criminal liability is incurred for preparation for a serious or particularly serious crime, as well as preparation for a terrorist offence.

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

In accordance with the Constitution and the Code of Criminal Procedure, the President of Kazakhstan, members of Parliament (the Majilis and the Senate), judges and the General Prosecutor enjoy immunity.

The President may be removed from office in the event of treason. The decision to bring a charge and investigate is taken by a majority of the total number of members of the Majilis on the initiative of not less than one third of the members. Investigations are organized by the Senate. The results by majority vote of the total number of members of the Senate are referred to the joint session of the chambers of Parliament. A final decision is taken by a majority of at least three quarters of the total number of members of each of the chambers of Parliament, subject to the findings of the Supreme Court and of the Constitutional Council.

Members of Parliament, the Chair and members of the Constitutional Council, judges, and the General Prosecutor may not be arrested, taken into custody, or prosecuted without the respective consent of the chambers of Parliament, the President, or the Senate, except in cases of detention at the scene of an offence or of the commission of serious or particularly serious crimes (articles 547, 549-551 of the Code of Criminal Procedure, articles 496-499 of the previous Code of Criminal Procedure).

The country’s authorities have provided examples of lifting of immunity.

Article 158 of the Code of Criminal Procedure provides for the temporary suspension from office of a suspect or an accused person (article 159 of the previous Code of Criminal Procedure).

Deprivation of the right to hold certain positions or engage in certain activities (article 50 of the Criminal Code, article 41 of the 1997 Criminal Code), imposed mandatorily for corruption offences, entails a lifetime ban on holding positions in public service, local government bodies of State organizations and organizations of whose authorized capital the State owns more than a 50 per cent share, including national management holding companies, national holdings, national companies, national development institutions in which the State is a shareholder, their subsidiaries more than 50 per cent of the voting shares (stockholdings) of which belong to them, and legal persons more than 50 per cent of the voting shares (stockholdings) of which belong to the aforementioned subsidiaries.

Circumstances mitigating an offence are genuine remorse, giving oneself up and rendering active assistance in the detection of an offence, the exposure of other accomplices to the crime and the search for property acquired as a result of the offence (article 53 (1) (k) of the previous Criminal Code, article 53 (11) of the new Criminal Code). Under exceptional circumstances that significantly reduce the degree of public danger of an offence, and likewise upon active cooperation of a member of a criminal gang in the detection of crimes committed by that gang, the Court may order a milder form of punishment than that provided for by the relevant articles, or not apply an additional form of punishment which has been established as mandatory (article 55 (1) of the previous Criminal Code, article 55 (4) of the new Criminal Code).

In accordance with article 65 of the Criminal Code (previous and new) a person, having committed a criminal offence for the first time, may be exempted from liability on the basis of character and positive conduct after having committed the crime.

A person may be exempted from liability upon implementation of a procedural agreement (article 67 of the Criminal Code) in the form of a plea bargain or a cooperation arrangement.

According to the notes to articles 367 and 253 of the Criminal Code (articles 312 and 231 of the previous Criminal Code), a person who gives a bribe is exempted from liability if he or she voluntarily informs a law enforcement or special State authority about the bribery. The absence of a reporting period in the Criminal Code may lead to abuse. Automatic exemption from liability may create difficulties in adequately assessing the guilt of the bribe-giver.

*Protection of witnesses and reporting persons (arts. 32 and 33)*

Security measures for experts, victims and witnesses include restriction on access to information about the person, ensuring personal safety, restraining orders, and the giving of testimony by videoconference (Chapter 12 of the Code of Criminal Procedure).

The Act on State protection of persons involved in criminal proceedings (2000) provides for their personal protection, protection of property, privacy, change in their place of residence, work or study, and assistance in finding employment.

Kazakhstan is a party to the Agreement on the protection of participants in criminal proceedings (2006) for the relocation of protected persons to other States parties.

The legislation of Kazakhstan contains no detailed provisions on the protection of reporting persons.

Staff who have been wrongfully dismissed for reporting corruption may contest the dismissal on the basis of the Labour Code (article 22).

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

The confiscation of property that is in the ownership of a convicted person is governed by article 51 and articles of the Special Part of the Criminal Code. For offences pertaining in the Criminal Code to corruption, property acquired through criminal means or obtained using resources acquired through criminal means and property transferred to the ownership of other persons by the convicted person, is subject to confiscation. However, the section on corruption offences does not cover all offences provided for in the Convention.

The Criminal Code does not clearly provide for the confiscation of income or proceeds from property derived from corruption offences.

Article 121 of the Code of Criminal Procedure allows procedural confiscation of property used in or destined for use in offences, including money and other assets, obtained by criminal means.

The Criminal Code does not clearly provide for the confiscation of property/proceeds of corruption offences which have been converted or transformed into other property (indirect confiscation), or for the confiscation of the equivalent monetary value of the property liable to confiscation.

The protection of the interests of third persons who obtained, in good faith, property liable to confiscation is not clearly regulated.

The above-mentioned shortcomings are successfully dealt with in article 48 of the new version of the Criminal Code (in force as of 1 January 2018), which introduces the confiscation of property pending conviction by a court, if the suspect or the accused is the subject of an international arrest warrant or if criminal proceedings against them are terminated as a result of an amnesty, the expiration of a statute of limitations or in the event of death.

Articles 161, 162, 163 and 164 of the Code of Criminal Procedure govern the seizure of property, decisions on which are taken by the investigating judge at the request of the prosecutor (article 161 of the previous Code of Criminal Procedure).

The administration of seized property is regulated by the Instruction on the procedure for the confiscation, registration, storage, transfer and destruction of material evidence and documents in criminal cases, civil cases and cases of administrative offences by the court or by the agencies in charge of prosecutions, preliminary investigations, inquiries and forensic inquiries, and by the Government Decree on certain issues regarding the registration, storage, evaluation and further use of property appropriated (liable to appropriation) by the State on specific grounds.

Law enforcement authorities may receive commercial and banking information of a confidential nature (article 122 of the Code of Criminal Procedure, previously article 125 of the Code of Criminal Procedure), subject to authorization by the prosecutor, an order by the investigative authorities to institute criminal proceedings

or by order of the Court. During the course of a national visit, representatives of the law enforcement authorities did not report any difficulties in obtaining such information.

*Statute of limitations; criminal record (arts. 29 and 41)*

According to the experts, the increased statutes of limitation provided for by the Criminal Code are applied taking into account the punishment and the gravity of the offence and are sufficient to serve the interests of justice. Article 71 of the Criminal Code stipulates that statutes of limitations shall not apply to persons who have committed corruption offences.

The legislation of Kazakhstan does not require consideration of sentences handed down by other States. The obtaining of information on such convictions is provided for in the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993).

*Jurisdiction (art. 42)*

Article 7 of the Criminal Code establishes jurisdiction over offences committed in Kazakhstan (para. 1), on vessels flying the flag of Kazakhstan and on Kazakh aircraft (para. 3).

Under article 8 of the Criminal Code, citizens of Kazakhstan who have committed an offence outside Kazakhstan are subject to criminal liability if the act is recognized as an offence in the State where it was committed, provided such persons have not been convicted in the other State. Foreign nationals who have committed an offence outside Kazakhstan are subject to criminal liability under the Criminal Code if the offence is directed against the interests of Kazakhstan or in circumstances provided for by international treaty, provided the foreign nationals have not been convicted in a foreign State.

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

Kazakhstan has established various means to eliminate the consequences of corruption, including compensation for moral or property-related damage in civil or criminal proceedings (Chapter 20 of the Code of Criminal Procedure). A transaction carried out by means of an act of corruption is recognized as invalid, as it was directed at achieving a criminal purpose (article 157 of the Civil Code, article 19 of the Anti-Corruption Act). During the course of the national visit, Kazakhstan reported examples of the annulment of the results of public tenders and the termination of contracts.

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

The National Agency for Civil Service and Anti-Corruption Affairs, established in 2014, is a dedicated anti-corruption State authority which reports to the President. The Agency provides leadership in public service, cross-sectoral coordination and other functions in the fight against corruption. Within the framework of the Agency an anti-corruption service has been established consisting of the operational-investigative units of public service and anti-corruption bodies engaged in activities aimed at preventing, detecting, suppressing, uncovering and investigating corruption crimes and offences.

At the General Prosecutor's Office, a law enforcement academy has been established which provides training for entry into the service of law enforcement authorities.

Furthermore, the National Centre for Personnel Management joint-stock company and the Public Administration Academy under the President of Kazakhstan, which offers Master's and doctoral programmes as well as advanced training courses for public employees, operate within the framework of the Agency.

Under article 6 of the Anti-Corruption Act, all public authorities and officials are obliged to combat corruption within their areas of competence.

Alongside the Agency, the Ministry of the Interior, the National Security Committee and the Ministry of Finance are addressing the fight against corruption through law enforcement measures. In the General Prosecutor's Office in various departments staff groups and staff members have been detailed to focus on the fight against corruption.

The experts conducting the review, taking into account the information provided, concluded that there was a need to further improve the specialization and professional training of staff.

Specific public bodies (Court of Auditors, Financial Control Committee of the Ministry of Finance) are required to transmit information on corruption to the law-enforcement agencies.

Under the Law Enforcement Service Act and the Act on the financial police authorities of Kazakhstan, law enforcement officials are entitled to obtain necessary information and materials.

The exchange of information on the fight against corruption is being carried out within the framework of an inter-agency information exchange system between law enforcement authorities, the Presidential Commission on Combating Corruption, the Coordinating Council of the Anti-Corruption Services, and the Parliamentary Commission on Combating Corruption in Business.

Cooperation between financial institutions and law-enforcement agencies on corruption crimes is regulated by the Act on combating the legalization (laundering) of the proceeds of crime and the financing of terrorism (2009), which sets out the protocol for dealing with suspicious transactions.

Citizens reporting crimes of corruption to law enforcement authorities, including by telephone hotline and e-mail, are remunerated in the form of a single monetary reward (Government Decision No. 1077 of 23 August 2012). Kazakhstan has provided statistics on criminal cases and administrative actions brought on the basis of reports received by the telephone hotline.

## **2.2. Successes and good practices**

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The adoption of amendments to the Criminal Code that criminalize corruption offences in accordance with the requirements of the United Nations Convention against Corruption.

- A new legislative approach to the punishment of bribery offences, where a fine is calculated as a multiple of the bribe amount.
- The establishment of all types of administrative and criminal offences as predicate offences for money-laundering purposes.
- A mandatory lifetime ban on holding civil service positions and positions in enterprises with State involvement in the event of conviction for crimes of corruption.
- Non-application of statutes of limitations for persons who have committed crimes of corruption.
- The possibility of concluding procedural agreements with suspects and persons accused of crimes of corruption, as a mechanism to facilitate the detection of corruption offences and cooperation with law enforcement authorities.
- The establishment in 2011 of an inter-agency information exchange system between law enforcement authorities.

### **2.3. Challenges in implementation**

The following steps could further strengthen existing anti-corruption measures:

- Continue efforts to find ways to criminalize the promise and offering of bribes, taking into account the specificities of the criminal legal doctrine of Kazakhstan.
- Provide in the Criminal Code for liability for giving bribes in favour of third parties.
- Provide in the Criminal Code for non-property benefits as bribes.
- Continue efforts to find ways to criminalize the solicitation of bribes, taking into account the specificities of the criminal legal doctrine of Kazakhstan.
- Harmonize definitions of public officials in accordance with the requirements of article 2 of the Convention.
- Continue efforts to develop clear definitions of public officials of a foreign State or an international organization.
- Consider the possibility of including those working in any capacity in economic, financial or commercial activities in private sector organizations as subjects of offences of commercial bribery.
- Consider the possibility of establishing a sanction for committing commercial bribery in the form of a fine, calculated as a multiple of the bribe amount, by analogy with the sanction for other forms of bribery.
- Consider the possibility of criminalizing the diversion by a public official of the property of another person entrusted to him or her as a separate element of a crime in the Criminal Code.
- Taking into consideration the specificities of the criminal legal doctrine of Kazakhstan, continue efforts to find ways to criminalize the promise or offering of an undue advantage to induce false testimony or to interfere in the

giving of testimony or the production of evidence in a proceeding in relation to the commission of an offence.

- Continue efforts to establish a regime for the effective administrative liability of legal persons for committing, as a minimum, any of the corruption offences subject to criminalization in accordance with the Convention, including the laundering of proceeds of corruption offences.
- Consider the possibility of amending the wording of point 2 of the notes to article 367 of the Criminal Code and point 1 of the notes to article 253 of the Criminal Code, by replacing the words “a person, having given a bribe, shall be exempted from criminal liability, if that person voluntarily informs the law enforcement or special public authorities of the giving of the bribe”, with the words “voluntary reporting by the person to law enforcement or special public authorities on the giving of the bribe prior to the respective body learning of the occurrence of the bribe, is seen as a circumstance exonerating the person from criminal liability”, thus eliminating the possible misuse of those provisions, as well as allowing for an appropriate assessment to be conducted of the level of cooperation and the circumstances mitigating the guilt of the bribe-giver, depending on the case in hand.
- Consider the possibility of adopting legislation which regulates in detail the mechanism for providing protection for persons who have furnished information on corruption offences.
- Continue efforts to improve specialization and professional training of prosecutors who are supervising corruption cases, as well as of investigators from law enforcement agencies investigating cases of corruption.

### **3. Chapter IV: International cooperation**

Under article 4 (3) of the Constitution of Kazakhstan, international treaties ratified by Kazakhstan take precedence over laws of Kazakhstan. The provisions of international treaties shall be applied directly, with the exception of rules requiring additional provisions for implementation in national legislation. The procedural rules contained in Chapter IV of the Convention may be applied directly. The General Prosecutor’s Office has adopted an instruction on the organization of prosecutorial oversight of the application of legislation upon implementation of international legal cooperation.

During the course of the national visit, the lack of practical examples of implementing extradition and providing legal assistance on the basis of the Convention was noted in particular.

#### **3.1. Observations on the implementation of the articles under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

In Kazakhstan, extradition is governed by articles 4 and 11 of the Constitution, by the appropriate international agreements, by Chapter 60 of the Code of Criminal Procedure and by article 9 of the Criminal Code. Decisions on extradition are taken by the General Prosecutor or his or her deputy on the basis of the results of an

extradition check and may be appealed to the Supreme Court (articles 591 and 592 of the Code of Criminal Procedure).

Extradition is not permitted if the conduct is not recognized as a crime (article 590 of the Code of Criminal Procedure). Extradition is permitted if even for one of the offences for which extradition is requested the law provides for imprisonment of not less than one year or the person has been sentenced to imprisonment and the unserved term is not less than six months (article 579 of the Code of Criminal Procedure).

Kazakhstan has explained that the crimes provided for by the Convention are automatically incorporated by reference into all of the bilateral treaties on extradition signed by Kazakhstan.

Extradition may be granted pursuant to the principle of reciprocity (article 558 of the Code of Criminal Procedure). Upon ratification of the Convention, Kazakhstan stated that it would use the Convention as a legal basis for cooperation on extradition with other States parties to the Convention. The same provision is contained in the Act of Kazakhstan on ratifying the United Nations Convention against Corruption.

There is no provision in Kazakhstan for a simplified extradition procedure. In reference to article 44 (9) of the Convention, the handling of a request for extradition may be accelerated.

Under articles 587 and 588 of the Code of Criminal Procedure, Kazakhstan may detain a person whose extradition is requested, and keep him or her in custody for up to 40 days. Pursuant to article 589 of the Code of Criminal Procedure, Kazakhstan may make an extradition arrest of a person whose extradition is requested within a period of 12 months from the date of detention.

Under article 11 of the Constitution, article 590 of the Code of Criminal Procedure and article 9 of the Criminal Code, a citizen of Kazakhstan cannot be extradited to a foreign State unless otherwise provided for in an international agreement (there is at least one such bilateral treaty). Where refusal is on the grounds of citizenship of Kazakhstan, the General Prosecutor's Office confirms its readiness to institute a criminal prosecution in accordance with article 598 of the Code of Criminal Procedure. Kazakhstan may enforce a sentence or the remainder of a sentence handed down by the requesting State (articles 601 and 607 of the Code of Criminal Procedure).

Article 44 (14) of the Convention is applied directly. The rights of a person whose extradition is requested are protected by article 586 of the Code of Criminal Procedure.

Article 44 (15) of the Convention is applied directly to requests for extradition made on the basis of the Convention. Extradition is prohibited if there are grounds to believe that the person sought may be prosecuted on grounds of race, religion, nationality, membership of a social group or political beliefs (article 590 of the Code of Criminal Procedure).

Kazakhstan participates in multilateral treaties on cooperation in matters of extradition, including the Minsk Convention and the Chisinau Convention on Legal

Assistance and Legal Relations in Civil, Family and Criminal Matters (2002). Kazakhstan has concluded 14 international treaties.

The handing over of a convicted person is governed by Chapter 62 of the Code of Criminal Procedure (Chapter 56 of the previous Code of Criminal Procedure). Kazakhstan is a party to the Commonwealth of Independent States Convention on the transfer of persons sentenced to imprisonment for the further serving of sentences (1998). Kazakhstan has concluded nine bilateral treaties.

The transfer of criminal proceedings to another State is possible (Chapter 61 of the Code of Criminal Procedure; articles 527 and 529 of the previous Code of Criminal Procedure) if extradition of the person to Kazakhstan is refused. The Code of Criminal Procedure does not regulate the transfer of criminal proceedings with a view to the proper administration of justice when, for example, the case affects several jurisdictions.

*Mutual legal assistance (art. 46)*

Legal assistance is provided on the basis of international treaties or the principle of reciprocity (Section 12 of the Code of Criminal Procedure, section 55 of the previous Code of Criminal Procedure).

The General Prosecutor's Office considers requests for legal assistance relating to pretrial and, at the Supreme Court, trial proceedings.

The authorities of Kazakhstan have reported that legal assistance is provided to the fullest extent possible, including in cases of crimes of legal persons. Dual criminality is a requirement only in cases of requests made on the basis of the principle of reciprocity. This condition does not apply to requests under the Convention (article 569 of the Code of Criminal Procedure).

Mutual legal assistance may be provided for most purposes under the direct application of the Convention.

Article 577 of the Code of Criminal Procedure regulates the identification, tracing and freezing of the proceeds of crime.

The preservation of the confidentiality of information transmitted without prior request to other States parties to the Convention is covered in article 568 of the Code of Criminal Procedure.

Kazakhstan has confirmed the applicability of paragraphs 9-29 of article 46 to relations with States parties with which there are no bilateral treaties on legal assistance.

Paragraphs 10, 11 and 12 of article 46 of the Convention are covered in articles 574 "Temporary transfer" and 575 "Summons of a person situated outside Kazakhstan" of the Code of Criminal Procedure.

The General Prosecutor's Office is the central authority in Kazakhstan for the purposes of article 46 of the Convention. The Kazakh and Russian languages are acceptable in requests for legal assistance.

Under article 559 of the Code of Criminal Procedure, Kazakhstan may accept a request from the requesting party by fax, or electronic or other means of communication. The execution of a request is subject to confirmation of its

transmission or the transfer of original documents. Requests transferred through the International Criminal Police Organization (INTERPOL), or orally with subsequent written confirmation, are accepted.

Requirements as to the content and form of requests (article 565 of the Code of Criminal Procedure) are in accordance with article 46 (15) of the Convention.

Application of the procedural legislation of the requesting State and conduct of procedural actions via video link (articles 566, 576 and 570 of the Code of Criminal Procedure) are permitted.

The grounds for refusing a request for legal assistance are listed in article 569 of the Code of Criminal Procedure and, in general, are in accordance with article 46 (21) of the Convention. The competent authority in Kazakhstan informs the requesting party of the reasons for the refusal and the conditions for reconsideration of the request (article 567 of the Code of Criminal Procedure).

Before refusing a request, consultations may be conducted on the basis of article 46 (26) of the Convention and article 567 of the Code of Criminal Procedure.

The cost of providing legal assistance is borne by Kazakhstan, except for expenses incurred by the summoning of participants in criminal proceedings to the territory of the requesting party, ensuring their safety, conducting expert assessments, and the transit of the extradited person (article 564 of the Code of Criminal Procedure).

Kazakhstan is a party to multilateral conventions on legal assistance (for example, the Minsk and Chisinau Conventions). Kazakhstan has concluded seventeen bilateral treaties on legal assistance in criminal matters.

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

Kazakhstan is a party to agreements on cooperation in the fight against corruption (list enclosed).

The General Prosecutor's Office is a party to the Agreement on Cooperation of Offices of the General Prosecutors of Member States of the Commonwealth of Independent States in Combating Corruption, as well as **five** bilateral agreements with the Offices of the General Prosecutors of other States.

Kazakhstan considers the Convention as the basis for cooperation with other States parties.

Kazakhstan Financial Monitoring (KFM) is a member of the Egmont Group of Financial Intelligence Units. KFM has concluded 10 bilateral memorandums of cooperation with the financial intelligence units of foreign States.

The operational exchange of information is conducted through legal advisers at embassies, and liaison officers in the Office of the General Prosecutor of the Russian Federation, the Ministry of the Interior of the Russian Federation and the Ministry of the Interior of the Kyrgyz Republic.

The possibility of conducting joint investigations is provided for in article 578 of the Code of Criminal Procedure and article 63 of the Chisinau Convention.

Law enforcement authorities may use special investigative techniques (article 11 of the Police Operations Act). Investigative actions may be conducted in Kazakhstan and other States on the basis of legislation and international treaties (for example, article 108 of the Chisinau Convention).

### **3.2. Successes and good practices**

Overall, the following points are regarded as successes and good practices within the framework of implementing Chapter IV of the Convention:

- The adoption of amendments to the Code of Criminal Procedure that promote a more complete and detailed regulation of the provision of international legal assistance in criminal matters, including matters affected by the Convention, in particular the identification, freezing, tracing and confiscation of the proceeds of crimes, the possibility of conducting by video link procedural actions requested in legal assistance requests, and the establishment of joint investigation teams.
- Confirmation of the Instruction on the organization of prosecutorial oversight of the application of legislation upon implementation of international legal cooperation as a measure that is significantly improving the effectiveness of the prosecution services' efforts to provide international legal assistance.
- Participation by Kazakhstan in regional, multilateral and bilateral agreements on international cooperation in criminal matters, including the fight against corruption.
- Participation by Kazakhstan in a number of international bilateral and multilateral intergovernmental and interdepartmental agreements on cooperation in the fight against crime, which cover corruption offences in particular.
- The possibility of accepting a request for mutual legal assistance from the requesting party by fax or electronic or other means of communication, but also orally with subsequent written confirmation as a measure to ensure greater effectiveness in the provision of legal assistance.

### **3.3. Challenges in implementation**

The following recommendations may serve as a framework to strengthen and consolidate the actions taken by Kazakhstan to combat corruption:

- Under the auspices of the Committee on Legal Statistics and Special Records, continue efforts to collect and use statistical and practical information on examples of international cooperation in the fight against corruption in order to improve evaluation of the effectiveness of cooperation mechanisms in the fight against corruption.
- Consider the possibility of establishing expedited extradition procedures and simplifying related evidentiary requirements in relation to requests pursuant to the Convention, in accordance with article 44 (9) of the Convention.
- Consider the possibility of transferring to other States parties proceedings for the prosecution of an offence established in accordance with the Convention where such transfer is in the interests of the proper administration of justice, in

particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

- Continue actively developing cooperation with the law enforcement authorities of other States parties to the Convention outside the Commonwealth of Independent States under article 48 of the Convention, including establishing direct contacts for the exchange of operational information.
  - Consider the possibility of concluding additional agreements with other States parties to the Convention on the use of special investigative techniques in the investigation of corruption offences.
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