

KAZAKHSTAN

Counter-Terrorism Provisions

A presidential decree “on measures to counteract terrorism and extremism” and a State Program for “combating terrorism and other forms of extremism and separatism” (2000-2003) provide a framework of “cooperation among State bodies in the prevention and suppression of manifestations of terrorism and extremism.” A decree “on measures for implementing United Nations Security resolution 1373” was adopted to provide instructions on taking the necessary measures to counteract and outlaw terrorism.

The Act “On measures to combat terrorism” “contains definitions of terrorist acts, which include the financing of terrorist organizations or terrorists.” It establishes the legal and organizational bases for counter-terrorism and provides the procedures for State bodies and citizens’ rights and obligations. It prohibits “advocacy of terrorism and the establishment, registration or operation of terrorist organizations and unlawful militarized groupings.”

The Criminal Code lists terrorist offenses that carry sanctions from four to fifteen years prison, such as: recruitment, training, funding or other material support of a mercenary; attack on a person or organization enjoying international protection; endangering the life of a government or public figure; terrorism; hostage taking; seizure of buildings, installations, means of transport, and means of communication; and unlawful procurement, transfer, sale, storage, transport or carrying of weapons, ammunition, explosive substances and explosive devices.

Any person whether or not they are a citizen of Kazakhstan, who commits an offense on the territory of Kazakhstan, is criminally liable. Offense is defined as “act which was started, continued or ended on the territory of Kazakhstan”. Territory is meant to include “Kazakhstan’s continental shelf and exclusive economic zone” as well as on a vessel in port or at open sea, or in air space unless there are laws that provide otherwise. If the perpetrator is a diplomatic representative of a foreign country, they will be treated in accordance with international law. Citizens of Kazakhstan are liable for offenses committed outside of Kazakhstan under the Criminal Code of Kazakhstan, as are military personnel serving abroad, subject to international agreements. The codes provide for the jurisdiction over trials that are relevant to crimes that occur in or outside of Kazakhstan. “Foreign nationals in the territory of Kazakhstan may not be prosecuted for offenses they committed before entering Kazakhstan”.

Weapons Control and Military Technology

Kazakhstan regulates the “circulation of weapons and military technology (WMT) and dual use products”. Circulation is possible only with the appropriate authorizations. The State Commission on Exports and Controls reviews documents, authenticates materials and determines whether to grant permission. Circulation of WMT is monitored through all stages from the application process through end use in the importing country.

The National Security Committee of the Republic of Kazakhstan is charged with investigating, identifying, and preventing illegal trafficking in firearms, ammunition, radioactive materials, explosives and poisonous substances. The Criminal Code prohibits theft and extortion of weapons of mass destruction or materials and equipment that could be used in the production of such weapons. The Criminal Code provides for punishment of up to three years in prison, with or without “a fine amounting to 200 to 500 times the monthly wage or to the wages or other income of the person convicted over a period of from two to five months”, or detention for up to six months for the unlawful procurement, transfer, sale, storage, transport or carrying of firearms (except for smooth-bore firearms), ammunition, explosive substances or explosive devices. Aggravated circumstances exist if the acts are “committed by a group of persons with premeditation or repeatedly,” which entails punishment of “imprisonment for a period ranging from two to six years.” “If committed by an organized group, such actions are punishable by imprisonment for a period ranging from three to eight years.”

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Action has also been taken to secure weapons storage facilities in order to prevent theft and embezzlement. Top priority areas include military units, demolition system premises and enterprises in industries that use or store explosives, and poisonous substances and radioactive materials. Securing facilities consists of preventive safety measures: “a solid defensive barrier preventing possible criminal encroachment and, on the other hand, of actual identification, prevention and suppression of specific unlawful intentions.”

Preventing the Financing of Terrorism and Money-Laundering, and Freezing Assets

The National Bank is taking measures to prevent terrorism and instructing second-tier banks to follow its example. These measures consist of preserving and presenting data, appraising requests and instructions made by law enforcement through proper channels, regulating operations with clients and partner banks, and routinely submitting implementation measures to the National Bank. “In accordance with article 50 of the Act ‘On banks and banking activities in the Republic of Kazakhstan’, the relevant law enforcement agencies have requested the second-tier banks to provide information on existing accounts and assets belonging to persons on the list provided by the United States of America.” Relevant information cannot be withheld based on banking confidentiality except for transactions covered by the Act or as classified by the bank under the category of trade secret. It is purposely very difficult to open anonymous bank accounts.

“Action to freeze specified accounts is contrary to the legislation in Kazakhstan which has not yet ratified the International Convention for the Suppression of the Financing of Terrorism. Kazakhstan is considering acceding to the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the drafting of legislation If financing of terrorist acts is discovered by law enforcement agencies in Kazakhstan, such money assets may be frozen only when following orders by appropriate government authorities and rulings by the courts.

International Cooperation

Kazakhstan has signed on to several bilateral and multilateral agreements in order to counter terrorism at regional and national levels, and participates in the establishment of the Commonwealth of Independent States (CIS) Anti-Terrorist Centre to develop legislation and joint measures for the combat of transnational organized crime. “Kazakhstan has concluded bilateral cooperation agreements on combating terrorism and international organized crime that include “exchanging information, meeting requirements for conducting intelligence investigations and taking steps to combat financing of terrorism and supplying of weapons and ammunition.” Kazakhstan is cooperating on “preventive intelligence measures and special operations to avert, expose and suppress crimes” and to share information on suspected terrorists in order to investigate or detain them, or cut off travel routes. To that purpose, the intelligence and law enforcement bodies work together with their foreign counterparts. Further cooperation exists with the National Central Bureau of Interpol.

“The Republic of Kazakhstan is party to 7 of the 12 United Nations antiterrorism conventions” and is in the process of ratifying the Convention on the Physical Protection of Nuclear Material. Kazakhstan is also considering bills “on accession by the Republic of Kazakhstan to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime” and “on combating the legalization (laundering) of proceeds from crime.”

Kazakh law enforcement agents are legally obligated to cooperate with their foreign counterparts under more than fifty international instruments. In 1999 the “Agreement on cooperation among States members of the Commonwealth of Independent States (CIS) in combating terrorism” was signed. Under the Agreement, cooperation takes place upon request for assistance or joint initiative. Kazakhstan has been party to a series of subsequent agreements designed to strengthen and expand the Agreement. There is room for expansion within the program and provisions for meetings and forums on combating terrorism. “Kazakhstan has concluded 19 treaties on the provision of legal assistance in civil and criminal cases.”

BIBLIOGRAPHY OF KAZAKH LEGISLATION

Legal Basis for Counter-Terrorism

1. Act No. 416-1 on measures to combat terrorism, 13 July 1999, Articles 1, 7, 10
2. Presidential decree on measures to prevent and suppress manifestations of terrorism and extremism, 10 February 2000
3. State Program for “combating terrorism and other forms of extremism and separatism” (2000-2003), November 2000
4. Strategy for the Development of Kazakhstan through 2030
5. Decree No. 1644 on measures for implementing United Nations Security resolution 1373 of 28 September 2001, 15 December 2001
6. Draft bill on accession by the Republic of Kazakhstan to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
7. Draft bill on combating the legalization (laundering) of proceeds from crime
8. Criminal Code, Articles 162, 163, 167, 233, 234, 238, 251, 317, 323, 325, 501
9. Draft bill on amending and supplementing certain legislative acts of the Republic of Kazakhstan on questions of counter-terrorism
10. Presidential decree on measures to improve the system for combating crime and corruption, 20 April 2000
11. Programme on measures to improve the system for combating crime and corruption, approved by Resolution No. 1641, 31 October 2000

Weapons Control and Weapons of Mass Destruction

1. Act on export controls
2. Act No. 339-1 on circulation of certain types of weapon, 30 December 1998
3. Resolution No. 1919, 14 December 1999 on approval of export control rules in the Republic of Kazakhstan and rules setting out responsibility for the use of goods imported into the Republic of Kazakhstan that are subject to export controls and verification of their observance thereof
4. Resolution No. 1143, 11 August 1999, “Specific issues concerning the transit of goods subject to export control”
5. Resolution No. 1037, 30 June 1997 on licensing the export and import of goods (works, services) in the Republic of Kazakhstan
6. Resolution No. 1282, 18 August 2000 on confirmation of the list of goods subject to export control in the Republic of Kazakhstan
7. Resolution No. 1917, 14 December 1999 on improving the export control system of the Republic of Kazakhstan
8. Criminal Code, Articles 247-249, 251, 255
9. Code of Criminal Procedure, Article 192
10. Resolution No. 1176, 3 August 2000, on measures to implement the Act ‘on state control of the circulation of certain types of weapon
11. Act on customs issues in the Republic of Kazakhstan, 20 July 1997
12. Draft Instructions on procedures for the import and export of civilian and service weapons and cartridges for them, explosives, toxic substances and colour photocopiers

Preventing the Financing of Terrorism and Money-Laundering

1. Act on measures to combat terrorism, Article 1
2. Act on banks and banking activities in Kazakhstan, Articles 32, 41, 48, 50, 51
3. Instructions on the procedure for opening, holding and closing bank accounts of clients in banks of the Republic of Kazakhstan, approved by decision No. 266 of 2 June 2000 of the administration of the National Bank
4. Draft legislation on measures to combat money laundering in the Republic of Kazakhstan
5. Criminal Code, Article 162
6. Letter from the National Bank, No. 1296/301, 9 September 2001
7. Letter from the National Bank, No. 12101/22, 14 January 2002