

KAZAKHSTAN'S EXPERIENCE AND RECOMMENDATIONS FOR STRENGTHENING INTERNATIONAL AND MULTILATERAL COOPERATION

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I. CHALLENGES TO STRENGTHEN AND MAKE INTERNATIONAL COOPERATION MORE EFFECTIVE

With the advances in information technologies, electronic transmission of requests has always been an important topic for us. It takes minutes to send and receive requests electronically, and this greatly improves the efficiency of international cooperation. In times of pandemic when air flights were cancelled, this became especially important. The most complicated problem we encountered was that we simply could not deliver our requests on paper to our colleagues abroad. So in the course of answering these challenges, we worked on options to establish such an exchange.

II. EFFORTS TO ADDRESS THE ISSUE

Article 46 of the United Nations Convention against Corruption on Mutual Legal Assistance (MLA) provides the necessary framework to tackle the issue. The investigation and prosecution of corruption and asset looting underscores the importance of MLA. MLA is the formal process in which countries request and provide cross-jurisdictional assistance in the investigation or prosecution of criminal offences.¹

The legislative base of the Republic of Kazakhstan in the field of international cooperation in criminal legal matters and tackling corruption includes laws which are coordinated with the United Nations Convention against Corruption ratified in 2008 and many agreements and conventions. However, in today's world no country can solely rely on the classical way of interaction. Conventional paper-based requests for MLA are more time-consuming, while electronic document management speeds up and simplifies communication. Now, electronic transmission of MLA is already in place with several jurisdictions via email, for example, with the United States Department of Justice. Electronic transmission request provisions are added to the new draft bilateral treaties we negotiate with partners around the world. We are also considering joining the Treaty on the Electronic Transmission of Requests for International Judicial Cooperation between Central Authorities (known as the "Treaty of Medellin").

In terms of international cooperation, which is of great help, especially in times of global tensions, there are different platforms for communication provided by international and regional organizations. For our country, the CARIN network was very helpful. CARIN or other similar networks are used as platforms to exchange information on registers of beneficial ownership and other information that may be obtained without judicial authorization via electronic requests. With the support of the United Nations Office on Drugs and Crime (UNODC), Kazakhstan joined CARIN² in Europe and ARIN-AP.³ CARIN is an informal inter-institutional network of law enforcement agencies around the world that aims to facilitate the exchange of information in the scope of asset tracing, freezing, seizure and confiscation.⁴

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¹ <http://www.unodc.org/e4j/zh/organized-crime/module-11/key-issues/mutual-legal-assistance.html> accessed 12 Oct. 2023.

² <https://www.carin.network>

³ <http://www.arin-ap.org/about/mission>

⁴ <https://www.carin.network>

Now our investigators are able to directly request information from colleagues from most countries of the world, moving beyond the official channels. The system is already running. For instance, one of our investigations needed information about an owner of real estate located in the United Kingdom and about certain offshore companies. We requested this information from foreign colleagues through the European CARIN network and received the necessary data in 5-10 days. The investigation was significantly accelerated. This allowed the return of illegally acquired assets worth about 1.4 billion USD. In case of using official diplomatic channels, we would have waited on this information from six months to a year. We proposed that the main law enforcement agencies in Kazakhstan have to identify English-speaking communication officers who will help their investigators to send requests through these Networks. The period of uncertainty caused by the Covid-19 global pandemic coincided in our country with a need to improve a framework for stolen asset recovery.

III. THE COMMITMENT OF KAZAKHSTAN TO TACKLE CORRUPTION AND RETURN THE STOLEN WEALTH OF THE COUNTRY

Kazakhstan has initiated a series of structural transformations aimed at creating a more diverse and stable economy. One of the key areas of these reforms is to dismantle the kleptocracy and tackle corruption, the de-monopolization and de-oligarchization of the economy, as well as the return of assets stolen by corrupt officials. The oligopolistic model of the economy that has developed over a number of decades in our country has led to deep social inequality, the destabilization of society, and a threat to national security.

Distorted, unfair rules for the functioning of individual economic entities were the result of the merger of the largest businesses with state power and the influence of oligopolies not only on the decisions of officials but also on the formation of favourable and non-competitive legislative conditions for their activities.

To give an adequate answer to the challenge, an interdepartmental commission was created by the Decree of the President in June 2022. The Commission was tasked to restore justice and return illegally withdrawn assets to the people of Kazakhstan. The efforts of the Commission led to the return of more than 1.7 billion dollars of assets to the State. Nevertheless, we learned during the work of the Commission that it is extremely hard to establish a link between the crime and the assets. It is required if we want to recover assets using this traditional approach.

That is why the Law On the Return of Illegally Acquired Assets to the State was drafted and adopted by Parliament.⁵ The new law sets more precise regulation in the field of recovering assets stolen by corrupted officials and persons with close ties to them. The subjects of the act are individuals who possess assets worth 100 million USD and more. In the presence of reasonable doubts as to origin or legality of assets, the specifically authorized state authority has the right to request inclusion of such individuals and any connected with them to the Asset Recovery Commission's dedicated roster.⁶ After being put onto the roster, persons are supposed to wait for notification to prove the legality of the origin of their assets at a fixed time. In case of non-fulfilment of a requirement, the authorized state body makes an application to the court for the forfeiture of relevant assets. Returned assets will be allocated into the Special Fund established and supervised by the government to develop economic and social infrastructure in Kazakhstan. That's why it is extremely important for us to bring to justice the persons who are responsible for the theft of the wealth of the country and recover stolen assets.

IV. SOME EFFORTS TAKEN TO ENHANCE THE WORK CARRIED OUT IN THE FIELD OF RECOVERING ASSETS

To begin with, we analysed the investigative practice and identified problems. *Firstly*, the law enforcement agencies did not have a clear algorithm of actions for what to do in the event of a withdrawal of assets

⁵ <https://adilet.zan.kz/eng/docs/Z2300000021>

⁶ <https://adilet.zan.kz/rus/docs/P2300000867> in Russian.

abroad, and there was no appropriate methodological base.

Secondly, asset recovery measures were often initiated too late, when it was much more difficult or impossible to secure their seizure. Taking into account these problems, we implemented a number of practical solutions. We scrupulously examined the main requirements of the countries of the European Union, the United States, and Southeast Asia. They are clearly structured. According to their experience, we have also succeeded in enhancing the quality of our requests and bringing them closer to international standards. As soon as we started using them, their effectiveness immediately increased. It is easier for colleagues to deal with us when they see that our documents meet their requirements.

Thirdly, through UNODC, we have joined the CARIN asset recovery networks in Europe and ARIN-AP in Asia. Thanks to these measures, we were able to significantly speed up the execution of our requests, including from offshore jurisdictions.

We understand that the differences in our legal systems sometimes make it very hard to cooperate against transnational criminals. We analysed our requests abroad and understood that they were primarily based on our national law, while the problem is that sometimes they do not conform to the requirements of the law of the requested country. Our investigators also did not effectively use other available tools, like the Egmont Group and asset recovery networks. And it was especially obvious at the regional level. We downloaded available publications online. The good practices studied have all been posted on the StAR website.⁷ The problem is that they are lengthy and voluminous. It was hard for our investigators to read and apply them.

We gathered a team that created a short list and adapted it to our needs. Now it does not take too much time to give the investigators an understanding of what asset recovery tools abroad we have in our arsenal. We also drafted an MLA template. We downloaded different templates, which were available online. We put them on the table, learned the most useful parts from every one of them, and, taking into account our legislation, drafted an MLA request template and translated it into the main UN languages. Our investigators nationwide have been using it. Now there is no necessity to waste time and budget money to translate them every time again and again. Furthermore, we defined four main steps for our investigators to effectively freeze, seize and confiscate criminal assets abroad. It covers responses to questions on how to find and trace stolen assets, prove the links between crime and assets, freeze and seize assets, and finally to confiscate the assets.

As the tools that can be utilized in this direction we recommended: potential of the Egmont Group, advantages of Exchange networks (CARIN, CARIN-AP and Interpol Focal Point), preliminary examination of open sources (public records, news media, libraries, social media platforms, images, videos, websites, the Dark Web). The methodology explained in detail to investigators what they can and cannot do. In addition, more than 200 investigators and 10 national trainers were trained in the Academy of Law Enforcement Authorities with the support of UNODC and the Embassy of the United States of America.

Another important project, which became very useful in times of pandemic, is the implementation of electronic legal proceedings. Currently, 94 per cent of criminal cases in Kazakhstan are registered digitally. Moreover, the investigation itself in a vast majority of cases is conducted electronically. All the decisions of an investigator are signed electronically. Interrogation of witnesses can also be done electronically. There are a number of advantages to this approach. First, such cases cannot be lost or forged. Every action is recorded. It is not possible to illegally swap the evidence once it is in the system. Second, this provides procedural time savings and shortens the investigation period. Participants in the process have remote access to electronic materials. Everything is transparent for the court, the prosecutor and the advocate.

To work with the system, the investigators were provided with personal computers with an additional monitor, a graphic tablet with a stylus, a multifunctional device (MFP), a web camera, and a biometric fingerprint scanner. More than 500 templates for basic procedural documents have been developed. The system pre-fills a document based on the available data, and an investigator just needs to supplement the necessary information. This significantly reduces the likelihood of errors. We use the technology for applying

⁷ <https://star.worldbank.org>

a handwritten signature to procedural documents by participants in criminal proceedings using a graphic tablet and a stylus. If there are doubts about the authenticity of such a signature, it is possible to conduct a handwriting examination.

We have automated the process of obtaining electronic information from relevant state databases. For example, those are: criminal records; psychiatric or drug dispensary registration; border crossing information; real estate registries; and others. There is no need for an investigator to send requests. Once there is a suspect, the investigator only needs to press a couple of buttons to obtain this information. Participants in the criminal process are provided with a portal through which they can submit petitions and complaints. The answers will be provided online.

On the portal, participants in the process can access the case materials and get copies of procedural documents. The police determine the number of necessary materials that are available online to participants in the process in accordance with the criminal procedure code. The module “Intelligent Assistant to the investigator” was implemented. It recommends an investigator to carry out the necessary investigative actions on a specific type of crime. It is especially important for young investigators.

In conclusion, it can be seen that Kazakhstan has taken a number of measures for efficient use of international cooperation in tackling asset looting.