

2024 Questionnaire of the 3rd Study Commission IAJ

In 2024, the Third Study Commission of the International Association of Judges (IAJ) intends to study the rapid evolution of illicit drug manufacturing and the challenges this unstoppable process poses to successful prosecution.

Kazakhstan:

1. Does your country have legislation, or regulations, and/or court rules of procedure that are relevant to the topic of our focus this year – chemical substances and essential equipment possibly used in illicit drug manufacturing and trafficking, including importing, exporting, for domestic distribution and use and private sector due diligence.

Answer: Yes, there is.

Law of the Republic of Kazakhstan No. 279 from 10 July 1998 on narcotic drugs, psychotropic substances, their analogues and precursors and measures to counter their illicit trafficking and abuse.

Resolution of the Government of the Republic of Kazakhstan dated 3 July 2019 No. 470 On approval of the list of narcotic drugs, psychotropic substances and precursors subject to control in the Republic of Kazakhstan, the summary table on classification of narcotic drugs, psychotropic substances, their analogues and precursors found in illicit trafficking to small, large and especially large sizes, the list of substituents of hydrogen atoms, halogens and (or) hydroxyl groups in structural formulas of narcotic drugs, psychotropic substances".

2. Does your country have specific legislation on precursors control?

Answer: Yes

3. In your country, is an approval by a judge a pre-condition to launch investigations into a case of diversion and trafficking of precursors? Similarly, is a court order or approval by a judge required for effecting controlled or monitored deliveries?

Answer: These actions are stipulated by Chapter 30 of the Code of Criminal Procedure of the Republic of Kazakhstan.

4. When a drug/precursor-related crime is being investigated in your country, does the judiciary have any role (a) in the request for information from a foreign state and/or (b) in the provision of information to a foreign state?

Answer: Yes. These actions are regulated by Chapter 59 of the Code of Criminal Procedure of the Republic of Kazakhstan.

5. Does your country have legislation or court rules that relate to monitoring manufacture and distribution of precursors which are applicable over the entire national territory?

Answer: Yes, but only in terms of judicial practice of consideration of criminal cases of this category.

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan from 14 May 1998 No. 3 "On the application of legislation in cases involving illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors".

6. Does your country have legislation or court rules that establish as a criminal offence the manufacture, transport and distribution of essential equipment intended to be used for illicit drug manufacturing.

Answer: Yes, in terms of judicial practice of consideration of criminal cases of this category.

Normative decision of the Supreme Court of the Republic of Kazakhstan from 14 May 1998 No. 3 "On the application of legislation in cases involving illicit trafficking in narcotic drugs, psychotropic substances, their analogues and precursors".

7. In respect of non-scheduled chemicals/ equipment, is the fact that they have been mis-declared before the Customs, sufficient to impute 'knowledge' on the part of the supplier of their being used for illicit drug manufacture?

Answer: Everything is individualised, in accordance with the requirements of the criminal law and procedural law.

8. In your country, does domestic legislation include measures and/or civil, criminal and/or administrative sanctions to address non-scheduled chemicals and emerging precursors, namely those that are used as starting materials and/or intermediaries in the legitimate manufacture of substances in Table I and Table II of the 1988 Convention? If yes, which type of sanctions?

Answer: Criminal sanctions are provided for those chemicals included in the List of narcotic drugs, psychotropic substances, their analogues and precursors.

9. Please elaborate on specific pieces of information and level of details that would allow you as a judge to act on information/intelligence/evidence received from counterparts in investigations related to new emerging drug precursor chemicals not under control in your country.

Answer: I cannot explain, as the court is guided only by the data that, according to the procedural law, must be taken into account in sentencing. Judges cannot use information from their colleagues or other sources regarding new precursor chemicals or use them, as the court is not a criminal prosecution body and does not stand on the side of prosecution or defence, it is guided only by the law (Criminal Code, CPC, normative resolutions of the Supreme Court and other legislative acts of the Republic of Kazakhstan).

10. Are there any specific provisions that allow you as judge to act on non-scheduled chemicals with no known legitimate uses? Would information from an international body, or a collection of information from other countries, that a chemical has no known legitimate use facilitate your work in any way?

Answer: There are no such provisions. The criminal case is submitted to the court with forensic examinations already conducted, and if the court has doubts about the correctness or legality of the examination, the court has the right to order a second examination. There are no other provisions under which the court would be empowered to seek evidence of the legality or illegality of the use of a seized substance.

11. As a judge, if you receive a request for assistance in a drug/precursor-related crime from a foreign country, whether at the investigation stage or in the context of a court proceeding (a hearing or a trial), how is it relevant to your determination to ensure that basic human rights, principles of natural justice, and/or rules of procedural fairness that exist in your country are respected?

Answer: These actions are regulated by Chapter 59 of the CPC RK. All actions of a judge when considering the issue of legal assistance to a foreign state are carried out in accordance with concluded agreements, ratified acts.

12. Describe your own personal experience(s) as a judge that are relevant to the topic of our focus this year, whether it be presiding over an extradition hearing (a request to extradite an accused person to another country in order to be prosecuted in that other country), or receiving evidence in a court proceeding in your country from a witness who is testifying from another country and with the help of court officials in that other country, or helping to arrange for a witness in a court proceeding in another country to testify from a place in your own country, or responding to a request for assistance from an international court such as The Hague, or something else. These are just examples of things that you may have experienced; they are not meant to be exhaustive.

Answer: All actions of a judge (court) when considering the issue of extradition, examination of a witness and other actions related to the provision of legal assistance are carried out in accordance with the norms of the Code of Criminal

Procedure. I do not have any special attitude to these issues. All my actions were carried out in accordance with the CPC, the regulations of the court session, and the powers vested in the court (bringing, notification, connection to the court session, etc.).
