Comments
on the draft law of the Republic of Kazakhstan
"Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of illicit traffic of narcotic drugs"

INTRODUCTION

The Draft of the Republic of Kazakhstan Law "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of illicit traffic of narcotic drugs"[1] (hereinafter **draft Law**) has been elaborated in pursuance of the minutes of the Republic of Kazakhstan's Security Council session of 20 September 2006.

It is stated that the reason for elaborating the draft Law draws on a "steady rising trend in the amount of drugs recovered from illicit traffic" and the fact that "tightening the anti-drug laws in a number of countries has led to a certain improvement of the drug situation". Examples were drawn from the legislation of Singapore, Pakistan, China, Iran and Thailand, where life imprisonment or even the death penalty with confiscation of property is imposed for committing certain offences involving the illicit traffic of narcotic drugs.[2]

Based on the aforesaid the RK Government proposed a number of changes and amendments into the current criminal legislation and the legislation on administrative offences which increase criminal and administrative responsibility for offences and violations of law related to illicit traffic of drugs.

Thus, it is proposed that changes and amendments be introduced into Article 48 of the General Part of the RK Criminal Code[3] (hereinafter RK CC), which establishes the boundaries of the long term deprivation of liberty, as well as a category of offences triggering life imprisonment; Articles 132, 250, 259, 260, 261, 263 and 266 of the Special Part of the RK CC, providing for criminal responsibility for certain offences related to illicit traffic of drugs; Articles 319 and 320 of the RK Code on Administrative Offences (hereinafter RK CoAO).

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[1] See: the Draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of the illicit traffic of narcotic drugs" submitted to the RK Parliament Mazhilis (Letter of the RK Government No. 23/6517 of 17 May 2007).

[2] See: The Explanatory Note to the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of illicit traffic of narcotic drugs" submitted to the RK Parliament Mazhilis (Letter of the RK Government No. 23/6517 of 17 May 2007).

[3] See: The RK Criminal Code. Passed on 16 July 1997, put in effect as of 1 January 1998 (with changes and amendments).

There is a number of comments on the draft Law relating to both concept and wording, linked to the necessity to consider general trends of criminal law policy in combating the illicit traffic of narcotic drugs and dealing with offenders, international experience in this area, international commitments of the Republic of Kazakhstan as well as the logic of building and developing the Kazakh criminal legislation and the rules of law drafting methodology.

1. REVIEW OF TRENDS IN CRIMINAL LAW POLICY IN COMBATING THE ILLICIT TRAFFIC OF NARCOTIC DRUGS AND DEALING WITH OFFENDERS

1.1. The purpose of combating the illicit traffic of narcotic drugs

The purpose of combating the illicit traffic of narcotic drugs, as rightly stated in the study "The Legal Regulation of Rendering Drug Addiction Help, Preventing HIV/AIDS and Counteracting the Illicit Traffic of Narcotic Drugs: the International Experience"[4] (excerpts from which are provided in the materials prepared by the Research and Information Department of the RK Parliament Mazhilis Administration), is (or, in any case, has to be), in the first place, protection of public health from the dangerous effect of narcotic drugs. That is precisely why the criminal law strategy of counteracting the illicit traffic of narcotic drugs in any state is inseparable from resolving problems both in the sphere of criminal justice and in the area of regulating legal conditions for offering drug addiction help and preventing HIV/AIDS.

1.2. Legal framework

From this viewpoint the legislation of the Republic of Kazakhstan is already quite well developed. In addition to international conventions to which the Republic of Kazakhstan has acceded,[5] the Criminal Code of the Republic of Kazakhstan and the Code of Administrative Offences, there is a number of regulatory acts related to drug trafficking, drug addiction help and prevention of HIV/AIDS as well as relevant bi-lateral international agreements of the Republic of Kazakhstan.[6]

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[4] See: "The Legal Regulation of Rendering Drug Addiction Help, Preventing HIV/AIDS and Counteracting the Illicit Traffic of Narcotic Drugs: the International Experience", Moscow, 2002. See also: excerpts from this study in information and reference materials "International Experience in Imposing Life Imprisonment for Committing Drug-Related Crimes", prepared by the Research and Information Department of the RK Parliament Mazhilis Administration, Astana, November 2007.

[5] The Republic of Kazakhstan acceded to the *Single Convention on Narcotic Drugs* of 1961, with amendments introduced in it pursuant to the Protocol of 1972 (on 1 July 1998), to the *Convention on Psychotropic Substances* of 1971 (on 29 June 1998) and the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1988 (on 29 June 1998).

[6] The Law of the Republic of Kazakhstan of 10 July 1998 No. 279-I "On Narcotic Drugs, Psychotropic Substances, Precursors and Measures to Counteract Their Illicit Traffic and Abuse"; The Law of the Republic of Kazakhstan of 5 October 1994 No. 176-XIII "On Preventing AIDS Disease"; The Law of the Republic of Kazakhstan of 27 May 2002 No. 325-II "On Medical and Social Rehabilitation of Persons Suffering from Drug Addiction"; the "Rules for Carrying Out State Control Over the Traffic of Narcotic Drugs, Psychotropic Substances and Precursors in the Republic of Kazakhstan" approved by the Decree of the Republic of Kazakhstan Government of 10 November 2000, No. 1693; the "Rules for Medical Use of Narcotic Drugs, Psychotropic Substances and Precursors Subject to Control in the Republic of Kazakhstan" approved by the Order of the Republic of Kazakhstan Ministry of Health Care of 7 April 2005, No. 173; the Regulatory Order of the RK Supreme Court of 14 May 1998, No. 3 "On Applying Legislation in Cases Related to Illicit Traffic of Narcotic Drugs, Psychotropic and Toxic Substances" (with changes and amendments)" and a number of others. The Republic of Kazakhstan signed the "Agreement on cooperation of CIS states in combating the illicit traffic of narcotic drugs, psychotropic substances and precursors" on 30 November 2000 and the "Agreement between the member states of the Shanghai Cooperation Organization on cooperation in combating the illicit traffic of narcotic drugs, psychotropic substances and their precursors" on 17 June 2004. In addition to that, relevant bi-lateral agreements or memoranda on cooperation in combating organised crime or other types of crime including cooperation against the illicit traffic of narcotic drugs, psychotropic substances and precursors were signed with Kyrgyzstan (in 1993 and 1997), Russia (1994), Germany (1995), the Czech Republic (1998), Iran (1999), Armenia (1999), Hungary (1999), Tajikistan (2000), Lithuania (2000), Poland (2002), the USA (2002), Bulgaria (2003), Rumania (2003), Azerbaijan (2005), Croatia (2007) and Egypt (2007).

This body of regulatory acts represents a sufficient mechanism for legal regulation and control over the illicit traffic of narcotic drugs.

In case of such control being ineffectual it is important to analyse all tendencies and international experience together, without being restricted only to increasing criminal responsibility for offences related to the illicit traffic of narcotic drugs.

1.3. International experience

The study "Legal Regulation of Rendering Drug Addiction Help, Preventing HIV/AIDS and Counteracting the Illicit Traffic of Narcotic Drugs: the International Experience"[7] contains a number of provisions and conclusions which, in our opinion, have to be considered in our review.

The analysis of present day foreign criminal legislation makes it possible to draw the conclusion that nowadays virtually all countries of the world have adopted a set of legal norms, which to a varying degree regulate the issues related to drug trafficking. The norms of foreign criminal law considerably vary with regard to both their volume and severity of sanctions. At the same time it is possible to identify some general features characteristic to legislation of virtually all countries.

The duty of the state to control the traffic of narcotic drugs derives from the *Single Convention on Narcotic Drugs* of 1961 with amendments introduced into it pursuant to the Protocol of 1972, the *Convention on Psychotropic Substances* of 1971, and the *Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1988.

The states, party to those conventions, committed themselves to provide in their national legislations responsibility for: 1) production, refining and manufacture of drugs; 2) theft of drugs in various forms and their extortion; 3) drug smuggling; 4) acquisition, purchase, stocking of drugs; 5) possession of drugs; 6) sale, trade in (distribution of) drugs; 7) transport (transit or dispatch) of drugs; 8) use of drugs; 9) inciting or inducing others to use drugs illicitly as well as promulgation of and advertising drugs; 10) keeping narcotics dens for using drugs; 11) forging various documents and other fraudulent actions for illicit acquisition of drugs in the sphere of their legal circulation (in pharmacies, hospitals, etc.); 12) violating professional codes of practice on the part of personnel with access to narcotics in the sphere of their legal circulation; 13) cultivation of narcotic plants.

It should be noted that in the majority of states criminal responsibility for the above-listed offences prevails over other types of legal responsibility. However, state policies pursued in different countries have their own peculiarities, which are not least of all determined by the drug situation in each particular country. Such specifics have an effect upon the national legislation, the policy of state bodies, contents of target-oriented programmes aimed at tackling the illicit traffic of drugs and their abuse.

For example, the criminal legislation of the bulk of European countries provides for relatively strict responsibility for smuggling and illicit trade in narcotic drugs. As a rule, the legislator makes the severity of punishment subject to the amount of traded drugs, the class of controlled substances to which a specific drug belongs and, consequently, the rigour of control over it. At the same time such offences as non-medical use of drugs, their possession with no intention to sell and so on, are, as a rule, not prosecuted by the criminal law or attract minimum punishment. Nevertheless, such punitive measures for the above mentioned offences are rigorous enough which is quite justified by their high social danger.

[7] See: "The Legal Regulation of Rendering Drug Addiction Help, Preventing HIV/AIDS and Counteracting the Illicit Traffic of Narcotic Drugs: the International Experience", Moscow, 2002. See also: excerpts from this study in information and reference materials "International Experience in Imposing Life Imprisonment for Committing Drug-Related Crimes", prepared by the Research and Information Department of the RK Parliament Mazhilis Administration, Astana, November 2007.

Out of all above-listed offences, the use of drugs is not criminally penalized in the majority of countries. This is partly explained by the fact that international legal commitments of the countries do not cover the criminalization of non-medical drug use.

A major approach to the problem of non-medical drug use in most states is a legislative prohibition of such use, which is accompanied by compulsory treatment of drug addicts and their social rehabilitation. At the same time, although on a considerably smaller scale, a punitive approach is used, namely imposing sanctions for non-medical use of drugs, including penal measures (up to the deprivation of liberty).

The laws of various countries regulating criminal responsibility for offences in the sphere of the illicit traffic of drugs sometimes significantly differ from one another both in the number of criminal law prohibitions and severity of sanctions. Assuming a certain degree of relativity and having adopted a severity of laws aimed at tackling the illicit drug trafficking as a criterion, all states can be split into four groups.

The first group is represented by the states with the most "liberal" legislation. Typical representatives of this group will be the Netherlands, Germany, Italy, Switzerland and Spain. In the Netherlands the sale and use of the so-called "soft" drugs (for example, derivatives of hemp (cannabis) in specially designated places – "coffee-shops") is permitted. There is no statutory prohibition of drug utilization without medical prescription in Germany, Italy and Switzerland.

The second group of states includes countries whose legislation is more balanced and differentiated. Such states constitute the majority, and they include, amongst others, Sweden, Austria, France, Belgium and Luxemburg. In many countries the development of present-day anti-drug legislation has passed through either a liberal or, on the contrary, a rigorous stage regarding attitude towards the illicit traffic and consumption of drugs.

The third group includes countries with the most rigorous legislation containing quite harsh, up to physical punishment and the death penalty, responsibility for offences related to the illicit traffic of narcotic drugs (China, Iran, Pakistan, Saudi Arabia, the UAE, Thailand, Malaysia, Singapore, Nigeria). For example, several hundred public executions of individuals convicted of drug dealing are conducted in Iran every year in conformity with the Law of 1989. According to the legislation of Singapore the death penalty is imposed in cases where more than 15g of heroin, 30g of morphine or 500g of marijuana are found on a person.

The fourth group comprises the countries (primarily, African and Latin American) where criminal legislation on responsibility for the illicit traffic of drugs is in the stage of formation. In particular, the legislation of such countries does not recognise the responsibility for certain offences which according to relevant acts of international law fall into the category of criminal liability, and excessively rigorous responsibility for some offences is found side by side with extreme liberalism towards others.

An array of legally meaningful features (for example, this or that set of criminal acts or qualifying circumstances, magnitude and forms of punishment, presence or absence of the death penalty and life imprisonment for committing the most serious crimes in the area of the illicit traffic of narcotic drugs and so on) makes it possible to split criminal anti-drug legislation of the majority of countries into **western and eastern types**.

With rare exceptions (the Netherlands, Switzerland) the national criminal legislation and law-enforcement practice of the European states complies with the requirements of international conventions on narcotic drugs both with regard to criminally liable acts and the opportunity to differentiate responsibility for their commission.

The legislations of those countries contain detailed descriptions of an offence in the relevant articles of criminal codes or other laws, considerably differentiated sanctions, opportunities for suspended sentencing and so on.

At the same time extremely rigorous, repressive legislation with regard to criminal responsibility for offences related to the illicit traffic of drugs has gained a foothold in **Eastern countries**, varying according to their state structure, form of government, level of economic and cultural development, geographical position and size of their territories, political influence in the world and prevailing religion (for example, China, Iran, Saudi Arabia, the UAE, Malaysia, Singapore). On the whole, legislation in these countries is marked by generalized formulations of the elements of the crime under consideration, limited opportunities to differentiate responsibility, individualize punishment and apply "active repentance" (plea bargaining). Sanctions include the death penalty (sometimes taking savage forms), physical punishment and long terms of deprivation of liberty. Such an approach to criminal responsibility goes beyond the framework of international conventions and poses a question about its compliance with human rights' standards.

In general, the comparative analysis of foreign legislation regulating criminal responsibility for acts in the area of the illicit traffic of narcotic drugs[8], permits the following conclusions to be drawn:

First of all, in the course of past decades this legislation has had a tendency to establish and apply quite rigorous criminal law sanctions in tackling the illicit traffic of drugs.

Second, it is evident that this tendency clearly persists; in particular, criminal punishments are gradually becoming more severe. In the first place this refers to the most serious crimes in the area of the illicit traffic of drugs and organised forms of criminal activities. The most stringent criminal law sanctions in various countries are imposed, as a rule, for the production of drugs, actual possession of drugs on a large scale and particularly dealing in drugs. These offences are considered as more serious compared to other criminal acts related to narcotic drugs.

Third, the position of foreign legislators is based on the necessity to differentiate criminal responsibility, which is mainly achieved by way of expanding the circle of special *corpus delicti* in the area of the illicit traffic of narcotic drugs.

Fourth, although application of repressive, primarily, criminal law sanctions in law enforcement practices of many countries for a long time has been a dominating strategy in the area of tackling the illicit traffic of drugs, foreign legislators use the principle of sparing use of penal repression. This principle manifests itself in such criminal law institutions as active repentance, plea-bargaining, suspended sentencing (probation) and conditional early discharge as well as ordering compulsory treatment of drug addiction as a condition of actual non-imposition of a sentence or an alternative to such a sentence. A search for more flexible forms of responding to offences in the area of the illicit traffic of drugs is linked to low-level efficiency of traditional methods applied within the framework of the criminal justice system.[9]

For example, the 2004 Framework Decision of the European Union Council[10], laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, states that:

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[8] See: "The Legal Regulation of Rendering Drug Addiction Help, Preventing HIV/AIDS and Counteracting the Illicit Traffic of Narcotic Drugs: the International Experience", Moscow, 2002.

[9] See: "The Legal Regulation of Rendering Drug Addiction Help, Preventing HIV/AIDS and Counteracting the Illicit Traffic of Narcotic Drugs: the International Experience", Moscow, 2002.

[10] See: Framework Decision of the European Union Council No. 2004/757/JHA of 25 October 2004, laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking. Official Journal of the European Union L335/8-11, EN, 11.11.2004.

- Penalties provided for by the Member States should be effective, proportionate and dissuasive, and include custodial sentences. To determine the level of penalties, factual elements such as the quantities and the type of drugs trafficked, and whether the offence was committed within the framework of a criminal organization, should be taken into account;
- States should be allowed to make provision for reducing the penalties when the offender has supplied the competent authorities with valuable information;
- It is necessary to take measures to enable the confiscation of the proceeds of the offences referred to in this Framework Decision;
- Measures should be taken to ensure that legal entities could be held liable for the criminal offences referred to by this Framework Decision, which are committed for their benefit.

Article 4 of the same document, concerned with types of penalties, states that less serious offences should be punished by criminal penalties of at least one to three years of imprisonment, and serious offences are punishable by criminal penalties of at least 5 to 10 years of imprisonment in each of the following circumstances:
- the offence involves large quantities of drugs;
- the offence either involves those drugs which cause the most harm to health, or has resulted in significant damage to the health of a number of persons.

Where the offence was committed within the framework of a criminal organisation the penalty should be 10 years of deprivation of liberty or more.

Furthermore, each state should undertake all necessary measures to ensure that legal entities could be held liable for any criminal offences, which were committed for their benefit by any other person who could have acted on his own or as an employee of a legal entity.

States shall take the measures necessary to ensure that a legal entity held liable is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:
- exclusion from the list of organizations entitled to tax relief or other benefits or public aid;
- temporary or permanent disqualification from the pursuit of commercial activities;
- placing under judicial supervision;
- a judicial winding-up order;
- temporary or permanent closure of establishments used for committing the offence.

Nevertheless, according to Article 5 of the Framework Decision, each state can undertake the necessary measures to ensure that the penalty referred to in Article 4 could be reduced if the offender renounces criminal activity related to trafficking in drugs and precursors and provides the administrative and judicial bodies with information which they would not have been able to obtain otherwise, helping them to prevent or mitigate the effects of the committed offence; identify or help to bring to justice other offenders; find evidence and prevent the commission of new offences.

On the one hand, a global trend in developing criminal anti-drug legislation is its gradual hardening due to both expanding the range of criminally liable offences (with the help of redefining categorising features inter alia) and stiffening of sanctions. On the other hand, no less effective is the trend to tackle the illicit drug trafficking by wider use of such criminal law institutions as active repentance, plea bargaining, suspended sentence (probation) and conditional early discharge as well as by ordering compulsory treatment from drug addiction as a condition for non-application of a fixed penalty or as an alternative to such penalty. In this connection the Republic of Kazakhstan has to decide in what direction its criminal legislation in this field will evolve, that is to what extent its hardening, if it is necessary, has to be balanced by its differentiation.

As international experience demonstrates, the efficiency of fighting drug-related crime can be ensured only through the use of a complex approach. Therefore, in our opinion, prior to hardening sanctions, which in the current criminal legislation are quite compliant with the punitive measures adopted by most European states, it is necessary, to consider other possibilities of tackling drug-

related crime, proceeding from the principle of "sparing use of penal repression" secured by the Guidelines for the Legal Policy of the Republic of Kazakhstan[11].

1.4. Conclusions from the international experience

A positive aspect of the draft Law is that it is anchoring such new categorising features as dealing in drugs in an educational institution, in a correctional institution and through the abuse of an official position. Such changes comply with international requirements.

It would also be expedient to consider the criminal procedure potential of tackling offences in the area of illicit drug trafficking. First, to study the possibility of introducing the institution of plea-bargaining into domestic legal proceedings.

Second, to continue improving legislation in the area of protection of witnesses and other persons, parties to legal proceedings. Plea-bargaining and witness protection are two interrelated institutions, which allow, according to the experience of other countries, achievement of considerable advantage in tackling drug-related crime.

Third, to expand the scope of powers of the law-enforcement bodies in dealing with the laundering of criminal proceeds from illicit drug trafficking.

At present Parliament has been considering a package of draft laws in the area of combating legalization (laundering) of proceeds from illegal activities and the financing of terrorism. Therefore it is important to harmonize a number of articles in this package of draft laws with the draft Law on increasing responsibility in the area of the illicit traffic of narcotic drugs.[12]

Fourth, to introduce criminal responsibility of legal entities for criminal activities in the field of the illicit traffic of narcotic drugs. It has been provided for by the international standards in the area of tackling drug-related crime.

Having taken such steps, it would be expedient after some time to assess the effectiveness of the fight against the drugs business and, consequently, to consider the issue of the necessity to increase criminal responsibility (up to life imprisonment if need be).

"The Opinion of Scientific, Legal and Criminology Experts" on the draft Law states that "one of the main directions of combating crime in the Republic of Kazakhstan today is to deal with the toughest task of organising a complex fight against the illicit traffic of narcotic drugs and its effect – wide-spread use of narcotics amongst the population".[13] It also says, "in the opinion of academic criminologists severe penalties generate violent crime, but the effect from severity of punishment is

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[11] See: The Guidelines for the Legal Policy of the Republic of Kazakhstan. Approved by the Decree of the President of the Republic of Kazakhstan No. 949 on 20 September 2002.

[12] The draft Law provides for the expanded application of the institution of seizure of property "because seizure of property together with the applied sanction of deprivation of liberty is a great deterrent". This, for example, refers to parts 1 and 4 of Article 250, part 2 of Article 259, part 4 of Article 259, parts 2 and 4 of Article 260 (Draft), part 4 of Article 261 (Draft), part 4 of Article 263. However, according to international standards, including the *Framework Decision of the European Union Council* No. 2004/757/JHA, the definition of seizure in the draft Law of the RK has to be made more precise. For example, according to the Decision, confiscation should be applied without prejudice to the rights of victims and of other *bona fide* third parties, and substances which are the object of drug-related offences, instrumentalities used or intended to be used for these offences and proceeds from these offences should be confiscated or the property the value of which corresponds to that of such proceeds, substances or instrumentalities should be confiscated (Article 4 of the Framework Decision).

[13] See: "The Opinion of Scientific, Legal and Criminology Experts" of 15 November 2006 on the draft Law "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of the illicit traffic of narcotic drugs".

short-lived".[14] It is hard not to agree with this conclusion. Strengthening of repressive sanctions quite often leads to the "inflation" of the punitive effect. Such a situation is developing, for example, in the USA where the galloping growth of the prison population is observed against a background of hardening criminal sanctions.

Introduction of life imprisonment for some or other offences should be balanced against other criminal sanctions. Therefore the draft Law needs to be analysed regarding this parameter as well. However such analysis has not been carried out yet.

Life imprisonment is an extreme, exceptional measure. Its introduction into the national legislation should involve preliminary widespread and professional discussion. Such a decision should follow strict, scientifically justified conclusions obtained on the basis of all-round studies. As far as we know such work has not been carried out in the Republic of Kazakhstan. It is also important to bear in mind that once the legislator has taken a decision in favour of life imprisonment, it will be difficult to repeal it in case of its ineffectuality, considering public opinion which does not take well any weakening in the fight against drug-related crime (even if the means for it prove to be ineffective).

2. COMMENTS ON THE CONTENTS OF THE EXPLANATORY NOTE TO THE DRAFT LAW

The Explanatory Note to the draft Law[15] states that "the study of the international experience demonstrates that hardening of the anti-drug legislation in a number of countries has contributed to certain improvement in the drug situation. For example, the legislations of Singapore, Pakistan, China, Iran and Thailand provide for quite severe penalties for the commission of some types of drug-related offences, up to life imprisonment or death penalty with seizure of property".

At the same time the Explanatory Note does not provide any statistics as to the improvement of drug-related situation in those countries. For example, what the drug situation and sanctions for offences had been like before the anti-drug legislation was hardened, and what happened after it had been changed; whether non-criminal law measures to tackle the illicit drug trafficking were applied and to what extent they were effective. Neither does the Note refer to the international standards or the experience of other countries, which effectively dealt with drug-related crime without resorting to hardening penalties.

The Explanatory Note does not provide any detailed description of major problems in tackling drug-related crime in the Republic of Kazakhstan, especially with regard to the investigative and judicial practices on the articles dealing with sanctions, where it is planned to include, for example, life imprisonment. There is no information, for instance, about what percentage leaders and members of organised crime groups involved in traffic and distribution of drugs made up in the number of those sentenced to imprisonment for illicit drug trafficking. There are no statistics on repeated offences in this area either.

"In recent years a steady trend has manifested itself towards an increase of the amount of drugs recovered from illicit trafficking. In 2006 alone the law-enforcement bodies confiscated more than 25 tons of narcotic substances", says the Explanatory Note to the draft Law.

Information about the growth of the amount of confiscated drugs does not allow speculation as to whether the very organizers of the drugs business are brought to justice.

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[14] Ibid.

[15] See: The Explanatory Note to the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of the illicit traffic of narcotic drugs" submitted to the RK Parliament Mazhilis (Letter of the RK Government No. 23/6517 of 17 May 2007).

The Explanatory Note does not provide a detailed justification of the proposed changes. The list of the constituent elements of crime, which can trigger life imprisonment, demonstrates that such measures are aimed, in the first place, at combating organised drug-related crime. However, it is not completely clear from the covering documents attached to the draft Law, to what extent such measures are "effective, proportionate and dissuasive".[16]

It is important to combat organised crime. However, it is not clear from the draft Law how the repressive, deterrent impact of life imprisonment can influence the effectiveness of such a fight. A peculiar substitution of the absence of tangible results in tackling the drugs business by an attempt to automatically harden sanctions for various offences in the sphere of illicit drug trafficking may take place.

In our view, it is important to comprehensively analyse the situation with drug-related crime prior to going for dramatic changes in punitive measures. Deprivation of liberty for 15-20 years for the same offences might also be quite sufficient for those sanctions to be "effective, proportionate and dissuasive".
In view of the above, the statement that increasing criminal responsibility for offences related to illicit drug trafficking will be an effective instrument in tackling drug-related crime, seems to be not sufficiently grounded.

3. COMMENTS ON THE INTRODUCTION OF LIFE IMPRISONMENT FOR OFFENCES RELATED TO ILLICIT DRUG TRAFFICKING

3.1. Law drafting methodology

Pursuant to the draft Law, changes and amendments will be introduced into Article 48 of the RK CC. In particular, deprivation of liberty up to twenty years or life imprisonment can now be imposed for:

1) smuggling of objects withdrawn from circulation and objects whose circulation is limited (part 4, Article 250 of the RK CC);
2) illicit purchase, transport or possession for the purpose of distribution, manufacture, refining, dispatch or sale of narcotic drugs or psychotropic substances (part 4, Article 259 of the RK CC);
3) theft or extortion of narcotic drugs or psychotropic substances (part 4, Article 260 of the RK CC);
4) inciting or inducing others to use narcotic drugs if this resulted in accidental death of the victim or caused other serious harm (part 4, Article 261 of the RK CC).[17]

From the point of view of law drafting methodology it seems not quite justified to set out in part 3 of Article 48 some offences related to illicit drug trafficking[18], because on the whole articles belonging to the General Part of the RK CC and concerned with forms of penalties do not mention separate offences (or articles providing for responsibility for their commission). This violates the logic of drafting the General Part of the RK CC.

[16] These characteristics of criminal sanctions for drug-related offences were laid down in the Framework Decision of the European Union Council 2004/757/JHA

[17] See: Comparative Table to the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of the illicit traffic of narcotic drugs" submitted to the RK Parliament Mazhilis (Letter of the RK Government No. 23/6517 of 17 May 2007).

[18] Ibid.

3.2. National security as a justification for the necessity to introduce life imprisonment

The justification for the Comparative Table to the draft Law points out that "taking into account that drug addiction and the drugs business represent a real threat to national security, there appeared a necessity to reclassify some types of drug-related crimes as especially serious crimes and to establish responsibility in the form of deprivation of liberty of up to twenty years or for life".[19]

Similar reference to *the threat to national security* can be found in the justification of changes and amendments virtually in all above-mentioned articles of the RK CC, but such reasoning does not comply with the international standards and commitments of the Republic of Kazakhstan. In 2005 the Republic of Kazakhstan ratified the International Covenant of Civil and Political Rights (ICCPR). Articles 12, 18, 19, 21 and 22 of the ICCPR contain criteria of permissible restrictions to human rights and freedoms in conformity with which certain rights are subject to no restrictions except those provided by the law and are necessary in democratic society in the interests of *state (national) security* and public order, for the purposes of preventing disorder and crime, and to protect public health and morals or the rights and freedom of others.

In 1984, in order to provide for the appropriate interpretation of these criteria, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights were elaborated and adopted.[20]

Principle 29 of this document states: *"National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force"*. According to Principle 30 the interests of national security *"cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order"*.

Obviously, drug-related crime is a serious problem and requires adequate efforts to counteract it. However, it is not a threat of force or force used against the national sovereignty, territorial integrity or political independence. Therefore any references to a threat to national security as justification for increasing responsibility in the area of illicit drug trafficking are unjustified from the point of view of international law.

3.3. The expansion of grounds for applying life imprisonment as a separate form of punishment

Within almost 10 years since its adoption the RK Criminal Code has strictly limited the application of the death penalty (and life imprisonment as an alternative) only as a form of punishment for especially **serious offences infringing upon human life**.

At present life imprisonment in the Republic of Kazakhstan is established *only as an alternative to the death penalty for committing especially serious offences infringing upon human life* and can be imposed in cases where the court would consider it possible not to apply a death penalty (part 4, Article 48 of the RK CC).

The draft Law proposes an expansion to the application of life imprisonment in the Republic of Kazakhstan by way of introducing changes and amendments in Article 48 of the CC having

[19] Ibid.

[20] See: Attachment 1. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. U.N. Doc. E/CN.4/1985/4 (1985). Adopted in May 1984 by the group of international experts in human rights convened by the International Commission of Jurists, the International Association of Penal Law, the American Association for the International Commission of Jurists, the Urban Morgan Institute for Human Rights and the International Institute of Higher Studies in Criminal Sciences in the city of Siracusa (Italy).

determined this sanction as a separate form of penalty for a number of serious crimes which the draft Law transfers to the category of especially serious ones.

Expanding the sphere of the application of life imprisonment to offences related to illicit drug trafficking, namely those which do not infringe directly upon human life, does not seem justified from the point of view of the logical development of the RK criminal legislation. Therefore a proposed amendment[21] into part 4, Article 48 of the RK CC, according to which life imprisonment will be imposed for all especially serious offences, evokes objection. This, in fact, is a contradiction of the recent tendency to humanize criminal policy, to have a balanced approach to using the most severe punitive measures and to fully phase out the death penalty.

In conformity with changes and amendments to the RK Constitution adopted in May 2007,[22] "… death penalty is established by the law as an exceptional measure of punishment for terror crimes involving the death of people as well as for especially serious crimes committed in times of war…".

In view of these changes and amendments to the RK Constitution, at present the Interdepartmental Commission to Study the Issue of Death Penalty Abolition in the RK is discussing the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into some legislative acts of the Republic of Kazakhstan on the issues of death penalty".

In conformity with this draft Law it is proposed that changes and amendments be introduced into a number of articles including Articles 48 and 49 of the General Part of the RK CC and several articles of the Special Part of the RK CC. It is proposed that life imprisonment should become a separate form of punishment, not an alternative to the death penalty, however, *only for especially serious crimes involving the infringement upon human life.*

In this connection it should be noted that the draft Law on increasing responsibility for the illicit traffic of narcotic drugs has not been harmonized with the draft Law on the issues of the death penalty, which is due to be submitted for consideration of the Mazhilis at the beginning of 2008.

Therefore it seems appropriate to postpone the consideration of the draft Law on increasing responsibility for the illicit traffic of narcotic drugs until the Law on "Introducing changes and amendments into some legislative acts of the Republic of Kazakhstan on the issues of death penalty" is considered and adopted, because it is the latter that will determine the boundaries of applying life imprisonment as a form of punishment replacing the death penalty with the reduction of its use or full abolition.

3.4. Forms of life imprisonment

The draft Law is supplemented with information and reference materials,[23] prepared by the Information and Research Department of Administration of the RK Parliament Mazhilis, which describe the experience of a number of countries regarding criminal responsibility for illicit drug trafficking related crimes.

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[21] See: Comparative Table to the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of the illicit traffic of narcotic drugs" (1 reading) and to "The Opinion of the Committee on Legislation and Judicial Reform of the RK Parliament Mazhilis on the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of enhancing responsibility in the area of the illicit traffic of narcotic drugs".

[22] See: the Law of the Republic of Kazakhstan "Introducing changes and amendments to the Constitution of the Republic of Kazakhstan No. 254-III of 21 May 2007.

[23] See: Information and reference materials "The international experience of establishing life imprisonment for committing narco-crimes", prepared by the Information and Research Department of the Administration of the Parliament Mazhilis of the Republic of Kazakhstan.

Unfortunately, there are inaccuracies regarding the application of life imprisonment in these materials. Nor do they provide guidance as to how profoundly the practices of various states differ from one another on the issue of the application of life imprisonment.

For example, they state that Belgium and Luxemburg belong to countries where life imprisonment can be applied for illicit drug trafficking related crimes. This information does not correspond to the real situation. It is not confirmed by the 2007 data of the European Monitoring Centre for Drugs and Drug Addiction.[24]

In the materials of the Administration of the RK Parliament Mazhilis, Ireland and Greece are included in the group of countries where life imprisonment is imposed for drug-related crimes; however, they do not specify what model of life imprisonment is used there.

In principle, in Ireland, life imprisonment can mean life, until the natural death of the prisoner. However, not in every case does life imprisonment equate to actually serving life in prison. Granting temporary or early release (release on parole) of life-sentenced prisoners is quite common. A special commission can take a decision to release a prisoner on parole after he/she has served seven years in prison. According to statistics, a life-sentenced prisoner on average serves a custodial sentence of not more than 12 years before an early release can be applied regarding him/her. As a rule, those sentenced for serious drug-related crimes should serve not less than 10 years before they have the right to parole.

In Greece life imprisonment is fixed and cannot exceed 25 years whatever the circumstances. A person sentenced to life imprisonment can be released on parole after 16 years have been served. If sentenced to more than one life term, a person must serve at least 20 years before being eligible to apply for parole.

Life imprisonment for certain crimes related to illicit drug trafficking is provided for in France, Estonia and Cyprus; however, these countries do not have indefinite life custodial detention either. Those sentenced to this form of punishment can be eligible for parole after a certain time has been served.

On the whole, the overview of the legislation of 15 European countries shows that ten of them do not impose life imprisonment for crimes related to illicit drug trafficking and the remaining five do have such form of penalty but it either has a fixed character or envisages the possibility of parole after a fixed amount of time (sometimes from 5-7 years).

The information material supplementing the draft Law does not reflect the fact that life imprisonment does not always mean custodial sentence until the death of the prisoner.

As a minimum, there exist two forms of life imprisonment in the world: fixed and variable. Many European countries practise fixed life imprisonment. Variable life imprisonment exists, for example, in the USA, Great Britain and Canada. However, this does not mean that persons sentenced to life imprisonment stay in custody until they die. In Great Britain and the USA, courts, for example, often fix a term, which has to be served by a prisoner jailed for life. On expiration of such a term, prisoners, as a rule, have the right to apply for parole supervised for the rest of their lives, or not, as the case may be.

The practice of applying life imprisonment in many countries makes it possible to take into account individual circumstances of the life-sentenced prisoners and to choose, with consideration of all risks, the most appropriate model of serving the sentence in order to

[24] See: Supplement 2. Review of legislation in the field of combating narco-crime in a number of European countries (2007). Information of the European Monitoring Centre for Drugs and Drug Addiction. Up-dated information. http://profiles.emcdda.europa.eu/

achieve a balance between public interests and the realities of the prison system. In any case, a global tendency in imposing fixed term life imprisonment can be observed.

The Legislation of the Republic of Kazakhstan provides for an indeterminate length of life imprisonment, which is used as an alternative to the death penalty. The life-sentenced persons can only apply for conditional early discharge (CED) after they have actually served 25 years in custody (part 5, Article 70 of the RK CC). Therefore, if the grounds for applying life imprisonment are expanded to include a number of especially serious crimes, then, apparently, it will be necessary to discuss the question as to what form of life imprisonment should be selected for this category of crime.

In this context, it is also important to bear in mind that the prison population serving long terms including life sentences, is currently rising. Consequently, the penal system should respond with pro-active reforms. It should be prepared for the fact that the proposed legislative changes will have a profound effect on the make up of the prison population.

4. COMMENTS ON THE PART OF THE DRAFT LAW PROVIDING FOR THE INCREASE OF ADMINISTRATIVE RESPONSIBILITY FOR COMMITTING OFFENCES RELATED TO ILLICIT DRUG TRAFFICKING.

4.1. Increasing administrative responsibility for distribution of drugs in recreational organisations

The draft Law provides for the increase and differentiation of administrative responsibility under Article 319-1 "Failure to take measures to suppress the distribution and use of narcotic drugs, psychotropic substances and precursors".[25]

The fact can undoubtedly be accepted that the most effective method of tackling the distribution of drugs in recreational establishments should be an increase in administrative responsibility. The proposed scheme of differentiating the perpetrators also appears to be logical (see Tables 1 and 2).

At the same time the sanction under Article 319-1 should clearly state for what length of time the activities of a recreational organisation could be suspended. The introduced definition of such an organisation in general matches similar definitions in foreign practice (see Table 1).

Table 1. Proposed changes in part 1 of Article 319-1 (sanction)[26]

Perpetrator	Current sanction	Proposed sanction	
Public officials and/or owners	From 50 to 200 MCI (minimum calculation index) with or without suspension of activities	From 50 to 150 MCI with suspension of activities	
Legal entities	From 500 to 1000 MCI with or without suspension of		

[25] See: The Code of the Republic of Kazakhstan on Administrative Offences of 30 January 2001.

[26] The name and the description of the offence of part 1 of Article 319-1 are also changed because according to the current article the administrative responsibility is invoked by the presence of two facts – drug dealing and the use of drugs. In conformity with the new version administrative responsibility will be invoked by the presence of at least one fact. The proposed wording "Failure of a public official and/or owner of the recreational organisation to undertake measures to suppress the distribution and (or) non-medical use of narcotic drugs, psychotropic substances and precursors (part 1, Article 319-1 – description of the offence)".

	activities		
		Legal entities – small and medium businesses	from 200 MCI to 300 MCI with suspension of activities
		Legal entities – large businesses	from 700 MCI to 1000 MCI with suspension of activities

Table 2. Proposed changes in part 2 of Article 319-1 (sanction)[27]

Perpetrator	Current sanction	Proposed sanction	
Public officials and/or owners	From 200 to 400 MCI with or without prohibition of sole trader's activities	from 200 to 300 MCI with prohibition of sole trader's activities	
Legal entities	from 1000 MCI to 2000 MCI with or without prohibition of activities of a legal entity		
		Legal entities – small and medium businesses	From 350 MCI to 400 MCI with or without prohibition of activities of a legal entity
		Legal entities – large businesses	From 1000 MCI to 2000 MCI with prohibition of activities of a legal entity

4.2. Administrative detention. Differentiation of administrative sanctions

The draft Law provides for the increase of administrative responsibility for illicit manufacture, refining, acquisition or dispatch of narcotic drugs, psychotropic substances and precursors without intention to sell, which do not have features of criminally punishable acts. According to the current legislation such illicit actions are subject to fines. The proposed changes in part 1 of Article 320 introduce a minimum limit of sanctions in the form of a fine depending on the perpetrator as well as the possibility of imposing administrative detention as an alternative to a fine. Detention can be applied to both physical persons and public officials (see Table 3).

Table 3. Proposed changes in part of Article 320 (sanction)

Perpetrator	Current sanction	Proposed sanction	Alternative sanction
Physical persons	Up to 10 MCI	From 5 to 10 MCI	Administrative detention up to 10 days
Public officials	Up to 30 MCI	From 15 to 20	Administrative detention

[27] Proposed description of the offence of part 2, Article 319-1: «Actions **(failure to act)** under part one of this Article committed for the second time within a year after the imposition of administrative penalty".

		MCI	up to 15 days
Sole traders	Up to 30 MCI	From 25 to 30 MCI	**No provision for administrative detention**
Legal entities – small and medium businesses	Up to 30 MCI	From 25 to 30 MCI	-
Legal entities – large businesses	Up to 50 MCI	From 40 to 50 MCI	-

These proposals are based on the fact that "the practical application of the RK CoAO shows that the actual recovery of fines established by the sanction of Article 320 of the RK CoAO is low since the prosecuted persons do not pay fines voluntarily, and the fine recovery through bailiffs is complicated due to specific idiosyncrasies and personal features of perpetrators. As a rule, such persons are insolvent."[28] The justification also states that the existing law does not allow for liability for repeat offending within a year, which does not facilitate the prevention of narco-crime and stepping up the fight against the drugs business; and the offenders when detained are only punished by small fines. However, despite the aforesaid, the draft Law does not have changes aimed at the prevention of repeat offences.[29]

The draft Law requires further improvement with the aim of increasing its impact upon offenders.[30] Primarily, it involves the differentiation of administrative sanctions and reconsideration of their repression constituent.

First, this process, as we see it, has to be part of a wider reform of administrative legislation in view of some decriminalisation of the RK Criminal Code.

Second, it should be noted that the practices of many states allow for a number of administrative punishment measures as alternative to fines. For example, Spain, Great Britain and Germany, apart from fines, in order to counteract such offences, may impose a caution, referral for a course of treatment, community work as well as counselling in a rehabilitation institution or with social services. Moreover, such measures are sometimes used as an alternative to administrative punishment. Practice shows that such forms of response are more effective than a fine or deprivation of liberty. They are also more appropriate from the point of view of financial expenses and channelling the efforts of the law-enforcement bodies to deal with really serious offences. Only when such administrative offences are committed recurrently or multiply, a penalty in the form of a fine, administrative detention or deprivation of liberty could be selected with regard to the offender.

Proposals to part 1 of Article 320 are questionable from the point of view of their corruption constituent since they allow for a big "gap" between the fine and administrative detention.

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[28] See: Comparative Table to the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of the illicit traffic of narcotic drugs" (1 reading) and to "The Opinion of the Committee on Legislation and Judicial Reform of the RK Parliament Mazhilis on the draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of enhancing responsibility in the area of the illicit traffic of narcotic drugs".

[29] It would be more than naïve to assume that the mere fact of the possibility to apply an administrative detention per se would help to prevent recurrent offences.

[30] It is obvious that the appropriate organisational measures have to be undertaken too. Until now a "common system of centralized recording and collection of fines ensuring the imminent character of punishment" has not been created in the Republic of Kazakhstan; nor has the appropriate work been carried out "to enhance the internal control over compliance with the law in applying measures of administrative punishment". In any case none of the covering documents to the draft Law mention such steps and results obtained. See: "The Guidelines for the Legal Policy of the Republic of Kazakhstan" (2002).

Introducing administrative responsibility for offences in the area of illicit drug trafficking in the form of administrative detention where fines cannot be collected from those who have committed an administrative offence, is not a sufficiently justifiable measure in the light of the policy of humanization, according to which any deprivation of liberty should be an exceptional measure.

Otherwise such logic implies that any persons, who, for example, have committed a criminal offence and are unable to pay fines, should also be subjected to nothing but deprivation of liberty. However, such an approach is flawed as it leads to the growth of the prison population and its further criminalization in custody.

One upside is that the new amendments to Articles 319 and 320 of the RK COAO introduce additional differentiation of administrative sanctions depending on the perpetrator. Such changes comply with international requirements.

MAIN CONCLUSIONS AND RECOMMENDATIONS

The draft Law of the Republic of Kazakhstan "Introducing changes and amendments into the Criminal Code of the Republic of Kazakhstan and the Code of the Republic of Kazakhstan on Administrative Offences with regard to the issues of increasing responsibility in the area of illicit traffic of narcotic drugs" requires serious revision with consideration of the following conclusions and recommendations:

1. The draft Law on increasing responsibility in the area of illicit drug trafficking is not harmonised with the draft Law on the issues of the death penalty, which is expected to be submitted to the Mazhilis at the beginning of 2008. In conformity with it, it is proposed to make life imprisonment a separate form of punishment and not an alternative to the death penalty, however, only **for especially serious crimes involving the infringement upon human life.** Therefore it would be expedient to postpone the work on the draft Law on increasing responsibility in the area of illicit drug trafficking until the adoption of the Law on the issues of the death penalty.

2. It is important for the legislator to determine the general direction in which the criminal legislation in this area is going to develop. In other words, to what extent its toughening, if needed, has to be balanced by its differentiation. The important element of such work is to check as to how "proportional" the proposed changes will be with regard to the sanctions of other offences under the RK CC.

3. The justification of the draft Law set forth in the Explanatory Note, does not give a clear-cut idea as to what extent the proposed measures will be effective, proportional and dissuasive. The Note does not have the necessary statistics, which would allow for drawing conclusions about the situation in combating organised crime in the area of illicit trafficking of drugs and the anticipated effect of the proposed measures.

4. The effectiveness of tackling narco-crime can only be ensured through the use of a complex approach. Prior to toughening sanctions it is necessary also to consider other possibilities of tackling drug-related crime proceeding from the principle of "sparing use of criminal repression" secured in the Guidelines for the Legal Policy of the Republic of Kazakhstan.

5. The draft Law should take into account all tendencies together with the international experience, not restricting itself solely to the increase of criminal responsibility for offences related to the illicit traffic of drugs. It is important to take into consideration various practices of life imprisonment existing throughout the world. There has to be justification provided for specific forms of such punishment.

6. When working on the draft Law it is recommended that international standards in the area of tackling illicit drug trafficking be taken into consideration, including the Framework Decision of the European Union Council No.2004/757/JHA of 25 October 2004.

7. Introducing life imprisonment for drug-related crime constitutes an extreme and exceptional measure. Its inclusion in the national legislation should involve preliminary wide and professional discussion. It is important also to bear in mind that, once the legislator has taken a decision favouring the introduction of life imprisonment, it will be problematic to repeal it in case it proves ineffective, since public opinion does not appreciate any relaxation in tackling drug trafficking.

8. Narco-crime constitutes a serious problem and requires adequate efforts to counteract it. However any references to the threat to national security as a means to justify the increase of responsibility in the area of illicit drug trafficking, are incorrect from the point of view of international law (the International Covenant on Civil and Political Rights, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. U.N. Doc. E/CN.4/1985/4 (1985)).

9. At present Parliament is considering the package of draft laws in the area of counteracting legalization (laundering) of illicit proceeds and financing terrorism. In this respect it is important to harmonise a number of provisions of this package of draft laws with the draft Law on the issues of increasing responsibility in the area of illicit drug trafficking.

10. The concept of confiscation in the draft Law of the RK has to be made more precise in conformity with international standards in the area of counteracting the legalization (laundering) of illicit proceeds.

11. The setting out in part 3 of Article 48 of certain offences related to illicit drug trafficking seems to be not completely justified from the point of view of legal drafting methodology owing to the fact that on the whole the articles belonging to the General Part of the RK CC, concerned with the forms of punishment, do not normally list separate offences or articles which provide for responsibility for their commissioning.

12. The sanction of Article 319-1 of the RK CoAO should clearly indicate the length of time for which the activities of a recreational organisation could be suspended.

13. Introducing administrative responsibility for offences in the area of the illicit traffic of narcotic substances (part 1 of Article 320 of the RK CoAO) in the form of administrative detention where fines cannot be collected from persons who have committed an administrative offence, is not a justified measure in the light of the policy of humanization according to which any deprivation of liberty should be an exceptional measure.

The proposals to be introduced into part 1 of Article 320 are questionable with regard to their corruption constituent since they allow for a large “gap” between the fine and administrative detention. It is necessary to develop a well-organized and differentiated system of penalties for administrative offences in this area with consideration of the international experience (referral for treatment, community work and so on).

2008, January