

Neighbourhood Co-operation Priorities for Kazakhstan 2014-2015

Co-operation activities
on Council of Europe's conventions
in criminal matters

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Introduction

Policy of the Council of Europe towards its immediate neighbourhood – neighbourhood co-operation priorities for Kazakhstan

In 2011, the Committee of Ministers invited the Secretary General to develop action plans for the implementation of the Council of Europe policy towards its immediate neighbourhood.

The Council of Europe policy towards its immediate neighbourhood is open to the countries of Central Asia.

In 2011, Kazakhstan expressed interest in co-operation with the Council of Europe, and in the conclusion of a Neighbourhood Co-operation Priorities (NCP) framework in particular.

An intensive dialogue between the Council of Europe and Kazakh authorities resulted in the draft of a comprehensive document entitled “The Council of Europe’s Neighbourhood Co-operation Priorities for Kazakhstan 2012-2014” which was presented to the Kazakh authorities in July 2012, after discussion in the relevant Council of Europe bodies. This document covered the following priority areas:

- the rule of law, with emphasis on the fight against corruption, and the criminal justice system;

- human rights, with emphasis on children’s rights, juvenile justice and human rights education;
- democracy, with emphasis on cultural co-operation, inter-ethnic and intercultural dialogue.

In December 2012, in his letter to the Secretary General, the Minister for Foreign Affairs of Kazakhstan noted “the innovative nature and concept of the Council of Europe proposals for Kazakhstan – which may require a lengthy internal procedure” before accepting the proposals. While the Governmental agencies are reviewing the draft comprehensive Council of Europe Neighbourhood Co-operation Priorities for Kazakhstan 2012-2014, the Minister, in line with the Secretary General’s suggestions, proposed initiating practical co-operation with the implementation of one of the NCP chapters, focusing on specific Council of Europe Conventions.



Co-operation activities on Council of Europe conventions in criminal matters

Since 1999, Kazakhstan has several times expressed an interest in acceding to the Council of Europe Conventions in criminal matters. With this in mind, the Secretary General of the Council of Europe and the Minister for Foreign Affairs of Kazakhstan, expressed their “commitment to intensify co-operation in order to build the necessary capacities and facilitate the accession of Kazakhstan to the Conventions” in a Joint Statement adopted in October 2011 in Astana.

The Minister for Foreign Affairs of Kazakhstan, in his letter of December 2012, reconfirmed that “Kazakhstan’s accession to the Council of Europe Conventions meets the long-term objectives for social and political modernisation of the country, ensuring its security and stability”. As a result of a subsequent exchange of letters and a meeting between the Secretary General and the Foreign Minister in early 2013, it was agreed to submit an NCP proposal to the Committee of Ministers,

focused initially on building the capacity of the Kazakh authorities in the criminal justice field.

The proposed NCP document aims to provide assistance to Kazakhstan as a “first step” towards possible future accession to a number of Council of Europe Conventions in the criminal field, in particular:

- the European Convention on Mutual Assistance in Criminal Matters and its additional protocol;
- the European Convention on Extradition;
- the European Convention on the Transfer of Proceedings in Criminal Matters;
- the European Convention on the International Validity of Criminal Judgements.

A decision on accession shall be made by the Parties to the relevant Conventions, and on a case-by-case basis.



Towards accession to the Council of Europe Conventions

designed to facilitate international co-operation in criminal matters: needs assessment, review of legislation, practice and capacity building

Background

Participation in most Council of Europe treaties is not exclusively limited to the member States of the Council of Europe. Many treaties are open to accession by non-member States, provided that they have been formally invited to accede by the Committee of Ministers of the Council of Europe. The modalities are specified in the relevant provisions of each treaty. Kazakhstan has expressed its interest in possible accession to several Council of Europe conventions designed to facilitate international co-operation in criminal matters, including:

- The European Convention on Mutual Assistance in Criminal Matters (ETS 30) and its additional protocol (ETS 99). Under this Convention the Parties agree to provide to each other the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons, etc. The Protocol completes provisions contained in the Convention. It withdraws the possibility offered by the Convention to refuse assistance solely on the grounds that the request concerns an offence which the requested Party considers a fiscal offence. It extends international co-operation to the service of documents concerning the enforcement of a sentence and similar measures (suspension of pronouncement of a sentence, conditional release, deferment of commencement of enforcement of a sentence or interruption of such enforcement). Finally, it adds provisions relating to the exchange of information on judicial records.
- The European Convention on Extradition (ETS 24) which provides for the extradition between Parties of persons wanted for criminal proceedings or for the carrying out of a sentence. The Convention does not apply to political or military offences and any Party may refuse to extradite its own citizens to a foreign country. Extradition may also be refused if the person claimed risks the death penalty under the law of the requesting State.
- The European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73) under which any Party may request another Party to take proceedings against a suspected person in its stead. The requested State may not refuse

acceptance of the request except in specific cases and in particular if it considers that the offence is of a political nature or that the request is based on considerations of race, religion or nationality.

- The European Convention on the International Validity of Criminal Judgements (ETS 70) under which each Party acquires competence to enforce a sanction imposed on the territory of another Party, provided that the requesting State has submitted a request for enforcement, that under the law of the requested State the act for which the sanction was imposed would be an offence, and that the judgment delivered by a requesting State is final and enforceable. One of the significant aims of the Convention is to promote the rehabilitation of the offender.

Methodology

Proposed NCP activities are detailed below, according to a methodology involving two consecutive phases:

1. Needs assessment which includes a detailed analysis of the legal framework for international co-operation in criminal matters and the level of the current practice of Kazakhstan with regard to international co-operation in criminal matters; review of relevant legislation and practice of Kazakhstan and development of recommendations on how to bring them in line with European standards, specifically those concerning international co-operation in criminal matters.
2. Capacity building activities and awareness raising on the Conventions and their mechanisms among practitioners involved in international co-operation in criminal matters (judges, prosecutors, civil servants and lawyers) with the aim of ensuring implementation of obligations undertaken by Kazakhstan in case of accession to the Council of Europe conventions.

This approach will be governed by fundamental principles of international co-operation in criminal matters: knowledge of the applicable legal instruments and the adequate use of the available tools to facilitate co-operation. Particular attention will be paid to the relevant case-law of the European Court of Human Rights. In order to facilitate the potential

accession of Kazakhstan to the conventions on international co-operation in criminal matters, the NCP aims to foster mutual trust between Kazakhstan and the European Parties to these conventions in each other's legal framework and judiciary system with regard to common standards in the field of human rights and rule of law.

Objective

Overall objective: Kazakhstan's legal framework, the functioning of the justice system and institutional practice regarding international co-operation in criminal matters are brought in line with European standards and best practice.

Phase 1: Needs assessment and review of relevant legislation and practice

Total cost: 250 000 Euros

Duration: 6 months

Partners: Office of the Prosecutor General, Supreme Court, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Justice, Committee of National Security, Agency on Fighting with Economic and Corruption Crimes (Financial police), "Institute of Legislation" of the Ministry of Justice, "Union of Advocates of Kazakhstan".

Objective – Phase 1

To conduct a needs assessment of the legal and judicial framework in view of the possible future accession of Kazakhstan to Council of Europe conventions in the criminal field and to conduct a legislative expertise to ensure that national regulatory frameworks and practices regarding international co-operation in criminal matters are brought in line with European standards and best practice.

Expected results

1. Desk and field research on the current situation regarding the application of international bilateral or multilateral agreement on international co-operation in criminal matters with Kazakhstan is conducted;
2. A detailed report on the current needs of Kazakhstan in terms of primary and secondary legal acts, practices and capacity building for application of the European standards concerning international co-operation in criminal matters is made available and presented to the national authorities;
3. Possible issues in national legislation and practices which might otherwise give rise to problems in international co-operation in criminal matters are identified and recommendations on how to overcome them and to reinforce the legislative framework and practice are proposed to Kazakh authorities with a view to their swift adoption and implementation.



Activities

- Expert assessment visits in preparation of the assessment report, to Kazakhstan and possibly to European countries with which Kazakhstan already has bilateral co-operation on these matters;
- Expert meetings on necessary changes and amendments to the relevant legislation and practice;
- Round table for presentation of the results of the report, experts' findings and recommendations to the policy makers;
- Expert meetings on necessary changes and amendments to the relevant legislation;
- Drafting sessions of necessary legislative amendments and changes in practice;
- Study visits for the central authorities to become familiar with the application of international co-operation in criminal matters in some CoE member countries;
- Round table for presentation of the results of the draft amendments to the policy makers.

Phase 2: Capacity building and awareness-raising

Total cost: 1 000 000 Euros (estimated pending country's needs assessment)

Duration: 12 months

Partners: Office of the Prosecutor General, Supreme Court, Ministry of Foreign Affairs, Ministry of Internal Affairs, Ministry of Justice, Committee of National Security, Agency on Fighting with Economic and Corruption Crimes (Financial police), "Institute of Legislation" of the Ministry of Justice, "Union of Advocates of Kazakhstan".

Objective Phase 2

■ To strengthen the national capacity to apply international bilateral and multilateral agreements on international co-operation in criminal matters.

Expected results

1. National stakeholders are familiar with the Conventions and their application within the national judicial system and with best European practice on bilateral and multilateral judicial co-operation;
2. Training curricula, including relevant materials, tools, and manuals for legal professionals have been developed and made available to the training centres for judges, prosecutors and lawyers;
3. A core group of national trainers has the substantive knowledge and methodological skills to train relevant stakeholders, thus ensuring sustainability of the results.

Activities

- Preparation, translation, publication and dissemination of the Conventions;
- Preparation of the training curricula, including relevant materials, tools, and manuals;
- Train-the-trainers sessions;
- In-depth training for the core group of practitioners at the central authorities dealing with international co-operation in criminal matters;
- Study visits for the above group of practitioners to become acquainted with best practices in this field in other European jurisdictions, in particular with the main partners for co-operation with Kazakhstan.

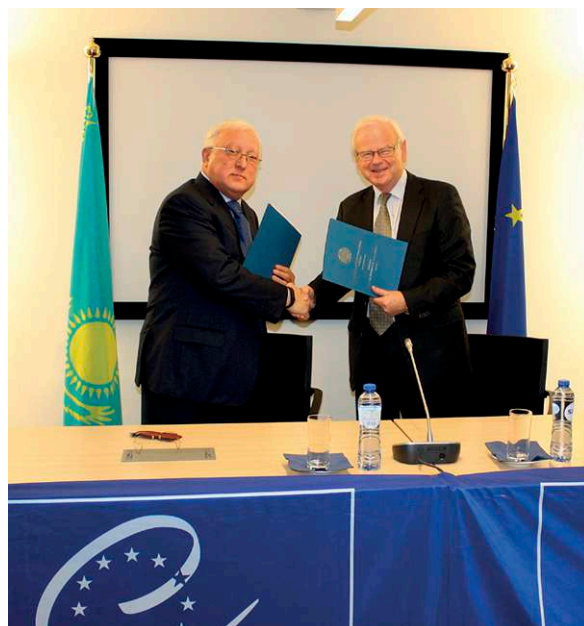
Risk assessment

There are several decisive factors for implementation of Phase 2 of the Project and successful completion of the Project:

- the implementation of Phase 2 depends on the successful implementation of Phase 1 and the introduction of relevant amendments into national legislation;
- the exact number of legal professionals to be trained, which will be established during the Phase 1;
- even if Phase 1 of the Project is successfully implemented, the CoE Member States may not be in favour of Kazakhstan's accession to these Conventions.

Risk management

Project implementation will be closely followed by the Office of the Directorate General of Programmes and will be subject of a mid-term progress review.



Programming Co-operation Framework

Progress review

The review of co-operation with Kazakhstan will be ensured by the Committee of Ministers of the Council of Europe through its Rapporteur Group on External Relations (GR-EXT), which will be regularly informed on the NCP implementation status by the Secretariat. For this purpose, the Office of the Directorate General of Programmes will issue a mid-term progress review report and a final evaluation report.

The evaluation of the impact of the activities implemented within the framework of this co-operation framework will be carried out for every programme and project in line with the evaluation process and requirements of different donors. An overarching mechanism to support, assess and evaluate the implementation of this NCP will be established jointly by the Council of Europe and the Kazakh authorities. This mechanism will take a form of a Steering Committee, composed of representatives of Kazakhstan, of the Council of Europe and of the donors; all members of the Steering Committee will be on an equal footing. Steering Committee's task will be to agree on the activities proposed, to exchange on progress regarding the NCP implementation, and if need be, to decide on any changes which may need to be brought to projects planned or under way.

Co-operation with international partners

As for the identification of priorities, activities will be implemented in close co-operation and co-ordination with national and international partners, in particular with the European Union and OSCE, but also other possible partners and financial contributors present in the country.

The Council of Europe's co-operation with neighbouring regions is funded through extra-budgetary resources, notably Joint Programmes with the European Union and voluntary contributions from national and international stakeholders. Activities foreseen within this NCP document (i.e.; training courses, expert working groups and study visits) will be covered by the funds allocated to the implementation of the NCP. The Kazakh authorities are invited to consider a possible voluntary contribution to support some logistical aspects (i.e. city and airport transport, meeting room).

Methods of implementation

The Council of Europe will use different methods of implementation to bring the Organisation's experience and expertise directly to the targeted beneficiaries, including the following types of intervention:

- needs assessment as a prerequisite for the identification of gaps and shortcomings in the legal and institutional framework and a basis for expert recommendations;
- experts' assessment of legislation and practice and drafting sessions to help the authorities draw up and implement laws and policies in compliance with European standards, to the maximum extent possible;
- translation: make essential texts and information accessible in Russian and Kazakh languages. Documents are also used as a tool in the training and awareness-raising activities;
- training courses allowing participants to acquire new knowledge and training-of-trainers courses providing groups of national trainers with the substantive knowledge and methodological skills to train on specific topics, policy areas;
- expert working groups (national, regional) to allow for the exchange of best practice and peer reviews;
- conferences, particularly to discuss with larger audiences' expert recommendations, early implementation of recommendations and achievement of common positions;
- public awareness measures;
- study visits: provide first-hand practical experience to complement the theoretical knowledge and help participants examine possible changes to their approaches and attitude, as well as facilitating networking.

National partners are expected to closely co-operate with the Council of Europe in the implementation of the projects. Their engagement entails in particular the active participation in meetings and activities and sharing of relevant information and data.

In order to ease the work a liaison officer will be appointed by Kazakh authorities and a liaison officer will be appointed by the Council of Europe.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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