

of nuclear energy. The Act on Nuclear Energy and Radiation Protection (No. 29 of 2001) prohibits any person setting up, operating or administering a nuclear installation in the Kingdom or circulating, importing, exporting, using, dealing in, obtaining, trafficking in, operating, leasing, transporting, stockpiling, destroying, disposing of or producing any radioactive materials or any radioactive sources. This includes research, pulverization, fission, extraction, conversion, mining or fabrication (article 15). The ban imposed by this legislative provision is of a comprehensive nature. With regard to the penalties provided for a violation of article 15 of the above-mentioned Act, article 23 therein reads:

“Any person who contravenes the provisions of articles 15 and 18 of this Act shall be liable to a term of imprisonment of not less than one year and not more than three years or a fine of not less than 10,000 dinars and not more than 30,000 dinars, or both these penalties.”

LVI. KAZAKHSTAN¹⁴⁰

1. SUMMARY OF LEGISLATION OF KAZAKHSTAN RELATED TO TERRORISM

The Act “On combating terrorism”, adopted on 13 July 1999, relates directly to anti-terrorism issues and lays down the legal and organizational bases for combating terrorism in Kazakhstan, the operating procedure for State bodies and organizations, irrespective of their form of ownership, and citizens’ rights, obligations and safeguards in matters relating to the campaign against terrorism.

According to article 10 of the Act, the advocacy of terrorism and the establishment, registration or operation of terrorist organizations and unlawful militarized groupings are prohibited in the territory of the Republic of Kazakhstan. In accordance with article 20, persons taking part in terrorist activity incur criminal liability as envisaged in the respective legislation.

In addition, the Criminal Code establishes the list of offences to be considered as terrorist offences, which carry sanctions ranging from four to fifteen years’ imprisonment, including in the following articles:

- *Article 162*: Recruitment, training, funding or other material support of a mercenary;
- *Article 163*: Attack on a person or organization enjoying international protection;

¹⁴⁰ Transmitted to the Secretariat by that Government on 26 December 2001 (S/2001/1307, enclosure), 17 September 2002 (S/2002/1087, enclosure) and 4 September 2003 (S/2003/862, enclosure).

- *Article 167*: Endangering the life of a government or public figure;
- *Article 233*: Terrorism;
- *Article 234*: Hostage-taking;
- *Article 238*: Seizure of buildings, installations, means of transport and means of communication;
- *Article 251*: Unlawful procurement, transfer, sale, storage, transport or carrying of weapons, ammunition, explosive substances and explosive devices.

The Criminal Code of Kazakhstan does not provide for criminal liability for the wilful provision or collection of funds by its citizens or in its territory for the purpose of using such funds, or with the suspicion that they may be used, to commit terrorist acts.

Under article 233 of the Criminal Code, terrorism involves acts that threaten the lives of people (even if it is one person), cause significant property damage or have other harmful effects on society.

Article 223 of the Criminal Code contains an amendment that provides legal incentives for persons to actively repudiate their association with terrorism. Thus, anyone involved in the preparation of a terrorist act shall be exonerated if he gives State organs timely warning, or uses other means, to prevent the terrorist act, and if he has not committed any other crime.

In accordance with article 20 of the Act of 13 July 1999 on measures to combat terrorism, a person who has taken part in the preparation of a terrorist act is exempt from criminal liability if he provides a timely warning to the authorities or by some other means enables the terrorist act to be prevented, provided that he has not committed other offences.

Pursuant to the Act of 17 February 2002 on amending and supplementing certain legislative acts of Kazakhstan on questions of counter-terrorism, supplementary provisions were added to the Criminal Code. By this means, new categories of offences were introduced and criminal liability established for advocacy of terrorism and public incitement to commit an act of terrorism (article 233-1), as well as the establishment or leadership of a terrorist group, and participation in its activities (article 233-2).

Article 162 of the Code defines a mercenary as a person who acts in order to obtain material compensation or other personal advantage, is not a national of a State participating in the armed conflict, is not a permanent resident in its territory, and has not been sent by another State to carry out official duties. Further, under article 233 of the Criminal Code, terrorism is defined as carrying out an explosion, fire or other acts that jeopardize human life, cause significant

property damage or have other dangerous consequences for society, where those acts are committed to violate public security, cause panic or influence decision-making by government authorities of Kazakhstan, a foreign State or international organization, including the threat to commit such acts for those purposes. In this connection, the purposes constituting definitive grounds for the commission of such an offence are varied. Closest to terrorism in the corpus delicti is sabotage (article 171): committing an explosion, fire or other act aimed at causing massive loss of life, injury to health, destruction of or harm to businesses, buildings, roads and communications or essential services, with the aim of undermining the security or defence capabilities of Kazakhstan, or, for the same purposes, mass poisoning or propagation of epidemics or episodic diseases. In addition, article 250 of the Criminal Code establishes criminal liability for smuggling items withdrawn from circulation, or items with restricted circulation (narcotic substances, weapons, military technology, explosive devices, ammunition, weapons of mass destruction, etc.).

2. CRIMINAL CODE

Article 233. Terrorism

1. Causing an explosion or fire or other acts that jeopardize human life, resulting in significant property damage or have other dangerous consequences for society, where such acts are committed for the purposes of violating public security, causing panic or influencing decision-making by the government authorities of Kazakhstan, a foreign State or an international organization, including the threat to commit such acts for those purposes, are punishable by imprisonment for 4 to 10 years.
2. Those same acts, when committed:
 - (a) Repeatedly;
 - (b) With the use of firearms;
 - are punishable by imprisonment for 7 to 12 years.
3. Acts provided for in paragraphs 1 and 2 of this article, if they:
 - (a) Are accompanied by the use of, or threat to use, weapons of mass destruction, radioactive materials, and the commission of, or threat to commit mass poisonings, spread epidemics or episodic diseases, or other acts capable of causing mass deaths;

(b) Have negligently caused a person's death or entailed other serious consequences;

– are punishable by imprisonment for 10 to 15 years.

4. An attempt on a person's life, committed for the purposes of violating public security, causing panic or influencing decision-making by the government authorities of Kazakhstan, a foreign State or an international organization, including an attempt on the life of a government or public official, committed for the same purposes, as well as for the purposes of bringing his government functions or other political activity to an end, or taking revenge for such activity, are punishable by imprisonment for 15 to 20 years, or capital punishment, or life imprisonment.

Note: A person who has participated in the preparation of an act of terrorism is exempt from criminal liability if he has provided a timely warning to the authorities or by some other means has enabled an act of terrorism to be prevented, provided that he has not committed other offences.

Article 233-1. Advocacy of terrorism or public incitement to commit an act of terrorism

1. Advocacy of terrorism or public incitement to commit an act of terrorism, as well as the dissemination of materials with such contents, is punishable by imprisonment for up to 5 years.

2. The same acts, committed by a person using his official status, by the head of a public association or through the mass media, is punishable by imprisonment for 3 to 8 years.

Article 233-2. Establishment or leadership of a terrorist group and participation in its activities

1. The establishment of a group for the purposes of committing offences for terrorist purposes (or by a terrorist group), as well as the leadership of such a group, is punishable by imprisonment for 8 to 15 years with or without confiscation of property.

2. Participation in the activities of a terrorist group or in acts of terrorism that may be committed by it is punishable by imprisonment for 6 to 12 years, with or without confiscation of property.

3. Acts referred to in paragraphs 1 and 2 of this article, carried out by a person using his official status or by the head of a public association, are punishable by imprisonment for 10 to 15 years, with or without confiscation of property.

Article 234. Hostage-taking

1. The taking or holding of hostages for the purposes of coercing a State, organization or citizen to commit, or to refrain from committing, an action, as a condition for the release of the hostage is punishable by imprisonment for 3 to 8 years.

2. The same acts committed:

- (a) By a group of people by prior agreement;
- (b) Repeatedly;
- (c) With the use of force, jeopardizing human life or health;
- (d) With the use of weapons or objects that may be used as weapons;
- (e) Against a person known to be a minor;
- (f) Against a woman whom the guilty party knows to be pregnant;
- (g) Against a person known to be in a helpless state;
- (h) Against two or more persons;
- (i) For mercenary motives or upon being hired;

– are punishable by imprisonment for 7 to 12 years.

3. The acts referred to in paragraphs 1 and 2 of this article, when committed by an organized group or if they have negligently caused loss of life or brought other serious consequences, are punishable by imprisonment for 10 to 15 years.

Note: A person shall be exempt from criminal liability if he has voluntarily, or at the request of the authorities, released a hostage and has not committed other offences.