

## **Criminal Procedure Code of the Republic of Kazakhstan**

### *Unofficial translation*

The Code of the Republic of Kazakhstan dated July 4, 2014 No. 231.

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**Footnote.** The table of contents is excluded by the Law of the Republic of Kazakhstan dated 29.06.2021 No. 58-VII (shall be enforced ten calendar days after the day of its first official publication).

### **General part Section 1. General provisions Chapter 1. The criminal procedure legislation of the Republic of Kazakhstan Article 1. The legislation, governing criminal proceedings**

1. The procedure for criminal proceedings in the territory of the Republic of Kazakhstan is determined by the Constitution of the Republic of Kazakhstan, constitutional laws, Criminal Procedure Code of the Republic of Kazakhstan, based on the Constitution of the Republic of Kazakhstan and the generally recognized principles and norms of international law. Provisions of other laws, governing criminal proceedings, shall be included in this Code.

2. International contractual and other obligations of the Republic of Kazakhstan, as well as normative resolutions of the Constitutional Court and the Supreme Court of the Republic of Kazakhstan regulating the procedure of criminal proceedings, are an integral part of criminal procedural law.

3. If in the course of criminal proceedings it is necessary to address the issue that should be resolved in accordance with the civil or administrative law, it shall be resolved in civil or administrative proceedings.

**Footnote.** Article 1 as amended by the Law of the Republic of Kazakhstan dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).

### **Article 2. Application of prevailing legal norms in criminal proceedings**

1. The Constitution of the Republic of Kazakhstan shall have supreme legal force and direct effect throughout the territory of the Republic of Kazakhstan. In case of conflict between the rules of this Code and the Constitution of the Republic of Kazakhstan, the provisions of the Constitution of the Republic of Kazakhstan shall apply.

2. In case of conflict between the rules of this Code and the constitutional law of the Republic of Kazakhstan, the provisions of the constitutional law shall apply. In case of conflict between the rules of this Code and other laws, the provisions of this Code shall apply.

3. International treaties, ratified by the Republic of Kazakhstan shall have priority over this Code and shall apply directly, unless the international treaty provides that its application shall require the issuance of law.

### **Article 3. Effect of the Criminal procedure law in space**

1. Criminal proceedings in the territory of the Republic of Kazakhstan, regardless of where the criminal offence committed, shall be conducted in accordance with this Code.

2. If an international treaty, ratified by the Republic of Kazakhstan stipulates other rules for application of this Code in the space, the rules of the international treaty shall apply.

### **Article 4. Application in the territory of the Republic of Kazakhstan of the criminal procedural law of a foreign country**

Application in the territory of the Republic of Kazakhstan criminal procedural law of a foreign country by the investigating bodies and the courts of a foreign country or on behalf of them by the body, conducting the criminal proceedings, shall be allowed, if an international treaty, ratified by the Republic of Kazakhstan provides that.

### **Article 5. Effect of the Criminal procedure law in time**

1. Criminal proceedings shall be carried out in accordance with the Criminal Procedure Law, enacted by the time of performing a procedural action, and the procedural decision-making.

2. Admissibility of evidence is determined in accordance with the law in force at the time of their receipt.

### **Article 6. Effect of the Criminal procedure law against foreigners and stateless persons**

1. Criminal proceedings against foreigners and stateless persons shall be carried out in accordance with this Code.

2. Features of the criminal proceedings pending against, or involving persons with diplomatic or other privileges and immunities, established by international treaties of the Republic of Kazakhstan, shall be determined in accordance with Chapter 57 of this Code.

### **Article 7. Clarification of some definitions, used in this Code**

The definitions, used in this Code, unless otherwise stated in the law, have the following meanings:

1) extradition of a person (extradition) – issuing to the State of a person, wanted for criminal prosecution or execution of sentence;

2) the prosecution party - the criminal prosecution bodies, as well as the complainant (private prosecutor), civil claimant, their legal representatives and representatives;

3) a juror - a citizen of the Republic of Kazakhstan, called to participate in the consideration by the court of a criminal case in the manner prescribed by this Code, and took the oath;

4) court of appeal - a court hearing the case on the merits of appeals and appeal petitions of the prosecutor against unenforceable sentences, decisions of the court of first instance;

5) special knowledge - not well-known in the criminal process knowledge, acquired during professional training or practical activities and used to solve problems in criminal proceedings;

6) special scientific knowledge - areas of special knowledge, the contents of which constitute scientific knowledge, implemented in methods of forensic research;

7) applicant - the person that reported on the criminal offence or addressed the court or the criminal prosecution bodies for the protection in the criminal proceedings of his (her) real or perceived rights, or the rights of the person concerned;

8) main trial - the consideration of a criminal case on the merits by a court of first instance ;

9) Court of first instance - district and equivalent courts (city, specialized inter-district courts, military garrison courts), which hear criminal cases under their jurisdiction that have been received after the completion of the pre-trial investigation or after the annulment of the judicial act by a higher court or upon a complaint by a private prosecutor, specialized investigative courts, specialized inter-district investigative courts, which hear complaints about decisions and actions (inaction) of the persons conducting the pre-trial investigation, and the prosecutor;

10) scientific and technological means - devices, special equipment, materials, legitimately applied to detect, control, seizure and examination of evidence;

11) close relatives - parents, children, adoptive parents, adopted persons, full and half brothers and sisters, grandparents, grandchildren;

12) covert investigative action - an action carried out in the course of pre-trial proceedings without prior notification of the persons concerned, in the manner and cases provided for by this Code;

13) legal representatives -parents (parent), adoptive parents, guardians of the suspected, accused, complainant, civil claimant, as well as representatives of organizations and individuals, in the care or maintenance of which are the suspected, the accused or the complainant;

14) court of cassation - the collegium of the Supreme Court of the Republic of Kazakhstan, hearing the case on petitions, submissions, protests against sentences, decisions of the courts of the first instance and courts of appeal;

15) electronic document - a document in which the information is provided in electronic digital form and certified by means of an electronic digital signature;

16) decision – any decision of the court, except the sentence, the decision of the investigator, the body of inquiry, investigator, prosecutor, adopted during the criminal proceedings;

17) protection - procedural activities, carried out by the defense team in order to ensure the rights and interests of persons who are suspected, accused of a criminal offence, the denials or mitigate suspicions, accusations, as well as rehabilitation of persons, unlawfully subjected to criminal prosecution;

18) defense team- the suspected, accused, convicted or acquitted, their legal representatives, defense counsel, civil defendant and his (her) representative;

19) final decision - any decision of the body, conducting the criminal proceedings, excluding the beginning or continuation of the proceedings, as well as deciding, though not completely, the case on the merits;

20) competent body - the body, conducting the criminal proceedings, which makes a request (order, petition) in accordance with section 12 of this Code or provides execution of the request (order, petition) for legal assistance;

21) legal assistance - conducting by the competent bodies of one State on request (order, petition) of the competent bodies of another state or international judicial institutions of proceedings, necessary for the pre-trial investigation, adjudication of a case or enforcement of the judicial act;

22) criminal prosecution (prosecution) - procedural activities, carried out by the prosecution party in order to establish the acts, prohibited by criminal law, and the perpetrator, the guilt of the latter with a criminal offence, as well as to ensure the application to such person of punishment or other measures of criminal law;

23) bodies (officials) of criminal prosecution - procurator (state prosecutor), investigator, the body of inquiry, interrogating officer;

24) other persons participating in the criminal process - the secretary of the court session, translator, witness, witness, expert, specialist, bailiff, mediator;

25) participants in criminal proceedings - bodies and persons who carry out criminal prosecution and support charges in court, as well as persons who protect their rights and interests during the proceedings on a criminal case: a prosecutor (public prosecutor), an investigator, a body of inquiry, an inquirer, suspected, witness entitled to defense, accused, their legal representatives, defender, civil defendant, victim, private prosecutor, civil plaintiff, their legal representatives and representatives;

26) body, conducting the criminal proceedings - court, as well as in the pre-trial investigation - procurator, investigator, the body of inquiry, interrogating officer;

27) criminal case - a separate production, conducted by the criminal prosecution body and (or) by the court regarding one or more criminal offences;

28) state prosecution - procedural activity of the procurator in the court of first instance and court of appeal, consisting in proving the accusations for the purpose of criminal prosecution of the person that committed a criminal offence;

29) actual detention - restriction of the freedom of the detained person, including freedom of movement, forced confinement in a certain place, forced conveying to the bodies of inquiry and investigation (capture, closing in the room, forced to go somewhere or stay in place, and so on), as well as any other actions that substantially restrict personal freedom, from the time up to the moment when these restrictions become real, regardless of giving the detainee any procedural status or performing other formal procedures;

30) protest, prosecutor's application is an act of the procuratorial supervision and reaction of the procurator to the decision of the court and the investigating judge in a criminal case, made within the limits of his competence and an order provided by the present Code;

31) central body - the body, authorized on behalf of the State to consider in the manner prescribed by this Code, a request (order, petition) of the competent body of a foreign state or international judicial institutions and to take steps to organize its execution or send to a foreign state a request (order, petition) of the competent body for legal assistance;

32) representatives – persons, authorized to represent the legitimate interests of the victim, civil claimant, private prosecutor, civil defendant under the law or agreement;

33) petition - a request of the party or an applicant addressed to the body, conducting the criminal proceedings, on the production of proceedings or adoption of a procedural decision, and in the court of cassation - an appeal for revision of the judicial act that entered into legal force in cassation procedure;

34) head of the procuracy authorities - the Procurator General of the Republic of Kazakhstan, procurators of regions and equivalent procurators and their deputies, as well as procurators of districts, cities and equivalent procurators and their deputies, acted within their jurisdiction;

35) procedural procurator - the procurator to which in accordance with this Code, by the head of the procuracy is entrusted the supervision over the application of laws in the criminal case;

36) procedural actions - actions to be taken in the course of criminal proceedings in accordance with this Code;

37) procedural agreement – the agreement concluded between the procurator and the suspected, accused or defendant at any stage of the criminal proceedings, or with the convicted person in the manner and on the grounds, provided by this Code;

38) procedural decisions - acts of the bodies, conducting the criminal proceedings, issued in connection with the execution of the criminal proceedings;

39) Sanction - permission of the court to commit a procedural action during pre-trial proceedings by the body of criminal prosecution;

40) court - judicial authority, any legally constituted court that is a part of the judicial system of the Republic of Kazakhstan, and considering the cases collectively or individually;

40-1) report on the completion of the pre-trial investigation - based on the collected factual data, brief conclusions of the person conducting the pre-trial investigation on the completion of the pre-trial investigation and referral of the case to the prosecutor for drawing up an indictment and referral of the case to the court;

Footnote. Article 7 is supplemented by paragraph 40-1), in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up indictment, which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

41) pre-trial proceedings - the proceedings in the case from the beginning of the pre-trial investigation to sending by the procurator the case to the court for consideration on the merits or the termination of the proceedings, as well as the preparation of materials for the criminal case by the private prosecutor and defense team;

42) Judge - the carrier of the judiciary; professional judge, appointed or elected to the position in accordance with the law (the Court Chairman, the Chairman of the Judicial Board, the judge of the relevant court);

43) requesting party - the state, the competent body of which makes a request (order, petition), or an international judicial institution;

44) requested party - the state, to the competent body of which a request (order, petition) is sent;

45) parties - bodies and persons, engaged in the proceedings on the basis of competitiveness and equality of the prosecution (criminal prosecution) and protection from prosecution;

46) investigative jurisdiction - a set of grounds defined by this Code on which the investigation of criminal offences shall be within the competence of one or another body of criminal prosecution;

47) investigating judge – a judge of the court of first instance, exercising powers under this Code during the pre-trial proceedings;

48) presiding judge - a judge, presiding at the collegiate criminal proceedings or hearing the case alone;

49) dwelling place - a room or building for temporary or permanent residence of one or more persons, including own or rented apartment, house, garden house, hotel room, cabin, compartment; directly adjoining verandas, terraces, galleries, balconies, roof structure, basement and attic of a residential building, except for an apartment house, as well as a river or sea vessel, and others;

50) relatives - persons in kinship, having common ancestors to the great-father and great-grandmother;

51) night time - the period from twenty-two to six hours local time;

52) sentence - a court decision, issued by the court of first instance, the court of appeal on the issue of guilt or innocence of the accused, and the use or non-use of punishment to him (her);

53) is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015);

54) protocol - a procedural document, which fixes the procedural action performed by the body conducting the criminal procedure, and in cases expressly provided for by the articles of this Code, - the procedural decision of the person conducting the pre-trial investigation;

55) complaint - the act of responding of the trial participants to the actions (inaction) and decisions of the bodies of inquiry, preliminary investigation, the procurator or the court, as well as the requirement of a person for criminal prosecution in the private or private-public order;

56) search measures (activities) – the measures, performed on behalf of the body, conducting the criminal proceedings, the actions of the body of inquiry aimed at establishing the location of persons, hiding from the body, conducting the criminal proceedings, and (or) avoiding criminal liability, the untraceable missing persons, objects and documents, relevant to the case, as well as identification of the perpetrators of a criminal offence;

57) proceedings - a set of procedural actions and decisions, undertaken in a particular criminal case during its pre-trial and judicial proceedings;

58) extradition arrest - an interim measure for execution of the decision of the competent body of a foreign state on the detention of a person in custody, to be applied by the court against the person sought for the purpose of extradition to a foreign state.

Footnote. Article 7, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (the procedure of enactment see Art. 2); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first

official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ).

## **Chapter 2. Objectives and principles of criminal procedure Article 8. The objectives of criminal procedure**

1. The objectives of criminal procedure are prevention, impartial, prompt and full disclosure, investigation of criminal offences, exposure and bringing to justice those who committed them, a fair trial and the correct application of the criminal law, the protection of persons, society and the state from criminal offences.

2. The legal procedure in criminal cases shall ensure protection against unjustified accusation and conviction, unlawful restriction of the rights and freedoms of man and citizen, and in the case of illegal accusation or conviction of an innocent person – his (her) immediate and complete rehabilitation, as well as to contribute to strengthening the rule of law, prevention of criminal offences, the formation of respect for the law.

## **Article 9. The principles of criminal procedure and their meaning**

1. The principles are the fundamental beginning of the criminal procedure, defining the system and the contents of its stages, institutions and norms that provide the general conditions for exercise of the rights and obligations of participants to the proceedings, and the decision of its tasks.

2. Violation of the principles of the criminal procedure, depending on its nature and materiality, implies the recognition of the procedural action or decision as unlawful, cancellation of the decisions, made in the course of such proceedings or recognition of the materials collected as not to have the strength of evidence or the proceedings held as invalid.

## **Article 10. Legality**

1. Court, procurator, investigator, the body of inquiry and interrogating officer during criminal proceedings shall strictly follow the requirements of the Constitution of the Republic of Kazakhstan, this Code and other regulatory legal acts, referred to in Article 1 of this Code.

2. Courts have no right to apply laws and other regulatory legal acts that infringe on the rights and freedoms of a person and citizen enshrined in the Constitution of the Republic of Kazakhstan. If the court finds that a law or other regulatory legal act subject to application infringes on the rights and freedoms of a person and citizen enshrined in the Constitution of the Republic of Kazakhstan, it is obliged to suspend the proceedings and apply to the Constitutional Court of the Republic of Kazakhstan with a recommendation on recognition of this act as unconstitutional.



3. Violation of the law by the court, the bodies of criminal proceedings in the criminal proceedings is inadmissible and entails liability under the law, annulment of illegal acts and their abolition.

4. In case of conflict of norms of this Code, those of which that comply with the principles of criminal procedure shall apply, and in the absence of a regulation in the norms, the proceedings issues shall be resolved directly on the basis of the principles of the criminal procedure.

**Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).**

#### **Article 11. Administration of justice only by court**

1. Criminal justice in the Republic of Kazakhstan shall be exercised only by the court. Assignment of powers of the court whosoever entails the criminal liability under the law.

2. No one shall be found guilty of a criminal offence, as well as subjected to criminal punishment except by a court decision and in accordance with the law.

3. The competence of the court, its jurisdiction, the procedure for exercising its criminal proceedings shall be defined by the law and cannot be arbitrarily changed. The establishment of emergency or special courts under whatsoever name for consideration of criminal cases shall not be allowed. Sentences and other decisions of emergency courts and other courts, established illegally shall not have legal force and cannot be enforced.

4. Sentences and other decisions of the court, exercising criminal proceedings for not under the jurisdiction case, exceeded its authority or otherwise violated the principles of the criminal procedure, stipulated in this Code, shall be illegal and subject to cancellation.

5. Sentences and other court decisions in a criminal case can be checked and reviewed only by the competent courts in the manner prescribed by this Code.

#### **Article 12. Judicial protection of the rights and freedoms of man and citizen**

1. Everyone has the right to judicial protection of his (her) rights and freedoms.

2. No one may be changed the jurisdiction, stipulated by the law without his (her) consent.

3. State shall ensure everyone's access to justice and compensation for damages in the cases and manner prescribed by law.

#### **Article 13. Respect for the honour and dignity**

1. In criminal proceedings, the decisions and actions that humiliate or diminish the dignity of the person, participating in criminal proceedings are prohibited, it is not allowed to collect, use and dissemination of information about the private life, as well as personal information that the person considers necessary to keep in secret, for purposes not covered by this Code.

2. Moral damage, caused to the person by the unlawful actions of the bodies, conducting the criminal proceedings shall be compensated in accordance with the law.

#### **Article 14. Personal immunity**

1. No one may be detained on suspicion of committing a criminal offence, detained or otherwise deprived of his (her) liberty except on the grounds and in the manner prescribed by this Code.

2. Detention and house arrest shall be allowed only in the cases provided by the present Code and only with the authorization of the court, with the right of the detainee to appeal to the court or house arrest.

Without a court order, a person may be detained for a period not exceeding forty-eight hours and a minor for a period not exceeding twenty-four hours, except when the Code expressly provides for the admissibility of detention without a court order for a period not exceeding seventy-two hours.

Forced placement of a non-custodial person in a medical organization for forensic psychiatric and/or forensic medical examinations is permitted only by court decision.

3. Any person detained shall be immediately notified of the reason of detention, as well as in the commission of what offence under the criminal law, he (she) is suspected.

4. The court, the bodies of criminal prosecution, the head of the administration of places of detention, medical organizations shall immediately release the person that is illegally detained or held in custody or unlawfully placed in a medical organization or held in custody beyond the period, provided by law or sentence.

5. None of the participants in the criminal proceedings shall be subjected to torture and other cruel, inhuman or degrading treatment or punishment.

6. No one may be induced to participate in procedural actions, endangering the life or health of a person. Procedural actions that violate the personal immunity may be made against the will of a person or his (her) legal representative only in cases and in the manner directly provided by this Code.

7. The detention of a person, as well as detention on suspicion of having committed a criminal offence should be carried out under the conditions that do not endanger his (her) life or health.

8. The damage, caused to a citizen as a result of illegal deprivation of freedom, detention in conditions dangerous to life and health, cruel treatment shall be compensated in accordance with the procedure prescribed by this Code.

**Footnote. Article 14 with the change introduced by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 15. Protection of the rights and freedoms of citizens in criminal proceedings**

1. The body, conducting the criminal proceedings shall be obliged to protect the rights and freedoms of citizens, involved in criminal proceedings, create conditions for their implementation, take timely measures to meet the legal requirements of participants in criminal proceedings.

2. The damage caused to the citizen by violation of his (her) rights and freedoms in the criminal proceedings shall be compensated on the grounds and in the manner prescribed by this Code.

3. If there are sufficient grounds to believe that the complainant, witness or other persons, involved in criminal proceedings, as well as their family members or other close relatives are threatened with murder, violence, destruction or damage to property or other dangerous illegal actions, the body conducting the criminal proceedings shall, to the extent of its competence, take legal measures for the protection of life, health, honour, dignity and property of these persons.

#### **Article 16. Privacy. Privacy of correspondence, telephone conversations, postal, telegraph and other communications**

1. The private life of citizens, personal and family secrets shall be protected by law. Everyone shall have the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other communications.

2. In the exercise of the criminal proceedings everyone is guaranteed the right to privacy (personal and family life). Limitation of this right shall be permitted only in cases and manner directly established by law.

3. No one has the right to collect, store, use and disseminate information about the private life of a person without his (her) consent, except as required by law.

4. Information about the person's private life, obtained in the manner prescribed by this Code cannot be used otherwise than to fulfill the tasks of the criminal procedure.

#### **Article 17. The inviolability of dwelling**

Dwelling is inviolable. Entry into a dwelling against the will of people, occupying it, its inspection and search shall be permitted only in cases and manner prescribed by law.

#### **Article 18. The inviolability of property**

1. The property is guaranteed by law. No one shall be deprived of his (her) property except by court order.

2. Seizure of deposits of persons placed in second-tier banks and branches of non-resident banks of the Republic of Kazakhstan, and other property, as well as their seizure in the course of legal proceedings may be carried out in cases and in the manner provided for by this Code.

**Footnote. Article 18 as amended by the Law of the Republic of Kazakhstan dated 02.01.2021 No. 399-VI (shall be enforced from 16.12.2020).**

#### **Article 19. Presumption of innocence**

1. Everyone shall be presumed innocent until his (her) guilty in committing a criminal offence is not proved in the manner prescribed by this Code and established by a valid court sentence.

2. No one shall be obliged to prove his (her) innocence.

3. Irremovable doubts about the guilt of the suspected, accused, defendant shall be interpreted in their favour. The doubts arising as to the application of criminal law and criminal procedure law shall be decided in favour of the suspected, accused, defendant.

4. Guilty verdict cannot be based on assumptions and must be confirmed by a sufficient set of admissible and reliable evidence.

#### **Article 20. Inadmissibility of the repeated conviction and criminal prosecution**

No one may be subjected to the repeated criminal liability for the same criminal offence.

#### **Article 21. Administration of justice on the basis of equality before the law and the court**

1. Justice is administered on the basis of equality before the law and the court.

2. In the course of criminal proceedings, no one may be subjected to any discrimination on grounds of origin, social, official or property status, sex, race, nationality, language, attitude to religion, beliefs, place of residence or any other circumstances.

3. Terms of the criminal proceedings against persons, enjoying privileges or immunity from criminal prosecution, shall be determined by the Constitution of the Republic of Kazakhstan, this Code, the laws and international treaties, ratified by the Republic of Kazakhstan.

#### **Article 22. Independence of judges**

1. A judge in the administration of justice shall be independent and subject only to the Constitution of the Republic of Kazakhstan and the law.

2. Any interference in the activities of the court in the administration of justice is prohibited and shall be punishable by law. Judges shall not be accountable in specific cases.

3. Guarantees of independence of the judge shall be established by the Constitution of the Republic of Kazakhstan and the law.

#### **Article 23. Proceedings on the basis of competitiveness and equality of the parties**

1. Criminal proceedings are based on the principle of competitiveness and equality between prosecution and defense parties.

2. Criminal prosecution, defense and resolution of the case by the court are separated from each other and carried out by different bodies and officials.

3. The burden of proof of guilt of a person in committing a criminal offence and a refutation of his (her) arguments in his (her) defense are assigned to the bodies of criminal prosecution, and in the court - to the public and private prosecutors.

4. Defense counsel shall use all legal means and ways to protect the suspected, accused, convicted, acquitted.

5. The Court is not a body of criminal prosecution, does not act for the prosecution or the defense, and does not express any interest, except for the interests of law.

6. The Court, while maintaining objectivity and impartiality, shall create the necessary conditions for the performance by the parties of their procedural duties and exercise the rights granted to them.

7. The parties, involved in the criminal procedure are equal it means that they are granted in accordance with the Constitution of the Republic of Kazakhstan and this Code with equal opportunities to defend their position. The court shall establish procedural decision only on the evidence to the study of which each of the parties is involved on an equal basis.

8. The parties in the course of the criminal proceedings choose their position, the methods and means to defend themselves independently of the court, other bodies and persons. The court at the request of the party helps it to obtain the necessary materials in the manner prescribed by this Code.

9. State prosecutor and private prosecutor may prosecute criminally a certain person or in cases stipulated by law, abandon the prosecution. The suspected, accused, defendant may freely deny their guilt or confess guilt, reconcile with the complainant, conclude a procedural agreement, the agreement on reconciliation in the order of mediation. The civil claimant shall have the right to abandon the claim or to settle amicably with the civil defendant. The civil defendant shall have the right to recognize the claim or to settle amicably with the civil claimant.

10. The court shall provide the parties with the right to consider the case in the first and appeal court; an accused and his/her defender and other participants in the proceedings shall be allowed to participate in the consideration of the case in the cassation procedure, during the proceedings on newly discovered circumstances and consideration of issues related to the execution of the verdict. The prosecution party must be represented by the state or private prosecutor in the consideration of each criminal case by the court. Other cases where the parties are obliged to participate in the consideration of a case by the court shall be determined by this Code.

**Footnote. Article 23 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

**Article 24. Comprehensive, full and objective investigation of the circumstances of the case**

1. The court, procurator, investigator, interrogating officer shall take all measures prescribed by law for comprehensive, full and objective investigation of the circumstances, necessary for the proper resolution of the case.

The court examines the evidence available in the case and presented by the methods stipulated by this Code. The court may not, on its own initiative, gather additional evidence in order to eliminate incompleteness of pre-trial investigation.

2. The bodies of criminal prosecution shall identify the factual evidence upon which the circumstances relevant to the case are established.

3. The court, considered a criminal case, maintaining objectivity and impartiality, shall create the necessary conditions for prosecution and defense parties to exercise their right to a comprehensive and complete investigation of the case.

4. The Court is not bound by the views of the parties on the necessity and sufficiency of investigation of the evidence, existing in the case and presented in the hearing by the parties, except as provided for by Article 380 of this Code.

5. The circumstances of the case, criminating or excusatory a suspected, accused, defendant, as well as any circumstances, mitigating or aggravating their liability and punishment shall be subject to identification. The body, conducting the criminal proceedings shall inspect all allegations of innocence or lesser degree of guilt, as well as on the existing of the evidence justifying the suspected, accused, defendant or mitigating their liability, as well as the use of illegal methods of investigation in collecting and securing evidence.

#### **Article 25. Evaluation of evidence on inner conviction**

1. The judge, procurator, investigator, interrogating officer shall evaluate evidence on their inner conviction, based on the totality of the evidence considered, guided by the law and conscience.

Juror shall evaluate the evidence according to his (her) inner conviction, based on the totality of the evidence considered, guided by conscience.

2. No evidence has a predetermined force.

#### **Article 26. Providing a witness entitled to a defense, a suspect, an accused with the right to defense**

**Footnote.** The title of Article 26 as reworded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

1. A witness who has the right to defense, a suspect, an accused shall have the right to defense. They can exercise this right both personally and with the help of a defender, legal representative in the manner prescribed by this Code.

2. The body, conducting the criminal proceedings shall explain to the suspected, accused their rights and provide them the opportunity to defend themselves from suspicion, accusations by all means not prohibited by law, as well as take measures to protect their personal and property rights.

3. In cases, stipulated by this Code, the body conducting the criminal proceedings shall ensure the participation in the case of the defense counsel of the suspected or accused.

4. Participation in criminal proceedings of a defense attorney and a legal representative of a witness who has the right to defense, a suspect, an accused shall not diminish the latter's rights.

5. A witness who has the right to defense, a suspect, an accused shall not be forced to give evidence, submit any materials to the criminal prosecution authorities, or provide them with any assistance.

6. The suspected, accused retains all the guarantees of their rights to defense as in the criminal proceedings against a person, accused of participatory criminal offence.

**Footnote. Article 26 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 27. Ensuring the right to professional legal advice**

1. Everyone has the right to receive in the course of criminal proceedings of the professional legal advice in the manner prescribed by this Code.

2. In cases stipulated by law, legal advice shall be provided free of charge.

#### **Article 28. Exemption from the obligation to give evidence as a witness**

1. No one shall be obliged to testify against himself or herself, a spouse (wife) and his (her) close relatives, the range of which is defined by this Code.

2. The clergymen shall not be obliged to testify against those, who confided in them in confession.

3. In the cases, provided for by the first and second part of this article, these persons shall have the right to refuse to testify and cannot be subjected to any liability for it.

#### **Article 29. Publicity**

1. The trial of criminal cases in all courts and judicial instances shall be public. Limiting the publicity of the trial shall be permitted only when it is contrary to the interests of the protection of state secrets and other secrets protected by law. Closed trial shall be permitted on a reasoned judgment of the court on criminal offences of minors, in cases of sexual offences and other cases in order to prevent the disclosure of information about the private lives of persons involved, as well as in cases where it is necessary for the safety of the victim, witness or other persons involved in case, as well as their family members or close relatives. Complaints against the actions (inaction) and decisions of the body, conducting criminal prosecution shall also be considered in a closed court session by the investigating judge.

2. Trial of cases in a closed session shall be subject to all the rules, established by this Code.



3. The court's sentence and decisions, taken in the case, in all cases shall be announced publicly. In the cases, considered in a closed court session, only the introductory and the operative part of the sentence shall be publicly proclaimed.

### **Article 30. Language of criminal proceedings**

1. Criminal proceedings in the Republic of Kazakhstan shall be carried out in the Kazakh language, along with the Kazakh, Russian language is officially used in proceedings, and when necessary, other languages are also used.

2. The body, conducting the criminal proceedings, if necessary, to conduct the case in Russian or other languages shall issue a reasoned decision on changing the language of the proceedings.

3. Persons participating in the case who do not speak or do not speak enough the language in which the proceedings are conducted, are explained and provided with the right to make statements, give explanations and testimony, file petitions, file complaints, challenge judicial acts, get acquainted with the case materials, speak in court in their native language or another language they speak; use the services of an interpreter, a sign language specialist for persons with hearing disabilities free of charge, in accordance with the procedure established by this Code.

4. The persons, involved in the criminal proceedings shall be provided free translation into the language of the criminal proceedings of the necessary materials of the case, written in a different language. The persons, involved in the criminal proceedings shall be provided free translation into the language of proceedings of that part of pleadings, which is in another language.

5. The bodies, conducting criminal proceedings, shall give participants in the process the documents that in accordance with this Code must be presented to them in the language of the proceedings. In this case, for those who do not speak the language of the criminal proceedings, a certified copy of the document, written in the selected by them language of the proceedings shall be attached.

**Footnote. Article 30 as amended by the Law of the Republic of Kazakhstan dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).**

### **Article 31. Freedom of the appeal of procedural actions and decisions**

1. The actions and decisions of the court and the body for criminal prosecution can be appealed in the manner prescribed by this Code.

2. Every convicted or acquitted person shall have the right to reconsideration of the sentence by a higher court in the manner prescribed by this Code.



3. It is not allowed to use the complaint to the detriment of the complainant, or for whose benefit it was filed.

### **Chapter 3. Criminal prosecution Article 32. Cases of private, private-public and public persecution and accusation**

1. Depending on the nature and gravity of the criminal offence the criminal prosecution and accusation in court shall be carried out in private, private-public and public order.

2. Cases of criminal offenses provided for in Articles 114 (parts one and two), 123 (part one), 131, 147 (parts one and two), 149 (part one), 150 (part one), 198 (part first), 199 (part one), 321 (part one) of the Criminal Code of the Republic of Kazakhstan, as well as article 152 (parts one and two) of the Criminal Code of the Republic of Kazakhstan, with the exception of the case provided for in part three of this article, shall be considered cases of private prosecution. Proceedings in these cases shall begin only upon the complaint of the victim and must be terminated for reconciliation with the accused or defendant.

3. Cases of criminal offenses provided for in Articles 110 (part one), 115, 120 (part one), 121 (part one), 126 (part one), 138, 139, 145, 148 (part one), 152 (part one) third), 153 (part one), 154, 155 (part one), 157 (part one), 158 (part one), 159, 187, 189 (part one and two), 190 (part one), 195 (part first), 198 (part two), 199 (part two), 201 (part one), 202 (part one), 204, 205 (part one), 206 (part one), 207 (part one), 208 (part one first), 209 (part one), 211 (part one), 219 (part one), 223 (part one and second), 248 (part one), 250, 251 (part one), 319 (part one and second), 321 (part two), 345 (part one), 389 (part one) of the Criminal Code of the Republic of Kazakhstan, as well as Article 152 (part one), if it is related to non-execution of a court decision on reinstatement at work, shall be considered cases of private-public prosecution. Proceedings in these cases shall begin only upon the complaint of the victim and shall be terminated for reconciliation with the suspect, the accused, the defendant only in the cases provided for by Article 68 of the Criminal Code of the Republic of Kazakhstan.

4. Procurator begins or continues the proceedings on the private and private-public accusation in the absence of the complainant's complaint, if the action affects the interests of person in a helpless or dependent condition or for other reasons is unable to make use of his (her) rights, or in the case of private-public accusation, affecting the interests of society or the state.

5. After registration of a report on a criminal offence in the Unified Register of pre-trial investigations and conducting urgent investigative actions, the proceedings of private and private-public accusation and prosecution in the absence of the complainant's complaint no later than three days from the date of registration shall be terminated on the grounds, specified in paragraph 5) of the first paragraph of Article 35 of this Code.

6. The cases of criminal offences, except for those specified in the second and third parts of this article, shall be considered as public prosecution cases. Criminal prosecution of these cases shall be carried out independently of the complaint to the complainants.

Footnote. Article 32 as amended by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 01.04.2019 № 240-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure ); dated 26.06.2020 No. 349-VI (shall be enforced ten calendar days after the day of its first official publication).

### **Article 33. Criminal prosecution on the application of commercial or other organization**

1. If the action, specified in Chapter 9 of the Criminal Code of the Republic of Kazakhstan, only harms the interests of commercial or other organization that is not a state-owned enterprise, and does not harm the interests of other organizations, as well as the interests of citizens, society and the state, the criminal prosecution is carried out by the application of the head, founder (participant) of the organization or the authorized body or with their consent.

2. excluded by the Law of the Republic of Kazakhstan dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication).

Footnote. Article 33 as amended by the Law of the Republic of Kazakhstan dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication).

### **Article 34. General conditions of criminal prosecution**

1. In order to perform the tasks of criminal proceedings the body for criminal prosecution shall, within its competence, in each case of detection of the signs of a criminal offence, take all legal measures to establish the circumstances of the criminal offence, the exposure of persons guilty of committing a criminal offence, their punishment, as well as take measures to the rehabilitation of the innocent.

2. The criminal prosecution body shall provide the complainant's access to justice and take measures to compensate for damage, caused by a criminal offence.

3. The criminal prosecution body performs its authority in criminal proceedings independently of any bodies and officials, and in strict accordance with the requirements of this Code.

4. Impact in any form on the criminal prosecution body to impede objective investigation of the criminal case entails the liability under the law.

5. Requirements of the criminal prosecution body brought under the law are binding on all state bodies, organizations, officials and citizens and shall be performed in the specified

period of time, but no later than three days. If necessary to take a decision to arrest, detention of the suspected, the requirement of the criminal prosecution body must be exercised within twenty-four hours. Failure to comply with these requirements without good reason entails the liability under the law.

### **Article 35. Circumstances excluding the proceedings**

1. A criminal case shall be terminated:
  - 1) for lack of a criminal offence;
  - 2) in the absence of components of a criminal offence;
  - 3) due to an act of amnesty, if it eliminates the use of punishment for the actions committed;
  - 4) expiration of the statute of limitation for criminal liability;
  - 5) in the absence of a complaint from the victim - in cases of criminal offenses provided for by parts two and three of Article 32 of this Code, except for the cases provided for by part four of Article 32 of this Code, as well as in case of refusal of a private prosecutor to charge - in cases of criminal offenses, provided for by part two of Article 32 of this Code, except for the cases provided for by part four of Article 32 of this Code;
  - 6) if a law abolishing criminal liability for the committed act has been put into effect, or if the Constitutional Court of the Republic of Kazakhstan finds unconstitutional a law or other regulatory legal act subject to application in this criminal case, on which the qualification of the act as a criminal offense depends;
  - 7) if a person has the entered into force sentence on the same charge or other not cancelled court decision, which established the impossibility of criminal prosecution;
  - 8) If a person has the not cancelled decision of the criminal prosecution body on termination of the criminal prosecution on the same suspicion;
  - 9) if the person that committed the action, prohibited by criminal law in a state of insanity, except in cases where the proceedings necessary for the application to him (her) of compulsory medical measures;
  - 10) in connection with the refusal to give consent by the authorized body or official to bringing to justice of the person that has the privilege or immunity from prosecution;
  - 11) in respect of the deceased, with the exception of cases where the proceedings necessary for the rehabilitation of the deceased or investigation against others, as well as to define property, obtained by illegal means, money and other valuables, subject to confiscation and providing compensation for damage;
  - 12) in respect of the person to be released from criminal liability under the provisions of the Criminal Code of the Republic of Kazakhstan.
2. The proceedings shall be terminated on the grounds, specified in paragraphs 1) and 2) of the first part of this Article, as in the absence of proof of a criminal offence or components

of a criminal offence, and in absence of proof of their presence, if there is no any other possibilities to gather additional evidence.

3. The proceedings shall be terminated on the grounds, specified in paragraph 2) of the first part of this Article, and in cases, when causing harm by the suspected, accused or defendant is lawful or when the offence is committed by the suspected, accused or defendant under circumstances which, in accordance with the Criminal Code Republic of Kazakhstan exclude his (her) confession as a criminal offence and criminal liability.

4. Termination of a criminal case on the grounds specified in paragraphs 3), 4) and 11) of the first part of this article shall be prohibited if the person, who is indicated by an applicant directly as a person who has committed a criminal offense (a witness entitled to defense), a suspect, an accused, as well as a defendant or his/her legal representatives, and in the cases provided for by paragraph 11) of the first part of this article, the persons listed in the second part of Article 66 of this Code, who, along with the lawyer, have the right to defend a suspect, accused, defendant, object to it. In this case, the proceedings on the case shall continue and end, if there are grounds for that, by issuing a judgment of conviction with the release of the person from punishment or criminal liability.

For the decision to terminate a criminal case on the grounds, specified in paragraphs 3), 4), 9), 10) and 11) of the first part of this Article, the consent of the complainant or his (her) representative is not required.

Termination of criminal case entails the simultaneous termination of the criminal prosecution.

5. The decision to terminate a criminal case against a person, who does not attain at the time of commission of the action at the age at which under the law is possible the imposition of criminal liability, shall be subject to adoption on the grounds referred to in paragraph 2) of the first part of this Article. On the same basis the decision to terminate a criminal case against a minor, who at the time of committing the action, though reached the age at which under the law the criminal liability is possible, but as a result of mental retardation, not associated with mental illness, could not fully aware of the actual nature and social danger of his (her) actions (inaction) and direct them, shall be subject to adoption.

6. The criminal prosecution body, finding the circumstances precluding criminal prosecution, shall make at any stage of the pre-trial proceedings the order for the termination of the criminal case.

The procurator may also, prior to consideration of the case in the main proceedings, withdraw it from the court and terminate on the grounds, provided in this Article. After the withdrawal of the case by the procurator from the court for termination, the holding on it a new pre-trial proceedings and re-direction to the court shall not be allowed.

7. The public prosecutor, finding in the court the circumstances precluding criminal prosecution, shall declare to waive prosecution. Statement by the public prosecutor to waive

prosecution shall not preclude the continuation of the criminal proceedings, if the private prosecutor continues to support the accusation.

8. The Court, found the circumstances precluding criminal prosecution shall decide on the termination of the criminal case.

9. In the event of a criminal case termination, the criminal prosecution bodies and courts are obliged, if there are signs of an administrative or disciplinary offense in the actions of a person, to refer the materials to the authorized bodies (officials) within ten days to resolve on administrative or disciplinary sanctions.

**Footnote. Article 35 as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023); dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 36. Circumstances, excluding criminal prosecution**

1. The criminal prosecution body, the court in the presence of the relevant circumstances within its competence shall have the right to terminate the prosecution with the release of a person from criminal liability in cases, specified in the first part of Article 65, Articles 66, 67, 67-1, the second, third parts of Article 68, the first, third parts of Article 83, as well as with the notes of Articles 441, 442, 444 - 448, 453 of the Criminal Code of the Republic of Kazakhstan. The court in such cases may also make a judgment of conviction with the exemption from criminal liability.

2. The public prosecutor, the court, finding the circumstances that allow not to prosecute shall have the right to declare the withdrawal of prosecution of the accused. The withdrawal of prosecution, declared by the public prosecutor does not preclude a private prosecutor to continue the prosecution of the accused with using materials of the criminal case.

3. Before the termination of the criminal case to the suspect, accused, defendant shall be explained the grounds for termination of the case, its legal consequences and the right to object to its termination on this ground.

4. The complainant and (or) his (her) representative shall be notified on the termination of criminal case, and they have the right to appeal against the decision to the procurator or the court in the manner prescribed by this Code.

5. Termination of a criminal case on the bases specified in a part of the present article, is not supposed, if the suspect, accused, defendant or the victim object to it. In such a case, the proceedings on the case shall continue in the usual manner.

6. If, before the court is removed to the deliberation room, a bail is made to the court's deposit provided for by Article 69 of the Criminal Code of the Republic of Kazakhstan, the

court shall have the right to issue a guilty verdict with the release of the person from serving the sentence with the establishment of a surety.

If the court makes another final decision on the case, the pledged item shall be immediately returned to the person who posted the pledge. Upon return of the pledged item, the amount spent on ensuring its safety shall not be collected from the pledger. The procedure for accepting, evaluating, storing, returning, selling, levying execution on the pledged item and turning into state revenue shall be determined by the Government of the Republic of Kazakhstan.

The release of a person from serving a sentence with the establishment of a surety shall be prohibited if the accused or the victim objects to this.

**Footnote. Article 36, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); No. 240-VI dated 1.04.2019 ( shall be enforced upon the expiration of ten calendar days after the date of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure ); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Chapter 4. Rehabilitation. Compensation for damage, caused by illegal actions of the body,**

#### **conducting criminal proceedings Article 37. Rehabilitation of a person, attracted as a suspected, accused, defendant**

1. A person, acquitted by the court, as well as the suspected, accused, defendant, against whom the decision of the court, the criminal prosecution body on the termination of the case is made on the grounds, provided for in paragraphs 1), 2), 5), 6), 7) and 8) of the first part of Article 35 of this Code, shall be subject to rehabilitation, that is, the restoration of rights and they cannot be subject to any restrictions in the rights and freedoms, guaranteed by the Constitution of the Republic of Kazakhstan.

2. The Court, criminal prosecution body shall take all legal measures for the rehabilitation of the person, referred to in the first part of this article, and to the compensation for damage, caused to him (her) by illegal actions of the body, conducting the criminal proceedings.

#### **Article 38. Persons, entitled to compensation for damage caused by the illegal actions of the body, conducting criminal proceedings**

1. The damage, caused to a person as a result of illegal arrest, detention, house arrest, suspension from office, placement in a special medical organization, conviction, application of compulsory medical measures shall be compensated from the budget in full, regardless of the guilt of the body, conducting criminal proceedings.

2. The right to compensation for damage caused as a result of the relevant illegal actions of the body conducting criminal proceedings shall be granted:

1) the persons, referred to in the first part of Article 37 of this Code;

2) the persons, the criminal case in respect of which was subject to termination on the grounds, provided for in paragraph 5) of the first part of Article 35 of this Code, if despite the absence of the circumstances, specified in part four of Article 32 of this Code, pre-trial investigation is not terminated since the discovery of the circumstances, precluding criminal prosecution;

3) the persons, the criminal case in respect of which had to be terminated on the grounds, specified in paragraphs 3) and 4) of the first part of Article 35 of this Code, but was not terminated since the discovery of the circumstances, precluding criminal prosecution, and the criminal prosecution is illegally continued despite the consent of such persons on the termination of the criminal case;

4) the person, convicted to arrest, imprisonment, arrested or detained in custody in case of changes in the qualification of the offence in the article of the Criminal Code of the Republic of Kazakhstan, provided liability for less serious criminal offence, at suspicion or accusation of committing of which this Code is not provided the arrest or detention, or appointment under this article a new, more lenient punishment or expulsion from the sentence the part of accusation and the reduction in connection with it the punishment, as well as in case of cancellation of unlawful judicial decision on the application of compulsory medical measures or compulsory educational measures. The actually served term of arrest or imprisonment is considered as illegally served to the extent to which exceeds the maximum punishment of arrest or imprisonment under article of the Criminal Code of the Republic of Kazakhstan, according to which the committed offence is newly qualified;

5) the person, detained in custody beyond the statutory period without a legal basis, as well as illegally subjected to any other measures of procedural coercion during criminal proceedings;

6) A person in respect of whom covert investigative actions have been carried out and subsequently declared illegal by a court.

3. In case of death of a citizen the right to compensation of damage in accordance with established procedure shall be transferred to his (her) heirs, and in part of receiving pensions and benefits, payment of which is suspended - for those family members who belong to the group of persons, provided by allowance of survivor.

4. The damage shall not be compensated to the person, if it is proved that he (she) during the pre-trial investigation and trial by voluntary self-incrimination prevents the truth and thereby contributed to the offensive consequences, referred to in the first part of this article.

5. The rules of this article in the absence of circumstances, referred to in paragraph 3) of the second part shall not apply to cases, where the applied in respect of a person coercive procedural measures or judgment of conviction canceled or changed due to the publication of acts of amnesty or pardon, statute of limitations, adoption of the laws, eliminating the criminal liability or mitigating a punishment.

6. Other circumstances shall not be grounds for compensation of damage.

**Footnote. Article 38 as amended by the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 39. The right to compensation of damage and time limit for bringing claims**

1. Having made a decision on full or partial rehabilitation of a person, the body conducting the criminal proceedings must recognize its right to compensation for harm. A copy of the acquittal or decision to terminate the pre-trial investigation, to cancel or change other illegal decisions shall be handed over or sent to the person concerned by mail. At the same time, a notification shall be sent to him/her explaining the procedure and terms for filing claims for compensation for harm. If there is no information about the place of residence of the heirs, relatives or dependents of the deceased person who has the right to compensation for damage, the notification shall be sent to them no later than five days from the date of their appeal to the body conducting the criminal procedure.

2. The persons, referred to in the second and third parts of Article 38 of this Code, shall be entitled to full compensation for property damage, reparation of moral damage and reinstatement of labour, pension, housing and other rights. The persons, deprived by a court of honour, military, special or another title, class rank, diplomatic rank, qualification class, as well as state awards shall be restored the title, class rank, diplomatic rank, qualification class, and returned the state awards.

3. Claims for compensation of damage, caused by illegal actions of the body, conducting criminal proceedings in the manner prescribed by this Chapter may be filed within six months from the date of receipt of the notification, explaining the procedure for restoration of rights. When missing this deadline for a good reason it may be reinstated by the court at the request of the interested persons.

**Footnote. Article 39 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 40. Compensation of property damage**

1. Property damage, caused to the persons, referred to in the second part of Article 38 of this Code, includes the compensation of:

- 1) wages, pensions, allowances, and other means of income, which they lost;
- 2) property illegally confiscated or turned into the income of the state on the basis of a sentence or other court decision;
- 3) fines, collected pursuant to an illegal sentence; court costs and other amounts, paid by a person in connection with the illegal actions;
- 4) the amounts, paid by the person for the provision of legal assistance;



5) other expenses, incurred as a result of criminal prosecution.

2. The amounts, expended for the maintenance of persons referred to in the second part of article 38 of this Code, in detention in custody, places of arrest or imprisonment, the court costs, related to the criminal prosecution of these persons, as well as earnings for the execution of them during detention in custody, places of arrest or imprisonment of any works, cannot be deducted from the amounts payable in respect of the damage, caused by illegal actions of the body, conducting the criminal process.

3. Upon receipt of copies of the documents, specified in the first part of Article 39 of this Code, with the notification of the damages, the persons, referred to in the second and third parts of Article 38 of this Code, shall be entitled to make a claim for compensation of property damage to the court, made the sentence, passed the decision to terminate criminal proceedings, or in court at the residence of the person or the court at the location of the body, that made the decision to terminate the pre-trial investigation or on cancellation or change of other illegal decisions. If the criminal case is terminated or the sentence is changed by a higher court, a claim for damages shall be sent to the court that passed the sentence. A legal representative of a minor shall have the right to make a claim for damages on behalf of the minor.

4. Not later than one month from the date of receipt of the application, the judge shall determine the amount of the harm, requesting, where necessary, the calculation from the financial bodies and bodies of social protection, after that he/she shall issue a resolution on the production of payments for compensation of this harm, taking into account inflation. If the case is terminated by the court upon its consideration in the appeal or cassation procedure, the specified actions shall be carried out solely by the judge of the court, who considered the case in the first court, without trial.

The decision must include: the base for compensation of property damage, its calculation and the amount in terms of money; the property, subject to return to the rehabilitated; the body, obliged to make a payment or return the property; deadline for submission of the decision for making payments; the procedure and terms of appealing against the decision.

The court decision may be appealed to a higher court in the manner, prescribed by this Code.

5. The court ruling that has entered into legal force on making payments on compensation for property damage shall be executed in accordance with the legislation of the Republic of Kazakhstan.

6. Is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015).

7. The claim for compensation of damage, caused to legal entities by illegal actions of the bodies, engaged in criminal proceedings shall be considered in the manner provided in this Article, and the damage in the prescribed amount shall be reimbursed by the state.

Footnote. Article 40, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

#### **Article 41. Elimination of consequences of the moral damage**

1. The body, conducting the criminal proceedings, adopted the decision on the rehabilitation of the person, shall bring him (her) a formal apology for the damage.
2. Action for compensation in monetary terms for moral damages shall be imposed in civil proceedings.
3. If a person is subjected to unlawful criminal prosecution, and the information on the criminal prosecution, arrest, detention in custody, suspension from office, forced placement in a medical organization, conviction and the other actions, taken against him (her), subsequently recognized as illegal, is published in the press, broadcasted on radio, television or other media, then at the request of that person, and in case of his (her) death - at the request of his (her) relatives or the body, conducting the criminal proceedings, decided to restore his (her) rights, the corresponding mass media shall, within one months, make the message about this.
4. At the request of the persons, referred to in the second and third parts of Article 38 of this Code, the body, conducting the criminal proceedings shall within fourteen days send a written message on the cancellation of illegal decisions at their place of work, study, residence.

#### **Article 42. Restoration of rights in court actions**

If the six-month time limit for filing a claim for damages in the manner prescribed by this chapter is missed, the person may apply to the court in civil proceedings.

##### **Article 42-1. Format of criminal proceedings**

1. Criminal proceedings in the Republic of Kazakhstan are conducted in paper and/or electronic formats.
2. The person conducting the criminal process, taking into account the opinion of the participants in the criminal process and technical capabilities, has the right to conduct criminal proceedings in electronic format, about which he makes a reasoned decision.

The opinion of a participant in criminal proceedings is submitted to the person conducting the pre-trial investigation, the judge in the form of a petition, which is considered in the manner and within the time limits established by this Code.

If it is impossible to continue conducting criminal proceedings in electronic format, the person conducting the criminal proceedings switches to paper format, and issues a reasoned decision on this.

The decision to conduct criminal proceedings in electronic format may be appealed by the participants in criminal proceedings in the manner prescribed by Article 100 of this Code.

3. When conducting criminal proceedings in paper format, the pre-trial investigation body has the right to accept and send procedural decisions to the prosecutor for approval or approval, as well as in the cases provided for by this Code, notify the prosecutor of the decisions taken and send copies of procedural decisions and other materials of the criminal case in electronic form. format, except for those requiring confidentiality.

**Footnote. Chapter 5 has been supplemented by Article 42-1 of the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Chapter 5. Conducting criminal proceedings Article 43. The compound of criminal cases**

1. The criminal cases against several persons that committed one or more criminal offences of complicity, the cases against the person that committed several criminal offences, as well as the cases against the person that suspected, accused for the obviously not promised concealment of these same crimes or failure to report them may be joined to one proceedings.

2. The compound of criminal cases is also allowed in cases where the suspected is not defined, but there are sufficient grounds to believe that several criminal offences are committed by one person or group of persons.

3. The compound of criminal cases shall be made on the basis of decision of the body, conducting the criminal proceedings. A copy of the decision, made by the criminal prosecution body shall within twenty-four hours be sent to the procurator and the defense team.

4. The following shall not be joined in one proceedings:

- 1) the same suspicions, accusations against various persons;
- 2) suspicions, accusations against persons, which is attributed to the commission of criminal offences in relation to each other, except when considering the case of private prosecution;
- 3) cases, for one of which the criminal prosecution is carried out in private, and the other - in public order;
- 4) all other suspicions, accusations, the joint consideration of which may interfere with the objective consideration of the case.

5. The period of the proceedings on the case, where several cases are joined, shall be calculated from the date of commencement of the first on time criminal case. If for one of the joined cases a detention or house arrest is applied as a preventive measure, the investigation period shall run from the date of commencement of the pre-trial investigation of the case on which to the following measures are applied.

6. The persons shall own the rights of participants in the criminal process only for those joined cases, which concern them.

#### **Article 44. Separation of a criminal case**

1. The Court, criminal prosecution body may extract from the criminal case in a separate proceeding the other criminal case against:

1) the individual suspected or accused persons, when the reasons for the closed judicial proceedings, relating to the protection of state secrets, refer to them, but do not apply to the other suspected, accused;

2) the juvenile suspected or accused, subjected to the criminal liability with adults;

3) some unidentified persons, subjected to the criminal liability, as well as in other cases provided for in Article 45 of this Code;

4) a suspect, accused person or defendant with whom the prosecutor has concluded a procedural agreement on cooperation.

2. In the event of an investigation of the multivolume criminal case, in which the deadline for pre-trial investigation or detention is expiring, the investigator, the interrogating officer, the body of inquiry, recognizing that part of the investigation into suspicions held comprehensively, fully and objectively, has the right to allocate a part of the case in a separate proceeding for direction it to the court, if it will not interfere with the investigation and adjudication in the remaining part.

3. If on the criminal case the information about the actions, contained the signs of criminal offences, unrelated to the case under investigation is received, all the materials for them shall be immediately separated to start a new pre-trial investigation in the manner prescribed by this Code.

4. Separation of criminal cases shall be allowed, if it does not affect the comprehensiveness, completeness and objectivity of the investigation of the facts and the resolution of the case.

5. Separation of a case is carried out on the basis of the decision of the body, conducting criminal proceedings. A copy of the decision, taken by the criminal prosecution body, shall be sent to the procurator within twenty-four hours. The decision shall be accompanied by a list of materials, allocated in the original or copies.

6. The period of proceedings in the selected case shall be calculated from the date of the registration of the application, reports of a criminal offence in the Unified Register of pre-trial investigations for a new criminal offence. In other cases, the period shall be calculated from the beginning of the pre-trial investigation in the main proceedings.

**Footnote. Article 44 as amended by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 45. Suspension of judicial proceedings in case and interruption of periods for pre-trial investigation**

1. Criminal proceedings shall be suspended by court order if:

- 1) the accused fled from the court or his (her) place of residence is not established for other reasons;
- 2) the temporary mental disorder or another serious illness of the defendant, certified in the manner prescribed by law;
- 3) staying of the defendant outside of the Republic of Kazakhstan;
- 4) force majeure, temporarily preventing further proceedings in the criminal case;
- 5) performing procedural actions, associated with obtaining legal assistance in the manner , provided for in Chapter 59 of this Code;
- 6) consideration by the procurator of the defendant's application in the court on obtaining the evidence, by using illegal acts or abusive treatment, and to appeal his (her) decision, if it is not possible to continue the main proceedings.

2. The court is obliged to suspend the proceedings in full or in the appropriate part in the case of a court appeal to the Constitutional Court of the Republic of Kazakhstan with a recommendation on recognition of law to be applied in this criminal case as unconstitutional or other regulatory legal act infringing the rights and freedoms of a person and citizen enshrined in the Constitution of the Republic of Kazakhstan.

The court, at the request of the parties, is obliged to suspend the proceedings in full or in the relevant part, if the Constitutional Court of the Republic of Kazakhstan, on the initiative of another court, has accepted for production a recommendation on recognition of a law or other regulatory legal act to be applied in this criminal case as unconstitutional.

3. The criminal proceedings in court shall be suspended in full or in relevant part by court order as if the private prosecutor in the case of private prosecution cannot be prosecuted in court because of his (her) severe illness, stay on a business trip outside the Republic of Kazakhstan or the performance of civic duty.

4. The criminal proceedings shall be suspended until the elimination of the circumstances, caused its suspension, and in this, the period for consideration of the case in court is terminated. After their elimination, it shall be renewed by court order.

5. The participants of the proceedings shall be reported on the suspension or resumption of the proceedings.

6. A suspended case shall be terminated upon expiration of the limitation period, established by the criminal law, if there is no information in the case on the interruption of the period of limitations.

7. The pre-trial investigation periods shall be interrupted in the following cases:

- 1) failure to identify the person, committed a criminal offence;
- 2) staying of the suspected, the accused person outside of the Republic of Kazakhstan;
- 3) when the suspected, the accused person fled from the criminal prosecution bodies or their place of residence is not established for other reasons;

4) temporary mental disorder or another serious illness of the suspected, accused, certified in the manner prescribed by law;

5) performance of the procedural actions, related to obtaining the legal assistance in the manner provided for in Chapter 59 of this Code;

6) failure to detect the untraceable missing person;

7) lack of real opportunities for participation of the suspected, the accused in the case, in connection with deciding on waiver of immunity from criminal prosecution or their issuance ( extradition) by a foreign state;

8) force majeure, temporarily preventing further proceedings in the criminal case;

9) appointing an expert in a criminal case.

7-1. Interruption of the pre-trial investigation period shall not prevent the conduct of the necessary search measures in the case in accordance with the Law of the Republic of Kazakhstan "On Operational Investigations" and covert investigative actions and the attachment of their results to the materials of the criminal case.

8. After the decision to interrupt the terms of the pre-trial investigation, the person conducting the pre-trial investigation shall send it to the prosecutor for approval within 24 hours .

8-1. The prosecutor, within three days, agrees on the decision to interrupt the terms of the pre-trial investigation or, by a reasoned decision, refuses to approve it and returns it to the person conducting the pre-trial investigation, indicating that the necessary investigative and procedural actions have been taken.

If the prosecutor agrees on the decision to interrupt the terms of the pre-trial investigation, the person conducting the pre-trial investigation shall notify the participants in the process about this.

In cases where it is necessary to request and study the materials of the criminal case, the decision to approve or refuse to approve is made by the prosecutor within ten days.

9. The interrupted terms of the pre-trial investigation shall be resumed by the decision of the person conducting the pre-trial investigation, from the moment the circumstances that served for their interruption disappear, of which the prosecutor shall be notified in writing.

Note. Under force majeure, preventing further proceedings in the criminal case should be understood the emergencies of natural and manmade.

**Footnote. Article 45 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 19.12. 2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).**

#### **Article 46. Termination of the criminal proceedings**

The criminal proceedings shall be terminated since:

- 1) the entry into force of the decision on the full termination of criminal proceedings;
- 2) the entry into force of the sentence or other final decision in the case, if it does not require special measures for its implementation;
- 3) confirmation of the execution of the sentence or other final decision on the case, if it requires special measures for its implementation.

#### **Article 47. Confidentiality**

1. In the course of criminal proceedings the measures under this Code and other laws for the protection of the obtained information, constituting the state secrets and other secrets protected by law shall be taken.

2. The persons to whom the body, conducting the criminal proceedings are requested to inform or provide information constituting the state secrets or other secrets protected by law, cannot refuse to perform the specified requirements with reference to the need to preserve the state secrets or other secrets protected by law. The body, conducting the criminal proceedings to obtain from the specified person the messages or information, shall make a notice in the protocol of the procedural action and familiarize with it under the signature the person on the need to obtain from him (her) the said information solely for the criminal proceedings and the maintaining confidentiality in the manner provided by law in respect of the information obtained.

3. The procedure for admission of participants in the proceedings to information, constituting the state secrets shall be determined by the legislation.

4. If the materials of the criminal case, considered by the court with the participation of jurors, contain information constituting the state secrets, the authorized state body performing logistical and other support to the court, upon the written order of the presiding officer shall prepare the admission of jurors to the state secrets in accordance with the legislation of the Republic of Kazakhstan.

5. Evidence, containing information constituting the state secrets, shall be investigated in a closed court session.

6. Evidence, containing information constituting other secrets protected by law, as well as revealing the intimate aspects of private life, at the request of persons at risk of disclosure of the above information may be investigated in a closed court session.

7. Damage, caused to a person as a result of violations of privacy, disclosure of personal or family secrets shall be compensated in accordance with the procedure prescribed by law.

8. The order for keeping confidentiality of the data of the pre-trial investigation shall be defined in Article 201 of this Code.

9. The copies of procedural documents of the case, containing information constituting the state secrets or other secrets protected by law, subject to delivery to the participants in criminal proceedings, after getting acquainted with them shall be kept at the case and handed to participants in criminal proceedings at the time of court session.



10. The Court, referring in the sentence or decision to the case materials, containing the state secrets and other secrets protected by law, shall not disclose their contents.

#### **Chapter 6. Procedural periods Article 48. Calculation of time periods**

1. The time periods, set forth in this Code shall be calculated in hours, days, months, years

2. The hour and day which is a beginning of the running of the time period shall not be taken into account in calculating the time periods. This rule does not apply to the calculation of time periods for arrest, detention, house arrest and being in a medical institution or organization of education with a special regime of detention.

3. Non-working hours are also included in the calculation of time periods.

4. The period, calculated for days, expires in twenty-four hours of the last day of the time period. The period, calculated in months expires in the appropriate month and day of the last month of the time period. If the end of the period is a month in which there is no corresponding date, the time period shall expire on the last day of that month. The period, calculated in years shall expire on the corresponding month and day of the last year of the time period. If the end of the period is a month in which there is no corresponding date, the time period shall expire on the last day of that month. In cases where the last day of the period falls on a non-working day, the day of the deadline shall be next working day, except in cases of calculation of time periods during the arrest, detention, house arrest and being in a medical institution or organization of education with a special regime of detention.

5. When arrest of a person on suspicion of committing a criminal offence the time period is calculated from the time (hours to the nearest minute) of the actual application of the measure. When calculating the periods of detention, house arrest, as well as being in a medical institution or educational organization with a special regime of detention, the first day of the period shall be included in the time period.

#### **Article 49. Compliance and extension of time period**

1. The time period shall not be considered as missed, if the complaint, petition or other document is delivered before the expiry of period to the post, transferred or declared to the person authorized to receive them, and for persons, detained in custody or placed in a medical organization, - if the complaint or other document is delivered before the expiry of period to the administration of the detention or medical organization. Time of delivery of the complaint or other document to the post shall be determined by the postmark, and the time of delivery to the person, authorized to receive them, or the administration of the detention or medical organization – by the mark of the office or of the officials of these organizations.



2. Compliance with the deadline by officials is confirmed by the appropriate indication in the procedural documents. Obtaining the documents, to be handed to the persons, involved in criminal proceedings, shall be confirmed by the receipt attached to the case.

3. Procedural periods may be extended only in cases, and in the manner prescribed by this Code.

#### **Article 50. The consequences of missing the deadline and the procedure for its recovery**

1. Procedural actions, performed by participants in the proceedings after the deadline shall be void.

2. At the request of the person concerned, deadline missed for a valid reason, can be restored by the decision of the interrogating officer, investigator, procurator or judge in the production of which the case is. The period shall be restored to the person missed it, but not for others, unless otherwise provided by the relevant decision of the body, conducting the criminal proceedings.

3. At the request of the person concerned, execution of the decision appealed from by missing the deadline may be suspended until resolution of the issue for restoration of the missing period.

4. Refusal to restore the term may be appealed, revised at the request of the prosecutor in accordance with the procedure established by this Code.

**Footnote. Article 50 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Section 2. State bodies and persons involved in criminal proceedings Chapter 7. The Court Article 51. The Court**

1. The Court, as a judicial body, shall administer justice in criminal cases.

2. Any criminal case can only be considered by legitimate, independent, competent and impartial composition of court that ensured by compliance with the rules of this Code:

- 1) determining the jurisdiction of specific cases;
- 2) formation of the court composition to consider specific criminal cases;
- 3) disqualification of judges;
- 4) separating the functions of adjudication from the functions of prosecution and defense.

3. Criminal justice in the Republic of Kazakhstan shall be performed by:

the Supreme Court of the Republic of Kazakhstan;

regional and equated courts, military courts;

district and equated courts;

specialized inter-district criminal courts, specialized investigative courts, specialized inter-district investigative courts, specialized inter-district military criminal courts, specialized inter-district juvenile courts and military garrison courts.

**Footnote. Article 51 as amended by the Law of the RK No. 180-VI dated 12.07.2018 ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **Article 52. Composition of the court**

1. Consideration of criminal cases in the courts of first instance is carried out solely by a judge, and for especially grave crimes, at the request of the accused, by a court with the participation of a jury consisting of one judge and ten jurors, with the exception of cases (on):

- 1) murders committed in an emergency situation and during mass riots;
- 2) crimes against the peace and security of mankind, against the foundations of the constitutional order and the security of the state;
- 3) terrorist and extremist crimes;
- 4) military crimes committed during wartime or in a combat situation;
- 5) crimes committed as part of a criminal group;
- 6) especially grave crimes against the sexual integrity of minors.

Criminal cases on crimes provided for in articles 116 (parts two and three), 125 (paragraph 1) part three), 128 (paragraph 1) part four), 132 (part five), 135 (paragraph 1) parts four), 146 (parts two and three), 160, 163, 164 (part two), 168, 249 (part two), 317 (part four), 335 (part four), 337 (parts four and six), 345 (part four), 345-1 (part four), 346 (parts five and six), 380-1 (paragraph 6) part two) of the Criminal Code of the Republic of Kazakhstan, are also considered at the request of the accused by a court with the participation of a jury consisting of one judge and ten jurors.

2. Consideration of criminal cases on grave and especially grave crimes in the appellate procedure is carried out collegially, consisting of at least three judges of the collegium, and when considering complaints, petitions of prosecutors for sentences, court decisions in cases considered in an abbreviated manner or in the order of writ proceedings, about criminal offenses and crimes of small and medium gravity, on issues of execution of a sentence, decision of an investigating judge - by a single judge.

In the absence of the chairman of the appellate board due to being on a business trip, vacation or illness, during the collegiate consideration of these cases, the judge of the collegium presides, who is entrusted by the chairman of the court with the duties of the chairman of the appellate board.

If the chairman of the appellate board cannot participate in the consideration of the case in the appellate instance on the grounds provided for in Article 87 of this Code, or in connection with the presence of other circumstances, then on his behalf, one of the judges of the board presides over the collegiate consideration of this case.

3. Consideration of cases in the cassation court shall be carried out by the collegial members of the court in an odd number (at least three) of the judges of the Supreme Court of the Republic of Kazakhstan, presided by the Chairman of the judges collegium or one of the judges on his instruction.

4. Consideration of cases on the grounds provided for in part four of Article 484 of this Code shall be carried out the collegial members in an odd number (at least seven) judges presided by the Chairman of the Supreme Court of the Republic of Kazakhstan or one of his/her judges on his/her instruction.

5. The composition of the court in consideration of cases upon discovery of new facts is determined in accordance with the rules, provided in Article 504 of this Code.

6. Consideration of issues, arising from the execution of the sentence and the consideration of cases on the application of compulsory medical measures to the insane, is carried out by the sole judge of the respective court.

7. In cases where in one board the number of judges in relation to the circumstances that prevent them from participating in the consideration of case, is not enough to provide a peer review of the case, respectively the Chairmen of the Supreme Court of the Republic of Kazakhstan, the regional and equivalent court shall have the right to involve the judges of other board in the consideration of case.

**Footnote. Article 52, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 118-VI dated 21.12.2017 ( shall be enforced upon the expiration of ten calendar days after the date of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure ); dated 30.12.2020 No. 393-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 29.12.2022 No. 175-VII (effective from 01.01.2024).**

### **Article 53. Powers of the Court**

1. The powers of the court as a judicial body shall be determined by law.

2. Only the court is authorized to:

- 1) recognize a person as guilty for committing a criminal offence and sentenced him (her);
- 2) apply to the person compulsory medical measures or compulsory educational measures

;

3) cancel or change the decision, taken by the lower court;

4) review judicial acts due to newly discovered evidence;

5) authorize the preventive measure chosen by the investigator, inquirer, body of inquiry and prosecutor with regard to the suspect or accused person in the form of remand in custody, house arrest, extradition arrest and bail, and extend their terms;

5-1) Authorize covert investigative actions and extension of the time limit, and extend the period for notifying a person of covert investigative actions taken against him or her, and give consent to the pretrial investigation body to not notify a person of covert investigative actions taken against him or her;

6) legalize against the suspected, the accused the measures of procedural coercion in the form of temporary suspension from office and restraining order;

7) forcibly place a person, not detained in a custody in the medical organization for the production of forensic psychiatric and (or) forensic medical examination;

8) to sanction the exhumation of the corpse, the announcement of an international search, the seizure of property, inspection, search, seizure and personal search;

9) authorize the compulsory receipt of samples and certification.

3. In the cases and in the manner prescribed by this Code, the court shall:

1) consider complaints against decisions and actions (inaction) of the criminal prosecution body, the procurator;

2) at the request of the procurator, defense counsel deposit testimony of the witness and the complainant;

3) impose monetary and administrative sanctions;

4) consider issues, related to the execution of the sentence;

5) consider the procurator's request for confiscation prior to the sentencing of the property , obtained by illegal means.

4. If during the judicial proceedings the circumstances that contributed to the commission of a criminal offence, violation of the rights and freedoms of citizens, as well as other violations of the law, committed during the pre-trial investigation are identified, the court shall issue a private ruling, which calls the attention of the relevant organizations or the persons, in these circumstances and facts of violation of the law, requiring the adoption of the appropriate measures. The court may issue a private ruling, and in other cases, if it considers it necessary.

5. The private ruling to the lower court (judge) shall not be made. Violations of the law, committed by the lower court, resulting in the cancellation or change of the sentence, decision , shall be stated in a judicial act of the higher court. When establishing the facts of the acts, forming the composition of the other criminal offences, or the offences, entailing administrative or disciplinary liability, the court shall issue to the relevant procurator a private ruling for adoption of the measures, provided for by law.

6. In the cases provided by law, the judge on the considered cases, shall have the right to demand cases of operational accounting, materials of counterintelligence activity and covert investigative actions of the bodies of inquiry related to the case under consideration, and to

get acquainted with them, except for information that is not subject to disclosure on organization of operational- investigative, counterintelligence activity and covert investigative actions, specific operational-investigative, counterintelligence activities and covert investigative actions, sources and methods of obtaining information.

**Footnote. Article 53 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication); dated 21.12.2017 № 118-VI (for the procedure of implementation, see Art. 2).**

#### **Article 54. Judge**

1. A judge, within his (her) competence considering the case solely, conducting the administrative steps to prepare the hearings or to enforce its sentence or other decision, deciding petitions and complaints, referred to in the third part of Article 53 of this Code, owns the powers of the court.

2. The judge, hearing the case in the composition of the panel, enjoys the same rights with by the presiding judge and other judges in all matters arising in connection with this case. In case of disagreement with the conclusion of the other judges on the issues involved, the judge may in writing express a dissenting conclusion, which is sealed in an envelope and attached to the criminal case. Opening the envelopes and familiarization with the dissenting conclusion of judge shall be allowed only by a higher court in the consideration of the case.

3. The investigative judge is a judge of the court of first instance, the powers of which include the implementation in the manner prescribed by this Code, the judicial control over the observance of the rights, freedoms and legitimate interests of persons in criminal proceedings. If necessary to replace the investigating judge, he (she) may be reappointed.

**A footnote. Article 54 as amended by the Law of the Republic of Kazakhstan No. 180-VI dated 12.07.2018 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication).**

#### **Article 55. Powers of the investigating judge**

1. During the pre-trial proceedings, the investigating judge in the cases, stipulated by this Code considers the issues of:

- 1) sanctioning of detention in custody;
- 2) sanctioning of house arrest;
- 3) sanctioning of the suspension from office;
- 4) sanctioning of restraining order;
- 5) sanctioning of the extradition arrest;

5-1) Authorizing covert investigative actions and extending the time limits for covert investigative actions;

5-2) termination of covert investigative actions upon the request of the prosecutor in the cases provided for by part three of Article 234 of this Code;

6) extension of detention in custody, house arrest, extradition arrest;

7) Authorizing the use of bail;

8) sanctioning the seizure of property;

9) forced placement of a person, not detained in custody in the medical organization for the production of forensic psychiatric and (or) forensic medical examinations;

10) in determining whether the mental illness, the transfer of a person in respect of whom previously applied detention in custody, in a special medical organization, providing psychiatric care, and adapted to the placement of patients in strict isolation;

11) the exhumation of the corpse;

12) announcement of the international search of the suspected or accused person;

13) sanctioning of inspection;

14) sanctioning of search;

15) sanctioning of seizure;

16) sanctioning of a personal inspection;

17) Authorization of forced examination;

18) Authorization of forced receipt of samples.

2. In the cases, provided for in this Code, the investigating judge shall:

1) examine the complaints against the actions (inaction) and decisions of the interrogating officer, the body of inquiry, the investigator and the procurator;

2) consider the issue for the implementation of material evidence, that is perishable or the long-term storage of which until resolution of the criminal case on the merits shall be expensive;

3) deposit during the pre-trial proceedings testimony of complainant and witness;

4) impose a monetary penalty on persons that do not perform or improperly perform procedural obligations in the pre-trial proceedings, except for lawyers and procurators;

5) consider the issue for the recovery of procedural costs in a criminal case by presentation of the procurator;

6) at the substantiated request of a lawyer participating as a defense counsel, a representative of the victim, considers the issue of requesting and attaching to the criminal case any information, documents, items relevant to the criminal case, with the exception of information constituting state secrets, in cases of refusal to enforce request or failure to make a decision on it within three days;

7) on a reasoned petition of a lawyer participating as a defense counsel, a representative of the victim, considers the issue of appointing an expert examination or performing other investigative actions by the criminal prosecution body, with the exception of covert investigative actions, including if the criminal prosecution body has unreasonably refused to satisfy such a request, or no decision was made on it within three days;

8) at the request of a lawyer, involved as a defense counsel, consider the issue for the compulsory drive to the body, conducting the criminal proceedings of the previously interviewed witness, securing the appearance of which to testify is difficult;

8-1) On a reasoned request from the pretrial investigation body, the court considers extending the period for notification of a person of covert investigative acts carried out against him or her to one year;

8-2) On a reasoned request from the pretrial investigation body, the pretrial investigation body gives its consent for the failure to notify the person of any covert investigative actions taken against him or her;

9) perform other obligations, prescribed by this Code.

3. Is excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

Footnote. Article 55 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 No. 118-VI (for the procedure of implementation, see art. 2); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

#### **Article 56. General conditions for the exercise of powers by the investigating judge**

1. The investigating judge shall exercise his (her) powers in accordance with the rules of this article and special features, provided by the relevant articles of this Code.

2. An investigating judge shall consider the issues within his or her competence alone, without holding a court hearing.

If it is necessary to examine the circumstances relevant to the adoption of a lawful and reasoned decision, or there is a petition of the prosecutor or the defense, the investigating judge resolves the issue of holding a court session with the participation of the relevant persons and the prosecutor.

At the request of the side of the defense, the representative of the victim, the appointment of a court session to consider the issue specified in paragraph 1) of part two of Article 55 of this Code, if necessary, hearing by the investigating judge of persons, actions (inaction), the decision of which is appealed by the side of the defense, the representative of the victim, for with the exception of complaints filed repeatedly on the same issue that do not contain new arguments.

If a court session is scheduled, the defense party, the representative of the victim and the prosecutor shall be notified in advance of its time and place.



At consideration of the questions specified in points 1), 2), 5) and 6) a part of the first, points 2) and 3) a part of second article 55 of the present Code, carrying out of a court session is obligatory.

Upon the order of the investigating judge, the court session may be held in the form of video link. Minutes shall be kept during the court session.

3. The investigating judge shall be entitled to:

1) demand from the body, conducting the pre-trial proceedings the additional information on the subject;

2) get acquainted with all materials of the respective pre-trial proceedings and investigate them;

3) call the participants in the proceedings to the court session and obtain from them the necessary information in a criminal case.

4. The investigating judge shall not prejudge issues which, in accordance with the present Code, may be the subject of judicial consideration in resolving the merits of the case, give instructions on the direction of the investigation and conduct of investigative actions, except as provided for in paragraph 7) of paragraph two of Article 55 of the present Code, perform actions and make decisions instead of persons conducting pre-trial proceedings and supervising the prosecutor, as well as the court considering the merits of the case.

5. Under the statement of the suspected on the use of torture and other illegal activities against him (her) or the presence of the traces of violence on his (her) body, the investigating judge shall instruct the supervising procurator to carry out an immediate check of these facts.

6. In cases of unlawful restrictions or other violations of human rights and freedoms, lawful interests of organizations, the investigating judge shall issue a private ruling to address the issue of liability of the persons that violated the law.

**Footnote. Article 56, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 21.12.2017 № 118-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

### **Article 57. Presiding judge**

1. When considering a criminal case in the composition of a court panel, the chairman of the court, chairman of the board or the judge, authorized to preside in the manner, prescribed by law shall preside.

The judge, hearing the case alone is considered as the presiding judge.

2. The chairman shall control the proceedings of the court, take all measures to ensure a fair consideration of the criminal case and compliance with other requirements of this Code, as well as the proper behaviour of all persons, presenting at the court session.



3. Orders of the presiding judge in a court session are mandatory for all participants in the process and other persons, presenting in the courtroom.

## **Chapter 8. State bodies and officials, performing the functions of criminal prosecution Article 58. Procurator**

1. Prosecutor – an official exercising, within his competence, supervision over the legality of operational investigative activities, inquiries, investigations and court decisions, as well as on behalf of the state, criminal prosecution at all stages of criminal proceedings and other powers in accordance with Article 83 of the Constitution of the Republic of Kazakhstan and this Code: Prosecutor General of the Republic of Kazakhstan, First Deputy, deputies of the Prosecutor General of the Republic of Kazakhstan, their senior assistants and assistants, the first head of the Department of the Prosecutor's Office for asset recovery, his deputies, Chief Military and Chief Transport Prosecutors of the Republic of Kazakhstan, prosecutors of regions, cities of republican significance, the capital and their deputies, heads of structural divisions, their deputies, senior assistants and assistants, senior prosecutors and prosecutors of departments, prosecutors of districts, towns and equivalent prosecutors, their deputies, senior prosecutors and prosecutors acting in accordance with the powers established by this Code. The prosecutor involved in the consideration of a criminal case by the court represents the interests of the state by supporting the prosecution and is a public prosecutor.

2. The procurator shall have the right to present the suspected, accused, defendant or the person that is liable for their actions, a claim in defense of the interests of:

1) the complainant, that is unable to exercise the right to present and defend the claim independently, by virtue of his (her) helpless condition, dependence on the suspected, accused, defendant or otherwise;

2) state.

3. In the presence of grounds and in accordance with the procedure provided for in this Code, the prosecutor shall have the right, by his/her decision, to take cases to his/her own proceedings and personally conduct an investigation using the powers of the investigator. Supervision of the legality of pre-trial investigation shall be carried out by the authorized prosecutor.

4. The powers of the prosecutor during the pre-trial investigation and consideration of the case by the court are determined by Articles 158 (part eight), 165 (part eight), 186 (parts two and three), 187 (part eight), 190 (part seven), 192, 192-2 (parts six and seven), 193, 194 (part three), 195 (part five), 196 (part two), 202, 203, 234 (parts two, three and four), 290, 301, 302, 302-1, 303, 304 and 305, 321 (sixth part), 337, 414 (second part), 428 (sixth part), 429 (seventh part), 478 (fifth part), 480 (sixth part), 484, 486, 494 (part five), 502 (part one), 518 (part five), chapters 57, 58, 59, 60, 61, 62, 63, articles 628 (part one), 643 (part eight), 668 (part six), as well as in other cases established by this Code.

5. The procurator in exercising his (her) procedural powers is independent and subject only to the law.

6. The General Prosecutor of the Republic of Kazakhstan shall, within the limits of his competence, adopt normative legal acts on the application of the norms of this Code, including the issues of conducting criminal proceedings in electronic format.

Normative legal acts adopted by the General Prosecutor of the Republic of Kazakhstan within the limits of his competence shall be binding for execution by the criminal prosecution bodies.

Normative legal acts of the bodies carrying out pre-trial investigation shall be adopted within their competence in coordination with the General Prosecutor of the Republic of Kazakhstan.

**Footnote. Article 58 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 28.12.2018 № 210-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Article 59. Head of the investigation department**

1. The Head of the investigation department is a Head of the investigative unit of the body, conducting pre-trial investigation, and his (her) deputies, acting within their competence.

2. The Head of the investigation department is authorized to:

1) entrust the investigation or accelerated pre-trial investigation to the investigator;  
2) supervise the timely execution of the investigative actions by the investigator in his (her) processing cases, and the compliance of the investigator with the periods of investigation and detention in custody, the execution of instructions of the procurator, orders of other investigators;

3) entrust the conducting of the investigation to several investigators;

4) remove the investigator from the proceedings;

5) examine the criminal cases and give instructions thereon;

6) within its competence, withdraw a criminal case from one investigative unit of the subordinated body, conducting the preliminary investigation, and transfer to another investigative unit of this or other subordinate body, conducting preliminary investigations;

7) send to the prosecutor criminal cases with a report on the completion of the pre-trial investigation, a protocol of an expedited pre-trial investigation, as well as criminal cases completed in the order of writ proceedings;

Footnote. Paragraph 7) of part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

8) apply to the procurator for the annulment of the unjustified procedural decision of the investigator;

8-1) To apply to the procurator for the filing of an application for an order of an investigating judge;

9) within its competence, give binding order and instructions to the bodies of inquiry;

10) consider complaints against actions (inaction) and decisions of the investigator.

3. The Head of the investigation department has the right by its decision to take the case to its production and personally conduct investigations, taking advantage of the powers of the investigator.

4. The instructions of the head of the investigative department on the case may not limit the independence of the investigator, his rights established by Article 60 of this Code. Instructions are obligatory for execution, but can be appealed to a higher head of the investigative department or the prosecutor. An appeal by the investigator against the actions of the head of the investigative department shall not suspend their execution, except for indications of the qualification of the suspect's act and the scope of suspicion, the direction of the criminal case to the prosecutor with a report on the completion of the pre-trial investigation or the termination of the criminal case.

Footnote. Part four - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :

from January 1, 2022 in relation to cases of especially serious crimes investigated by

investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

Footnote. Article 59 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017, No. 118-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force).

## **Article 60. Investigator**

1. The investigator is an official, authorized to carry out pre-trial investigation in a criminal case within its competence: the investigator of the internal affairs bodies, investigator of the national security agencies, investigator of the anti-corruption agency and investigator of the economic investigation agency, as well as the procurator in the cases provided for in this Code.

2. The investigator has the right by its decision to take the case to its proceedings, to carry out a preliminary investigation on it and perform all the investigative actions provided for by this Code.

3. The investigator is obliged to take all measures for a comprehensive, complete and objective investigation of the circumstances of the case, to carry out criminal prosecution of a person in respect of whom sufficient evidence has been collected that indicates the commission of a criminal offense by him, by qualifying the act of the suspect, choosing a measure of restraint for him in accordance with this Code. , drawing up a report on the completion of the pre-trial investigation outlining the circumstances of the criminal offense, describing the evidence collected.

In the cases provided for by this Code, the investigator shall notify the prosecutor of the establishment of circumstances that make it possible to conclude a procedural agreement. If there are grounds provided for by this Code, the investigator shall apply writ proceedings.

Footnote. Part three as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by

investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

4. In order to ensure the execution of the sentence in the civil claim, other property claims or possible confiscation of property, the investigator shall take measures to identify the property of the suspected or the persons legally financially responsible for his (her) actions.

5. In carrying out the investigation in criminal cases, the investigator shall also take measures to identify the property, obtained by criminal means or purchased with funds, obtained by criminal means, and transferred to the ownership of others.

6. The investigator may, at any time, by its decision take up the case and proceed with its investigation, without waiting for the execution of the urgent investigative actions by the bodies of inquiry.

7. The investigator shall take all decisions in the course of pre-trial investigation independently, except in cases when the law provides for the consent of the prosecutor, court authorization or court decision, and shall be fully responsible for their lawful and timely execution. Illegal interference in the activities of an investigator entails criminal liability.

The decision on the criminal case, made by the investigator within his (her) powers, as well as the orders and instructions during the pre-trial investigation in a criminal case must be executed by all the organizations, officials and citizens.

8. In case of disagreement of the investigator with the procedural decisions, actions (inaction) of the prosecutor under the investigation case, he/she shall have the right to appeal them to a higher prosecutor.

Appealing of procedure decisions, actions (inaction) of the prosecutor to a higher prosecutor does not suspend their execution.

9. The investigator on the cases under his (her) investigation has the right to examine the materials of cases of operational records and undercover investigative actions of the bodies of inquiry, relating to the case under investigation, to demand them to be attached in accordance with this Code to the present case, give the bodies of inquiry the binding orders and instructions on production of search, investigative and undercover investigative actions and to require them to assist in the conduct of investigative actions.

Footnote. Article 60, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 No. 118-VI (for the procedure of implementation, see Article 2); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force).

## **Article 61. The body of inquiry**

1. The bodies of inquiry, depending on the nature of the criminal offence shall be liable for:

1) taking in accordance with the competence, established by law the required criminal procedural and search actions in order to detect signs of criminal offences and the persons who committed them, the prevention and suppression of criminal offences;

2) execution of criminal procedural and search activities in the manner provided in Article 196 of this Code, on the cases, in which a preliminary investigation is conducted;

3) inquiry in the cases on which a preliminary investigation is not necessary, in the manner provided in Article 191 of this Code;

4) execution of an accelerated pre-trial investigation, established by Article 190 of this Code;

5) execution of pre-trial investigation in the form of protocol on criminal infractions;

6) conducting a preliminary investigation in the cases, provided for in paragraphs three and five of Article 189 of this Code.

2. The bodies of inquiry are:

1) bodies of internal affairs;

2) national security agencies;

3) anti-corruption agency;

3-1) economic investigation agency;

4) is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015);

5) bodies of the military police - in all cases, involving criminal offences committed by military personnel, undergoing military service on call-up or under the contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan, by citizens in reserve, during the passage of military duties, the civilian personnel of military units, formations, institutions in connection with the performance of their duties or in the location of these units, formations and institutions;

the bodies of the military police of the National Security Committee – also in all cases, involving criminal offences, committed by servicemen and members of special state agencies;

military police bodies of the Armed Forces - also in cases of all criminal offenses committed by military servicemen of the administrative bodies and military units of civil defense of the authorized civil protection body;

6) bodies of Board service - on the cases of violation of the legislation on the State Border of the Republic of Kazakhstan, as well as the criminal offences, committed on the continental shelf of the Republic of Kazakhstan;

7) commanders of military units, formations, heads of military institutions and garrisons, in the absence of the body of the military police - in all cases, involving criminal offences,



committed by their subordinated military personnel, undergoing military service on call-up or under the contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan, as well as by citizens in the reserve, during the passage of military duties, on the cases of criminal offences, committed by civilian personnel of military units, formations, institutions in connection with the performance of their official duties or in the location of these units, formations and institutions;

8) heads of diplomatic missions, consular offices and authorized representatives of the Republic of Kazakhstan - on the cases of criminal offences, committed by their employees in the host country;

9) State Security Service of the Republic of Kazakhstan – on the cases of criminal offences, committed in the area of security measures, and directly aimed against the protected persons, the list of which is set by law;

10) is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015);

11) bodies of the state fire service - in cases of criminal offenses related to fires.

3. The rights and obligations of the body of inquiry on pre-trial proceedings and execution of urgent investigative actions in all cases, involving criminal offences also rests on the captains of ships that are on a long voyage, the heads of exploration parties, other state organizations and their subdivisions, distant from the bodies of inquiry, listed in the second part of this article, - in the absence of transport links.

Footnote. Article 61, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 29.06.2021 No. 58-VII ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 14.03.2023 No. 206-VII (shall be enforced ten calendar days after the date of its first official publication).

## **Article 62. Head of the body of inquiry**

1. The Head of the Main Office (department), office, division of the body of inquiry and their deputies within their competence shall possess the powers of the Head of the body of inquiry in the pre-trial investigation in cases of criminal offences, provided for in Article 191 of this Code.

2. The Head of the body of inquiry shall organize the necessary operational- search, criminal procedural, including undercover investigative actions, in order to detect signs of criminal offences and the persons who committed them, the prevention and suppression of criminal offences. In accordance with the procedure established by this Code, he (she) presents the results of operational-search activities, undercover investigative actions to the bodies of pre-trial investigation.

3. Regarding the criminal offences, under investigation of the bodies of preliminary investigation, the Head of the body of inquiry shall:

1) ensure the execution of urgent investigative actions;

2) organize the execution of the orders of the procurator, head of the investigation department, investigator, including on the certain investigative and other actions, and application of protective measures for victims, witnesses and other persons, involved in criminal proceedings;

3) organize implementation of court orders.

In case of disagreement of the head of the inquiry body with procedural decisions, actions (inaction) of the prosecutor, he/she shall have the right to appeal to their superior prosecutor.

4. Regarding the criminal offences, the pre-trial investigation on which is carried out by the bodies of inquiry, the head of the body of inquiry shall control the timing and legitimacy of the actions of interrogating officers and have the right to:

1) check the cases under their proceeding;

2) give instructions on certain investigative and other procedural action, qualification of the actions of the suspected, transfer of the case, materials from one interrogating officer to another;

3) entrust the inquiry to several interrogating officers;

4) start pre-trial investigation and personally conduct inquiry, taking this case to own production, or performing separate procedural actions;

5) consider complaints on actions (inaction) and decisions of the inquirer;

6) to apply to the prosecutor for an application for an order of the investigating judge.

5. The head of the body of inquiry coordinates the decisions on initiating a petition for seizure of property, announcing an international wanted list, sending the suspect, the accused, who are not held in custody, to a medical organization for the production of a stationary forensic or forensic psychiatric examination, election in relation to the suspect, the accused measure of restraint in the form of detention, extension of the period of detention; change or cancellation of a measure of restraint in the form of detention; conducting a search; removal of the suspect, the accused from office; approach ban; transfer of the suspect, the accused; announcement of the search for the suspect, the accused; agrees on a protocol on a criminal offense; approves the protocol on the detention of persons suspected of committing criminal offenses, the decision to terminate the pre-trial investigation; coordinates the report on the completion of the pre-trial investigation, the protocol of the accelerated pre-trial investigation, the protocol of the accusation and sends the criminal case to the prosecutor; sends to the prosecutor criminal cases on criminal offenses in protocol form and in the order of writ proceedings; coordinates decisions on the application of writ proceedings and sends them to the prosecutor; ensures the adoption of measures to eliminate the circumstances that contributed to the commission of criminal offenses.

In the cases provided for by this Code, the head of the body of inquiry shall notify the prosecutor of the establishment of circumstances that make it possible to conclude a procedural agreement.



If there are grounds provided for by this Code, the head of the body of inquiry shall apply writ proceedings.

Footnote. Part five - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up by the person conducting the pre-trial investigation a report on the completion of the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

6. Instructions of the Head of the body of inquiry in the case may not restrict the independence of the interrogating officer, his (her) rights set out in Article 63 of this Code. Instructions shall be given in writing and shall be binding, but may be appealed to the procurator. Appealing by the interrogating officer the actions (inaction) of the Head of the body of inquiry to the procurator shall not suspend their execution, except as provided for in part six of Article 63 of this Code.

Footnote. Article 62 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ).

### **Article 63. Interrogating officer**

1. Interrogating officer is an official, authorized to carry out pre-trial investigation of the case within his (her) competence.

2. A person conducting an initial inquiry has the right by his or her decision to take the case to his or her own trial and to carry out pre-trial investigation in the forms specified in the present Code, and to decide independently on the conduct of investigative and other procedural actions, except in cases where the law provides for the approval or approval of the head of the body conducting the initial inquiry or where the consent of the procurator, the authorization of the court or the investigating judge, or the decision of the court is provided for by law.

3. In the course of pre-trial investigation in cases where preliminary investigation is not mandatory, the interrogating officer shall be guided by the rules provided for by this Code for preliminary investigation, with the exceptions provided for in Articles 190 , 191 , 192-1 and 192-2 of this Code.

4. In cases, in which a preliminary investigation is conducted, the interrogating officer is authorized on behalf of the head of the body of inquiry to carry out the urgent investigative actions, about which he (she) not later than twenty-four hours shall notify the procurator and a preliminary investigation body.

5. The investigator is obliged to fulfill the orders of the court, the procurator, the preliminary investigation body and the body of inquiry on certain investigative actions, adoption of measures to ensure the safety of the persons, involved in criminal proceedings. In order to enforce the sentence in the civil claim, other property claims or possible confiscation of property, the interrogating officer shall take measures to establish the property of the suspected or the persons, legally financially liable for their actions.

6. The instructions of the head of the body of inquiry are obligatory for the interrogating officer. The instructions of the head of the body of inquiry in criminal cases may be appealed to the prosecutor. Appealing the instructions does not suspend their execution, except for instructions on the qualification of the suspect's act and the extent of suspicion, the direction of the criminal case to the prosecutor with the accusation protocol, the report on the completion of the pre-trial investigation or the termination of the criminal case.

**Footnote. Part six as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

**Footnote. Article 63 as amended by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force).**

## **Chapter 9. Participants in the process, protecting their rights or represented rights and interests**

### **Article 64. Suspected**

1. The suspected is a person:

1) in respect of whom a decision has been issued on recognition as a suspect, agreed with the prosecutor;

1-1) interrogated as a suspect in the manner prescribed by part 1-2 of Article 202 of this Code, until the prosecutor refuses to approve the decision to recognize the person as a suspect ;

2) arrested in accordance with Article 131 of this Code;

3) in respect of whom a decision was made to qualify the act of the suspect the prosecutor or the person conducting the pre-trial investigation agreed with the prosecutor;

4) interrogated in connection with the suspicion of committing a criminal offense or criminal offenses specified in parts two - 11-1 of Article 191 of this Code.

2. The criminal prosecution body at the time of arrest immediately, prior to the production of any investigative actions, involving the suspected is obliged to explain to the suspected his (her) rights under this Code, as is noted in the protocols of arrest, interrogation protocol of the suspected and decisions on the recognition of a person as suspected and on qualifications of the acts of the suspected.

3. In the case of arrest of a suspected, he (she) must be questioned no later than twenty-four hours from the moment of the arrest protocol, while ensuring the right to private and confidential meeting before the first interrogation with his (her) chosen or appointed defense counsel. The arrested suspected has the right to immediately report by telephone or other means at his (her) place of residence or work about his (her) detention and place of detention.

If there is a reason to believe that the report on the arrest may prevent a pre-trial investigation, the official of the criminal prosecution body, carrying out arrest, can produce a notice of adult family members, close relatives of the detainee him(her)self. Such notification must be made without delay.

A note about the fact of such notification is made in the protocol of arrest, which specifies the time and manner of reports about the arrest.

4. In case of failure of a suspected to appear in the body of criminal prosecution, he (she) shall be questioned on the existing suspicions immediately after his (her) bringing, but in other cases - not later than the end of the pre-trial investigation in compliance with the right on a private meeting with a defense counsel.

5. The suspected shall be questioned about the existing suspicions against him (her), as well as on other circumstances known to him (her) and relevant in the case, and the evidence.

6. If the suspected does not exercise his (her) right to refuse to testify before the first interrogation, he (she) shall be warned that his (her) testimony can be used as evidence in criminal proceedings, including his (her) subsequent refusal from this evidence.

7. If the suspicion is unreasonable, the pre-trial investigation body shall immediately take steps to cancel the coercive procedural measures, applied against him (her) in the manner, prescribed by this Code.

8. A person ceases to be in the position of the suspected from the time of becoming a defendant or termination of the pre-trial investigation in respect of him (her).

9. The suspected shall have the right to:

1) obtain from the person, carried out the detention, the explanation of his (her) rights;

2) know what he (she) is suspected;

3) independently or through his (her) relatives or proxies invite a defense counsel. If a defense counsel is not invited by the suspected, his (her) relatives or proxies, the criminal prosecution body shall ensure his (her) participation in the manner, specified in the third paragraph of Article 67 of this Code;

4) exercise the rights of a civil defendant in the case, if he (she) is recognized as a such in connection with the presentation of a civil claim in the case;

5) have a private and confidential meeting with the chosen or appointed defense counsel, including prior to the interrogation;

6) give testimony only in the presence of the defense counsel, except in cases of refusal from him (her);

7) receive copies of the decisions on the recognition as a suspected, civil defendant, on the qualification of the action, the protocol of arrest, the petitions and the decisions on choosing and extension of a preventive measure, the decision to terminate the criminal case;

8) refuse to testify;

9) receive from the person, carrying out a pre-trial investigation, an explanation of the procedure and conditions for the application of a preventive measure in the form of bail and other measures, not related to detention in custody;

10) present evidence;

11) make applications, including on the adoption of security measures, and disqualifications;

12) give evidence in his (her) native language or the language he (she) speaks;

13) have the free assistance of an interpreter;

13-1) apply to the probation service for pre-trial probation;

14) participate with the permission of the criminal prosecution body in the investigative actions, carried out at his (her) request or the request of the defense counsel or the legal representative;

15) reconcile with the complainant in the cases provided for by law, including by way of mediation;

16) at any stage of the investigation, make a request to the procurator or express a consent to conclude a procedural agreement, setting out his (her) proposals on the type and extent of punishment, and conclude a procedural agreement;

16-1) to file a petition for the application of court proceedings in the case of a criminal offence or a crime of minor gravity;

17) get acquainted with the protocols of the investigative actions, carried out with his (her) participation, and give comments on the protocols;

18) make complaints against the actions (inaction) and the decisions of the investigator, the interrogating officer, the procurator and court;

19) protect his (her) rights and legal interests in other ways, not contrary to the law;

20) in the appointment and performance of the expertise, as well as giving him (her) an expert conclusion, carry out actions, provided for in Articles 274, 286 of this Code;

21) in the manner prescribed by this Code, examine at the end of the investigation the case materials and write out any information, as well as make copies using the scientific and technical means, except for the information constituting state secrets or other secrets protected by law;

22) object to the termination of criminal prosecution;

23) be immediately notified by the body, conducting the criminal proceedings, on the adoption of procedural decisions, affecting his or her rights and legitimate interests, except for matters, relating to the undercover investigative actions, as well as get copies of them;

24) apply for additional interrogation of the witness, indicating him (her), calling and interrogation as witnesses of the persons, specified by him (her) to line-up.

10. The presence of the suspected of a defense counsel or a legal representative cannot serve as the basis for the elimination or limitation of any rights of the suspected.

**Footnote. Article 64 as amended by the Law of the Republic of Kazakhstan dated 30.12.2016 № 39-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

## **Article 65. Accused**

1. The accused is a person in respect of whom:

1) the prosecutor has drawn up an indictment;

**Footnote. Paragraph 1) of part one - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the**

moment the prosecutor draws up the indictment, which put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

2) the prosecutor approved the decision on the application of writ proceedings, the protocol on the criminal offense, the protocol of the accelerated pre-trial investigation, the protocol of the accusation, and a decision was made to refer the criminal case to the court under the relevant article (s) of the criminal law;

3) the pre-trial investigation is completed by signing a procedural agreement in the manner, specified in the fourth part of Article 617 of this Code;

4) excluded by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).

2. The accused, in respect of whom, the court proceedings are appointed, and in cases of private prosecution - in respect of whom the complaint is accepted by the court to its production, shall be recognized as the defendant.

3. The defendant, in respect of whom a judgment of conviction is made, shall be recognized as the convicted.

4. The defendant, in respect of whom a judgment of acquittal is made, shall be recognized as the acquitted person.

5. The accused shall be entitled to exercise rights under the ninth part of Article 64 of this Code, as well as:

1) to know, why he (she) is accused;

2) receive copies of the indictment drawn up by the prosecutor, the protocol on the criminal offense approved by the prosecutor, the protocol of the accelerated pre-trial investigation, the protocol of the accusation;

Footnote. Paragraph 2) of part five - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph

29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

3) to protect his (her) rights and legitimate interests by means and methods, not contrary to the law, and to have adequate time and facilities to prepare a defense;

4) to exercise the rights of a civil defendant in the case, of recognition of him (her) as a such in connection with the presentation of a civil claim in the case;

5) at any stage of the investigation to make a request or express a consent to conclude a procedural agreement and conclude a procedural agreement, obtain a copy of the procedural agreement;

6) in cases stipulated by this Code to make a request for consideration of a criminal case in the court by jurors.

6. The defendant shall have the right to:

1) participate in the judicial proceedings in the court of first instance and appellate courts;

2) exercise all the rights of the defense, as well as the right to the last word;

3) at any stage of the court proceedings, file a petition or express consent to conclude a procedural agreement and conclude a procedural agreement;

4) refuse on the signed procedural agreement prior to the removal of the court to the deliberation room for decision-making;

5) require a public trial;

6) be against the termination of the case.

7. The convicted person or acquitted person shall have the right to:

1) get acquainted with the protocol of the court session and comment on it;

2) appeal against the sentence, the court decision, the judge's decision and receive copies of the disputed decisions;

3) know about the complaints brought in the case, petitions of the prosecutor and protests, to file objections to them;

4) participate in the court's consideration of the brought complaints, the prosecutor's petitions and protests;

5) make a request or express a consent of the signing a procedural agreement on cooperation and conclude a procedural agreement.

8. The presence of the accused of a defense counsel or a legal representative cannot serve as the basis for the elimination or limitation of any rights of the accused.

Footnote. Article 65 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 118-VI dated 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 19.12.2020 No. 384-VI (



shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ).

### **Article 65-1. Witness entitled to defense**

1. If a person is indicated in the application and report on a criminal offense as the person who committed it, or if a witness participating in the criminal process testifies against him, but procedural detention has not been applied to this person or a decision has not been issued on recognizing him as a suspect , then it acquires the status of a witness entitled to protection .

2. A witness entitled to protection has the right to:

- 1) receive from the person conducting pre-trial proceedings an explanation of his rights;
- 2) receive from the person conducting the pre-trial investigation an explanation of the status of a witness entitled to protection;
- 3) get acquainted with the resolution on the appointment of an examination in the cases provided for by this Code;
- 4) get acquainted with the conclusion of the expert examination in the cases provided for by this Code;
- 5) refuse to testify;
- 6) independently or through their relatives or proxies invite a lawyer as a defense counsel;
- 7) testify in the presence of a defense counsel;
- 8) testify in their native language or in the language they speak;
- 9) use the free assistance of an interpreter;
- 10) handwritten recording of their testimony in the protocol of interrogation;
- 11) get acquainted with the documents specified in part one of this article, with the exception of materials of operational-search, counterintelligence measures and covert investigative actions, as well as personal data contained therein;
- 12) get acquainted with the protocols of investigative actions carried out with his participation, and submit comments on them, provide evidence;
- 13) make petitions concerning his rights and legitimate interests, including the production of an expert examination and the application of security measures;
- 14) declare challenges;
- 15) confrontation with those who testify against him;
- 16) file complaints against actions (inaction) of an inquirer, investigator, prosecutor.

3. A witness who has the right to protection is obliged: to appear when summoned by the court, the prosecutor, the person conducting the pre-trial investigation; observe the established procedure during the production of investigative actions and during the court session.

4. A witness entitled to defense may not be subjected to an expert examination or examined, except for the cases specified in Articles 223 and 271 of this Code.



5. For failure to appear, without good reason, when summoned by the body conducting the criminal proceedings, a witness entitled to protection may be subject to a monetary penalty in the manner prescribed by Article 160 of this Code.

**Footnote. Chapter 9 is supplemented by Article 65-1 in accordance with the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 66. Defense counsel**

1. Defense counsel is a person, engaged in accordance with the law to protect the rights and interests of the witness, entitled to the protection, the suspected, accused, defendant, convicted, acquitted, and providing them legal assistance in criminal proceedings.

2. Lawyer shall be involved as a defense counsel. In the participation of a lawyer in criminal proceedings as a defense counsel along with him (her) on the written request of a witness, entitled to the protection, the suspected, accused, defendant, convicted, acquitted, their defense may exercise one of the following persons: the spouse (wife) or a close relative, a guardian, a care-giver or a representative of the organization, in the care or dependence of which is a client. Foreign lawyers are allowed to participate in the case as defense counsels, if it is stipulated by an international treaty of the Republic of Kazakhstan with the relevant state on a reciprocal basis, in accordance with the legislation.

3. The defense counsel shall have the right to participate in criminal process from the receipt by a person of the status of the witness, entitled to the protection, the suspected, the accused, as well as at any subsequent time of the criminal process.

4. One and the same person cannot be a defense counsel of the two witnesses, who are entitled to the protection, the suspected, accused, defendant, if the interests of one of them contrary to the interests of another.

5. Lawyer shall not be entitled to refuse from the assumed protection of a witness, entitled to the protection, the suspected or accused, the defendant, the convicted and acquitted persons

#### **Article 67. Mandatory participation of a defense counsel**

1. Participation of a defense counsel in criminal proceedings is mandatory in the following cases:

- 1) if so requested by the suspected, accused, defendant, convicted or acquitted;
- 2) the suspected, accused, defendant, convicted or acquitted does not reach the age of majority;
- 3) the suspected, accused, defendant, convicted or acquitted due to physical or mental disability cannot independently exercise their right to defense;

4) the suspected, accused, defendant, convicted or acquitted does not speak the language of the court proceedings;

5) a person is suspected, accused of committing a crime, for which, as a measure of punishment, imprisonment for a term of more than ten years or life imprisonment may be imposed ;

6) if detention in custody is applied to the suspected, accused, defendant, convicted as a preventive measure, or they are forcibly directed to stationary forensic psychiatric examination;

7) if there are contradictions between the interests of the suspected, accused, defendant, convicted, acquitted, one of which has the defense counsel;

8) a representative of the complainant (private prosecutor) or a civil claimant is involved in criminal proceedings;

9) a procurator, supporting the public prosecution (public prosecutor) is involved in court proceedings;

10) the suspected, accused, defendant, convicted or acquitted are outside the Republic of Kazakhstan and refuses to appear in the bodies of criminal prosecution or court;

11) if a petition on procedural agreement and its conclusion is filed.

2. In the cases, provided for in paragraphs 1) - 6), 10) of first part of this Article, the participation of a defense counsel is provided from the date of recognition of the person as suspected, accused, defendant, convicted, acquitted, by paragraph 7) – from the time of detection of contradictions between the interests of the suspected and accused persons, the defendants, convicted, acquitted persons, by paragraphs 8), 9) - from the time of participation in the case of the representative of the complainant, the procurator, 11) – from the time of the application on conclusion of a procedural agreement by the suspected, accused, defendant, convicted.

3. If in the circumstances, specified in part one of this article, the defense counsel is not invited by the suspected, accused, defendant, convicted, acquitted, their legal representatives, as well as by others on their behalf, the body, conducting the criminal proceedings shall ensure the participation of a defense counsel for appropriate stage of the process, about what a decision compulsory for professional organization of lawyers shall be made.

**Footnote. Article 67 as amended by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 68. Invitation, appointment, replacement of a defense counsel, payment for his (her) labour**

1. Lawyer as a defense counsel is invited by the witness, entitled to protection, the suspected, accused, defendant, convicted, acquitted by their legal representatives, as well as by other persons on behalf of or with the consent of the witness, entitled to protection, the suspected, accused, defendant, convicted, acquitted. The suspected, the witness, entitled to

protection, the accused, defendant, convicted, acquitted shall have the right to invite for the protection of several lawyers as defense counsels.

2. At the request of a witness entitled to defence, suspected, accused, defendant, convicted, acquitted, the participation of a defense counsel is provided by the body conducting the criminal process by sending a relevant decision on paper or in the form of an electronic document through the unified information system of the legal help.

3. In cases, where the participation of the chosen or appointed defense counsel is impossible for a long (not less than five days) period, the body conducting the criminal proceedings, is entitled to propose the witness, entitled to protection, the suspected, accused, defendant, convicted, acquitted to invite another defense counsel or to take measures to the appointment of a defense counsel through a professional organization of lawyers or its subdivisions. The body, conducting the criminal proceedings shall not be entitled to recommend inviting as a defense counsel of a certain person.

4. In the case of arrest or detention in custody, if the attendance of a defense counsel, chosen by the suspected, accused, defendant, convicted, acquitted is impossible within twenty-four hours, the body conducting the criminal proceedings, shall offer the suspected, accused, defendant, convicted, acquitted to invite another defense counsel, and in case of failure, to take measures to the appointment of a defense counsel through the professional organization of lawyers or its subdivisions.

5. Payment for labour of the lawyer shall be in accordance with the legislation of the Republic of Kazakhstan. The body, conducting the criminal proceedings, if there is a reason, is obliged to release the suspected, accused, defendant, convicted, acquitted person in whole or in part from the payment for legal assistance. In this case, the payment for labour shall be made by the state.

6. The costs for payment of labour of lawyers can be made by the state and in the case, provided for in part three of Article 67 of this Code, when the lawyer participates in the pre-trial investigation or in the court for its intended purpose.

7. If several defense counsels participate in criminal proceedings, the procedural action in which the participation of a defense counsel is necessary, cannot accept illegal due to not all the defense counsels of the corresponding suspected, accused, defendant, convicted, acquitted does not participate in it.

8. An advocate shall enter into the case as a defender upon presentation of the advocate's certificate and written notice of defence (representation) provided for by the Law of the Republic of Kazakhstan "On Advocacy and Legal Assistance". The request for other documents confirming the powers of an advocate to conduct a specific case shall be prohibited. Another person, in accordance with the provisions of paragraph two of Article 66 of this Code, shall submit a document confirming his right to participate in criminal

proceedings as a defender (marriage certificate, a document confirming the relationship with the suspect, accused, defendant, convicted, acquitted, decision of the bodies exercising guardianship and custody functions).

**Footnote. Article 68 with the change introduced by the Law of the Republic of Kazakhstan dated 05.07.2018 № 177-VI (shall be enforced dated 01.01.2019); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 69. Refusal of defense counsel**

1. The suspected, accused, defendant shall have the right at any time of the proceedings refuse of the defense counsel. Such refusal is permitted only at the initiative of the suspected, accused, defendant in the presence of the participating in criminal proceedings defense counsel or the defense counsel, appointed in the manner prescribed by the third part of Article 67 of this Code.

Refusal of the defense counsel on the grounds of lack of funds to pay for legal assistance shall not be received. The refusal shall be in writing or shall be recorded in the protocols of the corresponding investigative or judicial action.

2. In the cases provided for in paragraphs 2), 3), 4) and 5) (if a person is suspected of committing a crime for which life imprisonment may be imposed as a punishment), paragraph 6) (in case of compulsory referral of a suspect to an inpatient forensic psychiatric examination ) of part one of Article 67 of this Of the Code, the refusal of the suspect, the accused from the defender cannot be accepted by the body conducting the criminal process.

3. Refusal of defense counsel shall not deprive the person of the right to apply in the future for admission of the defense counsel to participate in criminal proceedings. Entry of the defense counsel in the process shall not involve the repetition of actions that committed by this time in the course of the investigation or court proceedings.

**Footnote. Article 69 as amended by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 70. Powers of the defense counsel**

1. The defense counsel shall use all legal means and methods of protection in order to identify the circumstances, refuting the suspicion, accusation or mitigating the liability of the suspected, accused, and provide them with the necessary qualified legal assistance.

2. The defense counsel shall have the right to:

1) have with the suspected, accused a private and confidential meeting, without limitation of their number and duration;

2) in the manner, prescribed by this Code, collect and present items, documents, information, as well as other data, necessary for the provision of legal assistance, which are subject to mandatory inclusion in the materials of the criminal case;

3) to participate in the interrogation of the suspect, the accused, as well as in other investigative and procedural actions, including in the examination, search, seizure, carried out with their participation or at their request or at the request of the defense counsel himself, to be present when the decision to recognize the suspect as a suspect is announced, qualification of the deeds of the suspect, as well as to receive copies of these decisions after their approval by the prosecutor;

4) propose a disqualification;

5) from the moment of joining the case, get acquainted with the following case materials in relation to his client, with the exception of case materials containing data on operational-search and counterintelligence measures, covert investigative actions:

application, notification of a person about a committed criminal offense, with the exception of the personal data contained in them;

a report on the registration of such an application, a message in the unified register of pre-trial investigation, with the exception of the personal data contained therein;

protocols of investigative and procedural actions carried out with the participation of the client;

a decision on the application of a measure of restraint and a petition to the court for a sanction to apply a measure of restraint.

With the help of scientific and technical means, he has the right to remove or receive from the person conducting the pre-trial investigation copies of the decisions of the pre-trial investigation body in relation to his client about (about):

acceptance of pre-trial investigation materials into proceedings;

creation of an investigative, investigative-operational group;

establishing the language of legal proceedings in a criminal case;

recognition as victims, with the exception of the personal data contained in them;

recognition as a civil plaintiff;

recognition as a suspect;

qualification of the suspect's act;

initiation of a petition for authorization of a measure of restraint;

involvement of a specialist to give an opinion;

appointment of a forensic examination;

attachment of property;

interruption of the terms of the pre-trial investigation;

termination of the pre-trial investigation;

resumption of the terminated pre-trial investigation;

the results of consideration of complaints, petitions of the defense;

search, seizure (after their completion);  
production of an investigative experiment;  
obtaining samples for expert examination.

And also with the help of scientific and technical means have the right to make copies of:  
conclusions of a specialist, expert, a message about the impossibility of giving an opinion  
in relation to his client;

notification of the completion of investigative actions and an explanation of the right to  
familiarize with the materials of the criminal case.

At the end of the pre-trial investigation, the right to get acquainted with all the materials  
of the criminal case, write out any information from it in any volume, make copies using  
scientific and technical means, with the exception of information constituting state secrets or  
other secrets protected by law, and the list of witnesses for the prosecution;

6) present petitions, including on the adoption of security measures;

7) participate in the preliminary hearing of the case, the judicial proceedings in any court,  
serve in pleadings, participate in the court session at the reopening of the case on newly  
discovered evidence, in considering an application for authorization of a preventive measure  
by the court, in considering an application for an extension of detention in custody or house  
arrest, when dealing with complaints and petitions of the defense team by the investigating  
judge, when depositing evidence;

8) get acquainted with the protocol of the court session, at the same time he (she) is  
entitled to affix his (her) signatures at the end of the protocol, and when reading the part of  
the protocol of the court session, by placing a signature at the end of this part, and bring  
comments on it;

9) receive copies of procedural documents, to be handed to him (her) and his (her) client;

10) object to the illegal actions (inaction) of the person, conducting the criminal  
proceedings, and other persons, involved in criminal proceedings, require the inclusion of  
these objections to procedural documents;

11) make complaints on the actions (inaction) and decisions of the interrogating officer,  
investigator, procurator and the court, and participate in their consideration;

12) use any other means and methods of protection, not contrary to law;

13) to be notified in advance by the body, conducting the criminal proceedings, about the  
time and place of production of the procedural actions with the participation of the client, as  
well as about all court sessions, related to the consideration of complaint of the defense,  
petitions on the application of a preventive measure, extension of the period of detention in  
custody, depositing evidence.

3. A lawyer, involved in the case as a defense counsel, along with the rights provided for  
in the second part of this Article may also:

1) apply to the investigating judge on depositing evidence of the witness and the  
complainant;

2) apply to the investigating judge for the discovery of any information, documents, items necessary for the provision of qualified legal assistance and protection of the interests of the suspected, accused, the witness, entitled to protection, except for information constituting the state secrets, in cases of refusal to execute the request or failure to decide on it within three days;

3) to apply to the investigating judge for the appointment of an expert examination or for the pre-trial investigation body to carry out the investigation action, except for the tacit investigation action, including if the body of criminal prosecution has been unreasonably refused or has not made a decision on such application within three days;

4) interrogate, including with the use of scientific and technical means, the persons who know anything about the circumstances of the case, and apply for admission of the thus-obtained evidence in the case file;

5) receive on a contractual basis of an expert conclusion, the expert on the case and apply for the admission of such conclusions to the case file;

6) apply to the investigating judge on reconduction to the body, conducting the criminal proceedings, the previously interviewed by them witness, providing the presence of which to testify is difficult.

4. Defense counsel, involved in the production of investigative action has the right to ask questions to the interrogated persons after questioning by the person, exercising the pre-trial investigation. The person, exercising the pre-trial investigation may exclude questions of the defense counsel, but he (she) is obliged to record all the questions in the protocol. The defense counsel may make written comments in the protocol of the interrogative action on the correctness and completeness of its entries.

A lawyer participating in the production of a procedural action as a defense counsel has the right to give, at the request of the client, brief consultations in the presence of the person conducting the pre-trial investigation.

5. Defense counsel shall not have the right to: take any action against the interests of the client and impede the exercise of his (her) rights; contrary to the position of the client admit his (her) involvement in the criminal offence and the guilt of committing it, declare the client's reconciliation with the complainant; recognize a civil claim; revoke the client filed complaints and petitions; disclose information that became known to him (her) in connection with an application for legal assistance and its implementation.

6. Defense counsel has also other rights and bears other obligations, stipulated by this Code.

**Footnote. Article 70 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**



## **Article 71. Complainant**

1. Complainant in criminal proceedings is a person in respect of whom there are grounds for believing that he (she) is directly suffered from moral, physical or property damage by criminal offence.

1-1. The person conducting the pre-trial investigation shall be obliged to immediately recognize the person as a victim in the cases provided for in the first part of this article.

2. A person shall be recognized as a victim, also in cases when he (she) suffered from damage caused by an act, prohibited by the Criminal Code of the Republic of Kazakhstan and committed by insane person.

3. A person shall be recognized as a victim in criminal proceedings after the issuance of the corresponding decision. If in the course of criminal proceedings it is identified that there are no grounds for his (her) stay in this position, the body, conducting the criminal proceedings shall terminate by its decision a participation of the person as a victim.

4. The complainant shall be explained the right to bring a civil claim in criminal proceedings and provided the compensation for property damage, caused by the criminal offence, as well as the costs incurred in connection with his (her) participation in criminal proceedings, including the costs of the representative, according to the rules established by this Code.

5. The claim of the complainant for compensation of moral damage shall be considered in criminal proceedings. If such claim is not submitted or left without consideration, the complainant shall be entitled to submit it to the civil proceedings.

6. The complainant shall have the right to:

- 1) know about the suspicions and accusations brought against him (her);
- 2) give testimony in native language or language he (she) speaks;
- 3) submit evidence;
- 4) make applications and challenges;
- 5) have the free assistance of an interpreter;
- 6) have a representative;

7) receive the property, seized from him (her) by the criminal prosecution body as a means of proving or represented by him (her), as well as his (her) property, confiscated from the person who committed the prohibited by the criminal law act, obtain the original documents, belonging to him (her);

8) reconcile, including by way of mediation, with the suspected, accused, defendant in the cases, provided by law;

8-1) consent to the application of the ordered proceedings in the case of a criminal offense or a crime of minor gravity;

9) get acquainted with the protocols of investigative actions, performed with his (her) participation, and give comments on them;

10) participate with the permission of the investigator or the interrogating officer in the investigative actions, carried out at his (her) request or the request of his (her) representative;

11) get acquainted at the end of the pre-trial investigation with the all case materials, write out any information and in any volume, with the exception of information constituting the state secrets;

12) make application for security measures to him (her) and his (her) family, non-disclosure of the circumstances of private life, and on the application in respect of the suspected a restraining order;

13) receive copies of decisions on recognizing him as a victim or refusal to do so, termination of the pre-trial investigation, the indictment, the protocol of the accelerated pre-trial investigation, the protocol of the accusation, as well as copies of the verdict and decision of the court of the first, appeal and cassation instances;

14) participate in the court proceeding of the case in the first, appeal and cassation instances;

15) act in pleadings;

16) support the accusation, including in the case of refusal of the public prosecutor to press charges;

17) get acquainted with the protocol of the court session, at the same time have the right to affix his (her) signatures at the end of the protocol, and by reference to the part of the protocol of the court session - at the end of this part; in the case of using the audio and video fixation of the court session - at the end of the protocol, and give comments on the protocol;

18) make complaints against the actions (inaction) of the body, conducting the criminal proceedings;

19) appeal the sentence and the court decision;

20) be informed about the complaints brought in the case, the petitions of the prosecutor and protests, to file objections to them and participate in their consideration;

21) protect his (her) rights and legal interests in other ways, not contrary to the law;

22) know about the intention of the parties to conclude a procedural agreement, its conditions and consequences, offer his (her) conditions for compensation of damages, caused by the crime, or object to its conclusion;

23) To receive compensation in accordance with the legislation of the Republic of Kazakhstan on the Victims Compensation Fund.

In the cases, stipulated by Article 76 of this Code, legal assistance shall be provided to the complainant free of charge.

7. The complainant, as in the case of his (her) death - his (her) successors shall be entitled to receive from the budget of monetary compensation for property damage, caused by a particularly serious crime, if the convicted of such crime does not have property, sufficient for compensation of the damage, caused by that crime. In this case, the issue of payment from the budget of monetary compensation shall be decided by the court, made the sentence, upon the

application of the complainant or his (her) successor. The complainant shall have the right, in the specified cases, to compensate the damages in full, if the damage does not exceed one hundred and fifty monthly calculation indices.

8. The complainant shall: appear on call of the body, conducting the criminal proceedings, truthfully report all known circumstances of the case and answer the questions; not disclose the information about the circumstances known to him (her) on the case; observe the established order in the investigative actions and during the court session.

9. For non-appearance of the complainant on call without a valid reason, he (she) shall be forced to drive in the manner, prescribed in Article 157 of this Code, and he (she) may be imposed a monetary penalty in the manner provided in Article 160 of this Code.

10. The complainant shall bear the criminal liability in accordance with the law for his (her) refusal to testify and perjury.

11. In cases of crimes, the consequences of which was the death of the person, the rights of the complainant, provided for by this Article shall be exercised by close relatives, spouse (wife) of the deceased. If for granting of the rights of the complainant the several persons, who caused moral damage by a criminal offence, are pretended, they all or one of them by agreement between them may be recognized as complainants.

12. The legal entity to which a criminal offence caused the property damage may be recognized as complainant. In this case, the rights and obligations of the complainant are exercised by a representative of the legal entity.

**Footnote. Article 71 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 10.01.2018 № 132-VI (shall be enforced dated 01.07.2018); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

## **Article 72. Private prosecutor**

1. Private prosecutor is the person who filed the complaint to the court in the case of private prosecution and supporting the prosecution in court, as well as the complainant in cases of public and private-public prosecution, independently supporting the prosecution in court in the case of refusal of the public procurator to press charges.

2. In the case of minority or incapacity of the complainant, his (her) legal representative, who made a petition, a request or a complaint, shall be considered as the private prosecutor.

3. Private prosecutor exercises all the rights and bears all the responsibilities of the complainant, as well as vested the rights, under the third and the fifth parts of Article 411 of this Code.

4. Private prosecutor exercises his (her) rights and performs obligations personally or if it is consistent with the nature of the rights and obligations through a representative.

### **Article 73. The civil claimant**

1. Civil claimant is an individual or a legal entity, filing a civil claim for compensation of material or moral damage, caused by a criminal offence or an act of insane.

2. The civil claimant in order to maintain the filed claim shall have the right to:

1) know the essence of suspicion, accusation;

2) submit evidence;

3) give explanations for the filed claim;

4) submit materials to be attached to the criminal case;

5) make petitions and challenges, give testimony and explanations in his (her) native language or language he (she) speaks;

6) have the free assistance of an interpreter, have a representative;

7) get acquainted with the protocols of the investigative actions, performed with his (her) participation;

8) participate with the permission of the procurator, investigator or the interrogating officer in the investigative actions, carried out at his (her) request or the request of his (her) representative;

8-1) consent to the application of the ordered proceedings in the case of a criminal offense or a crime of minor gravity;

9) get acquainted at the end of the investigation with the case materials, relating to the civil claim, and write out any information and in any volume, with the exception of information constituting the state secrets;

10) know about decisions that affect its interests, and receive copies of procedural decisions, relating to the filed claim;

11) participate in the consideration of a civil claim in any court;

12) act in pleadings;

13) get acquainted with the protocol of the court session and comment on it;

14) make complaints against the actions (inaction) and decisions of the body, conducting the criminal proceedings;

15) appeal the sentence and the court order in respect of the civil claim;

16) know about the complaints brought in the case, the petitions of the prosecutor and the protests in the part of the civil suit and to file objections to them;

17) participate in the judicial consideration of the complaints submitted, the petitions of the prosecutor and protests;

18) shall be excluded by the Law of the Republic of Kazakhstan dated 10.01.2018 № 132-VI (shall be enforced dated 01.07.2018);

19) declare about the acceptance of security measures.

3. The civil claimant shall bear the responsibilities, stipulated in part eight of Article 71 of this Code.

4. The civil claimant has also other rights and carries out other obligations, prescribed by law.

**Footnote.** Article 73 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 10.01.2018 № 132-VI (shall be enforced dated 01.07.2018).

#### **Article 74. The civil defendant**

1. Civil defendant is an individual or a legal entity, who is sued in a criminal case.

2. Civil defendant in order to protect its interests in connection with a claim against him (her) shall have the right to:

1) know the essence of the suspicion, accusation and the civil claim;

2) argue against the claim, file a counterclaim;

3) give explanations and testimony on the merits of the claim;

4) have a representative;

5) submit materials to be attached to the criminal case;

6) make applications and challenges;

6-1) consent to the application of the ordered proceedings in the case of a criminal offence or a crime of minor gravity;

7) get acquainted at the end of the investigation with the materials, related to the civil claim, and write any information and in any volume, with the exception of information constituting the state secrets;

8) know about decisions that affect its interests, and receive copies of procedural decisions, relating to the claimed civil claim;

9) participate in the consideration of the civil claim in any court;

10) serve pleadings, make complaints against the actions (inaction) and decisions of the body, conducting the criminal proceedings;

11) get acquainted with the protocol of the court session and comment on it;

12) appeal the sentence and the court order in respect of the civil claim;

13) know about the protests brought in the case, the petitions of the prosecutor and complaints in the part of the civil claim and to file objections to them;

14) participate in the judicial consideration of the complaints submitted, the petitions of the prosecutor and protests;

15) declare about the acceptance of security measures.

3. The civil defendant shall bear the responsibilities stipulated in part eight of Article 71 of this Code.

4. The civil defendant has also other rights and carries out other obligations, prescribed by law.

**Footnote. Article 74 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

**Article 75. The legal representatives of a minor, suspected, accused, defendant, convicted**

1. In criminal offences, committed by minors or the person, suffering from mental disorders, not excluding capacity, their legal representatives shall be involved to participate in case in the manner prescribed by this Code.

2. If the pre-trial proceedings or court proceedings in the cases, provided for in this Code, are carried out in the absence of the suspected, the accused, the defendant and convicted their legal representatives may participate in a criminal case.

**Article 76. Representatives of the complainant, civil claimant and the private prosecutor**

1. The representatives of the complainant, civil claimant and private prosecutor may be lawyers and other persons, eligible by law to represent in criminal proceedings the legitimate interests of the complainant, civil claimant and the private prosecutor, and admitted to participate in it by the decision of the body, conducting the criminal proceedings.

2. To protect the rights and legitimate interests of the complainants, who are minors or who do not speak the language of the proceedings either in physical or mental state deprived of the opportunity to defend their rights and interests, their legal representatives and representatives shall be involved to mandatory participation in the process.

In such cases, a lawyer chosen by the complainant or his (her) legal representative shall act as a representative of the complainant. If the lawyer is not invited by the complainant or his (her) legal representative, the participation of the lawyer shall be provided by the body, conducting the criminal proceedings by making a decision, binding on the professional organization of lawyers or its structural unit. The body, conducting the criminal proceedings shall not have the right to recommend to invite a particular lawyer as a defense counsel.

Remuneration of the defense counsel in the absence of the complainant or his (her) legal representative of funds, shall be made at the expense of the budget in the manner, prescribed by this Code.

3. The legal representatives and representatives of the complainant, civil claimant and the private prosecutor shall have the same procedural rights as they represented individuals and legal entities within the limits, prescribed by this Code.

4. The representative of the complainant, civil claimant, the private prosecutor shall not perform any act contrary to the interests of the represented participant in the proceedings.

5. The personal involvement in the proceedings of the complainant, civil claimant and private prosecutor shall not deprive them of their right to have a representative in the case.

#### **Article 77. Representatives of the civil defendant**

1. The representatives of the civil defendant shall be lawyers and other persons, eligible by law to represent in criminal proceedings the legitimate interests of the civil defendant, and admitted to participate in it by the decision of the body, conducting the criminal proceedings.

2. The representatives of the civil defendant shall have the same procedural rights as they represented individuals or legal entities, in accordance with the Civil Procedure Code.

3. The representative of the civil defendant shall not perform any act contrary to the interests of the represented participant in the proceedings.

4. Personal participation of the civil defendant in the proceedings shall not deprive him (her) of the right to have a representative in the case.

#### **Chapter 10. Other persons, involved in the criminal proceedings Article 78. Witness**

1. Any person, who may be aware of any circumstances relevant to the case may be called to testify and interrogated as a witness.

2. The following persons shall not be interrogated as a witness:

1) judge, jurymen – about the circumstances of the case, that become known to them in connection with participation in the criminal proceedings, as well as in the discussions held in the conference room of the issues arising in the adjudication;

2) the arbitrator - about the circumstances that became known to him/her in connection with the performance of the duties of the arbitrator;

3) defense counsel of the suspected, accused, defendant, convicted, as well as their legal representatives, the representative of the complainant, civil claimant and civil defendant, as well as the witness's lawyer - about the circumstances that become known to him (her) in connection with the performance of his (her) duties;

4) priest – about the circumstances, became known to him (her) from the confession;

5) a person who, because of his (her) young age or mental or physical disability is unable to correctly perceive the circumstances relevant to the case, and give the testimony on them;

6) mediator – about the circumstances that became known to him (her) in connection with the mediation, except as provided by law;

7) participant of the national preventive mechanism – about the circumstances that became known to him (her) in connection with his (her) activities, except in cases that pose a threat to national security;



8) Commissioner for Human Rights in the Republic of Kazakhstan - about the circumstances that became known to him in connection with the performance of his official duties.

3. A witness shall have the right to:

- 1) refuse to testify, which may result for him(her)self, his spouse (wife) or close relatives prosecution for committing a criminal offence or administrative violation;
- 2) give evidence in his (her) native language or language he (she) speaks;
- 3) have the free assistance of an interpreter;
- 4) challenge the interpreter, participating in his (her) interrogation;
- 5) a handwritten record of the testimony in the protocol of the interrogation;
- 6) make complaints against the actions (inaction) of the interrogating officer, investigator, procurator and the court, make applications, relating to his (her) rights and legitimate interests , including on the adoption of security measures.

A witness shall have the right to testify in the presence of his (her) lawyer. Absence of a lawyer at the time set by the person, carrying out the pre-trial investigation, shall not preclude the interrogation of the witness.

The witness shall be provided the reimbursement of expenses, incurred in the criminal proceedings.

4. The witness shall:

- 1) appear on the call of the interrogating officer, investigator, procurator and the court;
- 2) truthfully report everything known in the case and answer the questions;
- 3) not disclose the information about the circumstances became known to him (her) in the case, if he (she) is warned about this by the interrogating officer, investigator or the procurator;
- 4) observe the established order in the investigative actions and during the court session.

5. Excluded by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII ( shall be enforced ten calendar days after the day of its first official publication).

6. Excluded by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII ( shall be enforced ten calendar days after the day of its first official publication)

7. A witness may not be subjected to an expert examination or examined, except for the cases specified in Articles 223 and 271 of this Code.

8. For giving false testimony, refusing to give evidence, the witness shall bear criminal liability, provided for by the Criminal Code of the Republic of Kazakhstan. For evasion from giving testimony or failure to appear without good reason when summoned by the body conducting the criminal procedure, a monetary penalty may be imposed on the witness in the manner prescribed by Article 160 of this Code.

Footnote. Article 78 as amended by the Laws of the Republic of Kazakhstan dated 08.04.2016 № 489-V (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two

months after the day its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 29, 2021 No. 91-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

#### **Article 79. Expert**

1. A person, disinterested in case and possessing special scientific knowledge may be involved as an expert. Other requirements for a person, who can be entrusted with the production of the expertise, shall be established by the first part of Article 273 of this Code.

2. Call the expert, the appointment and production of expertise are carried out in accordance with the procedure, provided for in Chapter 35, as well as Article 373 of this Code

3. The expert shall have the right to:

1) get acquainted with the materials (the case materials), relating to the subject matter of the expertise;

2) submit request for additional materials necessary to give an conclusion, as well as adoption of security measures;

3) participate in the investigative actions and the court session with the permission of the body, conducting the criminal proceedings, and ask to the persons involved the questions, related to the subject matter of the expertise;

4) get acquainted with the protocol of a procedural action, in which he (she) participated, as well as in the corresponding part with the protocol of the court session, and give comments , to be included in the protocol, on the completeness and accuracy of fixation of his (her) actions and testimony;

5) in consultation with the bodies that appointed the expertise, give, within its competence , a conclusion on the identified in the forensic investigation circumstances relevant to the case , and beyond the scope of the issues, contained in the decision on the appointment of a court examination;

6) provide a conclusion and give testimony in his (her) native language or language he (she) speaks; have the free assistance of an interpreter; challenge the interpreter;

7) appeal the decisions and actions of the body, conducting the criminal proceedings, and other persons, involved in the proceedings, infringing his (her) rights in the production of expertise;

8) receive reimbursement of expenses, incurred in the production of expertise, and remuneration for work performed, if a forensic examination is not included in the scope of his (her) official duties.

4. The expert may not:

1) negotiate with participants of the proceedings on the issues, related to the production of expertise, without the knowledge of the body, conducting the criminal proceedings;

- 2) independently collect materials for the research;
  - 3) conduct research that may lead to total or partial destruction of objects, or change their appearance or basic properties, if there was not a special permission of the body that appointed an expertise.
5. The expert shall:
- 1) appear on call of the body conducting the criminal proceedings;
  - 2) conduct a comprehensive, complete and objective investigation of the objects presented to him (her), give an informed and objective written conclusion on the issues raised;
  - 3) refuse to give a conclusion and make a reasoned written message about the impossibility to give a conclusion, and send it to the body, conducting the criminal proceedings in the cases provided for in Article 284 of this Code;
  - 4) give testimony on matters, related to the research and the conclusion;
  - 5) ensure the safety of the objects, presented to the research;
  - 6) not disclose information about the circumstances of the case and other information, became known to him (her) in connection with the production of the expertise;
  - 7) represent to the bodies that appointed the expertise the cost estimates and a report on the costs, incurred in connection with the production of the expertise.
6. The expert shall be criminally liable, under the law for the knowingly false expert conclusion.
7. The expert who is an employee of the bodies of forensic examination, is considered by the nature of his (her) activities as informed with his (her) rights and obligations, and warned of the criminal liability for giving the knowingly false conclusion.

## **Article 80. Specialist**

1. A person, disinterested in the case and possessing special scientific knowledge necessary to assist in the gathering, research and evaluation of evidence by clarifying to the participants in the criminal proceedings the matters within his (her) special competence, as well as the application of scientific and technical means, shall be involved as a specialist. Specialists shall be also a teacher, a psychologist, involved in investigative and other procedural actions with minors, as well as the physician, involved in the investigative and other procedural actions, except in the case of his (her) appointment as an expert.

2. Officer of the authorized unit of the law enforcement or special state body of the Republic of Kazakhstan may be involved as a specialist to conduct research and give conclusion.

3. The expert shall have the right to:

- 1) get acquainted with materials, relating to the subject of the research;
- 2) submit requests for additional materials necessary to give a conclusion;
- 3) know the purpose of his (her) call;

4) refuse to participate in the proceedings, if he (she) does not have relevant knowledge and skills;

5) with the permission of the body, conducting the criminal proceedings, ask questions to the participants of the investigative or judicial action; draw their attention to the circumstances, connected with his (her) actions when assisting in the gathering, research and evaluation of evidence and the application of scientific and technical means, study the case materials, preparation of materials for the purpose of expertise;

6) on the appointment of the body, conducting the criminal proceedings, and the court, conduct the research, not resulting in complete or partial destruction of objects, or changing their appearance or basic properties, except for the comparative research, of the case materials, reflecting its progress and results in the protocol or official document, attached to the criminal case in the manner prescribed by the ninth part of Article 199 of this Code. Specialist of the authorized unit of the law enforcement or special state body of the Republic of Kazakhstan with the permission of the body, conducting the criminal proceedings, shall have the right to conduct comparative research, leading to the partial destruction of objects in volume, not excluding the forensic research of these objects, reflecting its progress and results in the conclusion of the specialist, recorded in accordance with the requirements of Article 117 of this Code;

7) get acquainted with the protocol of any investigation action, in which he (she) participated, as well as in the corresponding part with the protocol of the court session, and give the statements and comments, to be entered in the protocol, on the completeness and correctness of fixing the progress and results of the produced with his (her) participation activities;

8) make complaints against the actions of the body, conducting the criminal proceedings;

9) have the free assistance of an interpreter;

10) challenge the interpreter;

11) make an application for the adoption of security measures;

12) receive reimbursement of expenses, incurred by him (her) in connection with participation in the investigative or judicial action, and remuneration for work performed, if participation in the proceedings is beyond the scope of his (her) official duties.

4. Specialist may not:

1) negotiate with participants of the proceedings on the issues, related to the research, without the knowledge of the body, conducting the criminal proceedings;

2) independently collect research materials.

These restrictions shall not apply to the persons, referred to in the second part of this Article.

5. Specialist shall:

1) appear on call of the body conducting the criminal proceedings;

2) participate in the investigative actions and court proceedings, using special knowledge, skills and scientific and technological means to assist in collecting, researching and evaluating the evidence;

3) give explanations about the actions carried out by him (her), and in the case, provided by second part of this article, conduct a research and give a conclusion;

4) not disclose information about the circumstances of the case and other information, became known to him (her) in connection with participation in the case;

5) comply with the order in the investigative actions and during the court session;

6) ensure the safety of the objects, presented to the research.

6. Specialist may be imposed a monetary penalty in the manner prescribed in Article 160 of this Code for refusal or evasion from his (her) duties without a valid reason.

Specialist shall be criminally liable, under the law in the case of knowingly false conclusion.

### **Article 81. Interpreter**

1. A person, disinterested in the case and knows the language, knowledge of which is necessary for translation shall be involved, and attracted to participate in the investigative and judicial actions in cases where the suspected, accused, defendant, their defense counsels or the complainant, civil claimant, civil defendant or their representatives, as well as witnesses and other participants in the proceedings do not speak the language in which the proceedings are conducted, as well as for the translation of written documents.

2. The body, conducting the criminal proceedings shall issue a decision on the appointment of a person as an interpreter.

3. The interpreter shall have the right to:

1) ask questions the persons, attending in the translation, to clarify the translation;

2) get acquainted with the protocol of the investigative or other procedural actions, in which he (she) participated, as well as the in corresponding part of the protocol of the court session, and give comments, to be entered in the protocol, on the completeness and accuracy of the translation;

3) refuse to participate in the proceedings, if he does not possess the knowledge necessary for translation;

4) appeal against the actions of the body, conducting the criminal proceedings;

5) receive reimbursement of expenses, incurred by him (her) in connection with participation in investigative and other procedural actions, and remuneration for work performed, if participation in the proceedings is beyond the scope of his (her) official duties;

6) make an application for the adoption of security measures.

4. The translator shall:

1) appear on call of the body, conducting the criminal proceedings;

2) perform accurately and completely the requested translation;

3) verify the correctness of the translation by his (her) signature in the protocol of investigative action, carried out with his (her) participation, as well as in procedural documents to be handed to participants in the proceedings, translated into their native language or the language they speak;

4) not disclose information about the circumstances of the case or other information, became known to him (her) in connection with the involvement of as an interpreter;

5) comply with the order in the investigative actions and during the court session.

5. Interpreter may be imposed a monetary penalty in the manner provided in Article 160 of this Code for refusal or failure to appear or perform his (her) duties without a valid reason. Interpreter shall be criminally liable in the case of a knowingly wrong translation.

6. The rules of this article apply to a person who understands the signs of persons with complete loss of speech and (or) hearing and is invited to participate in the proceedings.

**Footnote. Article 81 as amended by the Law of the Republic of Kazakhstan dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).**

## **Article 82. Identifying witness**

1. Identifying witness is a person, engaged by the criminal prosecution body to certify the fact of investigative action, its progress and results in the cases, stipulated by this Code.

2. Only the persons, disinterested in the case and adult citizens, not dependent on the bodies of criminal prosecution and capable of fully and correctly perceive the action, occurred in their presence, and not subject to challenge in accordance with Article 90 of this Code shall be identifying witnesses.

3. At least two identifying witnesses shall be involved in the investigation actions.

4. Identifying witness shall have the right to:

1) participate in an investigative action;

2) give statements and comments on the investigative action, to be entered in the protocol;

3) get acquainted with the protocol of any investigative action in which he (she) participated;

4) appeal against the actions of the criminal prosecution body;

5) receive reimbursement for costs, incurred by him (her) during the criminal proceedings

;

6) make an application for the adoption of security measures.

5. Identifying witness shall:

1) appear on call of the criminal prosecution body;

2) participate in the investigative action;

3) verify by his (her) signature in the protocol of investigative actions the fact of this action, its progress and results;

4) not disclose without the permission of the interrogating officer, investigator, procurator, the pre-trial investigation materials;

5) comply with the order in the investigative actions.

6. Identifying witness may be imposed a monetary penalty in the manner provided in Article 160 of this Code for refusal or failure to appear or perform his (her) duties without a valid reason.

### **Article 83. The court session secretary**

1. The court session secretary is a civil servant, disinterested in a criminal case and keeps the protocol of the court session, and also provides audio and video fixation of the court session.

2. The court session secretary shall:

1) be in the courtroom as long as he (she) needs to provide protocoling, and not leave the court session without the permission of the presiding court;

2) completely and accurately present in the protocol of the action and decision of the court, the petitions, objections, testimony, explanations of all persons, participating in the court session, as well as other circumstances, which shall be recorded in the protocol of the court session;

3) prepare the protocol of the court session within the period, prescribed by this Code;

4) obey the lawful orders of the presiding court;

5) not disclose information about the circumstances that became known to him (her) in connection with his (her) participation in a closed court session.

3. The court session secretary shall be personally liable for the completeness and correctness of the protocol of the court session.

4. In the case of presenting the inaccurate or false information in the protocol of the court session, the secretary shall be liable under the law.

### **Article 84. Officer of justice**

1. Officer of justice is an official, performing the tasks, assigned to him (her) by law to ensure the established order of the courts.

2. Officer of justice maintains the order in the hall during the court session, follows the instructions of the presiding court and performs safe-keeping of judges, witnesses and other participants in the process in the court, protects them from external influences, assists to the court in procedural actions, drives the persons avoiding to appear in the court, performs other duties, assigned to him (her) by law.

### **Article 85. Mediator**



1. Mediator is an independent individual, who has been called by the parties for mediation in accordance with the requirements of the law.

2. Mediator shall be entitled to:

1) get acquainted with the information, provided to the parties of mediation by the body, conducting the criminal proceedings;

2) get acquainted with the data about the parties in the criminal proceedings, that are the parties to the mediation;

3) have private and confidential meetings with the parties to the criminal proceedings that are the parties to mediation, without limiting the number and duration of meetings in accordance with the law of criminal procedure;

4) assist the parties in concluding agreement on reconciliation in the order of mediation.

3. The mediator shall:

1) during the mediation act only with the consent of the parties to mediation;

2) prior to the mediation explain to the parties of mediation its objectives, as well as their rights and responsibilities;

3) not disclose the information, which become known to him (her) in connection with the mediation procedure.

4. The mediator may, with the consent of the parties, carry out the procedure for mediation from the time of registration of an application and a report of criminal offence and at the subsequent stages of criminal proceedings before the entry in the force of the sentence.

#### **Chapter 11. Circumstances, excluding the possibility of participation in criminal proceedings. Challenges Article 86. Challenges and requests for removal from participation and exemption from participation in the criminal proceedings**

1. If there are circumstances, excluding their participation in criminal proceedings, the judge, the procurator, investigator, interrogating officer, defense counsel, representative of a complainant (private prosecutor), civil claimant, civil defendant, identifying witness, the court session secretary, officer of justice, interpreter, expert, specialist shall be obliged to withdraw from participation in the criminal proceedings or they must be challenged by the participants in the criminal proceedings.

2. The body, conducting the criminal proceedings shall be entitled to, within its competence, resolve the stated challenges and requests for removal from the proceedings or when identifying circumstances, excluding the participation of the person in criminal proceedings, remove him (her) from participation on his (her) own initiative, by making the appropriate decision. If simultaneously with the removal of the person, authorized to resolve challenges in relation to other participants in the process, the other participants of the process are challenged, the first, the issue of challenge of that person shall be resolved.

3. In the case, if the simultaneous participation in criminal proceedings of several persons is excluded because of their kinship or other relations of personal dependence, the persons,

later than others acquired the status of participant in the process shall be removed from criminal proceedings. If the persons, related with kinship or other relations of personal dependence, became a part of the court, the presiding court shall decide what person must be removed from criminal proceedings.

4. The court session secretary, officer of justice, interpreter, specialist, expert, whose participation in a criminal proceedings is not excluded by any circumstances, provided for by this Code, may be, upon their request, exempted from such participation by the body, conducting the criminal proceedings, due to the presence of the good reasons, preventing them fulfill their procedural functions.

### **Article 87. Disqualification of a judge**

1. A judge may not participate in the proceedings, if he (she):

1) is not a judge, to the jurisdiction of which the criminal case is assigned in accordance with this Code;

2) participated in this criminal case as an investigating judge, examined complaints, petitions of the prosecutor against the decisions of the investigating judge;

3) is in this case the complainant, civil claimant, civil defendant, called or may be called as a witness;

4) participated in the criminal proceedings as an expert, specialist, interpreter, identifying witness, court session secretary, interrogating officer, investigator, procurator, defense counsel, legal representative of the suspected, accused, the representative of the complainant, civil claimant or civil defendant;

5) is a relative of the complainant, civil claimant, civil defendant or their representatives, a relative of the suspected, accused or his (her) legal representative, a relative of the procurator, defense counsel, investigator or interrogating officer or in-law relative of any of the participants in the process;

6) if there are other circumstances, that give reason to believe that the judge is personally, directly or indirectly interested in the case.

2. The composition of the court, considering a criminal case may not include the persons, related kinship or other relations of personal dependence.

3. A judge, participated in considering a criminal case in the court of first instance, may not participate in the consideration of this case in the court of appeal and cassation, or in supervisory instance, as well as to participate in the new trial in the court of first instance, in the case of cancellation of the sentence or the decision on termination of the case, taken with his (her) participation.

4. A judge, participated in the consideration of the case in the court of appeal, may not participate in the consideration of the case in the court of first instance and appeal, after the abolition of the appellate judgment, decisions, taken with his (her) participation, as well as in consideration of the case on cassation instance.

5. A judge, participated in the consideration of the case in the cassation instance, may not participate in the consideration of the case in the first instance, appeal and cassation instances after the abolition of the resolution, adopted with his (her) participation.

6. A judge, participated in the consideration of a case in previous judicial instances cannot participate in the consideration of the same case in the cassation instance. The judge, participated in the consideration of the case in the cassation instance cannot participate in the consideration of the same case in the courts of lower instances, and also in the revision of the decisions of the cassation instance pursuant to the part four of Article 484 of this Code.

7. A judge participated in the consideration of a case in the court of the first, appeal and cassation instance cannot participate in the consideration of the same case on newly discovered circumstances.

7-1. A judge may not take part in a court of first instance when considering a newly received criminal case if he has previously taken part in the consideration of a criminal case in a court of first instance in relation to other accomplices in a criminal offence.

7-2. A judge of the appellate and cassation instances may not take part respectively in the court of appeals and cassation instances if he took part in the previous consideration of the criminal case in respect of other accomplices of the criminal offence.

8. Disqualification shall be declared, when it was aware of the circumstances, excluding the participation of the judge in the case, at any stage of the criminal proceedings.

9. The issue of disqualification of a judge, as well as participants in court proceedings, subject to challenge, shall be resolved by a court in the conference room with making a decision.

10. Disqualification declared to the judge, shall be resolved by other judges in the absence of the disqualified, who has the right before removing judges in the conference room, to publicly present his (her) explanation on the disqualification, declared to him (her). Disqualification declared to several judges or to the composition of the court, shall be resolved by the court in full by majority vote. In case of equality of votes, the judge is considered as disqualified.

11. The recusal declared to the investigating judge, resolving petitions for the application of a measure of restraint or the performance of investigative actions, as well as considering complaints in the manner prescribed by Article 106 of this Code, is resolved by the same investigating judge alone with the issuance of a decision. A challenge to a judge considering a case in accordance with part one of Article 52 of this Code alone shall be resolved by the chairman of this court or another judge of this court, and in their absence, by a judge of a higher court. If the application for recusal is satisfied, the criminal case, complaint or petition is transferred in accordance with the established procedure to the proceedings of another judge.

12. The decision on rejection or satisfaction of the challenge to appeal (revision at the request of the prosecutor, protest) is not liable. Arguments of disagreement with the decision

may be included in the appeal, the prosecutor petition or a petition for revision of judicial acts in cassation procedure, a protest.

Footnote. Article 87 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 88. Challenge of procurator**

1. Procurator may not participate in criminal proceedings under any of the circumstances, specified in Article 87 of this Code.

2. Participation of the procurator in the pre-trial investigation, as well as maintaining his (her) prosecution in court shall not be an obstacle to his (her) further participation in this criminal case.

3. The issue of challenge of the procurator during the pre-trial investigation shall be resolved by the senior procurator, and in the court proceedings – by the court, hearing the case.

#### **Article 89. Challenge of the investigator and the interrogating officer**

1. The investigator and the interrogating officer cannot participate in the investigation of the case on the grounds, provided for in Article 87 of this Code.

2. Participation of the investigator and the interrogating officer in the respective capacities in the investigation, which is carried out earlier in the criminal case, shall not preclude their further participation in the proceedings in the criminal case.

3. The issue of challenge of the investigator or the interrogating officer shall be decided by the head of the investigation department or the head of a body of inquiry or by the procurator.

#### **Article 90. Challenge of the identifying witness**

1. The identifying witness cannot participate in the pre-trial investigation under any of the circumstances, specified in Article 87 of this Code, and in the second, third and fourth parts of this article.

2. The identifying witness cannot participate in the pre-trial investigation being personally or through service is dependent on the body, conducting the criminal proceedings. Employees of the law enforcement agencies, courts, students of special law schools, the convicted persons and those who are under the probation supervision, and the persons involved in the criminal liability for other criminal cases may not participate as identifying witnesses.

3. Previous participation of the identifying witness in an investigative action shall not be a circumstance, precluding his (her) participation in the proceedings under this criminal case of another investigative action, unless the participation of any of the identifying witnesses has become systematic.

4. Challenge of the identifying witness shall be decided by the person, conducting the investigative action.

5. For the concealment of the circumstances, precluding his (her) participation in the proceedings, and the failure to perform the obligation provided in the first part of Article 86 of this Code to hold aloof from participation in the proceedings, the identifying witness shall be liable in accordance with the procedure provided for in Article 160 of this Code.

#### **Article 91. Challenge of the court session secretary and the officer of justice**

1. The court session secretary and the officer of justice cannot participate in criminal proceedings:

- 1) under any of the circumstances, specified in Article 87 of this Code;
- 2) if they found as incompetent.

2. Previous participation of the person in the court hearing as a court session secretary or officer of justice shall not be a circumstance, precluding his (her) further participation in the respective capacities at the court sessions.

3. The issue of challenge to the court session secretary and officer of justice shall be decided by the court, hearing the case.

#### **Article 92. Challenge of an interpreter and a specialist**

1. An interpreter and a specialist cannot participate in criminal proceedings:

- 1) under any of the circumstances specified in Article 87 of this Code;
- 2) if they found as incompetent.

2. Previous participation of a person as an interpreter or a specialist shall not be a circumstance, precluding their further participation in the respective capacities in the proceedings under this criminal case.

3. The issue of challenge to an interpreter and a specialist shall be decided by the body, conducting the criminal proceedings.

#### **Article 93. Challenge of an expert**

1. Expert cannot participate in criminal proceedings:

- 1) under any of the circumstances, specified in Article 87 of this Code;
- 2) if he (she) was or is in service or other dependence of the interrogating officer, investigator, procurator, judge, the suspected, the accused, their defense counsels, legal representatives, the complainant, civil claimant, civil defendant or representatives;

3) if he carried out an audit or other verification activities, the results of which form the basis for the criminal prosecution;

4) if he (she) found as incompetent;

5) if he (she) participated in the case as a specialist, except in case of participation of a medical specialist in the field of forensic medicine in view of corpse of a person, in accordance with Article 222 of this Code.

2. The doctor who prior to the appointment of expertise provides the appropriate medical care of a person may not participate in the examination of a living person, and a corpse as an expert.

3. Previous participation of the person in this case as an expert shall not be a circumstance, precluding the entrusted to him examination under the case, except when it is appointed again after the examination, carried out with his (her) participation.

4. The issue of challenge to an expert shall be decided by the body, conducting the criminal proceedings.

#### **Article 94. Suspension from participation in criminal proceedings of a defense counsel, representative of the complainant (private prosecutor), civil claimant or civil defendant**

1. A defense counsel, as well as a representative of the complainant (private prosecutor), civil claimant, civil defendant cannot participate in criminal proceedings under any of the following circumstances:

1) if he (she) previously participated in the case as a judge, procurator, investigator, interrogating officer, court session secretary, officer of justice, witness, expert, specialist, interpreter or identifying witness;

2) if he (she) is in kinship or other relations of personal dependence with the official, who has taken or is taking part in the investigation or judicial consideration of the case;

3) if he (she) provides or has previously provided legal assistance to a person, who has the opposite interests with his (her) client or principal, as well as he (she) is in kinship or other relations of personal dependence with such persons;

4) if he (she) is not entitled to be a defense counsel or a representative by virtue of law or court decision.

2. The issue of suspension from participation of a defense counsel, representative of the complainant (private prosecutor), civil claimant or civil defendant during the pre-trial investigation shall be decided by the procurator, and in the proceedings in the court – by the court, considering the case.

#### **Chapter 12. Ensuring the safety of the persons,**

**involved in criminal proceedings Article 95. Ensuring the safety of judges, jurors, procurators, investigators, interrogating officers, defense counsels, experts, specialists, court session secretaries, officers of justice**

1. The judge, investigating judge, juror, procurator, investigator, interrogating officer, defense counsel, expert, specialist, court session secretary, officer of justice, as well as their family members and close relatives shall be under the state protection.

2. For the persons, listed in the first part of this article, the state shall provide in the manner prescribed by law, the adoption of security measures against encroachments on their lives, or other forms of violence in connection with consideration of criminal cases or materials in court, carrying out pre-trial investigation.

**Article 96. The duty of take measures for the safety of complainants, witnesses, the suspected persons and other persons, involved in criminal proceedings**

1. The body, conducting the criminal proceedings shall take measures for the safety of the suspected, accused, complainant, witness and other persons, involved in criminal proceedings , as well as their family members and close relatives, if in connection with the production of the criminal case there is evidence of a threat of committing violence against them or other actions prohibited by criminal law.

Safety measure in the form of restrictions on access to information can be used to protect against disclosure of the state secrets or information about the private lives of persons, involved in the case.

2. If necessary, to ensure the safety of the suspected, accused, defendant or convicted, who have entered into a procedural agreement, his (her) close relatives with the consent of the said persons the measures of state protection and security, provided by this Code and other laws shall apply.

3. The body, conducting the criminal proceedings shall take security measures of the persons, referred to in the first and second parts of this article, on the basis of their oral ( written) application or on its own initiative, about what an appropriate decision is made.

4. Applications of persons participating in criminal proceedings, their family members and their close relatives for their security measures must be considered by the body conducting the criminal proceedings no later than twenty-four hours from their receipt. The applicant shall be immediately notified of the decision taken with a copy of the relevant decision served to him.

5. The applicant may appeal to the procurator or the court the refusal to satisfy petition for taking measures of his (her) security.

6. Failure to adopt security measures shall not prevent the repeated application for the adoption of these measures, if the circumstances, which are not reflected in the previously filed application, have arisen.

**Footnote. Article 96 as amended by the Law of the Republic of Kazakhstan dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication).**



## **Article 97. Security measures for complainants, witnesses, suspected and other persons, involved in criminal proceedings**

1. In order to ensure the safety of witnesses, suspected and other persons, involved in criminal proceedings, their family members and close relatives, the body conducting the criminal proceedings shall:

1) make a formal warning to the person, who presents the threat of violence, or other actions, prohibited by criminal law, about the possible involvement of him (her) to criminal liability;

2) restrict access to the information about the protected person;

3) issue a decision on ensuring his personal security;

4) applies, in the manner prescribed by this Code, in relation to the suspect, the accused, preventive measures that exclude the possibility of applying (organizing the application) of violence or committing (organizing the committing) of other criminal acts against participants in the criminal process;

5) apply a measure of procedural coercion in the form of restraining order.

2. Warning, issued by the body, conducting the criminal proceedings, shall be notified to the person against the signed receipt.

3. Restriction of access to information about the protected person may be from the beginning of the criminal proceedings under the application of the person, and consists of withdrawal from the case file the information about the personal data of the person and keeping them separate from the main production, the using of an alias by that person. On the application of this measure, the person performing the pre-trial investigation, shall issue a regulation, setting out the reasons for the decision of keeping secret the data of the identity, it specifies an alias and specimen signature of the protected person, which he (she) will use in the protocols of investigative actions with his (her) participation. Procedural actions, involving the protected person, where appropriate, may be carried out under the conditions, precluding his (her) recognition. Resolution and separated from the main production materials shall be placed in a sealed envelope, which is then stored in the body, investigated a criminal case, and with the contents of which, except the person, carrying out pre-trial investigation, the procurator and the court may be get acquainted.

4. The procedure for ensuring personal security measures for witnesses, suspects, accused, injured persons and other parties in criminal proceedings, their family members and close relatives is prescribed by the Law of the Republic of Kazakhstan "On state protection of persons participating in criminal proceedings".

4-1. When the criminal prosecution authority takes the security measures provided for in subparagraph 3) of part one of paragraph 2 of Article 7 of the Law of the Republic of

Kazakhstan "On state protection of persons participating in criminal proceedings", the supervising prosecutor shall be notified within twenty-four hours with confidentiality observed.

5. Regardless of adoption of the security measures, the criminal prosecution body shall be obliged in the presence of reasons, to start a pre-trial investigation in connection with the detection of threats to commit the action, prohibited by criminal law in relation to complainant, witness, suspected and other persons, involved in criminal proceedings.

6. Security measures shall be lifted by a reasoned decision of the person conducting the pre-trial investigation, the prosecutor, the court, the court verdict, when their application is not necessary, and in case of detected violations of the rights and legitimate interests of the protected persons - by the decision of the prosecutor or the court. The protected person must be immediately notified of the cancellation of his security measures or the disclosure of data about him to persons participating in the criminal procedure. Filing a complaint with a court or prosecutor by a protected person against the decision on applying a personal security measure provided for in subparagraph 3) of part one of paragraph 2 of Article 7 of the Law of the Republic of Kazakhstan "On State Protection of Persons Participating in Criminal Proceedings", or on abolition of security measures shall suspend execution of the decision appealed.

**Footnote. Article 97 as amended by the Law of the Republic of Kazakhstan No. 180-VI dated 12.07.2018 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 98. Ensuring the safety of the persons, involved in court proceedings**

1. To ensure the safety of the participants in the court proceedings, the presiding judge holds a closed session of the court, as well as takes measures stipulated in the first, second, third and fourth parts of Article 97 of this Code.

2. The court may, at the request of the protected person, the prosecution party, as well as on his (her) own initiative in order to ensure the safety of the person, his (her) family members and close relatives, issue an order on the interrogation of a witness:

- 1) without disclosing the data on the identity of the protected person by using an alias;
- 2) under the conditions, excluding recognition of the protected person for the rest of other attendants, by the voice, accent and external data: gender, nationality, age, height, body-built, posture, gait;
- 3) without a visual observation of him (her) by other participants in the court proceedings, including by videoconference.

The judge shall personally certify the identity of the interrogated through the familiarization of the personal data of the protected person, separated from the main production, and the identity documents, without their announcement, presenting other

participants in the court session, including the court session secretary, and reflection in the protocol of the court session and (or) judicial acts.

3. The Chairman shall be entitled to:

1) prohibit the production of video, sound recordings and other means of capturing the interrogation;

2) remove from the courtroom a defendant, representatives of the defense team, with the exception of a lawyer.

4. Testimony of the protected person, who is interrogated by the court without any of the participants in the proceedings or outside their visual observation, shall be announced by the presiding judge in the court, in the presence of all its members without specifying the information about the protected person.

5. Where necessary, the court shall take other measures to ensure the safety of participants in the proceedings and other persons, provided by law.

6. Execution of the court order on ensuring the safety of the participants in the proceedings shall be assigned to the criminal prosecution bodies, institutions and bodies, executing punishment, as well as an officer of justice.

**Chapter 13. Applications. Appeal against the actions (inaction) and decisions of the state bodies and officials, carrying out the criminal proceedings Article 99. Obligatoriness of consideration of applications of the participants to the criminal proceedings**

1. The participants to the criminal proceedings may apply to the person, conducting the pre-trial investigation, the procurator, the judge (court) with applications for production of procedural actions or making procedural decisions to establish the circumstances, relevant to the criminal proceedings, ensuring the rights and legitimate interests of the person, making a request, or the person they represent.

2. Making applications is possible at any stage of the process. The person, who made an application, must specify to determine what circumstances he (she) requests to perform an action or making a decision. Written requests shall be attached to the materials of the criminal case oral requests shall be recorded in the protocols of the investigative action or court session.

3. Rejection of the application shall not prevent its repeated application at the subsequent stages of criminal proceedings or before other body, conducting the criminal proceedings.

4. The application shall be subject to consideration and resolution immediately after its application. In cases where an immediate decision on the application is not possible, it must be resolved within three days from the date of application.

5. The application shall be satisfied, if it contributes to a comprehensive, full and objective investigation of circumstances of the case, ensuring the rights and legitimate interests of the participants in the proceedings or others. In other cases, the satisfaction of the

application may be denied. The body, conducting the criminal proceedings shall not refuse to satisfy an application for interrogation as experts or witnesses of the persons, whose attendance is provided by the parties. The body, conducting the criminal proceedings shall assist in securing the attendance for the interrogation of the specified persons, including with the application of coercive procedural measures, stipulated by law.

6. On the complete or partial refusal to satisfy the body conducting the criminal proceedings shall issue a reasoned decision, which shall be communicated to the person, who made the request. The decision on the application may be appealed by the general rules of submission and consideration of complaints, established by this Code.

#### **Article 100. Appeals against the decisions and actions (inaction) of the bodies and officials**

1. The decisions and actions of the person, conducting the pre-trial investigation, the procurator, court or judge may be appealed as provided in this Code by the participants in the criminal proceedings, as well as by individuals and legal entities, if the conducted procedural actions affect their interests.

2. Complaints shall be submitted to the state body or the official, authorized by law to consider complaints and make decisions in the criminal case.

3. Complaints may be oral or written. Oral complaints shall be recorded in the protocol, signed by the applicant and the official, who received the complaint. Oral complaints, expressed by citizens at a reception at the appropriate officials shall be settled on a common basis with the complaints submitted in writing. The complaint may be accompanied by additional materials.

4. A person, who does not speak the language, used in the criminal proceedings, shall be guaranteed the right to file a complaint in his (her) native language or a language he (she) speaks.

5. The complainant shall have the right to withdraw his (her) complaint. The suspected, the accused shall have the right to withdraw the complaint of the defense counsel; the civil claimant, the victim (private prosecutor), the civil defendant shall have the right to withdraw the complaint of his (her) representative, except for the legal representative. The complaint filed in the interests of the suspected, the accused may be withdrawn only with his (her) consent. Withdrawal of the complaint shall not prevent its repeated submission before the expiration of terms, specified in Article 102 of this Code, except as otherwise expressly provided by this Code.

#### **Article 101. The procedure for filing complaints of the persons arrested or detained in custody**

1. The administration of pre-trial detention shall immediately send to the body conducting the criminal proceedings, the addressed to it complaints of the persons, arrested on suspicion of committing a criminal offence or detained in custody as a preventive measure.

2. The administration of places of detention shall immediately send to the procurator the complaints of persons, arrested or detained in custody, on torture and other cruel, inhuman or degrading treatment, as well as on the actions or decisions of the investigator, the interrogating officer, the head of the body of inquiry, and the complaints on the actions and the decision of the procurator – to a higher procurator. The administration of places of detention shall send other complaints no later than the day after their receipt to a person or body, dealing with the case.

#### **Article 102. Terms for filing complaints**

Complaints on the actions and decisions of the interrogating officer, the body of inquiry, investigator, procurator, judge or court may be filed during the pre-trial investigation and court proceedings. Complaints against the decision to terminate the criminal case at the pretrial stage may be filed within one year from the adoption of the respective resolution by the criminal prosecution body or its approval by the procurator. Complaints against judicial acts, made by courts of first instance, appeal or cassation instances, shall be filed within the terms established by this Code.

#### **Article 103. Suspension of execution of the decision in connection with the filing a complaint**

In the cases, provided for in this Code, filing a complaint shall suspend the execution of the disputed decision. In other cases, bringing the complaint may result in the suspension of the execution of the disputed decision, provided that it deems necessary the person, considering a complaint.

#### **Article 104. General procedure for considering complaints**

1. It is prohibited to charge the consideration of the complaint to an interrogating officer, investigator, procurator or judge, whose actions are appealed, as well as an official, approved the decision appealed.

2. Considering the complaint, the head of the investigation department, the head of the inquiry body, the prosecutor or the judge shall be obliged to check all the arguments set out therein, to request additional materials, if necessary, to receive written explanations from the relevant officials, individuals or legal entities regarding the actions and decisions appealed against.

3. The head of the investigation department, the head of the body of inquiry, the prosecutor or the judge considering the complaint shall be obliged, within the limits of their powers, to immediately take measures to restore the violated rights and legitimate interests of the participants in the criminal process, as well as other individuals or legal entities.

4. If by the appealed unlawful actions or decisions the person or legal entity caused moral, physical or property damage, he (she) should be explained the right to compensation or

elimination of damage and the procedure for exercising this right, provided for in Chapter 4 of this Code.

**Footnote. Article 104 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

**Article 105. The procedure for consideration of complaints against actions (inaction) and decisions of persons conducting pre-trial investigation, the head of the investigation department, the head of the inquiry body, the prosecutor, filed by persons defending their own or represented rights and interests**

1. Complaints filed by persons defending their own or represented rights and interests against actions (inaction) and decisions of persons conducting pre-trial investigations shall be submitted to the head of the investigation department, the head of the inquiry body, the prosecutor or to the court.

The person carrying out the pre-trial investigation, and who received a complaint about his/her own actions (inaction) or decision, shall be obligated to immediately direct a complaint with his explanations to the head of the investigation department, the head of the inquiry body.

Complaints about actions (inaction) and decisions of the head of the investigation department, the head of the body of inquiry shall be submitted to the prosecutor. The head of the investigation department or the head of the inquiry body, to whom a complaint has been made about his/her own actions (inaction) or decision, shall be obligated to immediately direct a complaint with his explanations to the relevant prosecutor.

Complaints about actions (inaction) and decisions of the prosecutor shall be submitted to a higher prosecutor. On the issues specified in Article 106 of this Code, complaints shall be submitted to the court and be considered in accordance with the procedure provided for in this article.

1-1. Refusal to accept and register a complaint shall be prohibited and shall entail liability established by law.

The complaint of the person defending his/her or the represented rights and interests on the merits of the criminal case under investigation, as well as the answer to it and the decision taken as a result of the consideration of the complaint shall be attached to the materials of the criminal case.

2. The prosecutor, the head of the investigative department, the head of the body of inquiry are obliged to consider the complaint and notify the person who filed the complaint about the decision taken within seven days from the moment of its receipt. Complaints about violations of the law during detention, recognition as a suspect, qualification of the suspect's act, removal from office, unauthorized inspection, search, seizure, temporary restriction on the disposal of property, suspension of transactions and other transactions with property are subject to consideration within three days from the date of their receipt. In exceptional cases,

when it is necessary to request additional materials or take other measures to verify the complaint, it is allowed to consider the complaint within a period of up to fifteen days with notification of the person who filed the complaint.

3. As a result of the consideration of the complaint, the head of the investigation department, the head of the inquiry body shall have the right to petition the prosecutor about the cancellation or change of the appealed decision, to give instructions and orders to the inquiry body that are mandatory for execution by the person conducting the pre-trial investigation.

As a result of consideration of the complaint, a decision may be made to fully or partially satisfy the complaint with the cancellation or change of the appealed decision or on the refusal to satisfy the complaint.

At the same time, the previous decision cannot be changed if this leads to a worsening of the situation of the person who filed the complaint or the person in whose interests it was submitted.

4. The person who filed the complaint must be notified of the decision taken on the complaint and the further procedure for appeal. Refusal to satisfy the complaint must be motivated.

**Footnote.** Article 105 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication).

#### **Article 106. The judicial procedure for considering complaints against the actions (inaction) and decisions of the procurator, the criminal prosecution bodies**

1. A person, whose rights and freedoms are directly affected by the action (inaction) and the decision of the procurator, bodies of investigation and inquiry, shall have the right to appeal to the court on the refusal to accept the application on the criminal offence, as well as on the violation of the law at the beginning of the pre-trial investigation, interruption of investigation terms, termination of the criminal case, forced placement in a medical organization for forensic medical examination, performing a search and (or) seizure or other actions (inaction), and making decisions. In considering the complaint under this Article, the court should not prejudge the issues which, in accordance with this Code may be subject to judicial consideration in the resolution of the criminal case on the merits.

2. In consideration of the complaint, the court without giving assessment of available evidence in the case, shall find out, if all the circumstances, pointed to by the applicant in the complaint are tested and considered by the interrogating officer, investigator, the procurator. In this, the court, without making conclusions on proof or lack of evidence, admissibility or



inadmissibility of evidence collected must verify the existence or absence of substantive and procedural grounds for making a decision in the case.

3. The limits of judicial review are limited to clarifying the compliance of the law in the commission of actions (inaction) and making decisions, referred to in the first part of this article.

4. Bringing a complaint shall not suspend the production of the appealed actions and execution of the appealed decision.

5. The application may be filed in the district court at the location of the body, conducting the criminal proceedings, within fifteen days from the date of familiarization with the decision, with which the person does not agree, or in the same period after receipt of the notice of the procurator on the refusal to satisfy the complaint, filed in his (her) name, or from the date of expiration of fifteen days after the filing of the complaint to the procurator, if a response is not received.

6. The complaint shall be considered by the investigating judge alone without holding a court session within three days. If it is necessary to explore the circumstances, relevant for a legitimate and reasoned decision, the investigating judge shall consider the complaint within ten days in a closed court session with the participation of the persons concerned and the procurator, non-appearance of which does not preclude the consideration of the complaint. By order of the investigating judge, a court session may be held as a video. Protocol shall be kept during the court session. If necessary, the investigating judge shall be entitled to request additional materials, call and interview relevant persons. Officials, whose actions (inaction) and decisions are appealed, at the request of the court shall, within three days, submit to the court the materials that served as the basis for such actions (inaction) and decisions.

7. At the court session, the investigating judge announces which complaint is subject to review, then the applicant, if he (she) is involved in a court session, shall prove the complaint, then the other persons, who come and are entitled to provide the court with evidence, shall be heard. The burden of proving the legality of the appealed action (inaction) or decisions lies with the person, who committed or accepted them.

8. As a result of consideration of the complaint, the investigating judge shall make appropriate decisions:

- 1) on abolition of the procedural decision, deemed as illegal;
- 2) on recognition of the action (inaction) of the official concerned as illegal or unreasonable, and his (her) duty to eliminate the violation;
- 3) on assigning to the procurator the duty to eliminate the violation of rights and legitimate interests of citizens or organizations;
- 4) on abandonment of the appeal.

**Article 107. Appealing, lodging a petition of a prosecutor against decisions, sanctions of an investigating judge**

**Footnote. The heading of Article 107 as reworded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

1. In the course of the pre-trial investigation, the suspect, his/her defense lawyer, legal representative, victim, his/her legal representative, representative, a person whose rights and freedoms are directly affected by the act of the investigating judge, shall have the right to appeal, and the prosecutor may file a petition for the decision, sanction of the investigating judge:

1) on sanctioning of the preventive measure in the form of detention of the suspected in custody, extradition arrest, house arrest, bail or extend the period of detention in custody, house arrest;

2) on refusal to give sanction to the detention of the suspected in custody, extradition arrest, house arrest, bail, or to refuse to extend the period of detention in custody, house arrest ;

3) on cancellation or refusal of cancellation the sanctioning of the preventive measures;

4) on imposition or refusal to seizure of property;

5) on exhumation or refuse to do so;

6) on the announcement of the international investigation or refuse to do so;

7) on forced placement of a person in a medical organization for forensic and medical, and (or) the forensic and psychiatric examination or refuse to do so;

8) on the circulation of bail in favor of the state or refuse to do so;

9) on consideration of the complaints against the actions (inaction) and decisions of the procurator, the criminal prosecution bodies;

10) the authorization or refusal to authorize the inspection, search, seizure, personal search, forced examination, forced receipt of samples.

11) on the appointment or refusal to appoint an expert examination, or on the performance by the criminal prosecution body of other investigative actions, with the exception of covert investigative actions.

1-1. In the course of the pre-trial investigation, the prosecutor shall have the right to bring a petition for a resolution, sanction of an investigating judge:

1) on the authorization or refusal to authorize covert investigative actions;

2) on the extension or refusal to extend the terms of covert investigative actions;

3) on the extension or refusal to extend the period for notifying the person about the covert investigative actions carried out against him/her;

4) on consent to the non-notification by the pre-trial investigation body of the person about the covert investigative actions carried out against him/her or the refusal to give such consent to the pre-trial investigation body;

5) on the refusal to satisfy the prosecutor's petition to terminate the covert investigative actions;

6) on the termination of covert investigative actions carried out in accordance with the procedure established by Article 235 of this Code, and the inadmissibility of using the results obtained as evidence.

2. The decision of the investigating judge, made in accordance with the rules of this Article, within three days from the date of its announcement, may be appealed by the persons specified in part one of this article, as well as the prosecutor may bring a petition to it to the regional and equated court through the court which investigating judge made a decision. The deadline, missed for a good at the request of the person concerned may be reinstated in accordance with Article 50 of this Code.

3. Filing a complaint or bringing of a petition of the prosecutor shall not suspend the execution of the decisions on the issues specified paragraphs 8) and 10) of the first part of Article 55 of this Code and paragraphs 1), 2), 7) and 10) of part one of this article.

4. At the end of the period for appeal, bringing the petition of the prosecutor, the materials with a complaint, a petition of the prosecutor shall be sent to the regional or equated court, with notification of it the applicant and the person whose actions and decisions are appealed, and the prosecutor. The decision of the regional or equated court, taken as a result of consideration of the complaint, the petition of the prosecutor shall be final.

5. A judge of a regional or equivalent court in compliance with the rules and terms provided for in parts two and three of this article, no later than three days from the date of receipt of the complaint, the prosecutor's petition to the court, shall verify the legality and validity of the decision, the sanction of the investigating judge.

The decision of a judge of a regional or equivalent court, issued based on the results of consideration of a complaint, a petition of a prosecutor, shall come into legal force from the moment of announcement.

6. Consideration takes place in a closed court session, except for the issues specified in paragraphs 1), 2) and 11) of the first part of this article, which must be considered in an open court session if the investigating judge considered them in an open court session.

The prosecutor and the defender of the suspect participate in the court session. The suspect, his legal representative, the victim, his legal representative, representative and other persons whose rights and interests are affected by the contested decision may also participate in the meeting, whose failure to appear upon timely notification of the time and place of the consideration of the complaint, the petition of the prosecutor does not prevent their judicial consideration.

In the case provided for by paragraph 10) of part one of this article, the list of persons participating in a closed court session is determined by the judge considering the complaint or petition.

Consideration of the issues provided for by part 1-1 of this article is carried out in accordance with article 234 of this Code.

7. Having heard the arguments of the parties, having considered the submitted materials, the court shall make one of the following motivated decisions:

- 1) on leaving the decision, sanction of the investigating judge unchanged;
- 2) on changing the decision, sanction of the investigating judge;
- 3) on cancellation of the decision, sanction of the investigating judge and the issuance of a new decision.

8. A copy of the court resolution shall be sent to the body of pre-trial investigation, as well as the procurator, the suspected, the defense counsel and a representative of the administration of the place of detention of the person and shall be subject to immediate execution.

In the cases stipulated by paragraph 10) of paragraph one and paragraph 1-1 of this Article, the court decision shall be handed over (sent) to the prosecutor.

9. Appeal against the decision on the extradition (extradition) of the person, accused of a crime or convicted in a foreign state, and the judicial review of its legality and validity shall be carried out in accordance with the procedure, provided for in Article 592 of this Code.

**Footnote. Article 107 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (the order of enactment see Art. 2); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 19.12. 2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication) .**

#### **Article 108. Complaints, petitions of the prosecutor for the verdict, court decisions**

Complaints, petitions of the prosecutor for the verdict, decisions of the courts of first instance shall be submitted in accordance with the rules of chapter 48 of this Code. Complaints, protests, petitions to revision court decisions that have entered into force, shall be filed in accordance with the rules established by chapter 52 of this Code.

**Footnote. Article 108 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Chapter 14. Final provisions on the persons, involved**

##### **Article 109. The right to demand recognition as participant in the proceedings**

1. Persons who are not participants in the criminal proceedings, if there are the grounds for it, provided for in this Code shall have the right to demand recognition of them as the

suspected persons, victims, private prosecutors, civil claimants, civil defendants, their legal representatives and representatives. Applications (requests) of the said persons shall be considered the body, conducting the criminal proceedings, within three days of receipt. About the decision shall be immediately notified the applicant, to whom a copy of the decision shall be sent.

2. An applicant may appeal to the procurator, the court the refusal to satisfy his (her) request or postponing its settlement within five days of receiving a copy of the relevant decision. If the copy of the decision is not received within ten days from the filing of the complaint, the complainant may appeal the inaction to the court or refer to the procurator with the application for recognition him (her) as a participant in the process.

A close relative, spouse (husband) of the deceased or the person, lost the ability to consciously express his (her) will as a result of a criminal offence of a person, can claim the recognition of him (her) as a victim, if he (she) wants to become his (her) successor. The specified request shall be considered the body, conducting the criminal proceedings in the manner prescribed by the first part of this Article.

#### **Article 110. The duty of explaining the rights and responsibilities and providing opportunities for their implementation to the persons participating in the criminal proceedings**

1. Each person, involved in criminal proceedings shall have the right to know his (her) rights and responsibilities, the legal consequences of his (her) chosen position, as well as an explanation of the procedural actions, carried out with his (her) participation and the content of the materials of the criminal case, submitted to him (her) for review.

2. The body, conducting the criminal proceedings shall explain to each person, who is involved in criminal proceedings, his (her) rights and responsibilities assigned to him (her), including in the cases involving minors, to their representatives the right to be tried in a special juvenile court or in the court of the place of residence of the minor, ensuring in the manner, provided in this Code the opportunity to implement them. At the request of the person, the body conducting the criminal proceedings shall explain his (her) rights and responsibilities again.

3. The body, conducting the criminal proceedings shall be obliged to inform the participants in the proceedings the names of the persons, who may be challenged, and other necessary information about them.

4. The rights and responsibilities shall be mandatorily explained to a person, who acquired the status of participant to the proceedings before the procedural actions with his (her) participation and before expressing by him (her) any position as a participant in the proceedings. The Court shall be obliged to explain the participant to the proceedings, appearing before the court session the rights and responsibilities assigned to him (her), regardless of whether they are explained in the pre-trial investigation.

5. The body, conducting the criminal proceedings shall clarify the responsibilities and rights to the identifying witness, the interpreter, the specialist and expert before each procedural action, carried out with their participation.

The responsibilities and rights of the witness should be explained to him (her) before his (her) first interrogation by the criminal prosecution body, and again in the court session.

### **Section 3. Evidence and proof**

#### **Chapter 15. Evidence Article 111. The concept of evidence**

1. The evidence in criminal case is legally obtained evidence on the basis of which in the manner, provided for in this Code the body of inquiry, interrogating officer, investigator, procurator, the court establishes the presence or absence of the act, provided by the Criminal Code of the Republic of Kazakhstan, the commission or omission of an act by the suspected, accused or the defendant, his (her) guilt or innocence, as well as other circumstances relevant for the proper resolution of the case.

2. Evidence, relevant to the proper resolution of the criminal case shall be established: by the testimony of the suspected, accused, victim, witness, the witness, entitled to protection, expert, specialist; by the conclusion of the expert, specialist; by material evidence; the protocols of procedural actions and other documents.

#### **Article 112. The evidence, not admissible as evidence**

1. The evidence must be declared not admissible as evidence, if they are obtained in violation of this Code, which, through deprivation or restraint of the legally guaranteed rights of participants in the proceedings or in violation of other rules of criminal procedure in pre-trial investigation or judicial proceedings had, or could affect the reliability of the evidence, including:

- 1) the use of torture, violence, threats, deception, or other illegal acts and abuse;
- 2) the use of the delusion of a person, participating in criminal proceedings with respect to his (her) rights and responsibilities arising from unexplained, incomplete or incorrect explanation of them to him (her);
- 3) in connection with the procedural action by a person, not authorized to conduct proceedings in the criminal case;
- 4) in connection with participation in the procedural action of a person, subject to the challenge;
- 5) a material violation of the order of procedural actions;
- 6) from an unknown source or from a source that cannot be established in court session;
- 7) the use in the course of proving the methods contrary to current scientific knowledge.

2. Inadmissibility of the use of factual evidence as evidence, as well as their limited use in criminal proceedings shall be established by the body of inquiry, interrogating officer,

investigator, procurator or court, on its own initiative or at the request of a party. The body of inquiry, interrogating officer, investigator, procurator or judge, deciding on the inadmissibility of evidence, shall in each case find out what exactly reflected to the violation and take a reasoned decision.

3. A witness entitled to defence, a victim and a witness, the conclusion of an expert, a specialist, material evidence, protocols of investigative and judicial actions and other documents cannot be used as the basis for the accusation, if they are not included in the inventory of the materials of the criminal case. The testimony given by the suspect during his preliminary interrogation as a witness cannot be recognized as evidence and used against his spouse (wife) and close relatives, and also form the basis of the suspect's accusation.

4. Evidence, obtained in violation of the criminal procedure law, shall be deemed inadmissible as evidence and cannot be the basis for the prosecution, as well as used in proving any circumstances, referred to in Article 113 of this Code.

5. Evidence, obtained with violations, referred to in the first part of this article, may be used as evidence of the fact of the corresponding violations and the guilty of persons, committed them in the course of investigation of the criminal case.

**Footnote. Article 112 as amended by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 113. Circumstances to be proven in a criminal case**

1. The following must be proved in a criminal case:

- 1) event and signs of the elements of a criminal offence (time, place, method and other circumstances of its commission), defined in the criminal law;
- 2) who committed prohibited by the criminal law act;
- 3) the guilt of the person committing a prohibited by the criminal law act, the form of his (her) guilt, the motives of the committed offence, the legal and factual errors;
- 4) the circumstances that affect the degree and nature of liability of the suspected, accused ;
- 5) the circumstances that characterize the personality of the suspected, accused;
- 6) the consequences of the committed criminal offence;
- 7) the nature and extent of the harm, caused by the criminal offence;
- 8) the circumstances, precluding criminal wrongfulness of the act;
- 9) the circumstances, causing the exemption from criminal liability and punishment.

2. Additional circumstances, which must be proved in cases of criminal offences, committed by minors, specified in article 531 of this Code, and in cases of socially dangerous acts of the insane in Article 510 of this Code.

3. Along with other circumstances in a criminal case, circumstances confirming that the property subject to confiscation in accordance with Article 48 of the Criminal Code of the



Republic of Kazakhstan is obtained illegally, including as a result of a criminal offense, or is income from this property or has been used or was intended to be used as an instrument or means of committing a criminal offense or financing or otherwise providing for extremist or terrorist activities or a criminal group, shall be subjected to averment.

4. The circumstances that contributed to the commission of a criminal offence must be identified in the criminal case.

**Footnote. Article 113 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 114. Circumstances, established without proof**

The following circumstances are considered to be established without proof, if within the appropriate legal procedures will not be proven otherwise:

- 1) commonly-known facts;
- 2) correctness of the research methods, generally accepted in modern science, technology, art, craft;
- 3) the circumstances, established by a legally effective judicial act;
- 4) knowledge of the law by a person;
- 5) knowledge by a person of his or her official and professional duties;
- 6) absence of special training or education of a person, who failed to confirm the availability of the document and does not indicate the educational institution or other institution, where he (she) received special training or education.

#### **Article 115. Testimony of the suspected, victim, witness**

1. Testimony of the suspected, victim or witness is the information, communicated by them in writing or orally during the interrogation, held in pre-trial investigation in the manner prescribed by Chapter 26 of this Code.

2. The suspected shall have the right to give testimony about the existing suspicions against him (her), as well as on other circumstances known to him (her) and relevant in the case, and evidence.

3. Recognition by the suspected of his (her) guilt in committing a criminal offence may be used as the basis for prosecution only upon confirmation of his (her) guilt by total of the evidence in the case.

4. The victim may be interrogated about any circumstances, subject to proof in the case, as well as his (her) relationship with the suspected, other victims, witnesses. The information reported by the victim may not be used as evidence, if he (she) cannot specify the source of his (her) knowledge.

5. A witness may be interrogated on any relevant circumstances, including the identity of the suspected, the victim and his (her) relationship with them and other witnesses. The

information reported by a witness may not be used as evidence, if he (she) cannot specify the source of his (her) knowledge. The information of the persons, not to be questioned as witnesses shall not be evidence.

6. Testimony of the data, characterizing the identity of the suspected cannot be the basis for prosecution and is used as evidence only to address the issues, related to the purpose of punishment or exemption from punishment.

7. Testimony of a person, who in the order prescribed by this Code recognized at the time of interrogation as unable to perceive or reproduce the circumstances, relevant to the criminal case, shall not be evidence.

8. Factual data, directly perceived by the person providing assistance on a confidential basis to the law enforcement or special state bodies can be used as evidence after questioning the specified person with his/her consent as a witness, victim, suspect, accused.

Factual data, directly perceived by the persons embedded in a criminal group, in order to ensure the safety of these persons can be used as evidence after questioning the official of the body carrying out operational-investigative, counterintelligence or covert investigative activities as a witness.

**Footnote. Article 115 as amended by the Law of the Republic of Kazakhstan dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication).**

#### **Article 116. Expert's conclusion and testimony**

1. Expert's conclusion is a document, drawn up in accordance with the requirements of this Code and reflecting the status and results of forensic investigation.

2. Oral explanation of the expert shall be evidence only in part of the explanation of his (her) earlier conclusions.

3. Expert's conclusion shall not be binding on the body, conducting the criminal proceedings, but his (her) disagreement with the conclusion must be motivated.

4. Expert's testimony is the information, communicated by him (her) during the interrogation, conducted after obtaining the conclusion, in order to explain or clarify this conclusion.

#### **Article 117. Specialist's conclusion and testimony**

1. The conclusion of the specialist is the official document, drawn up in accordance with the requirements of the third part of this article and submitted in writing, reflecting the content of the study and conclusions on the issues put before the specialist by the person, conducting the criminal proceedings, or the parties.

The procedure for appointing a research, reporting on the impossibility of giving a conclusion, the rights and duties of the suspected, the accused, the victim and his (her)

representatives, witnesses, defense counsel with the appointment and conduct of research, guarantees of the rights and legitimate interests of persons, in respect of which the research is conducted, the rights of participants in the process for the presence in the production of research, legal requirements to the objects of research, the order and the legal consequences of presentation for the suspected, the victim the specialist's conclusion, the grounds and procedure for obtaining samples for the research shall be established by the Chapters 34 and 35 of this Code, taking into account the special features of the specialist's research.

2. After the production of the necessary research, the specialist on his (her) own name prepares a written report and certifies it with his (her) signature.

Written conclusion of the specialist, compiled by officer of the authorized units of law enforcement or special state body of the Republic of Kazakhstan, shall be sealed by the specified unit.

A specialist's opinion may be issued in the form of an electronic document.

3. The specialist's conclusion shall include: the date of its registration, date and place of research; details of the protocol of the investigative action, which attached by the specialist, information about the specialist, who conducted the research (surname, first name, middle name (if available), education, profession, professional experience, academic degree and academic rank, position); the mark, certified by the specialist that he (she) warned of criminal liability for knowingly giving false conclusion; the questions put to the specialist; the objects of research, their condition, packaging, affixing a seal; the content and results of research, showing the techniques employed; evaluation of the results of the research, study and formulation of conclusions on the issues laid upon the specialist.

4. Materials, illustrating the specialist's conclusion (photo-tables, diagrams, graphs, tables, and other materials), certified in the manner prescribed by the second part of this article, shall be attached to the conclusion and shall be its integral part. The conclusion must also be attached by remaining after the research objects, including samples.

5. Oral explanations of the specialist shall be evidence only in part of the explanation of his (her) earlier conclusions.

6. Testimony of the specialist is the information, communicated by him (her) during the interrogation, conducted after obtaining the conclusion, in order to explain or clarify this conclusion.

7. Conclusion of the specialist shall not be binding to the body, conducting the criminal proceedings, but his (her) disagreement with the conclusion must be motivated.

**Footnote. Article 117 as amended by the Law of the Republic of Kazakhstan No. 180-VI dated 12.07.2018 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **Article 118. Material evidence**

1. Material evidence shall be recognized:

1) items, if there is reason to believe that they served as an instrument or other means of committing a criminal offense;

2) items that have retained or could have retained traces of a criminal offense;

3) items that were objects of socially dangerous encroachment;

4) money, valuables and other property received as a result of a criminal offense;

5) money, valuables, other property, objects, documents that can serve as means for detecting a criminal offense, establishing the factual circumstances of the case, identifying the guilty person or refuting his guilt or mitigating responsibility.

2. Material evidence shall be attached to the case by a decision of the body conducting the criminal proceedings, or by a protocol drawn up in accordance with the requirements of Article 527 of this Code, and remain with it until the verdict or decision to dismiss the case enters into legal force, except for the cases provided for by part four Article 221 of this Code. The procedure for examining physical evidence and their storage is determined by Article 221 of this Code.

3. In deciding to terminate a criminal case or sentencing, the issue of material evidence should be resolved. In this case:

1) instruments and (or) means of committing a criminal offense belonging to the person who committed a criminal offense shall be confiscated on the basis of Article 48 of the Criminal Code of the Republic of Kazakhstan;

1-1) instruments and (or) means of committing a criminal offense that legally belong to a person who did not know or should not have known about the illegal purposes of using his/her property, shall be returned to this person;

1-2) in other cases, the instruments and (or) means of committing a criminal offense shall be transferred to the relevant institutions to certain persons or destroyed;

2) things that are prohibited for circulation or limited in circulation, shall be transferred to the appropriate institutions or destroyed;

3) things of no value, and which cannot be used, shall be destroyed, and in the case of application of the interested persons or institutions may be granted to them;

4) money and other property obtained by criminal means or acquired with funds obtained by criminal means, with the exception of property and proceeds from it, subject to return to the legal owner, as well as items of illegal business and smuggling, by a court decision, shall be subject to turning into state revenue; the rest of the things shall be handed over to the legal owners, and if the latter are not established, they shall become the property of the state. In the event of a dispute about the ownership of these things, the dispute shall be resolved in the civil procedure;

5) documents that are material evidence, shall remain in the case for the duration of its storage or transferred to interested persons or legal entities in the order specified in the fourth part of Article 120 of this Code.

4. The order of withdrawal, registration, storage, transfer and destruction of material evidence, documents in criminal cases by the court, procurators, bodies for criminal prosecution and judicial examination shall be established by the Government of the Republic of Kazakhstan.

**Footnote.** Article 118 as amended by laws of the Republic of Kazakhstan No. 268-VI dated 28.10.2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 119. Protocols of the procedural actions**

1. Evidence in a criminal case shall be the factual data contained in the protocols of investigative actions drawn up in accordance with the rules of this Code, the protocol drawn up in accordance with the requirements provided for in Article 527 of this Code, certifying the circumstances directly perceived by the person conducting the criminal proceedings, as well as established during the examination, examination, seizure, search, detention, seizure of property, presentation for identification, obtaining samples, exhumation of a corpse, verification of testimony on the spot, presentation of documents, investigative experiment, study of the results of undercover investigative actions, examination of material evidence conducted by a specialist in the course of an investigative action, as well as those contained in the minutes of the court session, reflecting the course of judicial actions, and their results.

2. The actual data, contained in the protocols, compiled in making an oral statement about the criminal offence, the submitted things and documents, acknowledgement of guilt, clarifying the persons of their rights and duties, assigned to them, may be used as evidence.

**Footnote.** Article 119 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 120. Documents**

1. Documents shall be recognized as evidence, if the information contained or certified in them by individuals, legal entities and officials, are important for the criminal case.

2. Materials, which contain factual data on unlawful actions, received in compliance with the requirements of the Laws of the Republic of Kazakhstan "On operative-investigative activity", "On counter-intelligence activity" shall be the documents and can be used in criminal proceedings as evidences.

3. Documents may contain the information recorded in written and another form. Documents also include the explanations, acts of inventories, audits, inquiries, tax acts, the conclusions of tax authorities, as well as the materials containing computer information,

photography and filming, sound and video recordings, obtained, demanded or presented in the manner, provided for in Article 122 of this Code.

4. Documents shall be filed and retained for the duration of the case. Where the documents seized and attached to the case are required for current record-keeping, reporting and other lawful purposes at the request of the rightful owner, they may be returned to him or provided for temporary use, including from electronic media, if possible without prejudice to the case, or their copies certified by a notary public, if necessary.

Costs related to the copying and certification by the notary of the copies of the documents to be transmitted shall be borne by the initiator of the application.

Documents that are not relevant to the criminal case are returned to the rightful owner.

5. In cases, where the documents have signs, referred to in Article 118 of this Code, they shall be recognized as material evidence.

**Footnote. Article 120 as amended by the Law of the Republic of Kazakhstan dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication); No. 217-VI dated 21.01.2019 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **Chapter 16. Proof Article 121. Proof**

1. Evidence consists of the collection, research, evaluation and use of evidence to establish the circumstances relevant to the lawful, reasonable and fair resolution of a case. Proof shall be made only in respect of criminal offences for which pre-trial investigation has been initiated in accordance with the procedure provided for in Chapter 23 of the present Code.

2. The burden of proof of the grounds of criminal liability and guilt of the suspected, the accused lies on the accuser.

**Footnote. Article 121 as amended by the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **Article 122. Collection of evidence**

1. Collection of evidence shall be produced during the pre-trial investigation and court proceedings by procedural actions, provided in this Code. Collection of evidence includes their detection, consolidation and seizure.

2. The body conducting the criminal procedure, upon the petitions of the procedure participants or on its own initiative, shall have the right, on the criminal case under its jurisdiction, to call any person for interrogation or giving a conclusion as an expert or specialist in the manner established by this Code; to produce procedural actions provided for in this Code; demand from individuals, legal entities and officials, as well as bodies

conducting operational-investigative or counterintelligence activities, the provision of documents and items relevant to the case, in compliance with the order, established by the legislative acts of the Republic of Kazakhstan for issuance and disclosure of information that constitutes commercial or other secret protected by law; to demand the production of audits and inspections from the authorized bodies and officials. The criminal prosecution body shall notify the prosecutor on the demand for production of audits and inspections of business entities within 24 hours. The court shall not have the right to collect evidences, on its own initiative.

3. Defense counsel, representative of the victims, admitted in accordance with this Code to participate in the pre-trial investigation or court proceeding shall have the right in the compliance with the order, established by the legislative acts of the Republic of Kazakhstan on non-disclosure of information, constituting commercial and other secrets protected by law, to obtain the information necessary for the implementation of protection, representation of the interests of the victim, by:

1) requesting certificates, characteristics and other documents from legal entities, including from state bodies and public associations. The specified persons are obliged to present to the defender, the representative of the victim documents requested by them or their certified copies within ten days.

When considering whether to authorize a preventive measure in the form of remand in custody, the required certificates, testimonials and other documents are submitted to the defence counsel within twenty-four hours;

2) initiation on a contractual basis to carry out a forensic examination in accordance with the fifth, ninth and tenth parts of article 272 of this Code;

3) sending a request for conducting a forensic examination on a contractual basis to the forensic examination body or to a person from among those specified in paragraphs 2) and 3) of the first part of Article 273 of this Code;

4) involvement on a contractual basis of a specialist;

5) Interviewing, with their consent, persons allegedly in possession of information relevant to the criminal case, including through the use of scientific and technological means.

The course and results of the interrogation shall be reflected in writing or on an electronic medium, which, at the request of the defence counsel or victim's representative, shall be attached to the criminal case and shall acquire the status of evidence after their examination and evaluation by the body conducting the criminal proceedings, in accordance with the requirements of this Code.

4. Information both oral and in written or in the form of an electronic document, as well as objects and documents for attaching them as evidences to a criminal case, may be provided by a suspect, an accused, a defender, a private prosecutor, a victim, a civil plaintiff, a civil defendant and their representatives, as well as any citizens and organizations.



When a specialist is involved on a contractual basis, the defender, the representative of the victim explains his rights and obligations under Article 80 of this Code, and criminal liability under Articles 420 and 423 of the Criminal Code of the Republic of Kazakhstan with a receipt

The said receipt shall be sent within 24 hours to the person conducting the pre-trial investigation for inclusion in the case file;

5. Failure to comply with the requirements of paragraph 1) of the third part of this Article entails the liability under the law.

**Footnote. Article 122 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

### **Article 123. Preservation of evidence**

1. Actual data may be used as evidence only after their fixation in the protocols of procedural actions.

2. The responsibility for keeping the protocols during the pre-trial investigation is assigned to an interrogating officer, investigator and procurator, and in the court - to the presiding judge and court session secretary.

3. The participants of the investigative and judicial actions, as well as the parties to the court proceedings should be guaranteed the right to get acquainted with the protocols that set out the progress and results of these actions, to make additions and corrections to the protocol, make comments and objections to the procedure and conditions of this action, offer their version of the recording in the protocol, pay attention of the interrogating officer, investigator, procurator or court to the circumstances that may be relevant to the case. The note about the explanation to the participants of investigative and judicial actions of their rights shall be made in the protocol.

4. Additions, corrections, comments, objections, applications and complaints, made orally, shall be included in the protocol, and laid down in written form shall be attached to the protocol. The clause about crossed out or inscribed words or other corrections shall be made before the signatures at the end of the protocol.

5. Persons, who are acquainted with the protocol of the investigative action, shall put their signatures to the last line of text on each page and at the end of the protocol. In reading the part of the protocol of the court session the signatures may be put at the end of each page or at the end of this part.

6. In case of disagreement with comments or objections, the interrogating officer, investigator, procurator or the court shall render a decision.



7. At refusal of any of the participants in the process or other persons to sign in cases, prescribed by law, the protocol of investigative action, the interrogating officer, investigator or procurator shall make a note in the protocol, which is certified by the signature.

8. At refusal to sign in cases prescribed by law the records of judicial action, made in the protocol of the court session, a note shall be made in this protocol and certified by the signatures of the presiding judge and court session secretary.

9. A person, refused to sign the protocol shall have the right to explain the reason for refusal and the explanation shall be recorded in the protocol.

10. If the participant of the procedural action due to his (her) physical disability cannot read or sign the protocol him(her)self, with his (her) consent the protocol shall be read aloud and signed by his (her) defense counsel, representative or other individual, whom he (she) trusts, as is noted in the protocol.

11. To preservation of evidence, along with the preparation of protocols the sound, video, film, photography, the production of snapshots, prints, plans, schemes and other ways of capturing information can be used. On the application of a party to the investigative action or court proceedings the referred methods for preservation of evidence, a note respectively in the protocol of the investigative action or the protocol of the court session shall be made with the technical specifications of the used scientific and technical means.

12. Soundtracks, videos, movies, photos, snapshots, prints, plans, schemes other display of the progress and results of the investigative or judicial action shall be attached to the protocol. Each application shall contain the explanatory inscription with the designation of the name, location, date of the investigative or judicial action, for which the application is related to. This note is certified by the signatures of the procurator, interrogating officer or investigator and, where appropriate, by the identifying witness during the pre-trial investigation, and in the court – by the presiding judge and court session secretary.

#### **Article 124. Examination of evidence**

Evidence collected in the case shall be subject to the full and objective investigation. The investigation includes an analysis of the evidence obtained, its comparison with other evidence, gathering additional evidence for their verification, checking the sources of evidence.

#### **Article 125. Evaluation of evidence**

1. Each piece of evidence must be assessed in terms of relevance, admissibility, reliability, and all the evidence collected together – for sufficiency to resolve the criminal case.

2. In accordance with Article 25 of this Code, the judge, procurator, investigator, interrogating officer shall assess the evidence according to their inner conviction, based on a

comprehensive, complete and objective examination of evidence in their totality, guided by the law and conscience.

3. The evidence shall be recognized to be relevant to the case, if it is the actual data that confirm or refute or cast doubt the findings on the existence of the circumstances, relevant to the case.

4. The evidence shall be recognized as admissible, if it is obtained in the manner prescribed by this Code.

5. The evidence shall be recognized as valid, if during the check it turns out that it corresponds to reality.

6. The totality of the evidence is recognized as sufficient for the resolution of the criminal case, if the admissible and reliable proofs relating to the case are collected, without any doubt and undeniably establishing the truth about all and each of the circumstances to be proved.

**Footnote. Article 125 as amended by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 126. Scientific and technological means in the process of proof**

1. Scientific and technical means in the process of proving in a criminal case may be used by the body conducting the criminal proceedings, a lawyer who is a defender, a representative of the victim, as well as an expert and specialist in the performance of their procedural duties provided for by this Code.

2. To provide assistance in the use of scientific and technical means, the body conducting the criminal proceedings, the lawyer who is the defender, the representative of the victim, may involve a specialist.

3. The application of scientific and technological means shall be recognized valid if they:

- 1) expressly authorized by law or not contrary to its rules and principles;
- 2) are scientific;
- 3) ensure the effectiveness of the criminal proceedings;
- 4) are safe.

4. The use of scientific and technical means by the body conducting the criminal process is recorded in the protocols of the relevant procedural actions and the minutes of the court session, and by a lawyer who is a defender, a representative of the victim, in a survey report indicating the data of scientific and technical means, the conditions and procedure for their application, objects to which these tools were applied, and the results of their use.

**Footnote. Article 126 as amended by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 127. Prejudice**

1. A verdict that has entered into legal force, as well as another decision of the court in a criminal case that authorizes it in substance, shall be binding for all state bodies, individuals and legal entities in respect of both the established circumstances and their legal assessment in relation to a person about whom they are taken out. This provision shall not prevent (impede) verification, cancellation and change of the verdict and other court decisions in cassation instance on the basis of newly discovered circumstances.

2. A valid court decision in a civil case shall be binding for the body, conducting the criminal process in the pre-trial investigation or in a criminal case only on the question of whether there has been an event or action, and should not prejudge the conclusions about the guilt or innocence of the defendant.

3. A valid sentence, which recognizes the right to satisfaction of the claim, shall be binding in this part for the court in consideration of the civil case.

4. Resolution of the criminal prosecution body shall not be binding for the court, except the decision to terminate the criminal prosecution on the same suspicion.

**Footnote. Article 127 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

#### **Section 4. Measures of procedural compulsion Chapter 17. Detention of the suspected Article 128. Grounds for detention**

1. Detention of the suspected in committing a criminal offence is a measure of procedural compulsion, applied by the criminal prosecution body to suppress crime and permit the application of a preventive measure in the form of detention in custody or to secure the production of criminal infraction, for which there is a reason to believe that person may escape or commit a more serious offence.

2. An official of the criminal prosecution body shall have the right to detain a person, suspected of committing a crime for which a sentence of imprisonment can be assigned, if there are one the following grounds:

1) when the person is caught during the commission of the crime or immediately after its commission;

2) when eye-witnesses (witnesses), including the victims, directly point out the person committed the crime or detain that person in the manner prescribed in Article 130 of this Code;

3) when clear evidence of a crime will be found in that person or his (her) clothes with him (her) or in his (her) home;

4) when in the materials of operational- investigative, counterintelligence activity and (or) covert investigative actions received in accordance with the law, there are reliable data on the crime committed or planned by him/her.

3. The detention of persons suspected of committing a crime shall be made after the necessary urgent investigative actions, except for the ground, provided for in paragraph 1) of the second part of this Article.

4. If there are other grounds for suspecting a person in committing a criminal offence, he (she) may be detained only if this person tried to escape or when he (she) does not have a permanent residence or identity of the suspected is not established, or the application on sanctioning the preventive measure in the form of detention in custody is directed to the court.

5. The period of detention of the person, suspected of committing a criminal offence, shall be counted from the moment of actual detention and cannot exceed seventy-two hours.

**Footnote. Article 128 as amended by the Law of the Republic of Kazakhstan dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication).**

#### **Article 129. Conveyance**

1. Conveyance is a measure of procedural compulsion, applied for a period of not more than three hours in order to elucidate the involvement of the person to a criminal offence.

2. Upon confirmation of the involvement of a person to a criminal offence, the criminal prosecution body shall have the right to carry out a detention in the manner provided in Article 131 of this Code, and the time of conveyance is included in the total period of detention, provided in the fourth part of Article 131 of this Code.

3. At the end of the period for convey, the person shall be immediately issued a certificate of conveyance, except the cases of his (her) subsequent procedural detention.

#### **Article 130. The right of citizens to non-procedural detention of persons, who committed a criminal offence**

1. The victim, as well as any other citizen shall have the right to detain a person, who committed a criminal offence, and to restrict his (her) freedom of movement for the transmission or conveyance to the criminal prosecution body or other public authority in order to prevent him (her) from committing other assaults.

2. In the cases, specified in part one of this Article, a detained person in providing resistance may be applied within the limits provided for in Article 33 of the Criminal Code of the Republic of Kazakhstan, the physical force and other means. If there is reason to believe that the detained person has weapons or other dangerous objects relevant to the criminal case, the citizen detained him (her) shall have the right to inspect the clothes and remove the objects he (she) has for transfer to law enforcement or other public authority.

#### **Article 131. The order for procedural detention of a person, suspected of committing a criminal offence**

1. When detaining a person on suspicion of committing a criminal offence, an official of the criminal prosecution body verbally announces to the person on suspicion of committing what criminal offence he (she) is detained, explain him (her) the right to invite the defense counsel, the right to remain silent and that everything what he (she) said can be used against him (her) in court.

If the detained person does not speak Kazakh and (or) Russian languages or cannot at the moment of detention due to alcohol, drug, toxic intoxication or painful psychosomatic condition adequately perceive an explanation of his (her) rights, the rights of the suspected shall be explained to him (her), respectively, in the presence of an interpreter (if necessary) and (or) the defense counsel prior to being interrogated as a suspected, as is noted in the protocol of the interrogation.

2. In the term specified in a part of the first article 129 of the present Code, the official of body of inquiry, the inquirer, the investigator make the report of detention. The suspect shall be subject to examination in an order provided by article 223 of the present Code, for establishment of the general state of his health and presence of bodily injuries.

The detention report shall contain the following information:

- 1) The surname, name and patronymic (if any) of the suspect;
- 2) by whom the suspect is detained, grounds, motives, place of detention, time of actual detention and delivery (indicating the hour and minute);
- 3) information on the explanation of the rights of the suspect;
- 4) results of a personal search;
- 5) information on the state of health of the detainee;
- 6) time and place of drawing up the protocol;
- 7) the term of detention.

The report is signed by the official who drew up it, the suspect and the defence counsel (with his participation).

The report shall be accompanied by a medical examination report.

3. The person, performing the pre-trial investigation shall inform in writing the procurator about the detention within twelve hours from the moment of making the protocol of detention

4. A person may be detained on suspicion of committing a crime for a period not exceeding forty-eight hours and a minor for a period not exceeding twenty-four hours, with the exception of the following cases in which detention for a period not exceeding seventy-two hours is permitted:

- 1) detention on suspicion of a particularly serious crime;
- 2) detention on suspicion of committing a terrorist or extremist crime;
- 3) detention on suspicion of committing a crime in the course of a mass riot;
- 4) detention on suspicion of committing a crime within a criminal group;

5) detention on suspicion of committing crimes related to illicit trafficking in narcotic drugs, psychotropic substances, precursors and their analogues, against sexual inviolability of minors, as well as intentional crime that caused death of a person;

6) the impossibility to ensure timely delivery of a person to the investigating judge due to remoteness or lack of proper means of communication, as well as in the conditions of a state of emergency or emergency.

**Footnote. Article 131, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); No. 118-VI dated 21.12.2017 ( shall be enforced upon the expiration of ten calendar days after its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

### **Article 132. Personal search of the detained person**

The person, performing the detention, shall have the right to in compliance with the rules, provided for in Article 255 of this Code, immediately make a personal search of the detained person in cases where there is reason to believe that he (she) carries weapons or items that can be used as a weapon or prohibited for circulation, and other items that can be used in proving, or he (she) tries to get rid of the evidence, incriminating him (her) of committing a criminal offence, or in other necessary cases.

### **Article 133. Grounds for release of a person, detained on suspicion of committing a criminal offence**

1. A person, detained on suspicion of committing a criminal offence, shall be released by resolution of the person carrying out the pre-trial investigation or the procurator, if:

- 1) the suspicion of committing a criminal offence is not confirmed;
- 2) there is no reason to apply to a detained person a preventive measure in the form of detention in custody or punishment in the form of arrest or deportation from the Republic of Kazakhstan;
- 3) the detention is carried out with a material breach of the requirements of Article 131 of this Code;
- 4) there are not legal grounds for detention.

2. If within forty-eight hours and within twenty-four hours of the actual arrest the chief of the place of detention has not received a court order authorizing the detention of a suspect, the chief of the place of detention of the suspect, except in the cases provided for in paragraphs 1) to 6) of paragraph four of Article 131 of this Code, shall immediately release him/her by order and notify the person in charge of the case and the prosecutor.

In the cases provided for in paragraphs 1) to 6) of paragraph four of Article 131 of this Code, the head of the place of detention of a detained person shall immediately release him/her by decision and notify the person in charge of the case and the prosecutor, unless the court

order authorizing the detention of the suspect has been received within seventy-two hours from the moment of actual detention.

3. If failure to meet the requirements of the second part of this article, the head of the administration of the place of detention shall be liable according to law.

4. With the release of the detained person, he (she) is issued a certificate, which indicates who detained him (her), the grounds, the place and time of detention, conveyance, the grounds and time of release.

5. In the cases, provided for in paragraphs 3) and 4) of the first part of this article, the data obtained as a result of investigative actions, conducted with the participation of the detained person in the course or after the illegal detention, shall be declared inadmissible as evidence.

**A footnote. Article 133 as amended by Law No. 118-VI of 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 134. The order of detention in custody of the detained on suspicion of committing a criminal offence**

The persons, detained on suspicion of committing a criminal offence shall be in temporary detention facilities. Military personnel and persons serving a sentence of imprisonment, detained on suspicion of committing a criminal offence may also be contained respectively in the guardhouse and institutions of the penal system, executing a sentence of imprisonment. In the cases, provided for in paragraph 9) of the second and third part of Article 61 of this Code, the persons, detained on suspicion of committing a criminal offence shall be contained in specially adapted premises, defined by the head of the body of inquiry. Under the conditions of the state of emergency the persons, detained on suspicion of committing a criminal offence may be held in facilities, designed for the purpose determined by the commandant of the area. The procedure and conditions of detention of persons, detained on suspicion of committing a criminal offence shall be defined by the legislation of the Republic of Kazakhstan.

#### **Article 135. Notification of relatives of the suspected about the detention**

A person, performing pre-trial investigation shall promptly notify about the detention of the suspected and his (her) location any of the adult members of his (her) family, and in the absence of them - other relatives or close persons, or provide an opportunity of such notification to the suspected. About the detention of a foreigner immediately, and in case of failure within twenty-four hours the embassy, consulate or other representative of the State through the Ministry of Foreign Affairs of the Republic of Kazakhstan must be notified according to the procedure established by joint order of the Minister of Foreign Affairs of the Republic of Kazakhstan and the Procurator General of the Republic of Kazakhstan.

#### **Chapter 18. Preventive measures Article 136. Grounds for application of preventive measures**



1. If there are sufficient grounds to believe that the suspected, the accused would hide from criminal prosecution bodies or court, or prevent the objective investigation of the case or proceeding in court, or will continue to engage in criminal activity, as well as to ensure the execution of the sentence, the body conducting the criminal proceedings within its powers may apply to these persons one of the preventive measures, provided for in Article 137 of this Code.

1-1. When electing a suspect or accused person, it is necessary to consider the possibility of applying a less stringent preventive measure, if any.

2. The persons, suspected or accused of committing crimes, stipulated in Articles 99 (paragraph 15) of the second part), 170 (fourth part), 175, 177, 178, 184, 255 (fourth part), 263 (fifth part), 286 (fourth part), 297 (fourth part), 298 (fourth part), 299 (fourth part) of the Criminal Code of the Republic of Kazakhstan, may be applied the detention in custody as a preventive measure on the grounds of the seriousness of the offence committed.

3. To the persons suspected, accused in commitment of crimes in sphere of economic activity, except for the criminal offences provided by articles 217, 218, 218-1, 231, 234, 248 and 249 of the Criminal code of the Republic of Kazakhstan, the preventive measure in the form of a detention shall not be applied, except for the cases provided by points 4) and 5) of a part one of article 147 of the present Code.

**Footnote. Article 136 as amended by the laws of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

### **Article 137. Preventive measures and additional restrictions**

1. The preventive measures are:

- 1) recognizance not to leave and good behaviour;
- 2) a personal suretyship;
- 3) placing a serviceman under the supervision of the commander of a military unit;
- 4) returning a minor under supervision;
- 5) a bail;
- 6) house arrest;
- 7) detention in custody.

2. If necessary, in relation to the person to whom the preventive measure is applied, except for placing a serviceman under the supervision of the commander of the military unit and the detention, can be applied electronic means of tracking.

A notice on the application of electronic means of tracking and explaining the suspected, the accused their appointment shall be made in the decision on the application of preventive measures.



3. The use of electronic means of tracking is permitted under the condition of taking measures to conceal them from observing others and should take into account the places visited by the suspected, the accused, and ways of their moving, as well as the age, health, marital status and lifestyle.

4. The procedure, conditions and grounds for using electronic tracking shall be determined by the Government of the Republic of Kazakhstan.

**Article 138. Circumstances to be considered when selecting a preventive measure and establishing additional restrictions**

1. At the decision of a question on necessity of application of a measure of suppression and what, besides the bases specified in article 136 of the present Code, and also an establishment of the additional restrictions specified in a part of second article 137 of the present Code, should be considered also:

- 1) The gravity of the crime committed;
- 2) The identity of the suspect or accused and his or her age;
- 3) state of health;
- 4) marital status, presence of dependants in the family;
- 5) the strength of social ties between the suspect and the accused;
- 6) reputation of the suspect or accused;
- 7) occupation;
- 8) the suspect or accused has a permanent place of work or study;
- 9) property status;
- 10) presence of a permanent place of residence and other circumstances.

2. In the absence of the grounds, listed in Article 136 of this Code, the severity of the offence cannot be the sole basis for a preventive measure in the form of detention in custody.

**Footnote. Article 138 with the change introduced by the Law of the Republic of Kazakhstan dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

**Article 139. The use of a preventive measure prior to the decision on qualification of the acts of the suspected**

1. In exceptional cases, if there are grounds provided for in Article 136, and under the circumstances, specified in Article 138 of this Code, a preventive measure may be applied to the suspected prior to the decision on the qualification of the acts of the suspected. In this case, the decision on the qualification of the acts of the suspected shall be announced no later than ten days, and in the case of committing at least one of the offences, provided for in Articles 173, 179, 181, 184, 255 - 268 and 272 of the Criminal Code of the Republic of Kazakhstan, not later than thirty days from the date of application of a preventive measure, and if the

suspected is arrested and then detained in custody for the same period from the time of detention. If during this time the decision on the qualification of the acts of the suspected will not be made and announced, the preventive measure shall be immediately cancelled.

2. At the announcement to the suspected of the decision on the qualification of his (her) act, the application to him (her) of the detention in custody as a preventive measure shall be reconsidered by the court in accordance with the procedure, provided for in Article 147 of this Code. If within twenty-four hours before the expiration of the period, specified in the first part of this article, the head of the place of detention does not receive a court order on sanctioning the detention in custody of the suspected, the head of the place of detention must notify the body or person dealing with the criminal case, and the procurator. If at the end of the period, specified in the first part of this article, the corresponding decision to cancel the preventive measure or on sanctioning by a court of the detention in custody of the accused is not received, the head of the place of detention shall release him (her) by his (her) decision, a copy of which within twenty-four hours directs to the body or person, dealing with the criminal case, and the procurator.

3. If failure to meet the requirements of the second part of this article the head of administration of the place of detention shall be liable according to law.

#### **Article 140. The order of application of preventive measures**

1. The suspected, the accused may not be applied simultaneously two or more preventive measures.

2. The body conducting the criminal proceedings shall issue a decision on the application of a preventive measure, containing a reference to a criminal offence, for which a person is suspected and accused, and the grounds for the application of this measure. Copy of the decision shall be given to the person against whom it is made, and at the same time he (she) shall be explained the order of appeal against the decision on the application of the preventive measure, provided for in this Code.

A preventive measure shall be applied to the suspected only after the decision on the qualification of his (her) acts, except in cases, provided for in Article 139 of this Code.

3. In the application of a preventive measure, not related to the detention in custody, the suspected, the accused or defendant may be assigned one or more of the following duties to ensure good behaviour:

1) come to the person, conducting the pre-trial investigation, the procurator or the court at the scheduled time;

2) not to leave permanent or temporary residence without the permission of the body, conducting the criminal proceedings;

3) inform the person, conducting the criminal proceedings, the procurator on changing the place of residence, place of work;

4) not to communicate with certain persons and go to certain places;

5) undergo a course of treatment for mental, behavioral disorders (diseases) associated with the use of psychoactive substances;

6) wear electronic means of tracking.

4. In the case of committing by the suspected, accused of actions that violated the measures provided for in Articles 141, 142, 143, 144, 145 and 146 of this Code, they shall be applied more stringent preventive measure, as the suspected, the accused shall be announced at the presentation of a copy of the relevant decision. In case of violation of the measures of procedural coercion, provided for in Articles 156 and 165 of this Code, a preventive measure shall be elected to the suspected, the accused.

**Footnote. Article 140 as amended by the Law of the Republic of Kazakhstan dated 07.07.2020 No. 361-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 141. Recognizance not to leave and good behaviour**

Recognizance not to leave and good behaviour is taking from the suspected, the accused by the body, conducting the criminal proceedings, a written undertaking not to leave permanent or temporary place of residence (town) without permission of the interrogating officer, the investigator or the court, not to interfere with the investigation and hearing in court, coming at the appointed time to the body, conducting the criminal proceedings.

#### **Article 142. Personal suretyship**

1. Personal suretyship is assumption by trustworthy persons a written undertaking that they vouch for the good behaviour of the suspected, the accused and their appearance on call of the body, conducting criminal proceedings. The number of guarantors cannot be less than two.

2. Selection as a preventive measure a personal suretyship shall be valid only upon written request of the guarantor and with the consent of the person against whom the suretyship is given.

3. Guarantor provides a recognizance on a personal suretyship, in which he (she) confirms that he (she) is explained the nature of the suspicions of the person against whom he (she) gives suretyship, guarantor's responsibility, which consists in the imposition of a monetary penalty in the case of committing by the suspected, the accused of actions, to prevent which this preventive measure is used.

4. Guarantor at any time of the criminal proceedings shall have the right to refuse suretyship. In this case, within forty-eight hours after the refusal, another preventive measure shall be elected to the suspected, the accused, with regard to the requirements of the first part of Article 136 of this Code.

5. In the case of committing by the suspected, the accused of actions for the prevention of which a personal suretyship is applied, each guarantor may be imposed by the court a monetary penalty in the manner provided in Article 160 of this Code.

#### **Article 143. Supervision of the command of the military unit over a serviceman**

1. Supervision of the command of the military unit over the suspected, the accused, that is a serviceman or liable for military service called out for training, shall be taking measures, provided by the Charters of the Armed Forces, other troops and military formations of the Republic of Kazakhstan and capable of ensuring the good behaviour of that person and his (her) appearance on call the body, conducting the criminal proceedings.

2. The command of military units shall be reported on the essence of suspicion, for which this preventive measure is selected. The body, selected the preventive measure shall notify on establishing supervision of the command of the military unit.

3. In the case of committing by the suspected, the accused of actions for the prevention of which this preventive measure is selected, the command of the military unit shall immediately inform the body, selected this preventive measure.

4. Persons, guilty of non-fulfillment of their oversight responsibilities, shall be disciplinarily liable under the legislation.

5. During the term of this preventive measure it is not allowed to involve the suspected, the accused to combat duty, carrying out combat or guard duty, service in the post detail or daily detail of the units (divisions).

#### **Article 144. Return of a minor under the supervision**

1. The return of a minor under the supervision of parents, guardians, care-givers or other credible persons, as well as administration of the organization, carried out in accordance with the law the functions to protect the rights of the child, where he (she) stayed, shall be the assumption by any of the above persons a writing undertaking to ensure the good behaviour of the minor and his (her) appearance on call of the body, conducting criminal proceedings, including the restriction of his (her) staying outside the house and avoiding travel to other localities without the permission of the body, conducting criminal proceedings.

2. The return of a minor under the supervision of parents and other persons shall be possible only upon written request.

3. When taking the recognizance on acceptance under the supervision, the parents, guardians, care-givers, administration of the organizations, carried out in accordance with the law the functions to protect the rights of the child, shall be notified of the nature of the criminal offence, for which the minor is suspected, and on their responsibilities in case of violation of the assumed responsibilities for supervision.

4. The persons, for whom the minor is placed under the supervision, in case of non-fulfillment of the assumed obligation may be imposed a monetary penalty in the manner provided in Article 160 of this Code.

#### **Article 145. Bail**

1. The pledge shall consist in the payment by the suspect, the accused or another person to the court's deposit of money to ensure that the suspect, the accused fulfill their obligations to appear before the person conducting the pre-trial investigation, the prosecutor or the court upon their summons, as well as in order to prevent them from committing new deliberate criminal offenses. Other values, movable and immovable property, which are arrested, shall be taken as a bail. Proving the value of the bail and the lack of charges shall be borne to the bailor. Pledge shall not be applied in cases stipulated by part nine of Article 148 of this Code.

2. Bail shall be applied only with the sanction of an investigating judge or by court order.

When elected as a measure of restraint of bail, the person conducting pre-trial investigation, in accordance with Article 140 of the present Code, shall make a decision on the initiation of a petition to the court to sanction the use of this measure and shall send it to the court. The decision shall be accompanied by certified copies of the criminal case materials confirming the validity of the petition.

A copy of the decision is sent to the procurator at the same time.

3. The amount of bail shall be determined taking into account the severity of the suspicion, the identity of the suspect or accused, the nature of the criminal act and the property status of the pledgor and shall not be less than thirty times the monthly calculation index, but not more than one hundred and twenty times the monthly calculation index - in case of suspicion of committing a crime of minor gravity; one hundred and twenty-fold of the monthly calculation index, but not more than two hundredfold of the monthly calculation index - in case of suspicion of committing a careless crime of average gravity; two hundredfold of the monthly calculation index, but not more than three hundred and fiftyfold of the monthly calculation index - in case of suspicion of committing a deliberate crime of average gravity; three hundred and fiftyfold of the monthly calculation index - in case of suspicion of committing a serious crime, five hundredfold.

Other property may be pledged with the consent of the pledgor, the value of which exceeds the maximum amount of the pledge for the relevant category of crime.

In exceptional cases, the amount of the pledge may be lower than the lower amount or other property equivalent to this amount may be accepted with respect to it:

1) persons who have dependent minor children, elderly parents, relatives with disabilities, as well as being guardians and trustees;

2) is excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

3) persons belonging to socially vulnerable groups of the population, as well as receiving various types of social assistance at the expense of the budget;

4) minors and persons of pensionable age.

4. The suspected, accused or the defendant who are not detained in custody, or other person not later than five days after selection, application of a preventive measure in the form of bail shall contribute funds to the appropriate account and submit supporting documents to the person, conducting the pre-trial investigation, the procurator and the court.

In the event of non-compliance with the order of the investigating judge to post bail, the person conducting the pre-trial proceedings initiates the issue of changing the preventive measure.

5. When providing other values, movable and immovable property as a bail, a bailor shall within the same period provide them to the body, conducting the criminal proceedings, with the title documents.

In the case of application of the preventive measure in the form of bail to the suspected, detained in the manner provided in Article 128 of this Code, the investigating judge before the actual bail shall apply the preventive measure in the form of detention in custody or house arrest in the manner prescribed by the seventh part of Article 148 of this Code.

When replacing by bail the earlier preventive measure in the form of detention in custody or house arrest, the suspected, the accused shall be released from custody only after the actual bail. If by this time periods of detention in custody under this Code are expired, they shall be extended until the bail.

6. When the application of the preventive measure in the form of bail to the suspected, the accused, they shall be informed of their duties and the consequences of their non-fulfillment, and the bailor other than the accused, the suspected - in the commission of what criminal offence the person is suspected and accused, the statutory penalty for the offence, the duties for ensuring good behaviour of the suspected, the accused and their appearing on call, as well as the consequences of failure of these duties.

7. The protocol on the adoption of bail shall be drawn up, it is noted that the suspected, the accused are explained the duties to appear on a call, and the bailor is warned that in case of failure of the suspected, the accused to appear on call the bail shall be transferred to the public revenue. The protocol shall be signed by the official who chose this preventive measure, the suspected, the accused, as well as by the bailor, when he (she) is the other person. The protocol and document of the bail in deposit of the court shall be attached to the case file, and a copy of the protocol shall be given to the bailor.

8. If a pledge is made in accordance with the decision of the investigating judge in accordance with the procedure provided by part eight of Article 148 of this Code, with respect to the person to whom the measure of restraint in the form of detention was applied, an explanation to the suspect, accused of the pledge obligations and the consequences of their non-performance shall be made by the head of the place of detention.

The release of the suspect, the accused from custody shall be carried out by the head of the place of detention after the receipt of the document confirming the payment of a pledge, and the person conducting the pre-trial investigation, supervising prosecutor and the investigating judge shall immediately be notified of it.

9. The subject of bail shall be immediately returned to the bailor, if the suspected, the accused does not violate their assigned duties, but in respect of the suspected, the accused a more stringent preventive measure is applied, the sentence or decision for the termination of the criminal proceedings is issued.

In cases, if bailors are the suspected, the accused, the court, in considering the question of the fate of the bail in the presence of a civil claim, procedural costs and the need for other property penalties may, at the request of the procurator decide to foreclose on the bail or a part thereof.

Foreclosure on the bail, made by the bailor, who is not the suspected, the accused, may be made only with his (her) consent.

10. In the case of a written request of the person, who made a bail for the suspected, the accused that he (she) is unable in the future to enforce duties of the suspected, the accused to appear in the body, conducting the criminal proceedings, the bail shall be immediately returned if the suspected or the accused does not violate these duties.

When making the sentence or decision, finally resolving a criminal case, respectively, the court or criminal prosecution body simultaneously decides the fate of the bail.

11. In case of failure without good reason to perform by the suspected, the accused of duties, secured by the bail, the procurator shall send to the investigating judge a request for transferring the bail in favor of the state.

The Court shall take appropriate decision, which may be appealed by the bailor to a higher court, in the manner, provided in Article 107 of this Code.

12. Upon return of the bail, the bailor shall pay the amount, spent on the preservation of the bail.

13. Procedure for acceptance, storage, sale and transferring the bail in favor of the state shall be determined by the Government of the Republic of Kazakhstan.

**Footnote. Article 145, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).**

## **Article 146. House arrest**



1. House arrest consists in the isolation of a suspect or accused person from society without holding them in custody, but with the application of restrictions established by a judge in accordance with the procedure established by article 147 of the present Code.

2. In the application of house arrest, one or more restrictions may be applied in respect of the suspected, accused, defendant:

- 1) the prohibition of leaving the home completely or at certain times;
- 2) the prohibition of telephone calls, sending correspondence and the use of means of communication, except as provided for in paragraph 5) of this part;
- 3) the prohibition of communication with certain individuals and accepting anyone at home;
- 4) the use of electronic means of control and the obligation to carry these means with them;
- 5) the obligation to respond to control telephone calls or other control signals, call by phone or personally appear at a certain time in the body of inquiry or other body that supervise the behaviour of the suspected, accused or defendant;
- 6) establishment of surveillance over the suspected, accused or their homes, as well as the protection of their homes or premises allotted by them as a dwelling;
- 7) other measures, ensuring the good behaviour and the isolation of the suspected, the accused from society.

If necessary, the behaviour of the suspected, the accused shall be under supervision.

In supervising the compliance of the arrested with the established restrictions for leaving home, the body conducting the criminal proceedings shall have the right at any time to check his (her) presence in the location. Check is performed no more than twice a day and no more than once during the night. Staying of an official in the house of the arrested shall be allowed with the consent of that person and the persons, living together with him (her), and shall not exceed thirty minutes.

3. The decision of the court on house arrest shall set the specific restrictions, applied to the suspected, the accused, as well as it is also indicated the body or official, exercising supervision.

4. The period of house arrest, the order of its extension shall be defined by the rules, laid down in Articles 151 and 547 – 551-1 of this Code.

5. The order of execution of a preventive measure in the form of house arrest shall be determined by joint order of the state bodies, authorized to carry out pre-trial investigation.

**A footnote. Article 146 with the amendment introduced by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 29, 2021 No. 91-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**



## **Article 147. Detention in custody**

1. Detention in custody as a preventive measure shall be applied only with the authorization of a judge and only to a suspect, accused or defendant of a crime for which the law prescribes a penalty of deprivation of liberty for a period exceeding five years and where it is impossible to apply other less stringent preventive measures. In exceptional cases, this preventive measure may be applied to a person, suspect, accused or defendant in the commission of an offence for which the law prescribes a penalty of deprivation of liberty for up to five years, if:

1) he (she) does not have permanent residence in the territory of the Republic of Kazakhstan;

2) the person is not identified;

3) he (she) violated the previous preventive measure or a measure of procedural coercion;

4) he (she) tried to escape or escaped from the criminal prosecution bodies or the court;

5) he (she) is suspected of committing a crime in an organized group or criminal community (criminal organization);

6) he (she) has been convicted previously for a serious or particularly serious crime;

7) there is evidence of continuing his (her) criminal activities.

1-1. The circumstances provided for in paragraph 1) of paragraph one of this Article may not be the only reason for choosing a preventive measure in the form of remand in custody.

2. If it is necessary to choose detention in custody, as a measure of restraint, the person, conducting pre-trial investigation in accordance with Article 140 of this Code shall make a decision to initiate a petition before the court for sanctioning the use of this measure. The decision shall be attached by certified copies of the criminal case materials, confirming the validity of the petition.

The person carrying out pre-trial investigation shall be obliged to justify the reasons for the choice of such preventive measure and the impossibility to apply less stringent preventive measures in the decision to initiate an application to the court for a remand in custody.

During the period of detention of a person suspected of committing a criminal offense, in the manner prescribed by Article 131 of this Code, the prosecutor shall have the right to familiarize himself/herself with the materials of the criminal case, confirming the validity of the request, and shall have the right to interrogate the suspect at the place of his/her detention.

3. On the basis of the results of the examination of the petition of the person conducting the pre-trial investigation, the prosecutor agrees with the petition or refuses to support it with a reasoned decision and/or decides on the choice of another preventive measure. A copy of the decision is sent to the persons concerned.

The procurator must submit to the investigating judge, at least eight hours before the expiry of the period of detention, an order for the initiation of the application for authorization

of remand in custody, accompanied by copies of the criminal case file confirming the validity of the application.

4. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication).

Footnote. Article 147, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

#### **Article 148. Consideration by the investigating judge of applications for sanctioning of the preventive measure in the form of detention in custody**

1. The right to sanction detention shall belong to the investigating judge, and in the cases stipulated by paragraphs 2) and 3) of paragraph 7 of Article 107 of the present Code - to the judges of the oblast and equivalent court.

2. The investigating judge, in compliance with the procedure defined in Article 56 of this Code, shall consider a petition for sanctioning of a preventive measure in the form of detention in custody within eight hours from the receipt of the materials to the court with the participation of the prosecutor, the suspect, the accused, his defender.

The investigating judge introduces the defender to the received materials.

A legal representative and representative may also participate in the court session, whose absence in the event of their timely notice about the place and time of the court session by the court shall not prevent the conduct of the court session.

A protocol shall be kept during the court session.

3. When solving issues related to the sanctioning of detention in custody, the investigating judge, in addition to examining the materials of the case relating to circumstances taken into account in the selection of this preventive measure, checks the validity of a person's suspicion of committing a crime.

If necessary, the judge shall have the right to request a criminal case.

4. Consideration by the investigating judge of an application for sanctioning of the preventive measure in the form of detention in custody in the absence of the suspected, the accused shall be allowed only in cases of their absences in the search or location outside the Republic of Kazakhstan and evasion to appear in the body, conducting the criminal proceedings, with proper notice of the time and place of the court session. In the case of detention, the suspected, the accused shall be conveyed to the investigating judge to review the reasonableness of the use of the selected preventive measure.

5. At the beginning of the session, the investigating judge announces what application should be considered, clarifies for those who appeared at the session their rights and responsibilities. The procurator then justifies the need for selection as a preventive measure of the detention in custody of the suspected, and then the suspected, the accused and others who come to the court session shall be heard.

The suspect, the accused, as well as in their interests, a defense counsel during consideration of this petition of the prosecutor shall have the right to file a petition for applying another preventive measure provided for in part one of Article 137 of this Code.

6. In the case that the investigating judge makes a decision to refuse the sanctioning of house arrest, the use of a pledge, the prosecutor shall have the right to bring a petition to him according to the rules established by Article 107 of this Code.

7. Upon consideration of the petition for sanctioning of a preventive measure in the form of detention in custody of a suspect or accused, the investigating judge shall issue one of the following decisions:

1) on sanctioning of detention in custody;

2) on sanctioning of detention in custody for a period to ten days in the absence of sufficient grounds for sanctioning detention for a period of two months;

3) on refusal of sanctioning of detention in custody. In case of refusal of sanctioning this measure of restraint, the investigating judge shall have the right to choose another measure of restraint, provided by part one of Article 137 of this Code.

7-1. The investigating judge in the decision on authorization of detention shall be obliged to indicate the reasons for the choice of this preventive measure and impossibility to apply less stringent preventive measures.

8. The investigating judge in making the decision on sanctioning of the preventive measure in the form of detention in custody, except in cases of particularly serious crimes, shall determine the amount of bail, sufficient to ensure the execution by the suspected, the accused of obligations under part three of Article 140 of this Code, except in cases provided by part nine of this article.

The decision of the investigating judge and the court shall specify which obligations provided for in Article 140 of this Code, shall be imposed on the suspected, accused in the case of a bail, the consequences of non-execution, the validity of the selection of the amount of the bail, as well as the possibility of its application.

The suspected, the accused or other person shall have the right at any time to pay a bail in the amount, specified in the decision of the investigating judge and the court on sanctioning of the preventive measure in the form of detention in custody.

9. The pledge shall not be established when the investigating judge and the court make the decision on sanctioning of the preventive measure in the form of detention in custody, in the following cases:

1) suspicion, accusation of a person in committing intentional crimes that resulted in death of the victim;

2) suspicion and accusation of a person in committing a crime as part of a criminal group; terrorist and (or) extremist crimes; especially grave crimes provided for in Chapters 1, 4, 5, 11 and 17 of the Criminal Code of the Republic of Kazakhstan, as well as especially grave crimes committed in an emergency situation or in the course of mass disorders; especially grave war crimes committed in wartime or in a combat situation;

3) the availability of sufficient grounds to believe that the suspect, the accused will interfere with the court proceeding or escape from the investigation and the trial;

4) the availability of data (evidences) on continuation of criminal activity by the suspect, the accused;

5) violation by the suspect, the accused of previously chosen preventive measure in the form of a pledge for the criminal case under investigation.

10. The decision of the investigating judge shall be immediately handed to the person, against whom it is made, and sent to the person, conducting the pre-trial investigation, the procurator, the victim and the head of the institution of the place of detention, where the suspected, the accused stay, and shall have immediate effect.

11. The decision on sanctioning of detention in custody of the suspect, the accused or refusal to do so may be appealed, revisioned at the request of the prosecutor in the manner provided for in Article 107 of this Code.

12. The consideration by a provincial court or a court of equivalent jurisdiction of the question of authorizing the detention of a suspect or accused person in cases in which the judge's decision to refuse to authorize detention is overruled shall be carried out in accordance with the procedure set out in article 107 of the present Code.

13. Repeated appeal to the court with the request to sanction of the preventive measure in the form of detention in custody in respect of the same person for the same criminal case after the issuance by the investigating judge and the court of the decision on refusal of sanctioning of this preventive measure shall be possible only in the event of new circumstances, justifying the detention in custody.

14. On the use of detention as a preventive measure, the person conducting the pre-trial investigation shall be obliged to notify the relatives of the suspect, and if it is applied to a foreigner - also the embassy, consulate or other representation of this state through the Ministry of Foreign Affairs of the Republic of Kazakhstan in the manner prescribed Article 135 of this Code.

**Footnote. Article 148 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 180-VI dated 12 July 2018 (shall be enforced upon the expiration of**

10 calendar days after its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

**Article 149. Detention of the suspected, for which detention in custody is applied as a preventive measure**

The suspected, for which detention in custody is applied as a preventive measure, shall be kept in pre-trial detention. The procedure and conditions of their detention shall be determined by law.

**Article 150. Detention of the suspected, accused persons and defendants, for which detention in custody, in places of detention is applied as a preventive measure**

1. In cases, where conveyance to the temporary detention center of the suspected, accused, defendant for which detention in custody is applied as a preventive measure, shall not be possible because of distance or lack of the appropriate means of communication, or the need for investigative actions or court proceedings, such persons by decision of the person, conducting pre-trial investigation, approved by the procurator or the investigating judge or court, may detain up to thirty days in temporary detention centers, and military personnel in the guardhouse.

The procedure and conditions of detention in custody of such persons shall be determined by legislation.

2. Moving (escorting) of the suspected, accused or defendant, in respect of whom, detention in custody is applied as a preventive measure, from one detention center to another detention center for investigative actions shall be carried out by the decision of the procurator or the decision of the person, conducting pre-trial investigation, approved by the procurator.

**Article 151. The periods of detention in custody and the order of its extension**

1. The period of detention in custody at the pre-trial investigation may not exceed two months, except in exceptional cases, provided for in this Code.

2. If necessary to extend a brief period of detention in custody, sanctioned by the judge for up to two months, the procurator the day before its expiration makes a corresponding application to the investigating judge with additional materials collected. If it is impossible to complete the investigation within two months and in the absence of grounds to change or cancel a preventive measure, this period may be extended by a reasoned request of the person, conducting pre-trial investigation, agreed with the district (city) and equivalent procurator - the investigating judge - to three months, and in case of failure to complete the investigation within three months and, if necessary the further detention of the suspected, the accused in

custody under the reasoned request of the person, conducting pre-trial investigation, agreed with the procurator of the region and equivalent procurators and their deputies - the investigating judge - to nine months.

3. Extension of the term of detention in custody for more than nine months, but not more than up to twelve months, may be carried out by an investigating judge of a district and equivalent court only in view of the particular complexity of the case in relation to persons suspected of committing especially grave crimes, crimes within a criminal group, as well as other terrorist and (or) extremist crimes, upon the motivated request of the head of the investigation department or the prosecutor who has accepted the criminal case for his/her proceedings, or the head of the investigative, investigative-operational group, agreed with the regional prosecutor and prosecutors equated to him/her.

4. Extension of detention in custody for more than twelve months, but not more than eighteen months shall be allowed in exceptional cases against the persons, suspected of committing particularly serious crimes, crimes in a criminal group, as well as other terrorist and (or) extremist crimes by the investigating judge of the district and equivalent court under the reasoned request of the head of the investigative unit of the central apparatus of the criminal prosecution body or the procurator, who takes a criminal case to its production, the head of the investigative, the investigation and operational group, approved by the regional procurator and equivalent procurator and agreed with the Procurator General of the Republic of Kazakhstan, his (her) deputies.

5. A further extension of detention in custody shall not be allowed, and the suspected, the accused, detained in custody shall be released immediately.

6. The application for extension of the period of detention in custody for up to three months is represented to approval of the district (city) procurator and other equivalent procurators no later than ten days before the expiration of the period of detention in custody and examined by the procurator in a period of not more than three days from the date of its receipt.

7. The application for an extension of detention in custody for more than three months must be submitted to the procurator for approval not later than fifteen days prior to the expiration of the period of detention in custody and examined by the procurator in a period of not more than five days from the date of its receipt.

8. The application for an extension of the detention in custody for more than twelve months shall be submitted to the procurator for approval not later than twenty days prior to the expiration of the period of detention in custody and shall be considered in a period of not more than five days from the date of its receipt.

9. After considering of the application for an extension of the detention in custody, the procurator shall agree the decision of the person, conducting the pre-trial investigation, and immediately send it with the case materials, confirming the validity of the extension of the period of detention in custody to the relevant court or reasonably withhold consent. In the

case, if the procurator does not support the application for an extension of the detention in custody, the suspected and the accused shall be released immediately after the expiration of the period of detention in custody.

10. The application for an extension of the period of detention in custody for up to three months is represented to the court no later than seven days prior to the expiration of the period of detention in custody, on extension of the period for detention in custody for more than three months - not later than ten days, on the extension of the period of detention in custody for more than twelve months - not later than fifteen days.

11. The application for sanctioning of the period of detention of the suspected in custody during the familiarization with the materials of the criminal case shall be submitted to the procurator for approval not later than five days before the expiration of the period of detention in custody and examined by the procurator not more than one day from the date of receipt.

After considering of the application for sanctioning of the period of detention of the suspected in custody during the familiarization with the materials of the criminal case, the procurator shall agree the decision of the person, conducting pre-trial investigation, and immediately send it with the criminal case materials, confirming the need to sanction the detention in custody, to the investigating judge of the district or equivalent court by the place of end of the pre-trial investigation. In the case, if the procurator does not support the application on sanctioning of the period of detention of the suspected in custody, he (she) shall be released immediately from custody.

12. The application for sanctioning of the period of detention of the suspected in custody during the familiarization with the materials of the criminal case shall be submitted to the investigating judge no later than three days prior to the expiration of the period of detention.

13. An application for sanctioning the period of detention of the suspect for the period of examination by the prosecutor of the criminal case received with the report on the completion of the pre-trial investigation and the preparation of an indictment by him shall be submitted by the prosecutor to the investigating judge no later than three days before the expiration of the period of detention.

**Footnote. Article 151 is supplemented by part thirteen in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which put into effect:**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those**



connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

Footnote. Article 151 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ).

**Article 152. Consideration by the investigating judge of an application to extend the detention in custody and the calculation of time periods**

1. An application for an extension of detention in custody is subject to review by the investigating judge alone. The procurator must participate at the court session. The defense counsel, legal representative of the suspected, the victim, his (her) legal representative and the representative may also participate, and their failure to appear at a timely notice of the consideration of the application shall not prevent their judicial review.

The Court may consider necessary to participate in the consideration of the extension of detention in custody of a person, for which the application is presented, and impose the body, conducting the investigation, his (her) conveyance to the court session.

The person, on the extension of detention in custody of which the procurator requests, shall have the right to participate at the court session, in this case, the court may impose on the body, conducting the investigation, his (her) conveyance to the court session.

2. At the beginning of the session, the investigating judge announces which application should be considered, explains those who come their rights and responsibilities, and then, after hearing the arguments of the parties on the application filed for the necessity of non-changing of the preventive measure in the form of detention custody, shall make one of the following decisions on:

1) satisfaction of the application for an extension of the detention in the custody of the suspected, accused;

2) refusal to satisfy the application for an extension of the detention in custody of the suspected, the accused and the cancellation or changing of the preventive measure to a less strict and their release from prison.

3. The application for an extension of detention in custody shall be considered within a period not more than three days from the date of receipt of the application.

4. The head of the administration of the place of detention shall, not later than twenty-four hours before the expiration of the period of detention in custody of suspected, the accused notify about it the body or person dealing with the criminal case, as well as the procurator. If at the end of the statutory period of detention in custody, the corresponding decision to release of the suspected, the accused or to extend the period of their detention in custody is



not received, the head of the administration of the place of detention shall release them by his (her) decision, a copy of which within twenty-four hours shall send to the body or person, dealing with the criminal case, and the procurator.

5. If non-compliance with the requirements of the fourth part of this Article, the head of administration of the place of detention shall be liable under the law.

6. The period of detention in custody shall be calculated from the date of detention of the suspected in custody until the notification of him (her) on the end of the investigative actions and clarification of his (her) right to familiarize with the criminal case. The period of detention in custody includes the time of detention of a person as a suspected, forced stay in a psychiatric or other medical institution by court decision.

The detention in custody of the suspected in the period of his (her) and the defense counsel familiarization with the criminal case materials shall be sanctioned and extended by the investigating judge in accordance with Articles 148 and 151 of this Code.

Staying of the suspected in custody during his (her) and the defense counsel familiarization with the criminal case materials shall not be included within the period, established by the first - fourth parts of Article 151 of this Code, but shall be taken into account by the court when sentencing.

7. An application for sanctioning the period of detention of the suspect in custody during the period of familiarization of him and the defense counsel with the materials of the criminal case, as well as during the period of examination by the prosecutor of the criminal case received with the report on the completion of the pre-trial investigation, is subject to consideration in the manner and terms provided for by this article.

The term for the suspect to be in custody during the period of familiarization with the materials of the criminal case, as well as during the period when the prosecutor examines the criminal case received with the report on the completion of the pre-trial investigation, is determined by the investigating judge, taking into account the volume of the criminal case, the number of persons participating in the case and other circumstances affecting the time of familiarization with the case of the suspect and his defense counsel, as well as the study by the prosecutor of the criminal case and the preparation of the indictment.

**Footnote. Part seven - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up by the person conducting the pre-trial investigation a report on the completion of the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those**

connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

8. If a procurator returns a criminal case for further investigation, in which the time limit for remand in custody of the suspect has not expired and there are no grounds for changing the preventive measure, the period of remand in custody may be extended by the investigating judge on a reasoned application by the procurator within one month.

If the court returns the criminal case to the procurator on the grounds, provided by this Code, in cases where the deadline for detention in custody of the accused is not expired, and the grounds for changing the preventive measure is not available, the same court shall extend the detention in custody within one month from the time of receipt of the case by the procurator.

9. In the case of repeated detention of the suspected, the accused in custody on the same case, as well as on the criminal case, connected to this or isolated from it, the period of detention in custody shall be calculated taking into account the time, spent in custody.

10. In the case of extradition to the Republic of Kazakhstan of the person sought by a foreign country, the period of detention in custody shall be calculated from the date of his (her) arrival in the territory of the Republic of Kazakhstan, and the time of detention in custody of a person in the order of extradition arrest in the territory of a foreign country shall be counted to the total period of detention in custody when sentencing.

11. The procedure for calculating and prolonging the period of detention in custody of the suspect or the accused, established by this article, shall also apply if the sentence is revoked as a result of proceedings in cassation instance or on newly discovered circumstances with respect to a person serving a sentence in form of imprisonment.

**Footnote. Article 152 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); No. 180-VI of 12.07.2018 (shall be enforced upon the expiration of calendar days after its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ).**

### **Article 153. Cancellation or changing of a preventive measure**

1. A preventive measure shall be canceled when it is no longer necessary or changed to a less or more strict when changing the grounds and the circumstances, provided for in Articles 136 and 138 of this Code.

2. Cancellation or changing of the preventive measure shall be made by the reasoned decision of the body, conducting the criminal proceedings.

3. The measure of restraint selected by agreement or instruction of the prosecutor in the course of pre-trial proceedings in a criminal case may be cancelled or changed only with the consent of the prosecutor.

4. An appeal against the decision of the criminal prosecution body on changing or canceling the measure of restraint is carried out in the manner prescribed by Articles 100-106 of this Code.

5. Cancellation of the preventive measure sanctioned by the investigating judge is carried out by the pre-trial investigation body with the consent of the prosecutor.

The change of the measure of restraint sanctioned by the investigating judge to the measure of restraint also subject to sanction by the investigating judge shall be carried out with the sanction of the investigating judge, except for the case provided for by part eight of Article 145 of this Code.

A change in a measure of restraint sanctioned by an investigating judge to a measure of restraint not subject to sanction by an investigating judge shall be carried out by the pre-trial investigation body with the consent of the prosecutor.

6. Appeal against the decision on cancellation of the preventive measure in the form of bail, detention in custody or house arrest shall be made in accordance with the procedure, provided for in Article 106 of this Code.

**Footnote. Article 153 as amended by the Laws of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 118-VI of 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication) ; dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 154. The right to the care and supervision of the property**

1. Minors, as well as disabled persons, remaining as a result of the detention in custody of a parent or a family provider, as well as other activities of the body conducting the criminal proceedings, without the supervision, care and livelihoods, shall have the right to the care that the specified authority is obliged to provide for them at the expense of budgetary funds. Orders of the body, conducting the criminal proceedings, to organize the supervision, care and temporary placement of persons with disabilities in the public social assistance or medical organization shall be binding to the guardianship authority, as well as the heads of these organizations. The body conducting the criminal proceedings may also entrust the care of minors and disabled persons to their relatives with the consent of the latter.

2. A person, whose property is left unattended as a result of his (her) detention in custody, as well as other activities of the body conducting the criminal proceedings, shall have the right to supervision over his (her) property and animals belonging to him (her), which the specified official shall provide to that person, at his (her) request and at his (her) expense.

Orders of the body, conducting the criminal proceedings, to organize supervision over the property of the person and belonging to him (her) animals shall be binding for the relevant state bodies and organizations.

3. The body conducting the criminal proceedings shall immediately notify the person to whom, detention in custody is applied as a preventive measure, or other interested person of the measures, taken in accordance with this Article.

#### **Chapter 19. Other measures of procedural compulsion Article 155. Grounds for application of other measures of procedural compulsion**

1. In order to ensure the prescribed by this Code order of investigation, the court proceedings in criminal cases, the proper execution of the sentence, the body, conducting the criminal proceedings, shall have the right to apply to the suspected, accused, defendant instead of provided for in Chapter 18 of this Code preventive measures or in addition to other measures of procedural compulsion: obligation to appear, conveyance, suspension from office, seizure of property, restraining order.

2. In the cases, provided for in this Code, the body conducting the criminal proceedings shall be entitled to apply to victim, witness and other persons involved in the case the measures of procedural compulsion: the obligation to appear, conveyance, monetary penalty.

#### **Article 156. Obligation to appear to the person, conducting the pre-trial investigation and the court**

1. In the absence of the need for preventive measures, if there are sufficient grounds to believe that the suspected, the accused, which is not applied the preventive measure can avoid involvement in the investigative actions or court proceedings, or if their actual non-appearance on a call without good reason, these persons may be taken a written commitment on timely appear on the call of the criminal prosecution body or the court, as in the case of a change of residence they shall immediately report this. When taking the commitment to appear, the suspected or accused is also warned about the consequences of his (her) failure, provided for in fourth part of Article 140 of this Code.

2. A written commitment to appear to the criminal prosecution body or the court may also be taken from the victim and witness.

3. In case of failure of obligation to appear, the persons referred to in the first part of this article may be imposed a monetary penalty in the manner provided in Article 160 of this Code, and applied the preventive measure.

4. In case of failure of obligation to appear, the persons referred to in the second part of this article may be imposed a monetary penalty in the manner provided in Article 160 of this Code.

#### **Article 157. Conveyance**

1. In case of non-appearance on call without good reason, the suspected, accused, defendant, as well as the witness and victim may be conveyed (forced conveying) by the reasoned decision of the person, conducting the pre-trial investigation and the court.

2. Valid reasons for non-appearance of the person, properly notified on the call, shall be: the disease, preventing the possibility of the person to be, the death of close relatives, natural disasters, other reasons for depriving the person of an opportunity to appear at the appointed time. The suspected, accused, defendant, as well as the witness and victim must notify the body, called them on the existence of valid reasons, preventing the appearance on call at the appointed time.

3. The decision on conveyance is declared to the suspected, accused, as well as the witness and victim before its execution, as certified by their signature on the decision.

4. The conveyance cannot be done at night.

5. Minors under the age of fourteen, and persons who do not attain the age of eighteen, without notice of their legal representative, pregnant women, and patients who for health reasons cannot or should not leave their place of residence, which is certified by doctor, shall not be conveyed.

6. The decision of the court on conveyance is executed by the officer of justice, the body of internal affairs; the decision of the procurator, interrogating officer, investigator – by the body, conducting the inquiry, preliminary investigation or law enforcement agencies.

#### **Article 158. Suspension from office**

1. During the pre-trial investigation, the investigating judge or during the court proceedings, the court may dismiss the accused, defendant, as well as the suspected after the determination of the qualifications of the acts of the suspected if there is sufficient reason to believe that remaining in this position, he (she) will prevent the investigation and proceedings before the court, compensation of damage caused by the offence or continue to engage in criminal activities related to the stay in this position, in the absence of grounds for the selection of a preventive measure in the form of detention in custody.

2. In the presence of the circumstances specified in paragraph one of this article, the person conducting the pretrial investigation shall issue an order for the initiation of a petition to the court for temporary suspension from office and shall forward it to the investigating judge.

The decision shall be accompanied by certified copies of the materials of the criminal case, confirming the need for removal from office.

A copy of the order is sent to the prosecutor at the same time.

3. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

4. The request for authorization of temporary suspension from office shall be considered by the investigating judge alone without the participation of the parties within twenty-four hours from the date of receipt of the request to the court.

5. Having considered the petition and the materials of the case, the investigating judge shall issue a resolution on sanctioning or refusing to sanction a temporary suspension from office. The decision on sanctioning of temporary suspension from office or refusal to do so may be appealed, revised at the prosecutor's petition in the manner provided for in Article 107 of this Code.

6. The decision on suspension of the suspected, accused, defendant from office shall be sent at his (her) place of work to the head of the organization, which within three days after receiving it, is obliged to execute the decision and notify the person who filed an application on dismissal from office.

7. The suspended from office suspected, accused, defendant shall have the right to a monthly state allowance of not less than one minimum wage, if they cannot work for another post or do another job for reasons beyond their control.

8. Cancellation of temporary suspension from office is carried out by a reasoned decision of the criminal prosecution body with the consent of the prosecutor or by the court during the judicial consideration of the criminal case, when this measure is no longer necessary.

**Footnote. Article 158 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 118-VI of 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 159. Cash recovery**

For failure to fulfill the procedural obligations provided for by Articles 65-1, 71, 78, 80, 81, 82, 90, 142, 144, 156 and 165 of this Code, and violation of order in a court session against a witness entitled to protection, a victim, a witness, a specialist, an interpreter and other persons, with the exception of a lawyer, a prosecutor and a defendant, a pecuniary penalty may be imposed in the amount and in the manner established by Article 160 of this Code.

**Footnote. Article 159 - as amended by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 160. The order for imposition of a monetary penalty**

1. The monetary penalty shall be imposed by the court in the cases, referred to in Article 159 of this Code.

2. If the relevant violation is committed during the court session, the penalty shall be imposed by the court in the court session, where the violation is established, and about what the court decision is made.

3. If the relevant violation is committed during the pre-trial proceedings, the person conducting the pre-trial investigation, or the procurator shall make a protocol on violation, which is sent to the investigating judge, who considers it within a day of receipt of the court. The person to whom may be imposed a monetary penalty is called to the court session. Failure of the offender to appear without good reason shall not preclude the consideration of the protocol.

4. Upon the results of consideration of the protocol, the judge makes a decision to impose a monetary penalty of up to fifty monthly calculation indices or refuse to impose it. A copy of the decision shall be sent to the person who made the protocol, and the person against whom a monetary penalty is imposed.

5. While imposing a monetary penalty, the court may postpone or permit the execution by installments of the decision for up to three months.

#### **Article 161. Seizure of property**

1. In order to ensure the enforcement of the sentence in terms of civil action, other property penalties or possible confiscation of property, the person conducting the pre-trial investigation shall be obliged to take measures to seize the property.

If the grounds for securing a civil claim have arisen at the stage of the judicial investigation, the court shall have the right to take measures to secure it prior to the entry into force of the sentence.

In urgent cases, the person conducting the pretrial investigation may, with the consent of the procurator, establish a time limit on the disposal of property for a period of no more than 10 days, with notice to the owner of the property, if his/her identity is established, within twenty-four hours.

Before the expiration of the period for which the restriction on the disposal of property was established, the person conducting the pre-trial investigation is obliged to issue a decision on initiating a petition before the court to seize property in the manner prescribed by Article 162 of this Code, notifying financial organizations and authorized bodies of this in registration of property and (or) rights to property or other authorized bodies and organizations, or remove the established restriction.

Notification of the owner of the property on the establishment of a time limit on the disposal of the property belonging to him shall not be made in the following cases:

- 1) In criminal cases involving terrorist or extremist offences;
- 2) In criminal cases involving offences committed by a criminal group;



3) If the notification of the owner of the property of the established time limit in their disposal poses a threat of disclosure of information on covert investigative measures carried out in the criminal case.

2. Seizure of property is the prohibition, addressed to the owner or possessor of the property, to dispose of, and when necessary, use of the property, or seizure of property and transfer it to the storage.

3. The procedure for inspection and storage of the property to be confiscated shall be defined in Article 221 of this Code.

4. It is not allowed to take measures to secure the execution of the sentence in part of the civil claim on seizure of the property of the suspected, accused or the persons legally financially responsible for their actions, who are creditors of financial institutions, obligations of which are subject to restructuring in the cases, provided for by the laws of the Republic of Kazakhstan regulating the activities of financial institutions.

5. The cost of the property, which is arrested to secure the civil claim, brought by the civil claimant or procurator, may not exceed the amount of the claim.

6. When determining the share of the property subject to arrest, each of several suspected, accused or responsible for their actions persons, the attributed to the suspected, accused the degree of participation in a criminal offence shall be taken into account, but the arrest to secure the civil claim may be imposed on the property of one of the relevant persons in full, if others do not have property.

7. Arrest cannot be imposed on the property being the objects of the first necessity, and on other items, the list of which shall be determined by the legislation of the Republic of Kazakhstan.

It is not allowed to establish a temporary restriction on the disposal of property, restrictions on transactions and other transactions with property, seizure of money held in bank accounts and (or) electronic money held in electronic wallets of electronic money intended for crediting benefits and social benefits paid from the state budget and (or) the State social insurance fund, housing payments, lump-sum pension payments from the unified accumulative pension fund in order to improve housing conditions and (or) pay for treatment, target assets, payments of target savings from the unified accumulative pension fund in order to improve housing conditions and (or) pay for education, for money held in bank accounts in a housing construction savings bank received in the form of subsidies intended to pay for rented housing in a private housing fund, for assets of the social health insurance fund and funds of the target contribution allocated for a guaranteed volume of free medical care, held in bank accounts, for money, held in bank accounts in housing construction savings banks in the form of housing construction savings accumulated through the use of housing payments, in the form of payments of target savings from the unified accumulative pension fund in order to improve housing conditions and (or) pay for education, for money held in bank accounts in second-tier banks in the form of capital savings for repair of the common property of the

condominium object, with the exception of penalties based on court decisions in cases of non-fulfillment of obligations under contracts, concluded for the purpose of carrying out overall repairs of the common property of the condominium object, with money deposited on the terms of a notary's deposit, held in bank accounts under an educational savings deposit agreement concluded in accordance with the Law of the Republic of Kazakhstan "On the State educational savings system", with money from banks, insurance (reinsurance) organizations, voluntary accumulative pension funds, branches of non-resident banks of the Republic of Kazakhstan, branches of insurance (reinsurance) non-resident organizations of the Republic of Kazakhstan, deprived of a license by an authorized state body and (or) being in the process of compulsory liquidation (compulsory termination of activity), for money held in the current account of a private bailiff intended to store the recovered amounts in favor of the recoverers, for money held in bank accounts intended to account for the money of clients of the investment portfolio manager, for unfulfilled obligations of this manager of the investment portfolio, for money held in bank accounts intended to account for the money of the person's clients, performing the functions of a nominee holder, for unfulfilled obligations of this person performing the functions of a nominee holder, for money held in bank accounts for clearing transactions with financial instruments, as well as for money held in the bank account of a unified operator in the field of public procurement, intended for depositing money by potential suppliers or suppliers as interim measures within the framework of participation in public procurement in accordance with the Law of the Republic of Kazakhstan "On public procurement, for money held in the current account of a financial manager for crediting money in the bankruptcy procedure in accordance with the Law of the Republic of Kazakhstan "On restoration of solvency and bankruptcy of citizens of the Republic of Kazakhstan".

The provision of paragraph two of this part does not apply to restrictions imposed by the authorized body in the field of enforcement of enforcement documents, its territorial bodies, to suspend debit transactions on the specified current account intended for storing recovered amounts in favor of collectors, a private enforcement agent whose license has been suspended or terminated or whose license was revoked , as well as on the money held on the bank account of a single operator in the field of public procurement, intended for potential suppliers or suppliers of money to contribute as security measures in the framework of participation in public procurement in accordance with the Law of the Republic of Kazakhstan "On Public purchases."

8. Arrest may be imposed on property held by other persons if there are sufficient grounds to believe that it has been obtained as a result of the criminal actions of a suspect, accused, or has been used or intended to be used as an instrument or means of a criminal offense or to finance extremism, terrorism, an organized group, an illegal military formation, a criminal community.

9. In cases where there is reason to believe that the property subject to arrest may be hidden or lost, the person conducting the pre-trial investigation has the right to suspend transactions and other operations with property or withdraw it for a period of not more than ten days with the notification of the prosecutor and court within twenty-four hours.

Upon the expiration of the period for suspension of transactions and other operations with property or its seizure, the person conducting the pre-trial investigation is obliged to issue a decision on initiating a petition before the court to seize the property in the manner prescribed by Article 162 of this Code, notifying financial organizations and authorized bodies of this. in the field of registration of property and (or) rights to property or other authorized bodies and organizations, or cancel the suspension of transactions and other operations with property and (or) return it.

In cases of expiration of the period for which the restriction on the disposal of property was established, transactions and other operations with property have been suspended, and a decision has not been received on authorization by the investigating court to seize property, financial organizations and authorized bodies in the field of registration of property and (or) rights to property are obliged to independently lift the restriction on the disposal of property, suspend transactions and other operations with property with immediate notification of the person conducting the pre-trial investigation.

**Footnote. Article 161 as amended by the Laws of the Republic of Kazakhstan dated 26.07.2016 № 12-VI (shall be enforced upon expiry of thirty calendar days after the day its first official publication); dated 05.07.2017 № 88-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 12.12.2017 No. 114-VI (shall be enforced dated 01.01.2018); dated 28.12.2018 No. 208-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); No. 284-VI dated December 26, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 26.06.2020 No. 349-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 02.01.2021 No. 399-VI (the order of entry into force, see article 2 ); dated 30.12.2020 No. 397-VI (shall be enforced six months after the day of its first official publication); dated 02.07.2021 No. 62-VII (shall be enforced upon expiration of sixty calendar days after the day of its first official publication); dated 15.11.2021 No. 72-VII (shall be enforced from 01.01.2022); dated 12.07.2022 No. 138-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 30.12.2022 No. 177-VII ( shall be enforced ten calendar days after the date of its first official publication); dated 30.12.2022 No. 179-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 19.04.2023 No. 223-VII (effective from 01.01.2024); dated 16.11.2023 No. 40-VIII (effective from 01.01.2024).**

## **Article 162. The order for seizure of property**

1. If it is necessary to seize the property, the person conducting the pre-trial investigation, shall issue a decision to initiate the application before the court to seize the property of the suspected or the persons, legally financially responsible for their actions.

The decision shall be attached by the certified copies of the criminal case, confirming the validity of the application.

The decision shall contain a brief theory of the criminal offence, qualifications, data on the suspected, accused or the person responsible for the damage, caused by criminal offence or the action of the insane, prohibited by the Criminal Code of the Republic of Kazakhstan, in the presence of the claim, the cost of property, which may be seized, its location and conclusions on the need to seizure of property.

2. The decision of the person conducting the pre-trial investigation to initiate the application for seizure of property and materials must be submitted to the investigating judge within forty-eight hours from the moment the property to be seized is determined. A copy of the decision is sent to the procurator at the same time.

3. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication).

4. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI ( shall be enforced upon expiration of ten calendar days after the day of its first official publication).

5. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication).

Footnote. Article 162 as amended by the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication).

## **Article 163. The order for sanctioning of the seizure of property**

1. The right to sanction arrest on property belongs to the investigating judge, and in the cases provided by points 2) and 3) of a part of the seventh article 107 of the present Code, - judges of regional and equated to it court.

2. The decision of the person carrying out pre-trial investigation on the initiation of the application for seizure of property shall be considered by the investigating judge alone at the place of pre-trial investigation or at the place of discovery of the property of the suspect, accused within twenty-four hours from the moment of receipt of the materials in court.

3. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication).

4. After considering the application for sanctioning of the seizure of property, the investigating judge shall issue the decision on sanctioning or refusal to sanction the seizure of property.

When deciding on the seizure of property to ensure the possible confiscation of property, the investigating judge shall indicate the factual circumstances that established that the property belongs to the suspected, accused, and used in the commission of a criminal offence or received as a result of its commission.

If there is credible data that the property is obtained by crime, but the establishment of the property is not possible, the investigating judge shall have the right to seize other property of equivalent value.

5. The decision to seize the property shall specify the property to be seized, how it is set during the pre-trial proceedings, as well as the value of the property which may be seized to secure a civil claim, the information on the place of storage of the property before making a final decision in the case.

If necessary, the decision to seize property may be sent for execution to the appropriate authorized body or organization.

6. The decision of the investigating judge, issued on the results of consideration of a petition for seizure of property, shall be immediately sent to the person conducting the pre-trial investigation, the suspect or the person responsible for the harm caused by a criminal offense or an act of an insane person prohibited by the Criminal Code of the Republic of Kazakhstan, as well as the prosecutor, civil plaintiff, victim.

7. A judge's decision to seize property is executed by a bailiff.

The person conducting the pre-trial investigation, within ten days after the entry into force of the decision of the investigating judge on the refusal to authorize the seizure of property, removes the established restriction on the disposal of property, cancels the suspension of transactions and other operations with property and (or) returns the seized property owner.

8. The enforcement agent pursuant to a court decision on seizure of property shall check the availability of property, make its inventory, warn in writing the persons in possession of which the property is located, on the inadmissibility of its misapplication or committing other acts with the property, or make the act on the absence of property, which can be seized.

9. A specialist, determining the value of the property may participate in the seizure of property.

10. The owner or possessor of the property shall have the right to propose which items should be seized in the first place.

11. The property, which is seized, may be withdrawn or transferred at the discretion of the investigating judge for storage to the representative of the local administration, housing organization, the owner of the property or any other person who should be warned about the responsibility for the safety of property, about what a personal recognizance shall be taken.

12. When seizing money and other valuables on accounts and deposits in second-tier banks, branches of non-resident banks of the Republic of Kazakhstan and credit institutions, debit transactions on this account are terminated within the limits of the funds seized.

13. Seizure of property shall be canceled when this measure is no longer necessary. Cancellation of the seizure of property, sanctioned by the investigating judge at the stage of pre-trial investigation is based on a reasoned decision of the criminal prosecution body with the consent of the procurator.

**Footnote.** Article 163 as amended by the laws of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 02.01.2021 No. 399-VI (shall be enforced from 16.12.2020); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication).

#### **Article 164. Revision on the petition of the prosecutor and appeal against the decision of the investigating judge on sanctioning or refusing to sanction the arrest of property**

**Footnote.** The title of Article 164 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

1. The decision of the investigating judge on sanctioning the arrest of the property of the suspect, the accused, the person being legally responsible for his/her actions or on refusal to do so may be appealed, and revisioned at the petition of the prosecutor in the manner provided for in Article 107 of this Code.

2. Consideration by the regional or equivalent court of the question of authorizing the seizure of property in the event of cancellation of the decision of the investigating judge to refuse to authorize the seizure of property shall be carried out in the manner provided for in Article 107 of this Code.

**Footnote.** Article 164 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

#### **Article 165. Restraining order**

1. Restraining order is the limitation of the suspected, accused or defendant to seek, pursue, attend, make telephone calls and to communicate in other ways with the victim and other persons involved in the case, in order to protect them.

Restraining order is sanctioned by the investigating judge or applied by the court.

2. In the event of a real threat or commission by a suspect or accused person of a criminal offence involving the use of violence or the threat of its use against the family and minors, the person conducting the pretrial investigation shall, on the written application of the victim or another person subject to protection, issue an order to initiate an application to the court for authorization of the ban on approach and submit it to the court.

The decision is accompanied by certified copies of the materials of the criminal case, confirming the need to apply the ban on approach.

A copy of the decision is sent to the prosecutor at the same time.

3. excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

4. A request for authorization of a ban on approach shall be considered by the investigating judge alone within twenty-four hours from the date of receipt of the request by the court.

5. Having considered the petition and the materials of the case, the investigating judge shall issue a resolution on sanctioning or on refusal to sanction ban on approaching. The decision sanctioning a ban on approaching or refusal to do so may be appealed, revised at the request of the prosecutor in the manner provided for in Article 107 of this Code.

6. The decision on the restraining order must specify the base for application of the coercive procedural measures and types of restraining order, as well as the body entrusted with the supervision of its implementation. A copy of the decision on the restraining order shall be presented to the procurator, the suspected, accused, defense counsel, the protected person and the body, responsible for supervising.

7. In violation of the restraining order, the suspected, the accused may be imposed a monetary penalty in the manner provided in Article 160 of this Code, as well as may be applied a preventive measure.

8. Cancellation of the ban on approach is carried out by a reasoned decision of the criminal prosecution body with the consent of the prosecutor or by the court during the judicial consideration of the criminal case, when this measure is no longer necessary.

Footnote. Article 165 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2018 № 180-VI ( shall b enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).



## **Section 5. Property issues in criminal proceedings**

### **Chapter 20. The civil claim in criminal proceedings Article 166. Civil claims, considered in the criminal proceedings**

1. Civil claims of individuals and legal entities for compensation of property and moral damage, caused directly by criminal offence or socially dangerous acts of the insane, as well as on compensation for funeral expenses, treatment of the victim, the amounts paid to him (her) as insurance indemnity, benefits or pensions, as well as costs incurred in connection with participation in the inquiry, preliminary investigation and in court, including the costs of representation, shall be considered in criminal proceedings.

2. Proving of a civil claim, filed in a criminal case shall be made according to the rules, established by this Code.

If the legal relations, arising in connection with the presentation of a civil claim are not regulated by this Code, the rules of civil procedure law shall be applied in the part in which they do not contradict this Code.

3. If the persons, mentioned in the first part of this article, in the course of the criminal proceedings do not file a civil claim or after the presentation withdrawn it, or it is left by the court without consideration, they shall have the right to present it in civil proceedings. The request of the claimant to revoke the civil claim or leaving it without consideration shall be solved by the court in accordance with this Code and the rules of civil procedure law.

4. The decision of a civil claim, taken in civil proceedings, shall be the basis for preventing the presentation in criminal proceedings of the same claim against the same persons on the same grounds.

#### **Article 167. Filing a civil claim**

1. A civil claim may be filed since the beginning of the pre-trial investigation until the end of the judicial investigation by the person, who by criminal offence or criminally punishable act directly caused material or moral damage, or by his (her) representative.

In the cases, provided for by Article 58 of this Code, the procurator may file a civil claim.

In cases of crimes, the consequences of which are the death of a person, a civil claim may be filed by close relatives, husband (wife) of the deceased, exercising the rights of the victim under this Code.

2. A civil claim is filed against the suspected, accused, defendant or persons, bearing material responsibility for his (her) actions or actions of the insane.

A person, who filed a civil claim, is called the civil claimant, the person against whom a claim is filed, is called civil defendant. Such persons in the course of criminal proceedings exercise the procedural rights and bear procedural obligations established by this Code for the civil claimant and civil defendant respectively.

3. The claimant upon presentation of a civil claim in a criminal case shall be exempt from payment of state duty.

4. Jurisdiction of civil claim is determined by the jurisdiction of the criminal case, in which it filed and considered in conjunction with the criminal case.

5. A civil action shall be filed in written or in the form of an electronic document in accordance with the requirements for suits being considered in civil proceedings.

6. The failure to discover the suspected shall not preclude the filing of a civil claim in the criminal case.

7. If necessary to clarify the grounds for a civil claim and the amount of the claim, a person may supplement the claim.

8. To any person not to be recognized as the suspected in connection with the presence of a privilege or immunity from prosecution, a civil claim may be filed in civil proceedings.

**Footnote. Article 167 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

#### **Article 168. Application of the rules on the grounds, conditions, amount and method of compensation**

1. When considering a civil claim, filed in a criminal case, the grounds, conditions, amount and method of compensation shall be determined in accordance with the rules of civil , labour and other legislation.

2. If an international treaty, ratified by the Republic of Kazakhstan establishes rules other than those contained in this Code, the rules of the international treaty shall apply.

#### **Article 169. Return of the statement of claim, the rejection of the claim**

1. The civil claimant shall have the right to declare the return of the statement of claim at any stage of the criminal proceedings. The application for the return of the statement of claim shall be submitted in written or in the form of an electronic document and attached to the criminal case. If the return of the statement of claim is announced in the court session, it is entered in the record of the court session.

2. The application of the civil plaintiff for the refusal of the claim at the stage of pre-trial proceedings in the criminal case shall be submitted in written or in the form of an electronic document and attached to the materials of the criminal case. If the refusal of the civil plaintiff from the claim is expressed in the court session, it is entered in the record of the court session.

3. Rejection of the claim can be accepted by the court by making a decision at any time of the judicial proceedings, but before the removal of the court to the deliberation room for judgment.

Before the adoption of rejection of the claim, the court shall explain to the civil claimant, that the adoption of the rejection of the claim shall terminate proceedings on it and exclude

second apply to the court in a dispute between the same parties on the same subject and on the same grounds, including in civil proceedings.

4. Court does not accept the rejection of a claim by the civil plaintiff, if these actions are against the law or violate anyone's rights and interests protected by law, about what a reasoned decision shall be made.

**Footnote. Article 169 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

#### **Article 170. Decisions on the civil claim**

1. Following consideration of a civil claim in the criminal case, the court shall make one of the following decisions:

- 1) on full or partial satisfaction of a civil claim;
- 2) on refusal in satisfaction of a civil claim;
- 3) on the recognition of the civil claimant the right in satisfaction of a civil claim and refer the matter of its amount to the consideration of the court in civil proceedings;
- 4) on adoption of rejection of a civil claim and termination of proceedings on it;
- 5) on approval of the settlement agreement or agreement on adjustment of dispute in order of mediation in a civil claim and terminate proceedings on it;
- 6) on leaving a civil claim without consideration.

In making the decision to terminate the proceedings on the grounds specified in paragraphs 3), 4) of the first part of Article 35 of this Code, the court shall satisfy the civil claim in full.

2. In the judgment of conviction or making a decision on the application of compulsory medical measures to insane, the court shall satisfy the civil claim in whole or in part, or reject it.

In cases of satisfaction of a civil claim in whole or in part, the court establishes and specifies in the judgment the term for voluntary execution of the judgment in part of the civil claim. In case of failure to perform the court judgment in part of the civil claim within the period given for voluntary execution, the court shall direct the judgment for compulsory execution in part of the civil claim in the manner, prescribed by the civil procedural law. Compulsory execution is carried out in accordance with the legislation of the Republic of Kazakhstan on enforcement proceedings and status of enforcement agents.

3. If it is impossible to carry out a detailed calculation of a civil claim without postponing the criminal proceedings, the court may recognize the civil claimant's right to satisfaction of the claim and refer the question of its amount to the consideration of the court in civil proceedings.

4. Court refuses to satisfy a civil claim under the judgment of acquittal, as well as in making the decision to terminate the case by the application to the insane of compulsory medical measures, if it is not established an event of a criminal offence or an act, prohibited

by the Criminal Code of the Republic of Kazakhstan, or it is not proved the participation of the defendant, or it is not set his (her) fault or the person against whom a question on the application of compulsory medical measures is solved, in committing a criminal offence or an act, prohibited by the Criminal Code of the Republic of Kazakhstan.

5. Court shall decide on the termination of proceedings in the civil claim, in cases of court approval of a settlement agreement, achieving reconciliation in the order of mediation or the adoption by the court of rejection of the civil claim.

6. The Court leaves the claim without consideration, in cases of:

- 1) acquitting of the defendant in the absence of composition of a criminal offence;
- 2) termination of the case for lack of grounds for the application of compulsory medical measures to the insane person, who by nature of his (her) committed act and his (her) condition is not a danger to society and does not need compulsory treatment;
- 3) termination of the case on the grounds, specified in paragraphs 5), 7), 8) of the first part of Article 35 of this Code;
- 4) application of the civil claimant about it.

Leaving the civil claim without consideration for any other grounds, not prescribed by law, is not allowed.

#### **Article 171. Ensuring of a civil claim**

Upon presentation by a civil claimant of a civil claim, the criminal prosecution body shall take measures to ensure it. If such measures are not taken, the court in preparation for the main trial in accordance with Article 325 of this Code shall oblige the criminal prosecution body to take them. Upon presentation of a civil claim in the stage of trial, the court shall make a decision to ensure a civil claim.

#### **Article 172. Execution of the sentence and the court decision in part of the civil claim**

When making a decision on satisfaction of the civil claim in full or in part, the court may set a period for voluntary execution of the sentence, the court decision in part of the civil claim, and the rules of deferral and installment of execution, provided by the civil procedural legislation can be applied. Compulsory execution of a judicial act in part of the civil claim shall be made in accordance with the legislation of the Republic of Kazakhstan on enforcement proceedings and status of enforcement agents.

#### **Article 173. Victims' Compensation Fund**

1. Victims are entitled to compensation in the cases and according to the procedure provided for by the legislation of the Republic of Kazakhstan on the Victims Compensation Fund.

2. In accordance with articles 98-1 and 98-2 of the Criminal Code, the court is required to make a forced payment.

3. The court imposes the obligation to reimburse the money paid as compensation in the amount established by the Victims Compensation Fund Act on the court:

1) the guilty person;

2) The legal representatives of a minor found guilty of a crime;

3) A legal entity which, in accordance with the laws of the Republic of Kazakhstan, is materially liable for damage caused by a criminal offence by a natural person.

4. The resolution on termination of the pre-trial investigation on the grounds provided by paragraphs 3), 4) and 12) of paragraph one of Article 35, paragraph one of Article 36 of this Code shall be the basis for recovery of money in civil proceedings to the Fund for Compensation of Victims from the persons referred to in paragraph three of this Article in the amount established by the Law of the Republic of Kazakhstan "On the Fund for Compensation of Victims".

5. The money paid to victims from the Victims Compensation Fund shall be subject to recovery from the victim in cases where it has been established that they have been provided with false information to obtain compensation, as well as the requalification of criminal offences into offences not provided for in article 6 of the Law of the Republic of Kazakhstan "On the Victims Compensation Fund" and the termination of the criminal case or the entry into force of an acquittal verdict of the court for the absence of an event of a criminal offence.

**A footnote. Article 173 of the Law of the Republic of Kazakhstan dated 10.01.2018 No. 132-VI (shall be enforced dated 01.07.2018).**

## **Chapter 21. Payment for labour and compensation of expenses, incurred in the course of criminal proceedings Article 174. Payment for legal assistance**

1. Payment for labour of the defense counsel and a representative of the persons, involved in criminal proceedings shall be in accordance with the legislation of the Republic of Kazakhstan.

2. In cases provided by this Code, when the lawyer participated in pre-trial proceedings or in the court of destination as defense counsel, or as a representative of the victim (private prosecutor) without concluding an agreement with the client, the costs of lawyers' remuneration are paid at the expense of budget funds.

3. In the cases, specified in the second part of this article, the body conducting the criminal proceedings, if there is reason, shall have the right to release the suspected, accused, convicted in whole or in part from payment for legal assistance, about what it makes a reasoned decision.

**Footnote. Article 174 as amended by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

## **Article 175. Obtaining by an interpreter, specialist, expert of fees for the performance of their work**

1. Interpreter, specialist, expert, performing the relevant work in the criminal proceedings, is obtained:

- 1) wages in the workplace - if performed work in order of service task;
- 2) the remuneration for the expense of budget funds within the rates, established by the Government of the Republic of Kazakhstan, - if the work performed is not included in the scope of their official duties, and performed off-duty hours;
- 3) the remuneration in the amount, determined by the contract with the party - if the work is performed in agreement with that party.

2. In the case, provided for in paragraph 2) of this Article, the remuneration shall be paid on the basis of the decision of the body, conducting the criminal proceedings, made after presenting by the interpreter, specialist, expert, an account.

## **Article 176. Compensation of expenses, incurred by persons involved in criminal proceedings**

1. By way of criminal proceedings the following expenses of the victim, civil claimant, their legal representatives, lawyers providing legal assistance as a defense counsel or representative of the victim (private prosecutor) on the appointment of the body, conducting the criminal proceedings, in the cases provided in third part of Article 67 and the second part of Article 76 of this Code, an identifying witness, interpreter, specialist, expert, witness, potential jurors, called to court, but not selected for the jury, shall be compensated at the expense of budget funds:

- 1) the costs of attendance at the call of the body, conducting the criminal proceedings:  
the cost of travel by rail, water, road (except taxis) transport and other modes of transport that exists in the area, and with the consent of the body conducting the criminal proceedings, - the cost of travel by air transport;  
the cost of hiring premises under the standards adopted for the payment of business trips, provided that these costs are not reimbursed by the organization, the employer;
- 2) daily allowance, if necessary, for these individuals to reside at the request of the body, conducting the criminal trial, outside the place of permanent residence and provided that the daily allowance is not reimbursed by the organization, the employer;
- 3) average earnings for all the time, spent at the request of the body conducting the criminal proceedings, to participate in criminal proceedings, except in cases where the average salary is retained to them by the organization, the employer;
- 4) the cost of restoration or acquisition of property, loss of quality or lost as a result of participation of the person in the conduct of investigative or other procedural action at the request of the body, conducting the criminal proceedings.

2. The state bodies and organizations shall retain the average salary of the victim, his (her) legal representative, identifying witness, interpreter, specialist, expert, witness, potential juror, called at the court, but not selected for the jury, for the time spent at the request of the body, conducting the criminal proceedings, to participate in criminal proceedings.

3. Specialist and expert shall also be compensated the cost of their chemical reagents and other consumables that they spent in the exercise of the assigned work, as well as the payment made by them for the use of equipment, utilities and other services in order to perform the work.

4. Expenses, incurred in the criminal proceedings shall be compensated at the request of the persons, listed in the first part of this article, based on the decision of the body, conducting the criminal proceedings, in the amount prescribed by legislation. Procedure for payment of these expenses shall be determined by the Government of the Republic of Kazakhstan. These expenses may also be compensated at the expense of the party that attracted the persons, listed in the first part of this article to participate in the investigative action or in other cases, stipulated by this Code. Expenses under paragraphs 1), 2) and 4) of the first part of this Article may be compensated in accordance with the legislation by the body, conducting the criminal proceedings, on its own initiative.

## **Chapter 22. Procedural costs Article 177. Procedural costs**

Procedural costs consist of:

1) the amounts paid to witnesses, victims and their representatives, experts, specialists, interpreters, identifying witnesses in accordance with Articles 174 and 175 of this Code;

2) the amounts paid to witnesses, victims and their representatives, identifying witnesses, who do not have regular income, to distract them from ordinary activities;

3) the amounts paid to witnesses, victims and their legal representatives, identifying witnesses, working and having a regular income, for reimbursement of the lost wages for the time spent by them in connection with the call in the body, conducting the criminal proceedings;

4) remuneration, paid to experts, interpreters, specialists for the performance of their duties during the pre-trial investigation or the court, except where these duties are performed in the order of performance of work task;

5) the amounts paid for the provision by the defense counsel of legal assistance in the exemption of the suspected, accused or defendant from its payment or participation of a lawyer in the inquiry, preliminary investigation or in court by appointment;

6) the amounts paid for the provision of legal assistance by the representative of the victim (private prosecutor), if he (she) is exempt from its payment;

7) the amounts, spent for storing and sending of material evidence;

8) the amounts spent for examination in the bodies of judicial expertise;



9) the amount, spent in connection with the search of the suspected, accused, defendant, hiding from investigation or court, calculated in accordance with the procedure established by the Government of the Republic of Kazakhstan;

10) the amounts spent in connection with the conveyance of the suspected, accused or defendant to the investigator or the court in the case of their absence without good reason, as well as the stay of the judicial proceedings due to the absence of the defendant without good reason or his (her) coming in court in a state of intoxication;

11) other expenses, incurred in the criminal proceedings.

#### **Article 178. Recovery of procedural costs**

1. The question of recovery of procedural costs is considered by the court in making a final decision in the criminal case. If the proceedings are completed at the pre-trial stage of criminal proceedings, the investigating judge shall consider the recovery of procedural costs by presentation of the procurator. Procedural costs may be imposed by the court on the suspected, accused, convicted or accepted by the state.

2. The Court shall be entitled to recover from the convicted procedural costs, except for amounts paid to the interpreter. Procedural costs may be imposed on the convicted person, released from punishment.

3. Procedural costs, associated with participation in the case of the interpreter, shall be paid by the state. If the interpreter performs his (her) functions in the manner of a service task, his (her) payment for labour shall be compensated by the state to the organization, where the interpreter works.

4. Procedural costs, associated with the participation in the case of a lawyer, providing legal assistance free of charge as a defense counsel of the suspected, accused, defendant or representative of the victim (private prosecutor), in the cases specified in the third part of Article 67 and the second part of Article 76 of this Code, shall be paid at the expense of budget funds.

5. In the case of an acquittal of the defendant or termination of the case in accordance with paragraphs 1) and 2) of the first part of Article 35 of this Code, procedural costs shall be paid by the state. If the defendant is justified only in part, the court shall oblige him (her) to pay procedural costs, associated with the prosecution under which he (she) is found guilty.

6. Procedural costs are taken to the account of the state in case of property insolvency of the person from whom they should be recovered. The court has the right to exempt the convicted person, in whole or in part, from the payment of procedural costs, if their payment can significantly affect the financial situation of persons who are dependent on the convicted person. In the event of a court-ordered indictment, the court shall have the right to exempt the convicted person from paying all or part of the procedural costs, taking into account his or her property status.

7. Recognizing of several defendants as guilty in the case, the court determines to what extent procedural costs should be recovered from each of them. The court takes into account the nature of guilt, the degree of liability for the criminal offence and the financial situation of the convicted.

8. In cases of the criminal offences of minors, the court may impose the payment of the procedural costs to minor's parents or persons replacing them.

9. In the justification of the defendant in the case of private prosecution, the court is entitled to collect procedural costs fully or partially from the person, under the complaint of which the proceedings started. Upon termination of the case for the reconciliation of the parties, the procedural costs shall be recovered from the defendant.

10. In the case of the death of the suspected, accused their heirs shall not be liable for the obligations, associated with the procedural costs.

11. The right to collect procedural costs shall be terminated by limitation after three years from the date of entry of the appropriate court decision in legal force.

12. If there is data on the procedural costs, except as specified in the sixth part of this Article, the criminal prosecution body shall take measures to ensure the recovery of procedural costs.

**Footnote. Article 178 with the change introduced by the Law of the Republic of Kazakhstan dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **The Special Part Section 6. Pre-trial proceedings in a criminal case Chapter 23. The beginning of the pre-trial investigation Article 179. The beginning of the pre-trial investigation**

1. Pre-trial investigation begins with the registration of a statement, a report of a criminal offence in the Unified Register of Pre-trial Investigations or the first urgent investigative action. The initiation of a pretrial investigation is notified to the prosecutor within 24 hours.

A criminal complaint, report or report is not subject to registration:

1) in which there is no information about violations of the current legislation, about damage, about significant harm or illegal income, non-performance, improper performance of professional duties by a medical or pharmaceutical worker, failure to provide medical care to a sick person who is obliged to provide it, violation of the procedure for conducting clinical trials and applying new methods and means of prevention, diagnosis, treatment and medical rehabilitation, confirmed by acts of inspections, revisions, audits and others, when their presence is a mandatory sign of a criminal offense;

2) on violations based on non-execution or improper execution of civil law transactions made in writing and not recognized by the court as invalid, fictitious or sham.

The requirements specified in paragraphs 1) and 2) of paragraph one of this article shall not apply to cases of submission of collective, numerous applications on improper performance of contractual obligations.

2. In the cases, specified in the first part of Article 184 of this Code, the procurator, investigator, interrogating officer, the body of inquiry prior to the registration of statements and reports of criminal offence shall make urgent investigative actions for finding and fixing traces of a criminal offence. At the same time they are obliged to take measures to the registration of statements and reports of a criminal offence in the Unified Register of pre-trial investigations, including the use of means of communication.

3. Pre-trial investigation is necessary for all statements, reports of criminal offences, except in cases of private prosecution.

4. If it is received a statement, report of information about the signs of an administrative offence or disciplinary offence, an appeal within three days, shall be sent by a cover letter to the appropriate authorized state body or official.

5. If it is received a statement, report of information on which the criminal prosecution is carried out privately, the materials shall be sent to the appropriate court of competent jurisdiction and the applicant shall be notified.

6. Production of urgent investigative actions shall not preclude the consideration of the statement and report in the manner prescribed by parts four and five of this article.

**Footnote. Article 179 as amended by Law No. 118-VI of 21.12. 2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 07.07.2020 No. 361-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 180. The reasons to the beginning of a pre-trial investigation**

1. The reasons to the beginning of a pre-trial investigation are sufficient data, indicating the signs of a criminal offense, in the absence of circumstances excluding the proceedings, namely:

1) an application of an individual or a message of an official of the state body or a person performing managerial functions in the organization about a criminal offense or an obscure disappearance of a person;

2) acknowledgement of guilt;

3) messages in mass media;

4) a report of the official of the criminal prosecution body on the criminal offense being prepared, committing or committed.

If there is a reason to implement pre-trial investigation, the interrogating officer, the inquiry body, the head of the investigation department, the investigator and the prosecutor, within the limits of their competence and in the manner established by this Code, shall take a criminal case into the proceedings by its decision, except for cases stipulated in the paragraphs 2 and 3, part 1 of Article 185 of this Code

2. If on the case, investigating by the reason, specified in paragraph 1) of part 1 of this Article, established data in respect of the obscure disappeared person, showing signs of a

criminal offence, the act shall be qualified under the relevant article of the Criminal Code of the Republic of Kazakhstan.

3. The procedure for reception and registration of an application, a message or a report on criminal offenses, as well as the procedure for maintaining a single register of pre-trial investigations shall be determined by the General Prosecutor of the Republic of Kazakhstan.

**Footnote. Article 180 in the new wording of the Law of the Republic of Kazakhstan dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication).**

#### **Article 181. The statement, reporting a criminal offence**

1. Statements of an individual about a criminal offense may be oral and written or in the form of an electronic document

A written statement or a statement in the form of an electronic document must be signed by the person from whom it is issued, indicating the information about the applicant reflected in part two of this article.

2. Oral statement on the criminal offence is recorded in a separate protocol for its adoption, which should contain the information about the applicant, his (her) place of residence or work, as well as the document, proving his (her) identity. The protocol shall be signed by the applicant and the official, who took the statement.

Oral statement, made at the pre-trial investigation or in judicial proceedings, shall be entered in the appropriate protocol of the investigative action or in the protocol of the court session.

3. Report of the official of the state body and a statement of the legal entity on the criminal offence is submitted in writing with the supporting documents and materials.

4. The applicant, except for the official of the state body is warned of the criminal liability for knowingly false denunciation, as marked in the application or protocol, which is certified by the signature of the applicant.

5. In the absence of sufficient data, indicating signs of a criminal offence, the statements and reports, requiring audits and checks of the authorized bodies to establish the signs of a criminal offence without registration in the Unified Register of pre-trial investigations shall be sent for consideration to the authorized state bodies within three days.

6. Anonymous message about a criminal offence cannot be the reason for the beginning of the pre-trial investigation.

**Footnote. Article 181 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

#### **Article 182. Acknowledgement of guilt**

1. Acknowledgement of guilt - a private, voluntary, written or oral report of the criminal prosecution bodies of the committed or planned criminal offence, if the person is not yet recognized as the suspected, or he (she) is not detained on suspicion of committing the criminal offence.

2. Oral statement is received and recorded in the protocol in the manner established by Article 181 of this Code.

3. If in acknowledgement of guilt, the statement specifies the partners of the criminal offence, the applicant shall be warned of the criminal liability for knowingly false denunciation.

#### **Article 183. Message of a criminal offence in the media**

1. Message in the media may give rise to the beginning of the pre-trial investigation, when it is published in a newspaper or magazine or broadcasted by radio, television or telecommunications networks.

2. Persons, performing managerial functions in the media, which published or broadcasted the message of a criminal offence, at the request of the body authorized to start the pre-trial investigation, must transfer documents and other materials at their disposal, confirming the message, as well as name the person, who submitted this information, except in cases where the person submitted them with the condition of secrecy of the source of information.

#### **Article 184. A report about the detection of a criminal offence**

1. Finding information about a criminal offence shall be the reason for the beginning of the pre-trial investigation in cases, when:

1) in the performance of their official duties, the officer of the body of inquiry, investigator, procurator become witnesses of a criminal offence or detect traces or consequences of a criminal offence immediately after its commission;

2) an official of the criminal prosecution body, the procurator obtained the information about a criminal offence in the exercise of their powers.

2. In the cases, specified in part one of this article, the said persons compiled a report about the detection of a criminal offence with the application in their possession documents and other materials, confirming the discovery of information about the criminal offence.

3. A report on the discovery of a criminal offense may be drawn up in the event of receipt of a private decision, a private decision of the court containing the relevant information.

**Footnote. Article 184 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 185. Obligatoriness for acceptance of a statement, a message or a report on criminal offense**

Footnote. The title of Article 185 in the new wording of the Law of the Republic of Kazakhstan dated 26.07.2016 № 12-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

1. The body of criminal prosecution is obliged to accept and register a statement, a message of any criminal offense that is being prepared, committed or is being committed. The applicant shall be given a document on registration of an accepted application or a report on criminal offense.

If there are reasons to carry out pretrial investigations into cases involving extremist or terrorist offences, the criminal prosecution authorities may, with the consent of the procurator , postpone the registration of the application, report or report for a period determined by the procurator.

In order to protect the national interests of the Republic of Kazakhstan from reconnaissance and subversive activity, the body conducting counterintelligence activity, in the presence of reasons for carrying out pre-trial investigation on materials obtained during counter-intelligence activities, shall take a decision on registration of a statement, message or report in accordance with the procedure determined by the joint regulatory and legal act of the bodies conducting counterintelligence activities, and the General Prosecutor of the Republic of Kazakhstan.

Footnote. Article 185 as amended by the Laws of the Republic of Kazakhstan dated 26.07.2016 № 12-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication); No. 118-VI of 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication)

#### **Article 186. Transfer of the registered statement or report on criminal offence in accordance with the jurisdiction**

1. The registered statements or reports of a criminal offence shall be subject to the transfer in accordance with the jurisdiction, when:

1) the criminal offence is committed outside the area, region, city of republican significance, capital and for the production of pre-trial investigation is necessary to conduct investigative actions in the place of the criminal offence;

2) the production of investigation in a criminal case is the exclusive investigative jurisdiction of another body of criminal prosecution.

2. Statements, reports with existing materials shall be sent in accordance with the jurisdiction by the head of the criminal prosecution body through the procurator.

3. The rules of the first part of this Article shall not apply to the cases of receipt of statements, reports of criminal offences, which require urgent investigative actions. In such

cases, the collected materials shall be sent to the procurator to transfer in accordance with the jurisdiction within five days from the date of registration of the statements, reports.

4. Statements, reports shall be transferred in accordance with the jurisdiction together with the objects and documents, found during inspection of the scene, place or premises or provided by the organizations, officials or citizens.

5. Only the statements of victims (private prosecutors) about criminal offences, prosecuted in a private prosecution shall be subject to transfer in accordance with the jurisdiction.

## **Chapter 24. General conditions for the production of pre-trial investigation Article 187.**

### **Investigative jurisdiction**

1. In cases of criminal offenses provided for by Articles 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 175, 176, 177, 178, 179, 180, 181, 184, 185, 186 (part two), 255 (parts three and four), 257, 260, 267, 270, 275, 291 (parts two, three and four in relation to the theft or extortion of weapons of mass destruction, as well as materials or equipment that can be used in creation of weapons of mass destruction), 360, 375, 392 (part two), 396 (part two), 445 (part two), 458 (parts two, three, four and five) of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation is carried out by the investigators of the National Security Committee. In cases of criminal offenses provided for in Articles 205 (part three), 206 (parts two and three), 207 (parts two and three), 208 (parts two and three), 209 (parts two and three), 210 (parts two and three) of the Criminal Code of the Republic of Kazakhstan, if they are committed in relation to critical objects of information and communication infrastructure, the preliminary investigation may be carried out by the national security body. In cases of criminal offenses provided for in Articles 361 (parts three and four), 362 (part three, paragraph 3) of part four), 366 (parts three and four), 367 (parts three and four), 412-1 of the Criminal Code of the Republic of Kazakhstan, if they are committed by military personnel, employees of the anti-corruption service or special state bodies, preliminary investigation may be carried out by investigators of the National Security Committee. In cases of criminal offenses provided for in Articles 437 (part three), 438 (part three), 439 (part three), 441 (part three), 442 (part three), 443 (part two), 459 (part three) of the Criminal Code of the Republic of Kazakhstan, a preliminary investigation may be carried out by investigators of the National Security Committee if they are committed in a combat situation. In cases of criminal offenses provided for by other articles of the Criminal Code of the Republic of Kazakhstan, a preliminary investigation may be carried out by the national security body if their investigation is directly related to the preliminary investigation in cases of criminal offenses referred to the jurisdiction of the national security bodies, and the criminal case cannot be separated into separate proceedings.

2. On criminal offenses cases provided for in Articles 99, 100, 101, 102, 103, 104, 105, 106, 107 (part two), 110 (part two), 116, 118 (part three), 120, 121, 122, 123 (part two), 124,



125, 126 (parts two and three), 127, 128, 129, 132, 133, 134, 135, 141, 143 (parts two and three), 144, 146 (parts three and four in cases of cruel, inhuman or degrading treatment unrelated to torture), 147 (part five), 148, 150 (part two), 151, 155 (part two), 156 (parts three and four), 157, 188 (parts two, three and four), 188-1, 191 (parts two, three and four), 192, 193, 194 (parts two, three and four), 200 (parts two, three and four), 201 ( part two), 202 ( parts two and three), 203 (parts one, two and three), 205 (part three), 206 (parts two and three ), 207 (parts two and three), 208 (parts two and three ), 209 (parts two and three), 210 (parts two and three), 211 (parts two and three), 212 (part two), 213 (parts two and three), 251, 252 (part two), 254, 261, 268, 269-1 (parts two and three), 271, 272, 273, 274 (parts two, three and four), 277, 278, 279, 280, 281, 282, 288 (parts two and three), 293 (parts two, three and four), 295 (part three), 295-1 (parts two and three), 296 (part four), 297 (parts one and two), 298, 299 (parts two, three and four ), 300 (part two), 301, 302, 303 (part two), 304, 305, 306 ( part two and three), 308 (parts two and three), 309 (parts two and three), 310 (part two ), 312, 314 (part two), 315 (part two), 317 (parts two, three, four and five), 318, 319 (part five), 320 ( part two), 322 (parts two, three and four ), 323, 324, 325 (parts two and three), 326 (parts two and three), 327, 328 (parts two and three), 329, 330, 331 (part one), 332, 333, 334 (part three ), 335, 337, 338, 339, 340 (part four), 341 (part two), 342 (part four), 343 (parts two and three ), 344, 346 (parts five and six), 348 (parts three and four), 349 (parts three and four), 350 ( parts two and three), 351 (parts two and three), 352, 353 (parts two, three and four), 354 ( parts two, three and four), 355, 356 (part two), 358 (parts three, four and five), 359 (parts three and four), 376 (parts two and three), 377, 380, 380-1, 380-2, 382 (part two ), 386 (part two), 388, 389 (parts three and four), 399 (part three), 401, 402 (part two), 404 (part one), 407 (part three), 408, 409, 411, 426 (part two), 428 (part three), 429, 437 (part three), 438 (parts two and three), 439 (parts two and three), 440 (part four), 441 (part three), 442 ( parts two and three), 443 (part two), 446 (part two), 449 (part three), 453 (part two), 454 (part one), 459 ( part three), 462 (part two and three), 463 (parts three and four), 464, 465, 466 (parts four and five) of the Penal Code of the Republic of Kazakhstan, the preliminary investigation shall be conducted by investigators of the internal affairs bodies.

3. On criminal offenses cases provided for by Articles 189 (paragraph 2) of part three, part four if there are signs provided for in paragraph 2) of part three), 190 (paragraph 2) of part three, part four if there are signs provided for in paragraph 2) part three), 216 (paragraph 4) of part two), 217 (paragraph 3) of part three), 218 (paragraph 1) of part three), 218-1 ( paragraph 1) of part four), 234 (paragraph 1) of part three), 249 (paragraph 2) of part three) , 307 (paragraph 3) of part three), 361, 362 (paragraphs 3) and 4) of the fourth part), 364, 365, 366, 367, 368, 369 and 370 of the Penal Code of the Republic of Kazakhstan, the preliminary investigation shall be conducted by investigators of the anti-corruption service.

3-1. In cases of criminal offenses provided for in Articles 203 (part 1-1), 214 (part two), 216 (part one, paragraphs 1) and 2) part two, part three), 219 - 221, 223 - 224, 226 ( part two), 228 (parts two and three), 229 (parts two and three), 230 (parts two and three), 231, 234 (part

two, paragraph 2) parts three), 235-1, 236 (parts two and three ), 237, 238, 239 (part two), 243 (part one), 244, 245 (parts two and three), 248 (parts two and three), 249 (parts one. 1-1 and two, paragraph 1) of part three), 253, 307 (parts one and two, paragraphs 1) and 2) of part three) of the Criminal Code of the Republic of Kazakhstan, a preliminary investigation shall be carried out by investigators of the economic investigation service.

4. In cases of criminal offences under articles 149 (parts two and three), 362 (parts one, three and four (1) and (2)), 371, 413, 414 (parts one, two and three), 415, 416 (parts two, three, four and five) and 418 of the Criminal Code of the Republic of Kazakhstan, preliminary investigations are carried out by internal affairs bodies or the anti-corruption service, which have initiated pre-trial investigations. In cases of criminal offences under articles 146, 412, 412-1 and 433 of the Criminal Code of the Republic of Kazakhstan, preliminary investigations are conducted by internal affairs bodies or the anti-corruption service, which have initiated pretrial investigations against a person who is not an employee of that body.

4-1. In cases of criminal offenses provided for in Articles 147 (part three), 195 (parts three , four and five), 196 (parts three and four), 197 (parts three and four), 198 (parts three and four), 199 (parts three and four), 217 (part two, paragraphs 1) and 2) of part three), 217-1 ( part two), 232, 250 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation is carried out by the internal affairs bodies or the economic investigation service , which have initiated a pre-trial investigation.

In cases of criminal offences under articles 189 (part two, paragraphs 1) and 3) of part three, part four), 190 (part two, paragraphs 1), 3) and 4) of part three, part four) of the Criminal Code of the Republic of Kazakhstan, preliminary investigation shall be conducted by the internal affairs agencies, and in the event of damage to the State by the economic investigation service.

4-2. In cases of criminal offences, provided in Articles 416 (first and sixth parts), 417, 419 (second, third and fourth parts), 420, 421, 422, 423, 424, 425, 432, 434, 435 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation is carried out by the bodies of internal affairs, anti-corruption agency or economic investigation agency that started pre-trial investigation.

4-3. In cases of criminal offenses provided for in Articles 370-1, 370-2 (parts two and three), 450, 451 and 452 of the Criminal Code of the Republic of Kazakhstan, a preliminary investigation is carried out by internal affairs bodies, national security or anti-corruption service that have initiated a pre-trial investigation.

5. In cases of criminal offenses provided in articles 174, 182, 255 (parts one and two), 256 , 259, 269, 276 (parts two and three), 283, 284, 285, 286 (parts two, three and four 297, 297 ( parts three and four), 388-1, 394 (parts two and three), 404 (parts two and three), 405, 437 ( parts four and six) ), 438 (part four), 439 (part four), 441 (part four), 442 (part four), 443 (part three), 444, 452-1, 453 (part three), 454 (part two), 455, 456, 457, 459 (part four) of the

Criminal Code Kazakhstan, preliminary investigation shall be carried out by the bodies of internal affairs or national security, which initiated pre-trial investigation.

6. In cases of criminal offences, provided in Articles 218 (first and second parts, paragraphs 2) and 3) of third part), 218-1 (first, second parts and third, paragraphs 2) и 3) part four), 262, 263, 264, 265, 266 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation is carried out by the bodies of internal affairs, national security agencies, anti-corruption agency or economic investigation agency that started pre-trial investigation.

7. In cases of criminal offenses under article 258 of the Criminal Code of the Republic of Kazakhstan, preliminary investigation shall be carried out by the national security bodies, internal affairs or economic investigation service, which initiated a pre-trial investigation.

8. When connecting in one proceeding of criminal cases, investigated by the different bodies of preliminary investigation, investigative jurisdiction is determined by the procurator.

Footnote. Article 187, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 13.11.2015 № 400-V (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 24.11.2015 № 419-V (shall be enforced from 01.01.2016); dated 24.11.2015 № 422-V (shall be enforced from 01.01.2016); dated 22.12.2016 № 28-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 28.12.2017 No. 128-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 21.01.2019 No. 217-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 01.04.2019 No. 240-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); No. 268-VI dated October 28, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 290-VI dated December 27, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 25.05.2020 No. 332-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 06.10.2020 No. 365-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 30.12. 2020 No. 393-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 11.07.2022 No. 136-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 12.07.2022 No. 139-VII (shall be enforced sixty calendar days after the date of its first

official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023); dated 28.12.2022 No. 173-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 03.01.2023 No. 186-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 17.03. 2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 27.03. 2023 No. 216-VII (sixty calendar days after the date of its first official publication); dated 12.07.2023 No. 23-VIII (for the procedure of entry into force, see Article 2).

#### **Article 188. Place of pre-trial investigation**

1. Pre-trial investigation is carried out in the area (region, city of republican significance, capital), where a criminal offence is committed.

2. For the purpose of rapidity and completeness, the pre-trial investigation may be carried out at the place of detection of criminal offence, as well as at the location of the suspected or the majority of witnesses.

3. If it is necessary to carry out investigative actions in another district (oblast, city of republican importance, capital), the person carrying out the pre-trial investigation has the right to carry out them personally or to instruct the investigator or body of inquiry of this district (oblast, city of republican importance, capital) to carry out these actions. The person conducting the pre-trial investigation may instruct the investigative actions or investigative measures to be carried out secretly to the body of inquiry at the place of pre-trial investigation or the place of their production. Except for covert investigative actions, an order must be executed within ten days.

4. In carrying out orders of the investigator, the procurator on the investigative actions, the employee of the body of inquiry enjoys the authority of the investigator.

**A footnote. Article 188 as amended by the Law of the Republic of Kazakhstan No. 210-VI dated 28.12.2018 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 189. Forms of pre-trial investigation**

1. Pre-trial investigation is conducted in the form of inquiry, preliminary investigation and protocol form.

2. Pre-trial investigation in the form of an inquiry is carried out by the criminal prosecution body for the crimes specified in parts two - twelfth, twenty-fifth and twenty-six of Article 191 of this Code.

3. Pre-trial investigation in the form of the preliminary investigation is conducted for the crimes, referred to in article 187 of this Code, all the criminal offences committed by minors or persons who, because of their physical or mental disability cannot themselves exercise

their right to protection, as well as for the cases of inquiry, where a person suspected of committing a crime is not known, except in cases of criminal offences specified in the second part of Article 32 of this Code.

4. If it is impossible, within the time limits established by Article 526 of this Code, to ensure the completeness and comprehensiveness of the establishment of the circumstances to be proved in the case, the head of the body of inquiry for criminal offenses shall be obliged to appoint an inquiry or preliminary investigation in the manner prescribed by parts three and five of this article, with notifying the prosecutor within 24 hours.

5. Head of the body of inquiry shall have the right to appoint the preliminary investigation also in cases, where within the period, established by Article 192 of this Code is impossible to ensure the adequacy and completeness of the investigation of the circumstances of the case.

6. Pre-trial investigation in protocol form is carried out by the criminal prosecution body for criminal offenses provided for by parts sixteen to twenty-four of Article 191 of this Code, as well as for cases of accelerated pre-trial investigation and cases of inquiry.

**Footnote. Article 189 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 29.06.2021 No. 58-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 190. Accelerated pre-trial investigation**

1. The pre-trial investigation may be completed in an expedited manner.

2. Accelerated pre-trial investigation can be carried out for crimes of small and moderate gravity, as well as for grave crimes, if the evidence collected established the fact of the crime and the person committed it, the full recognition of his (her) guilt, the agreement with the size (amount) of the damage (harm) with notification of this of the suspected and the explanation of the legal consequences of that decision.

3. An expedited pre-trial investigation shall be completed within fifteen days.

In the case of authorization within three days from the start of the pre-trial investigation of covert investigative actions, the criminal case can be completed in an expedited manner within fifteen days after their end, but not later than two months from the date of registration of the application, message in the Unified Register of Pre-trial Investigations.

4. In the accelerated pre-trial investigation a person, performing pre-trial investigation sets out the circumstances of the criminal offence and collects evidence, supporting the participation of the suspected in the commission of the offence.

4-1. Upon completion of the accelerated pre-trial investigation, the person conducting the pre-trial investigation shall notify the suspect, his defense counsel, if he is involved in the case, as well as the victim, his representative, civil plaintiff, civil defendant, their representatives of the completion of the investigative actions on the case.

The notification contains a notice about the place of familiarization and the period during which they can familiarize themselves with the materials of the criminal case.

4-2. After fulfilling the requirements provided for by part 4-1 of this article, the person conducting the pre-trial investigation, in the manner prescribed by parts one and 1-1 of article 527 of this Code, draws up a record of the accelerated pre-trial investigation.

The person conducting the pre-trial investigation shall present to the suspect, as well as to the victim, his representative, civil plaintiff, civil defendant or their representatives, in the event of an oral or written request from them, the protocol of the accelerated pre-trial investigation and the materials of the criminal case for familiarization, about which in the protocol of the accelerated pre-trial investigation, an appropriate mark is made, certified by their signatures and the signature of the defense counsel (with his participation).

The civil plaintiff, the civil defendant or their representatives get acquainted with the materials of the case in the part that relates to the civil suit.

After familiarization with the record of the accelerated pre-trial investigation and the case materials, the criminal case is sent on the case of inquiry to the head of the body of inquiry, on the case of preliminary investigation - to the head of the investigation department.

4-3. The head of the body of inquiry, having studied the record of the accelerated pre-trial investigation and the materials attached to it, performs one of the following actions:

1) coordinate the protocol of accelerated pre-trial investigation and send the criminal case to the prosecutor;

2) refuses to agree on the protocol of the accelerated pre-trial investigation and returns the criminal case for the production of an inquiry.

The head of the investigative department, having studied the record of the accelerated pre-trial investigation and the materials attached to it, performs one of the following actions:

1) sends the protocol of the accelerated pre-trial investigation and the criminal case to the prosecutor;

2) return the criminal case for preliminary investigation.

5. The person, performing the pre-trial investigation shall be entitled to carry out only those investigative and other procedural actions, the results of which record the traces of the criminal offences and other evidence of guilt of the suspected or the accused.

6. Accelerated pre-trial investigation shall not apply:

1) in respect of all criminal offences, when at least one of them is particularly serious;

2) for persons who do not speak the language of the judicial proceedings;

3) for persons, enjoying privileges and immunity from criminal prosecution;

4) in the case of non-recognition of his (her) guilt, by at least one of the accomplices of a criminal offence;

5) for criminal offences, committed by minors or persons who due to their physical or mental disability cannot themselves exercise their right to protection.

7. The prosecutor, having received the criminal case with a record of accelerated pre-trial investigation, shall take, no later than three days, one of the following actions on it:

- 1) approve the protocol of the accelerated pre-trial investigation and send the criminal case to the court;
- 2) directs the case for the production of inquiry or preliminary investigation;
- 3) issue a decision to terminate the criminal case in full or in part;
- 4) draws up a new record of accelerated pre-trial investigation;
- 5) at its own discretion or at the request of the defense party, decides on the conclusion of a procedural agreement.

8. The prosecutor ensures that the minutes of the accelerated pre-trial investigation are handed over to the accused. A receipt confirming that the accused has received the record of the accelerated pre-trial investigation, containing an explanation of the rights of the accused, shall be attached to the file.

**Footnote. Article 190 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication);**

#### **Article 191. Pre-trial investigation, conducted in the form of inquiry and the form of protocol**

1. Regarding criminal offences, specified in the second – the twelfth, twenty-fifth and twenty-sixth parts of this article, the preliminary investigation is not necessary and the materials of inquiry are the basis for the consideration of the case in the court.

2. Inquiry shall be conducted by internal affairs bodies in criminal offenses cases provided for in Articles 107 (part one), 110 (part one), 112, 113, 114 (parts three and four), 117 (part two), 118 (part two), 119 (parts two, three and four), 126 (part one), 136, 137 (part two), 139, 142, 143 (part one), 146 (part one), 147 (part four), 153, 158 (part two), 188 (part one), 191 (part one), 194 (part one), 200 (part one), 201 (part one), 202 (part one), 207 (part one), 209 (part one) part one, 210 (part one), 212 (part one), 247 (part three), 252 (part one), 274 (part one), 287 (parts two and three), 288 (part one), 290 (part one), 293 (part one), 295 (parts one and two), 299 (part one), 299-1, 300 (part one), 308 (part one), 309 (part one), 310 (part one), 311, 313, 314 (part one), 315 (part one), 316 (part three), 319 (parts one, two, three and four), 321 (part two), 322 (part five), 334 (parts one and two), 340 (parts two and three), 341 (part one), 342 (parts two and three), 345 (parts two, three and four), 345-1, 346 (parts one, two, three and four), 347, 348 (part two), 349 (part two), 350 (part one), 357 (part one), 358 (part two), 359 (part two), 372, 379, 386 (part one), 387, 390 (parts two and three), 398 (part three), 399 (parts one and two), 407 (part one), 426 (part one), 427, 428 (part one), 430, 431 of the Penal Code of Republic of Kazakhstan. In criminal offenses cases provided for in Articles 188 (part one), 252 (part one), 290 (part one), 345 (parts two, three and four), 348 (part two),



350 (part one), 398 ( part three) of the Criminal Code of the Republic of Kazakhstan, the State Security Service of the Republic of Kazakhstan may conduct an inquiry if they are committed in the security measures zone and are directly targeted against protected persons, the list of which is established by law.

3. Economic investigation agency carries out inquiry in cases of criminal offences, provided in Articles 214 (first part), 233, 245 (first part), 248 (first part) of the Criminal Code of the Republic of Kazakhstan.

4. The bodies of the military police carry out inquiry in cases of criminal offences, provided for in Articles 437 (second part), 439 (first part), 440 (third part), 441 (first and second parts), 442 (first part), 446 (first part), 447 (second part), 448 (second part), 449 (second part), 453 (first part), 459 (first and second parts), 461, 462 (first part), 463 (second part), 466 (second and third parts) of the Criminal Code of the Republic of Kazakhstan, as well as in cases, specified in the second, third, seventh-ninth, eleventh, twelfth parts of this Article of criminal offences, committed by military personnel, undergoing military by conscription or contract in the Armed Forces of the Republic of Kazakhstan other troops and military formations of the Republic of Kazakhstan; citizens in reserve, during the passage of military duties; civilian personnel of military units, formations, institutions in connection with the performance of their duties or in the arrangement of these units, formations and institutions.

5. The bodies of the military police of the National Security Committee carry out inquiry in cases of criminal offences, provided in Article 445 (first part) of the Criminal Code of the Republic of Kazakhstan on the criminal offences, referred to in the fourth part of this article, as well as all other criminal offences, specified in the second, third, seventh - ninth, eleventh, twelfth parts of this article, committed by military personnel and members of the special state agencies.

6. The bodies of the border service carry out inquiry in cases of criminal offences, provided in Article 396 (first part) of the Criminal Code of the Republic of Kazakhstan.

**7. Is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015).**

8. An inquiry into cases of criminal offenses provided for in Articles 189 (part one), 190 (part one), 217 (part one), 217-1 (part one), 286 (part one) of the Criminal Code of the Republic of Kazakhstan is conducted by internal affairs bodies or the economic investigation service that have initiated a pre-trial investigation.

**9. Is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015).**

10. Inquiry in cases of criminal offences, provided in Article 392 (first part) of the Criminal Code of the Republic of Kazakhstan is carried out by the bodies of internal affairs or the border service that started the pre-trial investigation.

11. Inquiry in cases of criminal offenses provided in Article 385 (parts one and two) of the Criminal Code of the Republic of Kazakhstan shall be carried out by the bodies of internal affairs, national security, anti-corruption service, economic investigation service or the State Security Service of the Republic of Kazakhstan, if they are committed in the zone of guarding activities and directly aimed against protected individuals, the list of whom is established by law.

11-1. The inquiry in cases of criminal offenses provided in Article 394 (part one) of the Criminal Code of the Republic of Kazakhstan shall be carried out by the bodies of internal affairs or national security of the Republic of Kazakhstan that started the pre-trial investigation.

**12. Is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015).**

13. Inquiry in cases of criminal offences, referred to in this Article shall be carried out, when a person, suspected of committing a criminal offence is known.

14. Inquiry is carried out according to the rules, established by this Code for preliminary investigation, except as provided by the articles of this chapter.

15. In cases of criminal infractions, specified in the sixteenth – the twenty-fourth parts of this article, the inquiry is not necessary, and the collected materials are the basis for the consideration of the case in the court.

16. The pre-trial investigation in protocol form shall be conducted by the internal affairs bodies on criminal offenses provided for in Articles 111, 115, 117 (part one), 118 (part one), 119 (part one), 137 (part one), 138, 140, 145, 150 (part 1-1), 152 (part one, if it is related to non-execution of a court decision on reinstatement of employment, part three), 154, 155 (part one), 156 (parts one and two), 158 (part one), 159, 183, 187, 204 (part one), 205 (parts one and two), 206 (part one), 208 (part one), 211 (part one), 213 (part one), 247 (parts one and two), 276 (part one), 288 (part four), 289, 294, 295-1 (part one), 296 (parts one, two and three), 303 (part one), 306 (part one), 316 (parts one and two), 317 (part one), 320 (part one), 322 (part one), 325 (part one), 326 (part one), 328 (part one), 331 (part two), 336, 340 (part one), 342 (part one), 345 (part one), 349 (part one), 351 (part one), 354 (part one), 356 (part one), 357 (part two), 358 (part one), 359 (part one), 376 (part one), 381, 383, 384, 389 (parts one and two), 391, 395, 397, 398 (parts one and two), 400, 402 (part one), 403, 406, 407 (part two), 410, 436 of the Penal Code of the Republic of Kazakhstan.

17. The Economic Investigation Service shall conduct pre-trial investigation in a protocol form based on criminal offenses provided in Articles 222, 225, 226 (part one), 227, 228 (part one), 229 (part one), 230 (part one), 234 (part 236 (part one), 239 (part one), 241, 242, 243 (part two), 246 of the Criminal Code of the Republic of Kazakhstan.

18. The bodies of the National Security Committee carry out the pre-trial investigation in the form of protocol on the criminal infractions, provided in Articles 186 (first part), 458 (first part) of the Criminal Code of the Republic of Kazakhstan.

19. Pre-trial investigation in the form of protocol on the criminal infractions, provided in Articles 195 (first and second parts), 196 (first and second parts), 197 (first and second parts), 198 (second part), 199 (second part) of the Criminal Code Republic of Kazakhstan, is carried out by the internal affairs bodies or economic investigation agency.

19-1. Pre-trial investigation in protocol form on criminal offenses provided for in Articles 363, 370-2 (part one), 414 (part four) of the Criminal Code of the Republic of Kazakhstan is carried out by internal affairs bodies or the anti-corruption service.

19-2. Pre-trial investigation in the form of protocol on criminal infractions, provided in Article 419 (first part) of the Criminal Code of the Republic of Kazakhstan, is carried out by the bodies of internal affairs, anti-corruption agency or economic investigation agency.

20. The bodies of the military police carry out the pre-trial investigation in the form of protocol on the criminal infractions, provided in Articles 437 (first and fifth parts), 438 (first part), 440 (first and second parts), 443 (first part), 447 (part one), 448 (first part), 449 (first part), 460, 463 (first part), 466 (first part) of the Criminal Code of the Republic of Kazakhstan , as well as in cases of criminal offences, specified in the sixteenth, seventeenth, nineteenth, twenty-second - the twenty-fourth parts of this Article, and committed by military personnel, undergoing military service by conscription or contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan, by citizens in reserve, during the passage of military duties, civilian personnel of military units, formations, institutions in connection with the performance of their duties or in the arrangement of these units, formations and institutions.

21. The bodies of the military police of the National Security Committee carry out the pre-trial investigation in the form of protocol on criminal infractions, provided in the twentieth part of this article, as well as all other criminal infractions, committed by military personnel and members of special state agencies, for which the inquiry is not necessary and the collected materials are the basis for the consideration of the case in the court.

**22. Is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015).**

23. In cases of criminal offenses provided for in Articles 269-1 (part one), 287 (part one), 345 (part one), 348 (part one), 353 (part one), 378 , 382 (part one), 390 (part one) of the Criminal Code of the Republic of Kazakhstan, a pre-trial investigation in protocol form is carried out by the internal affairs body or the State Security Service of the Republic of Kazakhstan, if they are committed in the zone of security measures and are directly directed against protected persons, the list of which is established by law.

24. In the case of a criminal offense provided in Article 385 (part three) of the Criminal Code of the Republic of Kazakhstan, pre-trial investigation shall be carried out by the bodies of internal affairs, national security, the anti-corruption service, the economic investigation

service or the State Security Service of the Republic of Kazakhstan, if it is committed in the zone of guarding activities and is directly aimed against protected individuals, the list of whom is established by law.

25. Bodies of the state fire service conduct an inquiry in cases of criminal offenses provided for in Article 292 of the Criminal Code of the Republic of Kazakhstan.

26. Inquiry in cases of criminal offenses provided for in Article 204 (part two) of the Criminal Code of the Republic of Kazakhstan is carried out by the internal affairs bodies or the state fire service bodies that have begun the pre-trial investigation.

**Footnote. Article 191, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 22.12.2016 № 28-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 21.01.2019 № 217-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 268-VI dated 28.10.2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 05.04.2020 No. 321-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication); dated December 19, 2020 No. 384-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 30, 2020 No. 393-VI (shall be enforced ten calendar days after the day of its first official publication); dated 02.01.2021 No. 401-VI (shall be enforced from 01.07.2021); dated 29.06.2021 No. 58-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 30, 2021 No. 98-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); dated 11.07.2022 No. 136-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 12.07.2022 No. 139-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 03.01.2023 No. 186-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication);**

## **Article 192. Periods of the pre-trial investigation**

1. Pre-trial investigation should be completed within a reasonable time based on the complexity of the criminal case, the volume of investigative actions and the adequacy of an investigation of the circumstances of the case, but no more than the limitation period, established by the Criminal Code of the Republic of Kazakhstan.

In determining a reasonable time of the criminal proceedings, such factors as the legal and factual complexity of the case, the implementation of the procedural rights of participants in the pre-trial proceedings, the method of implementation by the person, performing the pre-trial investigation of his (her) powers to ensure the timely implementation of the pre-trial proceedings, shall be taken into account.

2. The term of the pre-trial investigation is calculated from the moment of registration of the application and message in the Unified register of pre-trial investigations until the day of sending the criminal case to the prosecutor with a resolution on termination of the criminal case, a report on the completion of the pre-trial investigation, a resolution on the application of writ proceedings, a protocol on criminal misconduct, a protocol of accelerated pre-trial investigation, the protocol of the prosecution or the decision to transfer the case to the court for consideration of the issue of the application of compulsory medical measures or until the day the prosecutor concludes a procedural agreement in the form of a plea bargain or a plea bargain and the return of illegally acquired assets with the submission of the case to the court.

Pre-trial investigation in cases of inquiry shall not exceed one month and two months in cases of preliminary investigation. The prosecutor has the right to review these terms by setting a reasonable term for the pre-trial investigation.

**Footnote. Part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

3. The period specified in the second part of this article does not include the time:

1) familiarization of the participants in the criminal process with the materials of the criminal case in the manner prescribed by Articles 190 , 192-2 and 296 of this Code;

2) finding a criminal case on the complaint of a witness entitled to protection, a suspect, a victim in court and the prosecutor's office;

3) the presence of the criminal case with the prosecutor in connection with the consideration of the issue of approval or coordination of procedural decisions and (or) actions of the person conducting the pre-trial investigation;



4) the presence of a criminal case with a prosecutor in connection with the consideration of a petition for concluding a procedural agreement.

4. The period of the pre-trial investigation, established by the second part of this article may be extended by a reasoned request of the investigator, head of the body of inquiry due to: complexity of the case by the district and equivalent procurator - at a reasonable time, but not more than three months;

special complexity of the case or in deciding the direction of the criminal case in a foreign state to continue the criminal prosecution – by the procurator of the region and equivalent procurator and their deputies at a reasonable time, but not more than twelve months.

5. A further extension of the period for the pre-trial investigation shall be permitted only in exceptional cases and can be made by the General Procurator of the Republic of Kazakhstan, his (her) deputies at a reasonable time, but not more than the period, specified in the first part of this article.

6. The decision to extend the period of the pre-trial investigation the head of the investigation department, inquiry, the procurator shall submit to the procurator of the district, region and equivalent procurators no later than five days, to the Procurator General of the Republic of Kazakhstan, his (her) deputies - not later than ten days before the expiry of the pre-trial investigation.

7. When the prosecutor returns the case for additional investigation, cancels the decision to interrupt or terminate the criminal case, or refuses to agree on the decision to interrupt the terms of the pre-trial investigation or approve the decision to terminate the criminal case, the pre-trial investigation is carried out within the time period established by the prosecutor, but not more than one month from the moment the case is received by the person conducting the criminal prosecution. Further extension of the term is carried out on a general basis and in the manner prescribed by this article.

8. The suspected, the victim shall have the right to appeal against the unjustified delay in the investigation and to file a petition to the procurator for establishment of a certain period, during which the person conducting the criminal prosecution shall complete the investigation of the case in full or to appeal to the court in the manner prescribed by this Code.

**Footnote. Article 192 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Article 192-1. Circumstances to be proven in the course of an inquiry**

1. In the course of an inquiry in accordance with Article 113 of this Code, the following shall be proved: the event of a criminal offense, the person who committed the act prohibited

by criminal law, the guilt of the person, the nature and amount of damage and other circumstances relevant to the case.

2. In order to establish the circumstances specified in the first part of this article, certificates may be requested on the presence or absence of a person suspected of committing a criminal offense, a criminal record, references from his place of work or study, other materials relevant to the case; interrogation of the victim, witness and other necessary investigative actions were carried out.

**Footnote. Chapter 24 is supplemented by Article 192-1 in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 192-2. Drawing up a record of the accusation and transferring the criminal case to the prosecutor for referral to the court**

1. Upon completion of the inquiry, the person conducting the pre-trial investigation shall notify the suspect, his defense counsel, if he participates in the case, as well as the victim, his representative, civil plaintiff, civil defendant, their representatives of the completion of the investigative actions on the case.

The notification contains a notice about the place of familiarization and the period during which they can familiarize themselves with the materials of the criminal case.

2. After fulfilling the requirements provided for by the first part of this article, the person conducting the pre-trial investigation shall draw up a protocol of prosecution.

3. The minutes of the accusation shall indicate:

- 1) the time and place of its drawing up, by whom the protocol was drawn up;
- 2) data on the identity of the suspect;
- 3) the place and time of the commission of the criminal offense, the event, its methods, motives, consequences and other significant circumstances;
- 4) factual data confirming the existence of a criminal offense and the guilt of the offender;
- 5) qualification of the criminal offense provided for by the Special Part of the Criminal Code;
- 6) last names, first names, patronymics (if any), addresses of witnesses and victims, if any ;
- 7) the amount of damage caused;
- 8) scientific and technical means and electronic media, if they were used during fixation or traces of a criminal offense were recorded on them;
- 9) information about material evidence (if any), the place of their storage;
- 10) measures taken to secure a civil claim and enforce a court judgment;
- 11) procedural costs and amounts to be recovered from the suspect, the filed claim.

Documents confirming the fact of committing a criminal offense are also attached to the record of prosecution.



4. The person conducting the pre-trial investigation shall present to the suspect, as well as the victim, his representative, the civil plaintiff, the civil defendant or their representatives, in the event of an oral or written request from them, the record of the prosecution and the materials of the criminal case for familiarization, which is stated in the record of the charge the corresponding mark, certified by their signatures and the signature of the defender (with his participation).

The civil plaintiff, the civil defendant or their representatives get acquainted with the materials of the case in the part that relates to the civil suit.

After familiarization with the record of the prosecution and the case materials, the criminal case is sent to the head of the body of inquiry.

5. The head of the body of inquiry, having studied the record of the prosecution and the materials attached to it, performs one of the following actions:

- 1) agree on the record of the accusation and send the criminal case to the prosecutor;
- 2) refuses to agree on the record of the prosecution and returns the criminal case for conducting an inquiry or appoints a preliminary investigation in the manner prescribed by paragraph five of Article 189 of this Code.

6. The prosecutor, having received the criminal case with the record of prosecution, shall, no later than three days, take one of the following actions on it:

- 1) approve the record of the accusation and send the criminal case to the court;
- 2) directs the case for conducting an inquiry or preliminary investigation;
- 3) issue a decision to terminate the criminal case;
- 4) issue a decision to terminate the criminal prosecution in full or in part;
- 5) draw up a new record of prosecution;
- 6) at its own discretion or at the request of the defense party, decides on the conclusion of a procedural agreement.

7. The prosecutor ensures that the minutes of the prosecution are handed over to the accused. A receipt confirming that the accused has received the minutes of the prosecution, containing an explanation of the rights of the accused, shall be attached to the file.

**Footnote.** Chapter 24 is supplemented by Article 192-2 in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication).

### **Article 193. Powers of the procurator in the pre-trial investigation**

1. The procurator, supervising the legality of the pre-trial investigation, as well as the criminal prosecution shall:

- 1) register a statement for a criminal offence and send it to the criminal prosecution body or accept it to own production and carry out pre-trial investigation;

2) send the statement and the available materials of the criminal offence, received from one criminal prosecution body by investigative jurisdiction and judicial jurisdiction;

3) check the observance of legality in the reception and registration of statements and reports of criminal offences;

3-1) based on the results of checking compliance with the legality of the pre-trial investigation, have the right to establish reasonable terms for the pre-trial investigation;

4) have the right to participate in the inspection of the scene, as well as carry out other activities within its powers, stipulated by this Code;

5) give written instructions on the production of certain investigative actions;

6) in cases provided for by the present Code, coordinate, approve actions and (or) decisions of the person conducting pre-trial investigation;

Coordination and approval by the prosecutor is carried out by certifying the decision with an electronic digital signature, and for procedural decisions and actions drawn up in paper form, including those requiring confidentiality, by putting on the decision of the person conducting the pre-trial investigation, the marks "Agree", "Approve", certified by his signature;

7) in cases and in the manner prescribed by this Code, give written instructions about the inclusion in the materials of pre-trial investigation the results of undercover investigative actions;

8) submit a presentation to obtain a consent to the deprivation of immunity and bringing to justice those who have immunity and privileges from criminal prosecution;

9) receive to check criminal cases, documents, materials, including the results of operational and investigative, counter-intelligence activities and covert investigative actions, from criminal prosecution bodies, direct criminal cases on which the deadlines for production of further investigation are interrupted;

9-1) terminates illegal covert investigative actions provided for by paragraphs 7) and 9) of Article 231 of this Code;

10) cancel illegal decision of the investigator, interrogating officer, the body of inquiry, as well as decisions and instructions of the heads of the investigation department and the body of inquiry, the subordinate procurator;

11) return a criminal case for further investigation or terminate the pre-trial investigation in full or in relation to specific individuals;

12) confiscate cases from the body conducting the pre-trial investigation and transfer to another body of the pre-trial investigation in accordance with the established by this Code investigative jurisdiction; in exceptional cases in order to ensure the objectivity and adequacy of the investigation, at the written request of the criminal investigative body or the participant in the criminal process transfer the cases from one authority to another or take them into their own proceedings and investigate them independently from the investigative jurisdiction established by this Code

12-1) has the right to carry out pre-trial investigation in cases of criminal offenses provided for in Chapter 17 of the Criminal Code of the Republic of Kazakhstan.

The General Prosecutor shall have the right, in exceptional cases, on his own initiative, to entrust the conduct of pre-trial investigation to the prosecutor, regardless of the investigative jurisdiction established by this Code;

13) in the cases and in the manner prescribed by this Code, extend the periods of pre-trial investigation, as well as in the cases, provided for in the seventh and eighth parts of Article 192 of this Code, establish the period of investigation;

14) in considering matters, assigned by this Code to the competence of the investigating judge, participate in court proceedings;

15) verify compliance with the legally prescribed procedure and conditions of detention of persons in custody;

16) draws up an indictment;

Footnote. Paragraph 16) of part one - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

16-1) approves the protocol on criminal misconduct, the protocol of accelerated pre-trial investigation, the protocol of accusation, the decision on the application of writ proceedings and sends the criminal case to the court for consideration on the merits;

17) approves the decision of the person conducting the pre-trial investigation to terminate the criminal case or criminal prosecution in full or in part;

18) by court order organize the investigative actions, the results of which the court attaches to the case materials at the request of the procurator;

19) initiate and conclude a procedural agreement;

20) exercise other powers, stipulated by this Code.

1-1. The prosecutor carries out pre-trial investigation in cases of torture.

2. Delineation of powers of the procurators during the pre-trial investigation is determined by the Procurator General of the Republic of Kazakhstan.

The exclusive powers of the head of the procuracy authorities shall be:

- 1) conclusion of a procedural agreement on cooperation;
- 2) cancellation of illegal decisions of the investigator, the interrogating officer, the body of inquiry, as well as the decisions and instructions of the heads of investigation departments and the body of inquiry, the subordinated procurator;
- 3) removal of a criminal case from a person or body, conducting the pre-trial investigation, and transfer it to another person or body for the production of the pre-trial investigation;
- 4) making representations to obtain a consent to the deprivation of immunity, and bringing to justice of those who have privileges from criminal prosecution;
- 5) extension of the periods of criminal investigation;
- 6) consideration of complaints against the actions and decisions of the investigator, the interrogating officer, the body of inquiry, the heads of investigation department and the body of inquiry, as well as the subordinate procurator;
- 7) in violations of the law, the removal of the investigator, the interrogating officer from the production of the pre-trial investigation in the criminal case;
- 8) approval of the decision of the procedural procurator to return the criminal case for further investigation;
- 9) drawing up an indictment;

Footnote. Paragraph 9) of part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

9-1) approval of the decision on the application of writ proceedings, a protocol on a criminal offense, a protocol of accelerated pre-trial investigation, a protocol of accusation and sending a criminal case to court for consideration on the merits;

10) approval of the decision of the person conducting the pre-trial investigation to terminate the criminal case or criminal prosecution in full or in part;

11) coordination of decisions on recognizing a person as a suspect and on qualifying the act of a suspect in cases where the norms of this Code directly impose this duty on the head of the prosecutor's office.

The powers of the head of the prosecutor's office, listed in paragraphs 2), 3), 6), 7), 8), 9), 9-1) and 10) of this part, may be exercised by the heads of structural divisions of the Prosecutor General's Office of the Republic of Kazakhstan, their deputies, heads of structural subdivisions of the prosecutor's offices of the regions and the prosecutor's offices equated to them, providing supervision over legality of the pre-trial stage of the criminal proceedings.

Footnote. Paragraph three of part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up by the person conducting the pre-trial investigation a report on the completion of the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are introduced into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

3. The head of the prosecutor's office body shall have the right to assign the prosecutor conducting supervision pursuant to this article (procedural prosecutor) in a specific criminal case.

The procedural prosecutor exercises supervision over the criminal case from the moment the pre-trial investigation begins, uses the powers provided for by part one of this article, except for the cases provided for by part two of this article, and participates in the court of first instance as a public prosecutor.

The procedural prosecutor is irremovable, but in cases prescribed by the regulatory legal acts of the Prosecutor General of the Republic of Kazakhstan, by decision of the head of the prosecution body, he can be replaced by another procedural prosecutor.

4. The procurator's instructions to the person, conducting the pre-trial investigation, the head of the criminal prosecution body, given in the manner prescribed by this Code shall be mandatory, but may be appealed to a higher procurator. Appealing of the received instructions to the higher procurator shall not suspend their execution.

Footnote. Article 193, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 28.12.2016 № 36-VI (shall be enforced upon expiry of two months after the day its first official publication); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (the order of implementation see Art. 2); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2

for the enactment procedure); dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (for entry into force, see Article 2 ); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023); dated 03.01.2023 No. 188-VII ( shall be enforced sixty calendar days after the date of its first official publication).

#### **Article 194. Production of the pre-trial investigation by the investigation, operational-investigation group**

1. Pre-trial investigation of the case in the event of its complexity or large volume can be assigned to a group of investigators and staff of the body of inquiry (investigation, operational-investigation group), about what a decision shall be made. The head of the investigation department and the body of inquiry shall have the right to make such decision. The decision must indicate all investigators, the staff of the body of inquiry, which assigned to carry out the investigation, including the investigator - the team leader.

The suspected, victim, civil claimant, civil defendant and their representatives should be familiar with the decision on investigation by the group of investigators, staff of the body of inquiry and they shall be explained the right to challenge the head of this group, as well as any investigator, an official of the body of inquiry from the group.

2. The group may include investigators, the staff of the body of inquiry of several bodies, which carry out the pre-trial investigation. The decision to create such a group may be taken at the direction of the procurator and on the initiative of the head of the investigation department, or the body of inquiry. Such a decision is documented with a joint order, issued in compliance with the requirements, specified in the first part of this article.

3. The Prosecutor General of the Republic of Kazakhstan, his deputy, regional prosecutors and prosecutors equated to them, in exceptional cases, when establishing the facts of incompleteness and bias of the investigation, the complexity and significance of the case, may form a group of prosecutors, as well as investigators , interrogating officers and operational officers of one or more bodies conducting pre-trial investigation, while appointing the prosecutor as the head of this group, formalizing this decision with his decision.

**Footnote. Article 194 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 195. The powers of the head of a group**

1. The head of a group by its decision accepts the case to its own production, organizes the work of the group, directs the actions of other investigators and employees of the body of inquiry.



2. Decisions to terminate the criminal prosecution, the criminal case in whole or in part, refer the case to the court for the application of coercive medical measures, join and separate criminal cases, initiate a petition for the extension of the pre-trial investigation, apply preventive measures sanctioned by the court, and their extension, as well as the minutes of the prosecution, the report on the completion of the pre-trial investigation are signed by the head of the group.

Footnote. Part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

3. Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as the accused from the moment the prosecutor draws up the indictment, which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

4. The leader of the group has the right to participate in the investigative actions, conducted by other investigators, personally conduct investigative actions and make decisions in a criminal case in the manner prescribed by this Code.

5. The procurator, appointed by the head, shall have all the powers of the investigator, provided in this Code.

Footnote. Article 195 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force).



## **Article 196. Activities of the bodies of inquiry in cases that are subject to a preliminary investigation**

1. If there are signs of a crime for which a preliminary investigation is necessary, the body of inquiry may commence the pre-trial investigation and make urgent investigative actions for establishing and fixing the traces of the crime: inspection, search, seizure, examination, detention and interrogation of suspected, interrogation of victims and witnesses and other investigative actions. The body of inquiry shall immediately notify the procurator on the detection of a criminal offence and the beginning of the pre-trial investigation.

2. Upon completion of urgent investigative actions, but no later than five days from the date of the start of the pre-trial investigation, the inquiry body, in the absence of questions about jurisdiction, shall be obliged to transfer the case to the investigator of the same body, notifying the prosecutor in writing within twenty-four hours. In case of establishing the circumstances precluding the proceedings on the case, the body of inquiry shall have the right to terminate the criminal case. In other cases, the criminal case shall be transferred to the prosecutor to determine the jurisdiction.

3. After the transfer of the case to the investigator, the body of inquiry can produce investigative, uncover investigative actions, as well as search measures only at the request of the investigator. In the case of a transfer to the investigator of the case, in which it is not possible to find a person who commits a criminal offence, the body of inquiry shall take search measures to determine the person, who committed a criminal offence, with the notification of the investigator on the results.

**Footnote. Article 196 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

## **Article 197. General rules for conducting investigative actions**

1. The person, conducting the pre-trial investigation, involving in investigative actions the persons provided for by law, verifies their identity, clarifies their rights and obligations, as well as the order for conducting investigative action.

2. Production of the investigative action at night is not permitted, except in cases of urgency.

3. The scientific and technological means can be applied in the investigative actions and the evidence-based methods to detect, capture and removal of traces of a criminal offence and material evidence are also used.

4. In the investigative actions it is not allowed to use torture, violence, threats or other illegal means, ill-treatment, as well as endangering the lives and health of the persons involved.

5. The person, conducting the pre-trial investigation is entitled to involve in the investigative actions of other employees of the criminal prosecution body.

6. When conducting the investigative actions, provided for in the thirteenth and fourteenth parts of article 220, article 252, fourth part of Article 254, Article 255, except in cases, provided for in paragraph 2) of the third part of Article 255 of this Code, the involvement of the identifying witnesses is obligatory.

In other cases of conducting the investigative actions, the use of the scientific and technological means for fixing the progress and results shall be obligatory.

In the absence of the scientific and technical means or the impossibility of their use in conducting the investigative actions, the identifying witnesses are involved.

The order of use of the scientific and technical means for fixing the progress and results is determined by the Procurator General of the Republic of Kazakhstan in coordination with the relevant state bodies.

**Footnote. Article 197, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015).**

#### **Article 198. Decisions made in the process of pre-trial investigation**

1. In the process of pre-trial investigation, when making any procedural decision in accordance with this Code, the person conducting the pre-trial investigation shall issue a decision indicating the place and time of its preparation, the name and position of this person, the essence and grounds for the decision being made, articles of this of the Code, on the basis of which the decision was made, except for cases when this Code directly provides for the possibility of making a decision by this person without issuing a separate decision with the reflection of the decision in the protocol of the procedural action.

2. Decisions made by the head of the body of inquiry, the head of the investigative department, the prosecutor, the investigating judge may be formalized as a resolution, except for cases where the norms of this Code expressly provide for the need for the said persons to issue a decision.

**Footnote. Article 198 - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 199. Protocol of the investigative action**

1. Protocol of the investigative action shall be made in the course of the investigative action or immediately after it.

2. Protocol can be handwritten, typewritten or written by computer. To ensure the completeness of the protocol, the short-hand, filming, sound and video recording or other scientific and technical means can be applied. Shorthand, materials, audio and video recordings or other media shall be attached to the protocol and kept at the case.

3. The protocol shall include: date and place of the investigative action; time of its beginning and ending with the nearest minute; position and surname of the person, conducting the investigative action, surname, first name, patronymic (if any) of each person, involved in the investigation.

The protocol sets out the procedural steps in the order in which they occurred, and the circumstances significant for the case identified in their production, as well as statements of persons, involved in the production of investigative action.

In the event of full sound and video recording of the course and results of the investigative action, the person performing the investigative action shall have the right to confine himself to a brief summary of the factual data obtained and the established circumstances that are relevant to the case.

4. The person, conducting the pre-trial investigation in the case of application of Article 97 of this Code shall not provide data on the identity of the victim, his (her) representative, as well as witnesses (identifying witnesses) in the protocol of the investigative action and shall use the alias of the person and signatures, to be elected by the protected person in the protocols of the investigative actions with his (her) participation.

5. If during the investigative action photographing, filming, sound and video recording or other scientific and technical means are applied or the casts and impressions of footprints are made, the drawings, diagrams, plans are compiled, the protocol shall include the scientific and technical means applied in its production, the conditions and procedures for their use, the objects to which these means are used and the results obtained. The protocol must be noted that before the application of scientific and technical means the persons, involved in the conduct of the investigative action are notified about it.

6. The protocol is presented for review to all persons, involved in the conduct of the investigative action. They shall be explained the right to make comments to be included in the protocol. All comments, additions, corrections, made in the protocol must be specified and certified by the signatures of these persons.

7. The protocol shall be signed by the official, prepared it, the interrogated person, interpreter, specialist, identifying witnesses and all other persons, involved in the conduct of the investigative action. In case of refusal to sign or impossibility of signing the protocol of the investigative action, the identification of this fact shall be made in accordance with the seventh and tenth parts of Article 123 of this Code.

8. The protocol shall be attached by photographic negatives and pictures, films, slides, soundtracks, video tapes, and other media, drawings, plans, schemes, casts and impressions of footprints, made in the production of the investigative action.

9. If in the course of the investigative action, according to the results of research the specialist prepares an official document, it shall be attached to the protocol, about what a corresponding note shall be made in the protocol.

**Footnote. Article 199 as amended by the Law of the Republic of Kazakhstan dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication).**

**Article 200. Presentation to address the circumstances that contributed to the commission of a criminal offence and other violations of law**

1. Finding during the criminal proceedings the circumstances, contributed to the commission of a criminal offence, the person conducting the pre-trial investigation may make to the relevant state bodies, organizations, or the persons performing managerial functions in them, the presentation to address these circumstances or other violations of law.

2. Presentations shall be subject to review with mandatory notification of the measures taken within one month.

**Article 201. Prohibition of disclosure of data of the pre-trial investigation**

1. The data of the pre-trial investigation cannot be disclosed. They may be made public only with the permission of the procurator in the extent to which it will be recognized that possible, if it is not contrary to the interests of the investigation and does not infringe the rights and legitimate interests of others.

2. The person, conducting the pre-trial investigation, warns the defense counsel, witnesses, victim, civil claimant, civil defendant or their representatives, expert, specialist, interpreter, identifying witnesses and other persons, involved in the investigation, on the inadmissibility of the disclosure of the data available in the case without his (her) permission, about what the above persons shall give a personal recognizance with warning about the liability.

3. The following are not disclosure of pre-trial investigation data:

1) transfer of information on a criminal case, set out in requests, petitions, applications, complaints and other procedural documents coming from participants in the process in the manner prescribed by this Code;

2) submission of information on a criminal case to a person involved in it by a defense counsel, a representative of the victim on a contractual basis as an expert, specialist, subject to familiarizing him with the responsibility under Article 423 of the Criminal Code of the Republic of Kazakhstan and giving him a written obligation not to disclose the specified information without the consent of the person conducting the pre-trial investigation, or the prosecutor with the issuance of an appropriate receipt;

3) submission of information to the authorized body for the return of assets on the illegal acquisition and withdrawal of assets obtained during criminal proceedings.

**Footnote. Article 201 as amended by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official**

publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).

## **Chapter 25. Recognizing a person as a suspect and determining the qualification of the suspect's act, the qualification of a criminal offense**

**Footnote.** The title of chapter 25 is as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).

### **Article 202. Announcement on the recognition of a person as the suspected**

1. If there is data, including those provided for in paragraphs 1) - 4) of part two of Article 128 of this Code, indicating that a person has committed a crime, if there is no need to apply procedural detention to him, the pre-trial investigation body issues a decision on recognition person as a suspect, who, with the materials of the criminal case, confirming its validity, is immediately sent to the prosecutor for approval.

1-1. The prosecutor immediately makes a decision to agree on the decision to recognize a person as a suspect or a reasoned decision refuses to approve it.

1-2. In urgent cases, the person conducting the pre-trial investigation has the right to issue a decision on recognizing the person as a suspect and to interrogate him in accordance with the rules provided for in Articles 209 and 216 of this Code, with the immediate direction to the prosecutor of the decision on recognizing the person as a suspect for approval.

The decision shall be accompanied by the materials of the criminal case and the record of the interrogation of the person as a suspect.

The prosecutor, having studied the materials of the criminal case and the record of interrogation of a person as a suspect, immediately:

- 1) agree on a decision on recognizing a person as a suspect;
- 2) issue a reasoned decision to refuse to approve the decision to recognize the person as a suspect with the recognition of the interrogation as inadmissible as evidence and return the materials of the criminal case to the person conducting the pre-trial investigation, if necessary, indicating the performance of certain investigative and (or) procedural actions. If the prosecutor refuses to approve this decision, the person ceases to be in the position of a suspect

The person conducting the pre-trial investigation shall notify the suspect or the person in respect of whom the prosecutor has refused to agree on the decision to recognize him as a suspect about the decision taken by the prosecutor.

2. The decision on the recognition of a person as the suspected shall specify:

1) the time and place of its preparation; a person, who made the decision; the surname, name and patronymic (if any) of the person, recognized as the suspected, the date, month, year and place of his (her) birth;

2) in the commission of what criminal offence a person is suspected.

The decision to recognize a lawyer, prosecutor, investigator, interrogating officer, head of the investigation department, head of the body of inquiry as suspects when they commit crimes related to the performance of professional and official duties, is agreed with the head of the body of the prosecutor's office.

Decision on the recognition of a person as the suspected shall be declared to that person. The person, conducting the pre-trial investigation shall clarify the person against whom the decision to recognize as the suspected is made, the rights of the suspected, as is noted in the decision, and shall give him (her) a copy of this decision.

3. Excluded by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI ( shall be enforced ten calendar days after the day of its first official publication).

Footnote. Article 202 as amended by the Law of the Republic of Kazakhstan dated 19.12. 2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

### **Article 203. The definition of the qualification of an act of the suspected**

1. If there is sufficient evidence to support the suspicion against a person, in the commission of a crime, the procurator, the person, conducting the pre-trial investigation, shall make a reasoned decision on the qualifications of an act of the suspected. The decision on the qualification of an act shall be made within a reasonable time.

The resolution on the qualification of the act of a lawyer, prosecutor, investigator, interrogating officer, head of the investigation department, head of the body of inquiry when they commit crimes related to the performance of professional and official duties, is agreed with the head of the body of the prosecutor's office.

1-1. The person conducting the pre-trial investigation, immediately after the issuance of a decision on the qualification of the deed of the suspect, sends it to the prosecutor for approval, except for the cases provided for by part 1-3 of this article.

1-2. The prosecutor shall immediately make a decision to agree on the resolution on the qualification of the act of the suspect or, by a reasoned resolution, refuse to approve it.

1-3. If a decision is issued to qualify the act of a suspect detained in accordance with Article 128 of this Code, the verification of the legality of the decision and its approval shall be carried out by the prosecutor simultaneously with the decision on the issue of approval of the petition for authorization of detention or house arrest.

2. The procurator, the person conducting the pre-trial investigation, shall inform the suspected of the day for announcement of the decision on the qualifications of an act of the



suspected, and at the same time shall explain to him (her) the right to invite a defense counsel or ask to ensure his (her) participation.

3. In cases in which, in accordance with the rules of this Code the participation of the defense counsel is necessary, the procurator, the person conducting the pre-trial investigation, shall take measures to ensure his or her attendance, if the defense counsel is not invited by the suspected or his (her) legal representative or other persons on his (her) behalf, or his (her) consent.

4. In determining the qualification of an act of the suspected, a copy of the identity document, certified by the procurator, the person conducting the pre-trial investigation shall be attached in the case materials, if it is not already done before.

5. In the absence or loss by the suspected, accused of the identity document, its documentation shall be made by the authorized body in the manner, prescribed in consultation with the state bodies engaged in pre-trial investigation.

**Footnote. Article 202 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 204. Decision on the qualification of an act of the suspected**

1. The decision on the qualification of an act of the suspected shall specify:

1) the time and place of its preparation; a person who made the decision; the surname, first name and patronymic (if any) of the suspected, the date, month, year and place of his (her) birth;

2) a description of the crime, for committing of which the person is suspected, with indication of the time and place of its commission, as well as other circumstances, to be proved in accordance with Article 113 of this Code;

3) the Criminal Law (article, part, paragraph) providing for the liability for the crime, in committing of which the person is suspected.

2. In suspicion of several criminal offences, the decision on the qualification of an act of the suspected shall specify in the commission of what specific actions (inaction) the person is suspected, on each of the articles (parts, paragraphs) of the criminal law.

**3. Excluded Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

**Footnote. Article 204 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 205. Mandatory attendance of the suspected**



1. The suspected, against whom a preventive measure in the form of detention in custody is not selected, shall be called for interrogation by written notice. Notification may also be transmitted by telephone or telegram or other means of communication.

2. The notice shall specify the person called, where and to whom, the day and hour of attendance, as well as the consequences of absence.

3. The notice shall be given to the suspected on receipt, and in case of his (her) temporary absence is handed over to an adult member of the family to transfer the suspected or is transferred to the housing organization or administration of the place of residence or in the administration of the place of work, who are obliged to submit notice for the suspected, called for interrogation. The suspected may be called by using other means of communication. In the case of finding the suspected outside of the Republic of Kazakhstan and its evasion to appear in pre-trial investigation bodies, a notice shall be published in the republican mass media, as well as in public telecommunication networks, and when his (her) location is known, in the mass media at the location of the suspected.

4. The suspected, against whom, a preventive measure in the form of detention in custody is not selected, shall appear on call of the person conducting the pre-trial investigation, at the appointed time.

5. About the reasons for failure to appear at the appointed time and if there are valid reasons, the suspected shall notify the person, conducting the pre-trial investigation.

6. In case of absence without good reason, the suspect can be convoyed.

7. The suspected, detained in custody, shall be called and convoyed through the administration of places of detention.

#### **Article 206. The order for declaration to the suspected of the decision on the qualification of his (her) act**

1. The decision on the qualification of an act of the suspected shall be declared in the presence of a defense counsel, if the participation of the defense counsel is required by law or requested by the suspected, and no later than twenty-four hours after the issuance of the decision. In case of absence of the suspected or his (her) defense counsel, the decision may be declared upon expiration of twenty-four hours.

2. The suspected that is conveyed, the decision shall be declared on the day of the conveyance. In this case, the person conducting the pre-trial investigation shall take measures to ensure the participation of the defense counsel when declaring the decision to the suspected on the qualification of his (her) act in those cases, where the participation of the defense counsel is required by law.

3. The person, conducting the pre-trial investigation, ascertaining the identity of the suspected and the instruction of the defense counsel to defend, declares the suspected and his (her) defense counsel a decision on the qualification of an act of the suspected.

4. The person, conducting the pre-trial investigation shall clarify to the suspected the essence of the suspicion.

5. Execution of the actions, specified in the third and fourth parts of this Article shall be certified by the signatures of the suspected, the defense counsel and the investigator on the decision of the qualification of an act of the suspected with the date and hour of its declaration.

6. In the case of failure of the suspected to sign, the person conducting the pre-trial investigation, and the defense counsel, if he (she) participated in the declaration of the decision on the qualification of an act of the suspected, shall certify in the decision on the qualification of an act of the suspected that the text of the decision is declared.

7. The suspected is handed a copy of the decision on the qualification of an act of the suspected.

8. In the case of finding the suspected outside the Republic of Kazakhstan and his (her) evasion to appear in the criminal prosecution bodies the person, conducting the pre-trial investigation, and in the case of the appearance of the defense counsel -the defense counsel certifies on the decision of the qualification of an act of the suspected that the suspicion may not be declared in connection with his (her) location outside the Republic of Kazakhstan and evasion to appear in the pre-trial investigation bodies.

If the location of the suspected is known, a copy of the decision shall be sent to him (her) with the means of communication, including by mail. If necessary, the person conducting the pre-trial investigation, with the consent of the procurator shall have the right to organize the publication of reports on the qualification of an act of the suspected in the republican mass media, the mass media on the location of the suspected, as well as in public telecommunication networks.

#### **Article 207. Changing or supplementing the qualification of an suspect act, the qualification of a criminal offense**

**Footnote. The title of Article 207 is as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

1. If in the course of the pre-trial investigation grounds arise for changing or supplementing the qualification of the act of the suspect, the qualification of the criminal offense, the prosecutor, the person conducting the pre-trial investigation are obliged in respect of the suspected person in compliance with the requirements of Article 204 of this Code, and if the suspected person has not been identified, in compliance with part 1-1 of this article draw up, respectively, a new resolution on the qualification of the act of the suspect or a resolution on the qualification of a criminal offense, subject to agreement with the prosecutor

The decision to change or supplement the qualification of the deed of the suspect is announced to the suspect in the manner prescribed by Articles 205, 206 of this Code.

The final qualification of the act of the suspect and the qualification of the criminal offense are determined by the date of the last ruling.

1-1. The decision to change or supplement the qualification of a criminal offense must indicate: the place and time of its preparation; by whom the resolution was drawn up; a description of the criminal offense committed by an unidentified person, indicating the time and place of its commission, as well as other circumstances subject to proof in accordance with Article 113 of this Code; criminal law (article, part, paragraph), according to which the committed act is qualified.

2. If during the pre-trial investigation the announced suspicion is not confirmed in any part, the investigator terminates the criminal prosecution in this part by his (her) decision and shall notify the suspected and other participants to the proceedings with the presentation of a copy of the decision.

**Footnote. Article 207 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Chapter 26. Interrogation and confrontation Article 208. Procedure to call for interrogation**

1. A witness, victim, suspected is called for interrogation by the person conducting the pre-trial investigation, by notice.

The notice shall specify the surname, first name, patronymic (if any) of a person, called for interrogation, the surname, first name, patronymic (if any), position of the person to whom the person is calling, the address and time to appear for interrogation (day, hour), the right to invite a lawyer, as well as the consequences of failure to appear without good reason.

The notice shall be given to the person, who called for interrogation on receipt or transmitted by means of communication. In the temporary absence of the person, called for interrogation, the notice shall be given to an adult member of his (her) family or shall be transferred to the housing organization or the administration of the place of residence or in the administration of the place of work or on behalf of the person, conducting the pre-trial investigation, other persons and organizations that are required to transfer the notice to the person, called for interrogation.

The person may be called by using other means of communication.

The suspected, detained in custody, shall be called and convoyed for interrogation through the administration of the places of detention.

2. The person, called for interrogation, shall appear at the appointed time or in advance notify the person, conducted the pre-trial investigation of the reasons for non-attendance. In case of absence without good reason, the person called for interrogation, may be convoyed or can be applied other coercive procedural measures provided for in this Code.

3. The person who is not attained the age of eighteen, shall be called in for interrogation by his (her) legal representatives, and in their absence through the guardianship authorities or through the administration at his (her) place of work or study.

4. A soldier shall be called for interrogation by the command of the military unit.

#### **Article 209. The place, time and duration of the interrogation**

1. Interrogation shall be conducted at the place of the pre-trial investigation. The person, conducting the pre-trial investigation, may, if it deems necessary, carry out the interrogation at the location of the interviewee.

2. The interrogation is conducted in the daytime, except in cases of urgency.

3. The interrogation cannot go on continuously for more than four hours. Continuation of the interrogation is allowed after a break of not less than one hour for rest and meals, and the total length of interrogation during the day shall not exceed eight hours. In the case of medical indications, the length of the interrogation shall be established on the basis of the written doctor's conclusion.

3-1. Continuous interrogation shall not exceed three hours, and the total duration of interrogation shall not exceed five hours:

1) a pregnant woman or a woman with a dependent minor child;

2) women aged fifty-eight and over;

3) men aged sixty-three and over.

4. The interrogation of a minor shall be carried out during the day and cannot continue without interruption for more than two hours, and in total - more than four hours a day. In the case of obvious fatigue, the interrogation of a minor shall be terminated before the expiry of that period.

**Footnote. Article 209 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 210. General rules of interrogation**

1. Before interrogation, the person conducting the pre-trial investigation shall make sure the personality of the interrogated. If there is doubt about speaking of the interrogated in language in which the proceedings are conducted, it is necessary to define, what language he (she) wishes to testify. Where necessary, the interpreter is provided to him (her) free of charge.

2. The person, called for interrogation, shall be informed in what position, on what criminal case, he (she) will be interrogated, and he (she) shall be explained the rights and obligations provided in this Code, as is noted in the protocol.

The persons, called in one case, shall be interrogated separately from other interrogated persons. The person performing the pre-trial investigation, shall take measures to ensure that

the interrogated called in one case, cannot communicate with each other prior to the interrogation.

3. The interrogation begins with a proposal to talk about the circumstances of the case known to the interrogated. If the interrogated talks about the circumstances that are clearly irrelevant, he (she) must be indicated on it.

4. At the end of a free story the interrogated may be asked questions aimed at clarifying and completing the testimony. Ask leading questions is prohibited.

5. If the testimony is associated with digital data or other information that are difficult to keep in mind, the interrogated shall have the right to use the documents and records which, at the request or with the consent of the interrogated may be attached to the protocol.

6. If during interrogation the interrogated is presented material evidence and documents, is announced protocols of other investigative actions or is played audio and (or) video recordings, filming of investigative actions, this shall be recorded in the protocol of the interrogation. The testimony of the interrogated person, given by him (her) on the submitted evidence, declared protocols, played sound and (or) video recordings, filming of the investigative actions shall be written in the protocol.

7. The interrogation of a witness, victim, suspect, accused with complete loss of speech and (or) hearing is carried out with the participation of a person who has sign language translation skills. The participation of this person in the interrogation is reflected in the protocol.

8. If the person has mental or other serious illness, his (her) interrogation shall be carried out with the permission of the doctor and in his (her) presence.

9. By decision of the person, conducting the pre-trial investigation, as well as at the request of the suspected, accused, witness or victim the sound and video recordings can be applied during the interrogation. The interrogated person shall be informed on the application of sound and video recordings prior to the interrogation.

10. Sound and video recordings should reflect the entire course of the interrogation and contain all testimony of the interrogated persons. Sound and video recording of the part of interrogation, as well as repetition especially for recording the evidence and data, given during the same interrogation, is not permitted.

11. At the end of the interrogation, the sound and video recordings shall be completely played to the interrogated. Additions to the sound and video recording of evidence, made by the interrogated, shall also be recorded on the sound and video recordings. Sound and video recordings are ended by the statement of the interrogated, certifying their correctness.

12. Evidence, obtained during the interrogation with the use of sound and video recordings shall be recorded in the protocol of the interrogation. The protocol of the interrogation shall also contain: a note on the use of sound and video recordings and notification of the interrogated person on it; the information on scientific and technical means, conditions for sound and video recordings and the facts of their suspension, reason for and

duration of the stop; statement of the interrogated about the use of sound and video recordings ; a note on playing sound and video recordings to the interrogated; certification of the correctness of the protocol and the sound and video recordings by the interrogated and the person conducted the pre-trial investigation. Sound and video recordings are kept in the case and at the end of the pre-trial investigation shall be sealed.

**Footnote. Article 210 as amended by the Law of the Republic of Kazakhstan dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).**

**Article 210-1. The procedure for interrogation by a lawyer of a person allegedly in possession of information related to a criminal case**

1. A lawyer participating in a case as a defense counsel, a representative of the victim, has the right, on the basis of the voluntary consent of the person who allegedly possesses information related to the criminal case, to interview him.

2. Before conducting a questioning, a lawyer shall be obliged to explain to the person who allegedly possesses information related to the criminal case:

- 1) the right to give explanations to a lawyer voluntarily without coercion, including refusing to give explanations that may lead to prosecution for himself, his spouse (wife) or close relatives for committing a criminally punishable act or administrative offense;
- 2) the right to give explanations in their native language or the language they speak;
- 3) the right to record explanations in the act of questioning in one's own hand;
- 4) the inadmissibility of disclosing information on a criminal case that has become known to him from a lawyer without the consent of the person conducting the pre-trial investigation and the prosecutor and liability under Article 423 of the Criminal Code of the Republic of Kazakhstan.

3. After the actions specified in part two of this article, the lawyer invites the interviewed person to tell everything he knows about the case and answer questions. The explanations and clarifications of the rights and obligations provided for in part two of this article, obtained in this way, are fixed by an act of interrogation, which must be presented for reading to the interrogated person and certified by his signature, as well as by the signature of the lawyer who conducted the interrogation.

4. The course and results of the interrogation are reflected in writing or on electronic media, which, at the request of a lawyer, are subject to attachment to the criminal case in the manner prescribed by this Code.

5. The use of scientific and technical means during the survey is mandatory. Information about the technical means used for such a recording is subject to mandatory reflection in the survey report.

**Footnote. Chapter 26 is supplemented by Article 210-1 in accordance with the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

## **Article 211. Additional and repeated interrogations**

1. Additional and repeated interrogations shall be conducted in compliance with the rules, provided for in Article 210 of this Code.

2. Additional interrogation is conducted in cases, when:

1) the interrogated person is willing to supplement or clarify the previously given testimony on the circumstances of the case under investigation due to their lack of clarity or incompleteness;

2) there are new questions significant to the case to the previously interrogated person.

3. Repeated interrogation is conducted in the following cases, when:

1) procedural rules of the first interrogation are significantly violated;

2) the interrogated person refuses to earlier testimony and is willing to provide new evidence.

## **Article 212. Protocol of the interrogation**

1. The progress and results of the interrogation are reflected in the protocol, made in compliance with the requirements of Article 199 of this Code.

Testimony shall be written in the first person and literally as possible. Questions and answers shall be recorded in the order, which took place during the interrogation. The protocol shall also indicate the questions of the persons involved in the interrogation, that have been designated by the person conducting the pre-trial investigation, or to which the interrogated refuses to answer, with indication of the reasons for withdrawal or refusal.

2. The protocol of the first interrogation shall indicate the identity of the interrogated, including: surname, first name, patronymic (if any), date and place of born, nationality, ethnicity, education; marital status, place of employment, occupation or position, place of residence, as well as other information that may be necessary in the circumstances of the case, in accordance with the rules of the fourth paragraph of Article 199 of this Code.

In subsequent interrogation the information on the identity of the interrogated, if they are not changed, may be limited by indication of his (her) surname, name and patronymic (if any)

The protocol of the interrogation of the suspected indicates the presence or absence of previous conviction.

3. The interrogated person can make charts, drawings, pictures, diagrams, which shall be attached to the protocol, as it is noted in the protocol.

4. The protocol shall indicate all persons, participated in the interrogation. Each of them should sign the protocol, as well as all the additions and clarifications made to it.

5. After a free story, the interrogated shall have the right to present his (her) handwritten evidence. After the presentation of handwritten evidence and its signing by the interrogated,



the person conducting the pre-trial investigation may ask complementary and clarifying questions.

6. At the end of the interrogation, the protocol shall be presented for reading to the interrogated or disclosed upon his (her) request. The requirements of the interrogated to make the additions and clarifications in the protocol shall be binding.

7. The fact of acquaintance with the testimony and the accuracy of their records shall be certified by the interrogated with his (her) signature at the end of the protocol. The interrogated shall also sign each page of the protocol. In case of refusal of the interrogated to sign the protocol, the person conducting the pre-trial investigation, finds out the reasons for refusal, put them in the protocol and certifies the protocol by his (her) signature.

8. If the interrogated due to physical disability or other reasons is unable to personally sign the protocol, at his (her) request the protocol shall be signed by the defense counsel, representative, or other person, who the interrogated trusts, as is noted in the protocol.

9. If an interpreter or a person, having the sign language skills participated in the interrogation, they shall also sign each page and the protocol as a whole. He (she) also signs the translation of handwritten testimony of the interrogated.

### **Article 213. Features of interrogation with using scientific and technological means in video communication mode (remote interrogation)**

1. Interrogation of a victim or witness may be produced by using scientific and technological means in video communication mode (remote interrogation) with their calling to the body of the pre-trial investigation of the area or region, city of republican significance, capital, where they are located or reside. During the remote interrogation, the participants in the procedural action live directly perceive the testimony of the interrogated person.

Remote interrogation is conducted in the following cases:

1) the inability of a person to arrive to the body, conducting the criminal proceedings at the place of investigation (review) of the criminal case for health or other valid reasons;

2) the need to ensure security of the person;

3) the interrogation of a minor or under-age witness or victim;

4) the need to ensure the compliance with the periods of pre-trial investigation, judicial proceedings;

5) the availability of the reasons that give reason to believe that the interrogation will be difficult or associated with unnecessary costs.

2. The decision to produce remote interrogation shall be taken by the person, conducting the investigation of the case, on his (her) own initiative or at the request of a party or other participants to the criminal proceedings or as directed by a procurator with sending the order in the manner, provided in Article 188 of this Code.

Use of scientific and technical means and technologies in remote interrogation should ensure the quality of picture and sound, as well as the information security.

3. The progress and results of the investigative actions, conducted as a video shall be recorded in the protocol, compiled by the body for the pre-trial investigation, executing the order, in accordance with the requirements of Article 199 of this Code. The protocol of the remote interrogation shall contain information on the scientific and technical means of video, with helping of which the investigative action is conducted.

Requirements of the interrogated to make additions and clarifications in the protocol shall be binding.

Protocol after its signing shall be sent to the person, conducting the investigation of the case.

4. In order to ensure the safety, a person at his (her) own request may be interrogated in a video communication with a change in appearance and voice, excluding his (her) recognition.

#### **Article 214. Features of interrogation of the witness and the victim**

1. Before interrogation, the person conducting the pre-trial investigation, find out the relationship of the witness, the victim to the suspected, explain to them the procedural rights and obligations, warns of criminal liability for refusing to testify. In this case, the person conducting the pre-trial investigation shall clarify that the witness, the victim has the right to refuse to give testimony, incriminating of committing a criminal offence of himself, wife (husband), close relatives and the priest also has the right not to testify against those who confided to him in confession. The witness, victim, who do not exercise this right are warned of criminal liability for perjury.

2. If the witness appears to the interrogation with a lawyer, invited by him (her) to provide legal assistance, the lawyer shall present during the interrogation. At the end of the interrogation, the lawyer may bring comments and submit petitions on the merits of the interrogation that shall be noted in the protocol of the interrogation.

3. The rest of the interrogation of the witness and the victim shall be conducted according to the rules of Article 210 of this Code.

#### **Article 214-1. Special aspects of the interrogation of a witness entitled to defense**

1. Before the start of the interrogation, the person conducting the pre-trial investigation shall inform the witness who has the right to defense, the staple of the statement, report or testimony about a criminal offense, which indicates the person who committed it. The person conducting the pre-trial investigation shall also explain to the witness who has the right to defense, his/her rights provided for in part two of article 65-1 of this Code, including the right to refuse to testify.

2. In other respects, the interrogation of a witness who has the right to defense shall be carried out in accordance with the rules of Article 210 of this Code.

**Footnote. Chapter 26 as supplemented by article 214-1 in accordance with Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the**

enactment procedure); dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 215. Features of the interrogation of a minor witness or victim**

1. A teacher and (or) a psychologist shall be invited to participate in the interrogation of a witness or victim under the age of fourteen years, and at the discretion of the person conducting the pre-trial investigation, also in the interrogation of a witness or victim under the age of fourteen to eighteen years. During the interrogation of a minor witness or victim, their legal representatives shall have the right to present.

2. Witnesses and victims under the age of sixteen years shall not be warned about the liability for refusal to testify and perjury. In explaining such witnesses and victims of procedural rights and liabilities they shall be instructed to speak only the truth. Minor witness and victim shall be explained the right to refuse to give testimony, incriminating of committing a criminal offence of themselves or close relatives.

3. If the persons, mentioned in the first part of this article are involved in the interrogation, they shall be explained the right to make comments on the violation of human rights and legal interests of interrogated persons, to be entered in the protocol, as well as with the permission of the person conducting the pre-trial investigation, they may ask questions to the interrogated. The person conducting the pre-trial investigation shall be entitled to disallow the question, but he (she) shall bring it in the protocol and indicate the reason for removal.

#### **Article 216. Features of the interrogation of a suspected**

1. Prior to the interrogation, the person conducting the pre-trial investigation, informs the suspected, in committing what criminal offence he (she) is suspected, and explains him (her) his (her) rights under Article 64 of this Code, including the right to refuse to testify.

2. Explaining to the suspected the essence of the suspicions, the person conducting the pre-trial investigation, finds out whether the suspected recognizes the guilt in whole or in part, or deny his (her) guilt in a criminal offence.

Refusal of the suspected to answer is regarded as non-recognition of his (her) guilt.

3. The interrogation begins with a proposal to the suspected to testify about the suspicions and all other circumstances that may be relevant to the case.

4. Participation of defense counsel is mandatory in the cases provided for in Article 67 of this Code, subject to the provisions of the second part of Article 69 of this Code.

5. The rest of the interrogation of the suspected shall be carried out according to the rules of Article 210 of this Code.

#### **Article 217. Features of the interrogation by the investigating judge of the victim, witness (deposition testimony)**

1. The prosecutor, investigator, head of the body of inquiry, the suspect or his lawyer, participating in the case as a defense counsel, as well as the lawyer who is the representative of the victim, have the right to petition for the interrogation by the investigating judge of the person who is the victim, the witness, if there are grounds to believe that their later interrogation during a pre-trial investigation or court session may not be possible due to objective reasons (permanent residence outside the Republic of Kazakhstan, travel abroad, poor health, security measures), as well as in order to exclude subsequent interrogations of minor witnesses and victims to exclude psychotraumatic effects.

The pre-trial investigator attaches to the application the materials of the criminal case confirming the need to deposit the testimony of the victim or witness.

2. The investigating judge considers the petition within twenty-four hours from the moment of its receipt and, based on the results, issues a reasoned decision to satisfy the petition or refuse to satisfy it. If the petition is satisfied, the investigating judge shall set the time for interrogation at the first opportunity, of which the prosecutor, the suspect and his lawyer participating in the case as a defense counsel, as well as the lawyer representing the victim shall be notified. The decision of the investigating judge to refuse to satisfy the petition is appealed and reviewed at the prosecutor's petition in the manner prescribed by Article 107 of this Code. The refusal of the investigating judge to satisfy the petition does not prevent the persons referred to in the first part of this article from reapplying in the event of circumstances indicating the existence of grounds for sending a petition to the court for deposition of evidence. An application for deposition of testimonies of minors is subject to mandatory satisfaction.

3. Interrogation by the investigating judge of the victim and the witness is carried out in the presence of the prosecutor, the suspect (if any), his lawyer participating as a defense counsel, the lawyer representing the victim, and, if necessary, other participants in the process . A suspect shall not be summoned for interrogation if the presence of the suspect during interrogation endangers the safety of the victim or witness. Ensuring the appearance of persons for participation in the court session when depositing evidence is assigned to the persons who filed a petition with the investigating judge. In order to summon a person, the defender of the suspect may apply to the investigating judge for assistance in securing the person's appearance for interrogation.

In connection with the absence for a valid reason of the prosecutor, defense counsel, lawyer, who is the representative of the victim, the suspect, the interrogation may be postponed, if the circumstances listed in the first paragraph of the first part of this article do not prevent this.

4. Interrogation and keeping of the protocol in the interrogation by the investigating judge shall be made in compliance with the rules of Articles 347, 369, 370, 371 of this Code.

5. The minutes of the court session in which the evidence of the person being questioned, deposited by the investigating judge, shall be signed by the judge and the secretary of the

court session. Participants in the proceedings who are present when depositing their testimony may receive a copy of the trial transcript and submit their comments thereon within five days of signing it. Comments on the minutes shall be considered by the investigating judge on the day of their receipt with a decision on their adoption or rejection. After that, the minutes of the court session, the comments thereon, if any, and the judge's decision to consider them shall be sent to the person conducting the pre-trial investigation for inclusion in the criminal case file.

Footnote. Article 217, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 09.04.2016 № 501-V (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 118-VI dated 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

#### **Article 218. Confrontation**

1. The person conducting the pre-trial investigation, shall be entitled to carry out a confrontation between two previously interrogated persons, if there are significant contradictions in their testimony, to clarify the reasons of these contradictions.

2. A defense counsel, a teacher and (or) a psychologist, a doctor, an interpreter and the legal representative of the interrogated person may attend at the confrontation in the cases provided for in this Code.

3. At the beginning of the confrontation it is clarified whether the persons, between whom the confrontation is held, know each other, and in what relations they are. The witness and the victim shall be warned of criminal liability for refusing to testify, avoiding to testify and perjury, as well as the interrogated persons shall be clarified the right not to testify against him(her)self, wife (husband) and their close relatives, as well as the priest against those who confided him (her).

4. The persons, called to confront shall be alternatively invited to give evidence about the circumstances of the case, to clarify which the confrontation is held. After that, the person conducting the pre-trial investigation asks questions. The persons, called to confront, with the permission of the person conducting the pre-trial investigation, may ask questions to each other.

5. During the confrontation, the person conducting the pre-trial investigation shall have the right to present the attached to the case material evidence and documents.

6. Announcement of testimony, given by the participants of the confrontation at previous interrogations shall be permitted after their testimony at the confrontation and entering them in the protocol.

7. The process and results of a confrontation shall be reflected in the protocol, compiled by the rules provided for in Article 199 of this Code.

8. The person conducting the pre-trial investigation introduces the participants to the confrontation with the content of the protocol. The interrogated persons shall have the right to request amendments and additions to the protocol. The protocol of confrontation shall be signed by the person conducting the pre-trial investigation and interrogated persons. Each interrogated person shall sign his (her) testimony and each page of the protocol.

## **Chapter 27. Inspection, examination Article 219. Inspection**

In order to detect and identify traces of a criminal offence and other material objects, clarify the situation of the accident and to establish the circumstances relevant to the case, the person conducting the pre-trial investigation makes the inspection of the territory, buildings, objects, documents, survivors, corpses of animals. Instructions of the person conducting the inspection shall be binding for all participants in this investigative action.

### **Article 220. General rules of inspection**

1. Inspection is usually performed immediately, when it becomes necessary.
2. The person conducting the pre-trial investigation, after receiving a statement or a report of a criminal offence, shall immediately arrive at the scene and inspect.
3. In case of inability to timely arrival of the person conducting the pre-trial investigation, the inspection shall be carried out by the interrogating officer or another employee of the body of inquiry, which received a statement or a report.
4. Employees of the body of inquiry are obliged to assist in the inspection and on behalf of the person conducting the pre-trial investigation, to carry out the necessary measures to protect the scene, identify eyewitness, detection and detention of persons who committed a criminal offence, evacuation of suffered persons, transportation of the dead, suppression of the continuing and prevention of the repeated criminal offences and the elimination of other consequences of the accident.
5. The examination shall be carried out with the use of scientific and technical means of fixing the course and results, and in the case provided for in Parts 13 and 14 of this Article, with the participation of witnesses.
6. If necessary, inspection is carried out with the participation of the suspected, victim, witness, as well as a specialist.
7. Inspection of the detected traces and other material objects shall be carried out on the site of an investigative action. If inspection takes a long time or inspection on the site of detection is much more difficult, the objects must be removed, packed, sealed and delivered without damage to other convenient place to explore.

8. All detected and seized during the inspection objects must be made understood to other participants in the inspection, as is noted in the protocol.

9. Only those objects that may be relevant to the case shall be seized. The confiscated objects shall be packed, sealed and certified by the signature of the person, conducting the pre-trial investigation, and identifying witnesses during their involvement.

10. Persons, involved in the inspection, shall have the right to pay attention of the person, conducting the pre-trial investigation, to all that, in their conclusion, would assist in clarifying the circumstances of the case.

11. Where necessary during inspection the measurements are made, plans and schemes of the inspected facilities are drawn up, as well as photographs and imprinting by other means shall be made, as is noted in the protocol, which is attached to these materials.

12. Inspection of a living person is carried out in the form of visual, external examination of the clothes in which he (she) dressed, and exposed parts of the body, the process and the results of which shall be reflected in the protocol of the investigative action.

13. Inspection of a premise is carried out only with the consent of the adults residing in it or with the sanction of the investigating judge. If the persons residing in it are minors or knowingly suffering from mental or other serious illnesses or object to the inspection, the person conducting the pre-trial investigation shall issue a resolution on compulsory examination, which must be sanctioned by the investigating judge. In case of refusal to give a sanction, the inspection shall not be performed.

13-1. If it is necessary to carry out a compulsory inspection of residential premises, the person conducting the pre-trial investigation shall issue a resolution on the inspection and send it to the investigating judge.

The decision shall be accompanied by certified copies of the materials of the criminal case , confirming the need for the examination.

A copy of the decision is sent to the procurator at the same time.

**13-2. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

13-3. The decision to conduct an inspection shall be considered by the investigating judge immediately after the materials are submitted to the court.

13-4. Having considered the decision and the submitted materials, the investigating judge shall sanction or with a reasoned decision refuse to authorize the inspection. The decision of the investigating judge shall be sent to the person conducting the pre-trial investigation.

14. If the dwelling is a place of incident and the inspection of the dwelling is urgent, the inspection of the dwelling may be carried out by order of the person conducting the pretrial investigation, but the materials may be forwarded to the investigating judge within 24 hours.

A copy of the decision is sent to the procurator at the same time.



The investigating judge verifies the legality of the examination and issues an order on its legality or illegality, which is attached to the case file.

If the decision on the illegality of the inspection is taken, its results may not be admitted as evidence in the case.

15. When inspection of the premise, the presence of living in it an adult must be ensured. In case of failure of his (her) presence, the representatives of the local executive body shall be invited.

16. Inspection in the premises and on the territory of organizations, as well as in the premises and territories used by individual entrepreneurs in entrepreneurial activities or by persons engaged in private practice, is carried out in the presence of representatives of their administration or owners, users or tenants of premises, territories. In case of impossibility of their presence, representatives of the local executive body are invited.

16-1. If the persons referred to in part sixteen of this article object to the inspection, the person conducting the pre-trial investigation shall issue a decision on a forced inspection, which must be sanctioned by the investigating judge.

In case of refusal to give a sanction, the inspection is not carried out.

16-2. The procedure for authorizing by the investigating judge a forced inspection of the premises and territories specified in part sixteen of this article shall be carried out in accordance with the rules provided for by parts 13-1, 13-3 and 13-4 of this article.

16-3. In cases where the premises or territory used by organizations, as well as individual entrepreneurs in entrepreneurial activities or persons engaged in private practice, is the scene of an incident, the sanction of the investigating judge for their inspection is not required.

17. Inspection of the premises, occupied by diplomatic missions, as well as the premises, inhabited by members of diplomatic missions and their families, may be made only at the request or with the consent of the head of the diplomatic mission or his (her) substitute, and in his (her) presence. Consent of the diplomatic representative is sought through the Ministry of Foreign Affairs of the Republic of Kazakhstan. The presence of a procurator and a representative of the Ministry of Foreign Affairs of the Republic of Kazakhstan shall be mandatory during the inspection.

18. If for any reason parts of the object are unexplored at the first inspection, their additional inspection shall be made.

19. Repeated inspection of the same object can be carried out:

1) when the conditions of the initial inspection were unfavorable for the efficient perception of the object;

2) when, after initial inspection the new information can be obtained;

3) if the initial inspection is carried out poorly.

**Footnote. Article 220 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official**

publication); dated 12.07.2018 № 180-VI (shall be enforced ten calendar days after the date of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication).

#### **Article 221. Inspection and storage of material evidence**

1. Items found during inspection of the scene, place or premises, seized during the search, seizure, investigative experiment or other investigative actions or submitted at the request of the person conducting the pre-trial investigation, organizations and citizens, shall be subject to inspection under rules of Article 220 of this Code.

2. After inspection, these items can be recognized in accordance with the rules of Article 118 of this Code as material evidence. The person, conducting the pre-trial investigation shall issue a decision on recognition of the item as material evidence, and attachment of it to the case. The same decision shall resolve the issue of leaving of real evidence in the case or its deposit to the owner or other persons or organizations.

3. If the items due to their large size or other reasons cannot be kept in the criminal case, they must be sealed by means of a photo or video, if possible, sealed and stored in a location specified by the person conducting the pre-trial investigation. The sample material evidence may be attached to the case. The appropriate certificate about the location of the material evidence shall be in the case.

The order of seizure, registration, storage, transfer and destruction of material evidence, as well as keeping money in local and foreign currency, seized by the body, conducting the pre-trial investigation shall be determined by the Government of the Republic of Kazakhstan.

4. Material evidence that is subject to quick damage, if it cannot be returned to the owner, shall be handed over to the appropriate organizations, determined by the local executive body, for use as intended or for sale with the payment of the received amounts to the deposit of the body conducting the pre-trial investigation. Material evidence, the storage of which requires significant material costs, if it cannot be returned to the owner, or if the owner is not identified, shall be sold. Material evidence shall be sold in accordance with the procedure established by the legislation of the Republic of Kazakhstan with the payment of the received amounts to the deposit of the body conducting the pre-trial investigation. If there are grounds, the used or realized material evidence shall be reimbursed to the owner with the items of the same kind and quality, or the latter shall be paid their cost from the state budget by a court decision.

Narcotic drugs, psychotropic substances in quantities, exceeding the set limit for their inclusion in especially large amounts on each name (kind), after forensic examination on the basis of the decision of the criminal prosecution body with the consent of the procurator must be destroyed in the manner, prescribed by the Government of the Republic of Kazakhstan, with the exception of attached to the case samples that are recognized as material evidence.

The decision, agreed with the procurator on the destruction of a drug and the act of its actual destruction, drawn up in accordance with the law and using video in the destruction, shall be attached to the criminal case.

For attachment of samples of narcotic drugs to the criminal case the person conducting the pre-trial investigation on the basis of the corresponding decision, agreed with the procurator, with the mandatory participation of specialists and using of video recording, from the total weight of the seized narcotic drugs, psychotropic substances should be selected the samples in an amount equal to the value of a particularly large amount, established by law for the respective narcotic drugs, psychotropic substances, on each name (kind), is packed and sealed, the packaging is recorded the name of the substance and its quantity, and the reliability of the contents of the package shall be certified by the signatures of the persons who participated in this action.

If necessary to use the seized from illicit traffic narcotic drugs or psychotropic substances during a controlled delivery or other undercover investigative actions with the consent of the procurator, their destruction cannot be made until the completion of the relevant undercover investigation.

5. When transfer of the case by the body of inquiry to the person conducting the pre-trial investigation, or from one body of inquiry to another body of inquiry or from one person conducting the pre-trial investigation to another, as well as sending the case to the procurator and the court, the material evidence shall be transmitted in accordance with the established procedure, except for the cases, provided for in the third and fourth parts of this article. Material evidence is transferred in a packed and sealed form with the annex thereto inventory, containing an indication for individualizing their symptoms.

6. Upon the termination of the criminal case, the fate of material evidence and items that are not recognized as such shall be resolved under the rules of the third part of Article 118 of this Code.

**Footnote. Article 221 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

## **Article 222. Inspection of a human corpse**

1. External examination of a human corpse in the place of its discovery shall be made in compliance with the general rules of inspection and mandatory participation of a specialist in forensic medicine, and when he (she) cannot participate – other doctor. Other specialists may be involved in the inspection of the human corpse.

2. In the case of additional or repeated inspection of the human corpse, the participation of a specialist in forensic medicine is not necessary.

3. Photography, fingerprinting of the unidentified human corpse, as well as obtaining of the samples for expert examination are mandatory.

4. External inspection of the human corpse shall not replace or preclude the subsequent forensic examination.

5. Statements of citizens on the identification of the deceased, made in the process of inspection of the body, shall be entered in the protocols of the investigative action, followed by interrogation of the applicant as a witness that does not preclude the further presentation of the human corpse for identification of others.

### **Article 223. Examination**

1. To detect in the human body distinguishing marks, traces of a criminal offence, signs of injury, identification of intoxicated or other properties and attributes, relevant to the case, if it does not require expertise, the examination of the suspected, victim, witness, applicant and the person to whom the applicant points directly as a person who committed a criminal offence, may be conducted.

2. The person conducting the pre-trial investigation shall issue a decision on the conduct of the examination, which shall be binding on the suspect, the accused, as well as on the person directly identified by the applicant as the perpetrator of the criminal offence.

Compulsory examination of the victim, witness or applicant is subject to the authorization of the investigating judge in accordance with the procedure set out in article 220, paragraphs 13-1, 13-3 and 13-4, of the Code.

3. The examination shall be made by the person conducting the pre-trial investigation, with the participation of a doctor or other healthcare specialist.

4. The person, conducting the pre-trial investigation, shall not be present at the examination of a person of the opposite sex, if the examination is accompanied by the exposure of the human body. In this case, the examination is conducted by the specialist in forensic medicine or a doctor.

**Footnote. Article 223 with the change introduced by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

### **Article 224. Protocols of inspection, examination**

1. The process and results of the inspection, examination shall be recorded in the protocol, which is made by the person conducting the investigative action, in compliance with Article 199 of this Code.

2. The protocol describes all produced during the inspection or examination activities, as well as all discovered during the inspection or examination in the order in which they are conducted, and in the form in which there is detected at the time of inspection or examination. The protocol lists and describes all the objects, seized during the inspection or examination.

3. The protocol shall specify: at what time, in what weather and lighting the inspection or examination is conducted; what scientific and technical means are used and what the results are obtained; who is involved in the production of this investigative action and what part is expressed; which objects are sealed and by what seal; where a human corpse or objects relevant to the case are directed after inspection.

#### **Chapter 28. Exhumation Article 225. Grounds for exhumation**

1. Removing the human corpse from the place of burial (exhumation) is performed, if required:

- 1) to inspect the corpse of a person, including additional or repeated inspection;
- 2) to present for identification;
- 3) to obtain samples for the expertise and to make the expertise;
- 4) to establish other circumstances that are relevant to the case.

2. The exhumation is based on a reasoned decision of the person conducting the pre-trial investigation, sanctioned by the court. One of the relatives of the deceased is notified on the production of exhumation.

Decision on exhumation is binding for the administration of the place of burial.

#### **Article 226. Procedure for sanctioning the decision on the exhumation**

1. If it is necessary to carry out exhumations, the person conducting the pre-trial investigation shall issue an order on the exhumation and send it to the investigating judge.

The decision is accompanied by certified copies of the criminal case materials confirming the need for exhumation.

A copy of the decision is sent simultaneously to the prosecutor.

2. Excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

3. The request for authorization of the exhumation shall be considered by the investigating judge alone, without the participation of the parties, within twenty-four hours from the date of receipt of the materials by the court.

4. Having considered the application and the case file, the investigating judge authorizes or refuses to authorize the exhumation by a reasoned decision, and in the case of a court hearing, issues an order authorizing or refusing to authorize the exhumation.

A copy of the decision or order of the investigating judge is sent to the pretrial investigation body that issued the exhumation order for execution.

5. A decision to carry out an exhumation or to refuse to do so may be appealed against or revised at the request of the procurator in accordance with the procedure set out in article 107 of the Code.

Footnote. Article 226 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 118-VI of 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication).

### **Article 227. Procedure of exhumation**

1. Exhumation is produced by the administration of the place of burial in the presence of a specialist in forensic medicine with the prior notice by the body of the pre-trial investigation of the local sanitary-epidemiological service.

The person conducting the pre-trial investigation, made the decision on the exhumation shall participate in the production of exhumation.

2. Identification and inspection of a human corpse, obtaining samples can be produced on the place of exhumations.

3. After exhumation, the human corpse can be delivered to the medical organization to conduct other studies.

4. The bodies of inquiry shall assist the person conducting the pre-trial investigation in the exhumation.

5. The process and results of exhumation shall be recorded in the protocol, which is made in compliance with the requirements of Article 199 of this Code.

The protocol shall include:

- 1) the date, time and place of investigative action;
- 2) surname, first name, patronymic (if any) and position of the person conducting the pre-trial investigation;
- 3) position, surname, first name, patronymic (if any) of a specialist in forensic medicine, who participated in the exhumation;
- 4) surname, first name, patronymic (if any), year, month, date, place of birth, place of residence of the involved close relatives or legal representatives of the deceased;
- 5) information about other persons, involved in the production of the exhumation;
- 6) a note of photography, the use of sound, video, film or other recording scientific and technical resources and information about them;
- 7) surname, first name, patronymic (if any) of the buried, date of death, as well as the actions and all found during the exhumation material objects in the order in which they are conducted and detected;
- 8) remarks of the persons involved in the investigative action;
- 9) the institution, where the human corpse or other items relevant to the case found in the production of this investigation are sent after the exhumation.

6. The protocol of the exhumation shall be signed by all participants to the investigative action. If the protocol consists of several pages, the participants of the investigative action shall sign each page.



If during the exhumation photography, video, film is used or other recording scientific and technological means are applied, the photographs, films or other media shall be attached to the protocol.

7. If the identification, inspection of the corpse, obtaining samples is produced in another place, a separate protocol shall be made about this.

#### **Article 228. Burial of a human corpse after exhumation**

Burial of a human corpse after exhumation and subsequent procedural actions shall be made by the administration of the place of burial in the presence of the person who made the decision on exhumation. The protocol on the burial of a human corpse shall be made.

#### **Chapter 29. Identification Article 229. Presentation for identification**

1. In order to establish the identity or difference with the previously observed person or object, the person conducting the pre-trial investigation may bring to identify a person or object to the witness, victim, suspected. The corpse may also be brought for identification.

2. The identifying persons are previously questioned about the circumstances in which they observed the person or thing, the signs and characteristics by which they can make the identification.

#### **Article 230. The order of presentation for identification**

1. A person, subject to identification, is presented to the identifying person together with other persons of the same sex who do not have sharp differences in appearance and clothing. The total number of persons, presented for identification, must be at least three. This rule does not apply to the identification of a human corpse.

2. Participation in the investigative action of other persons, among which the identifiable is, shall only be possible with their voluntary consent and provided that the identifying person do not know them.

3. As a rule, the corpse is presented in the singular. In cases of disasters and other cases with a significant number of victims, presentation for identification of the corpse can be made in the total number of victims. Where necessary, as directed by the person conducting the pre-trial investigation, before showing the corpse for the identifying person, the specialist makes face painting (“toilet”) of the corpse. Instruction of the person conducting pre-trial investigation, for preservation of the corpse at its location shall be obligatory for the period of time, required to presentation for the identification.

4. If the identifying person is a witness or victim, he (she) shall be warned before the identification of the criminal liability for refusal to testify, for perjury, he (she) shall be explained the right not to testify against him(her)self, wife (husband) and his (her) close relatives, as well as the priest against persons, trusting him in confession.



5. Before starting the identification, the person conducting the pre-trial investigation, offers to an identifiable to take any place between other persons, it is noted in the protocol.

6. If it is impossible to present a person, the identification can be made by his (her) photo, presented together with photographs of others, possibly similar in appearance to an identifiable, in an amount not less than three, as well as by sound and video recording.

7. The object is presented in a group of similar items in an amount of not less than three. When identifying the object for which it is impossible or difficult to pick up similar objects, identification is performed on a single presented sample.

8. The identifying person is asked to indicate the person or item about which he (she) testified. Leading questions are not allowed.

9. If the identifying person pointed to one of the presented persons or one of the items, he (she) shall be proposed to explain on what signs or characteristics he (she) found the person or item.

10. Presentation for identification shall be made with using scientific and technological means of progress and results.

11. In order to ensure the safety of the identifying person, as well as in identifying by features of voice, speech, gait, the presentation of a person for identification can be made under conditions precluding visual observation of the identifying person by the identifiable. The identifying person must be ensured the possibility of sufficient visual observation of the persons, presented for identification.

12. It is not allowed to provide repeated identification of the person by the same identifying person under the same signs.

13. The protocol on the presentation for identification shall be drawn up in compliance with the requirements of Article 199 of this Code. The protocol shall specify the conditions, the process, the results of identification and, if possible, verbatim explanations of the identifying person. If the presentation of a person for identification is carried out under conditions excluding the visual observation of the identifying person by the identifiable, it is also noted in the protocol.

### **Chapter 30. Undercover investigative actions Article 231. Types of undercover investigative actions**

According to the provisions of this Chapter, the following undercover investigative actions are performed:

- 1) undercover audio and (or) video surveillance of the person or place;
- 2) tacit control, interception and removal of information, transmitted over electrical network (telecommunication) communication;
- 3) secret obtaining of the information about the connections between subscribers and (or) subscriber units;

4) unofficial collection of information from computers, servers and other devices for collecting, processing, accumulation and storage of information;

5) undercover control of postal and other items;

6) unspoken penetration and (or) site survey;

7) secret surveillance of a person or place;

8) is excluded by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication);

9) secret controlled purchase;

10) excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

Footnote. Article 231 as amended by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

#### **Article 232. Terms and grounds for undercover investigative actions**

1. The undercover investigative actions, provided in this chapter shall be carried out, if to clarify the circumstances, subject to proof in a criminal case, the information about the facts must be obtained without informing the persons, involved in the criminal process, whose interests they affect.

2. Undercover investigative actions, except for the secret control of postal and other items, shall be performed on behalf of the body of pre-trial investigation by the authorized unit of the law enforcement agency or special state body with using the forms and methods of operational and search activities.

3. Unrestricted investigative actions provided for in paragraphs (1) to (6) of Article 231 of this Code shall be carried out with the sanction of an investigating judge of a specialized investigative court or a specialized inter-district investigative court, the procedure for obtaining which is established by Article 234 of this Code.

4. Undercover investigative actions shall be carried out in the presence of one of the following grounds:

1) in cases of crimes, the sanction for the commission of which provides for punishment in the form of imprisonment for more than one year;

2) for crimes, prepared and committed by a criminal group;

5. In order to detect, suppress and disclosure of other criminal offences, not provided for by the fourth part of this article, the undercover investigative actions provided for only by paragraphs 7) - 9) of Article 231 of this Code may be carried out.

6. In case of a threat to life, health, property of individuals at their request or with their written consent it is permitted to carry out the undercover investigative actions, specified in paragraphs 1) and 2) of Article 231 of this Code, on the basis of the decision of the body of

pre-trial investigation with mandatory notification of the procurator within twenty-four hours after the decision-making.

7. Undercover investigative actions are carried out in respect of:

1) the person who in the statement, reporting a criminal offence is specified as the person, preparing and committing or committed the offence, or in respect of which there are other reasons to believe that he (she) is relevant to the offence under investigation, or has knowledge of the preparing and committing or committed criminal offence;

2) the suspected;

3) the victim, with his (her) written consent;

4) a third party, if there is evidence that a third person receives or transmits information relevant to the case;

5) the place, in case if there are circumstances or expected their appearance, which may be relevant to the case.

8. It is prohibited to carry out undercover investigative actions against lawyers, offering professional assistance, except in cases where there is reason to believe that they prepared or committed grave or especially grave crime.

9. It is not allowed to carry out undercover investigative actions, as well as using the obtained in the course of their conduct information to achieve the goals and objectives, not provided by this Code.

10. The procedure for conducting undercover investigative actions is determined by law enforcement agencies and special state bodies in consultation with the Procurator General of the Republic of Kazakhstan.

**Footnote. Article 232 as amended by the laws of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced dated 01.03.2018); dated 12.07.2018 No. 180-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure ).**

### **Article 233. Decision on conducting an undercover investigative action**

1. An authorized official of the body, entrusted with the conduct of undercover investigative action shall make a decision in compliance with the requirements of Article 198 of this Code.

The decision shall contain:

1) the time and place of its making;

2) the position, name and initials, personal signature of the person who made the decision;

**3) shall be excluded by the Law of the RK dated 21.12.2017 № 118-VI (shall be enforced dated 01.03.2018);**

4) the number of criminal case, under which it is supposed to carry out undercover investigative actions;

- 5) Articles of this Code, under which the decision is made;
- 6) a short summary of the theory of the criminal case;
- 7) the rationale for conducting undercover investigative action;
- 8) information about the person, place or thing in respect of which it is planned to carry out an undercover investigative action;
- 9) the duration of the undercover investigative action;
- 10) information about the body, entrusted with the conduct of undercover investigative action.

2. In order to avoid the decoding of the object, in respect of which the undercover investigative action is carried out, it is allowed to specify an alias, the code name instead of real data in the decision. The corresponding decision on the change of data in compliance with the confidentiality requirements shall be made, and it is agreed with the procurator.

**Footnote. Article 233 with the change introduced by the Law of Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced dated 01.03.2018).**

#### **Article 234. Authorization of covert investigative actions**

1. Non-classified investigative actions shall be carried out with the sanction of an investigating judge of a specialized investigative court, a specialized inter-district investigative court on the basis of a reasoned decision of the person conducting the pre-trial investigation, or other officials authorized to make the relevant decision by the present Code.

2. An order to conduct an unspoken investigative act within twenty-four hours of its issuance, together with the materials confirming the validity of the said investigative act, shall be submitted to the investigating judge.

The authorisation of a covert investigative action is granted within twelve hours of the receipt of the relevant order by the court.

If it is necessary to request additional materials, the decision may be considered beyond the established time limit, but not more than twenty-four hours.

If the decision is unfounded, the investigating judge refuses to authorize it.

If there is any doubt as to the veracity of the information provided during the authorization of a covert investigative act, the investigating judge may, after authorizing the decision, initiate a review of its legality by the procedural procurator within twenty-four hours

The procedural prosecutor is obliged to carry out the relevant inspection within five days and notify the investigating judge of the results.

In the event that the verification establishes the illegality of the decision to carry out a covert investigative act, the prosecutor must submit a request to the investigating judge to that effect.

Unspecified investigative actions may be terminated by the investigating judge at the request of the procurator.

3. Undercover investigative actions provided for in paragraphs 1), 2), 3), 4), 5) and 6) of Article 231 of this Code may be terminated by the investigating judge upon the request of the prosecutor. Undercover investigative actions provided for by paragraphs 7) and 9) of Article 231 of this Code may be terminated by the prosecutor.

4. The authorization of an unspoken investigative action against a judge is carried out by an investigative judge of a specialized interdistrict investigative court of the capital by the decision of the pre-trial investigation body, agreed with the Prosecutor General of the Republic of Kazakhstan.

The authorization of an unspoken investigative action against the Prosecutor General of the Republic of Kazakhstan is carried out by the investigating judge of the specialized interdistrict investigative court of the capital by the decision of the pre-trial investigation body, agreed with the First Deputy Prosecutor General of the Republic of Kazakhstan.

5. An authorized prosecutor shall be notified of the results of the covert investigation within two days from the date of its completion.

**Footnote.** Article 234 of the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced dated 01.03.2018); with the change introduced by the Law of the Republic of Kazakhstan dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 291-VI dated December 27, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 05.11.2022 No. 157-VII (shall be enforced ten calendar days after the date of its first official publication).

#### **Article 235. Conducting covert investigations in urgent cases**

1. In urgent cases, it shall be allowed to carry out covert investigative actions specified in paragraph three of Article 232 of this Code with notification of the investigating judge within twenty-four hours and subsequent receipt of a sanction in accordance with the procedure provided for by Article 234 of this Code.

2. The investigating judge, having studied the submitted materials, in the case of agreement with the urgency authorizes the decision to conduct an unspoken investigative action, and in the case of disagreement, issues an order to terminate it and the inadmissibility of using the results as evidence.

**Footnote.** Article 235 of the Republic of Kazakhstan Law dated 21.12.2017 No. 118-VI (shall be enforced dated 01.03.2018).

#### **Article 236. Dates of undercover investigative actions**

1. Undercover investigative action, subject to sanction shall be carried out in a period of not more than thirty days.

2. If it is necessary to continue to carry out covert investigative actions, the body that initiated them, three days before the expiry of the term, issues a reasoned decision on the need to extend it for a period of not more than thirty days and sends the investigating judge for authorization.

When an investigating judge approves a decision, it is forwarded to the authorized body carrying out covert investigative actions for execution. The investigating judge may authorize an extension of the covert investigative action, but with a shorter time limit than specified in the order. In the absence of the need to continue the covert investigative action, the investigating judge refuses to authorize the decision and the covert investigative action shall be terminated.

In the event that there is no longer a need for further covert investigative action, the pre-trial investigation body shall independently discontinue it.

3. excluded by the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced dated 01.03.2018).

4. Uncover investigative action may be performed at any time of the day and continuously during the whole period of its conduct.

Footnote. Article 236 as amended by the Law of the Republic of Kazakhstan No. 118-VI dated 21.12.2017 (shall be enforced dated 01.03.2018).

#### **Article 237. Presentation of the results of undercover investigative actions**

1. At the end of the undercover investigative action all relevant to the case materials, obtained in the course of its conduct, shall be sent in compliance with the privacy to the body of pre-trial investigation by a cover letter.

2. The body of pre-trial investigation may, at any time, request from an authorized unit of the law enforcement agency or special state body the results of their activities for study, evaluation and initiation to the investigation materials.

#### **Article 238. The study of information obtained as a result of undercover investigative action, and its use as evidence**

1. Study of the results of undercover investigative action shall be carried out by the body of pre-trial investigation in compliance with the requirements of Articles 47 and 124 of this Code, if necessary with the involvement of a specialist and the staff member of the body of inquiry.

The protocol on the results of the study shall be drawn up in compliance with the requirements of Articles 47 and 199 of this Code, which reflects the results of the undercover investigative actions.

2. Actual data, relating to the investigation, shall be attached to the protocol.

#### **Article 239. Evaluation and use of the results of undercover investigative actions in proving**

1. The results of undercover investigative actions are evaluated according to the rules, laid down in Articles 25 and 125 of this Code.

2. Protocols of the study results of the undercover investigative actions, sound recording and recording of images, photos, other results recorded with the help of scientific and technological means, seized items and documents or copies thereof are used in the proof along with the evidence obtained as a result of the investigation.

3. If secretly recorded statements or actions of any person are used in proving, that person must necessarily be questioned about it. When familiarization of a person with actual data, obtained without his (her) knowledge, this person is informed of the produced undercover action in so far as they relate directly to the person and exclude disclosure of state secrets and other secrets protected by law.

#### **Article 240. Familiarization with materials, not attached to the protocols of undercover investigative actions**

1. The results of covert investigative actions which the investigator and the inquirer found to be of no evidentiary value in criminal proceedings shall not be attached to the materials of the investigation and shall be kept in the authorized subdivision of a law enforcement or special state body under conditions that exclude the possibility of disclosure to unauthorized persons, until the final resolution of the issues provided for in paragraphs 1-1 and 6 of this article, after which shall be destroyed with the drafting of the relevant act.

The relevant procurator is notified two months prior to the date of the destruction of the results of the covert investigative acts which the pretrial investigation body found to be of no evidentiary value in criminal proceedings.

1-1. The person in respect of whom an undisclosed investigation action was carried out must be notified by the pretrial investigation body without being informed of the results of the undisclosed investigation action within six months of the final decision in the criminal case, except in the cases provided for in this article.

This period may be extended by the investigating judge of a specialized investigative court or a specialized inter-district investigative court on a reasoned request by the pretrial investigation body to one year.

An investigating judge of a specialized investigative court or a specialized inter-district investigative court may, at the substantiated request of a pretrial investigation body, agree on the failure to notify a person of an unspoken investigative action taken against him or her:

- 1) In criminal cases involving a terrorist or extremist offence;
- 2) in a criminal case involving an offence committed by a criminal group;
- 3) if the notification poses a threat of disclosure of state secrets;
- 4) if the notification poses a threat to the safety of persons conducting activities on a confidential basis and in a covert manner and other persons.



2. A person in respect of which, the undercover investigative actions are performed, shall be entitled to apply for his (her) familiarization with the data, not attached to the investigation within the limits, precluding disclosure of state secrets and other secrets protected by law. An application is considered by the investigator, the interrogating officer, the procurator, and when the application is received during the consideration of the case by the court – by the judge.

3. The investigator, interrogating officer, procurator and the court shall assess the application taking into account the possible value of the materials in the criminal proceedings and admitted human rights restrictions.

The investigator, interrogating officer, procurator, judge may reject the application for familiarization with the unattached materials, if it can pose a substantial threat to life, health or legally protected interests of any person involved in criminal proceedings or if it affects privacy of a third party.

4. After familiarization with the unattached materials the person may apply for their inclusion in the materials of the criminal case. The refusal of the investigator, the interrogating officer, the procurator in satisfaction of the application may be appealed in accordance with Articles 105 and 106 of this Code, the judge's refusal shall be appealed together with the complaint to the judicial act, which completed the consideration of the case in court.

5. The decision on the declared during the judicial proceedings application for familiarization with the not attached to the case materials of the undercover investigative action shall be taken by the same composition of the court, which is considering the case.

6. The person in respect of whom covert investigative actions were carried out, within fifteen days from the moment of the notice provided by a part 1-1 of the present article, has the right to address in specialised investigatory court, specialised interdistrict investigatory court in an order provided by article 106 of the present Code, with the statement on recognition of carrying out of corresponding covert investigatory actions illegal and compensation of the caused damage (if available).

**Footnote. Article 240 as amended by the laws of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2017 № 180 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 241. Measures for the protection of information in criminal proceedings**

1. Information about the fact of undercover investigative action and information obtained as a result of its conduct, before the end of the undercover investigative action shall be confidential, for the disclosure of which the officials or those involved in its production, shall be liable according to the law.

2. Information about the methods of undercover investigative actions, the people who conducted them, including persons operating on a confidential basis and in a conspiratorial form is state secrets and shall not be subject to disclosure.

3. The body for pre-trial investigation uses all legal means to limit the spread of the information obtained as a result of the undercover investigative action if they affect the privacy of the person or relate to other secrets protected by law.

#### **Article 242. Undercover audio and (or) video surveillance of the person or place**

1. Undercover audio and (or) video surveillance of the person - is a secret control of speech and other information, as well as the actions of a person, if necessary, produced by covert penetration and (or) survey, using video, audio or other special scientific and technological means with simultaneous fixation of their contents in a tangible medium.

2. Undercover audio and (or) video surveillance of the place – is a secret control of conversations and other sounds and (or) events, occurring at a specific point, if necessary, produced by covert penetration and (or) site survey, using video and audio or other specialized scientific and technical means with simultaneous fixation of their contents in a tangible medium.

3. After recognizing the need for undercover audio and (or) video surveillance of the person or place, the investigator, interrogating officer shall give the appropriate instructions to the body of inquiry.

4. The protocols of delivery of the technical means shall be certified by the signatures of the person to whom it is given, a staff member of the body of inquiry and (or) the investigator , the interrogating officer.

5. Upon completion of undercover audio and video surveillance of the person or place, the authorized body shall present to the investigator, interrogating officer relevant to the case audio and video recording under seal with a cover letter, which should specify the base, start and end time, duration of the recording.

#### **Article 243. Tacit control, interception and removal of information, transmitted over electrical network (telecommunication) communication**

1. Tacit control, interception and removal of information, transmitted over electrical network (telecommunication) communication – is secret listening and (or) recording of voice information using scientific and technical means and (or) computer programs, transmitted by telephone or other device that allows to transfer voice information, if necessary, produced by undercover penetration and (or) survey.

Interception and removal of information transmitted over electrical networks, - is interception and removal of signs, signals, voice information, written text, images, video,

audio and other information, transmitted by wire, radio, optical or other electromagnetic systems.

2. After recognizing the need of tacit control, interception and removal of information transmitted over electrical network (telecommunications) communication, the investigator, the interrogating officer shall give the appropriate instructions to the body of inquiry.

3. The results of undercover investigative action are recorded in the relevant material carrier, which is packed, sealed and certified by the signatures of the official of the authorized body, conducting the undercover investigative action.

Material carrier is transmitted to the investigator, the interrogating officer.

**Article 244. Secret obtaining of the information about the connections between subscribers and (or) subscriber units**

1. The secret obtaining of the information about the connections between subscribers and (or) subscriber units - is obtaining of the information about the date, time and duration of connections between subscribers and (or) subscriber units (user equipment).

2. After the approval of the investigating judge, the decision is sent by the pre-trial investigation body to the authorized subdivision of the law enforcement or special state body for execution, the employee of which is obliged to provide the required information recorded on any material medium.

This information is provided in sealed form with a cover letter indicating the period for which it was provided and the numbers of subscribers and (or) subscriber devices.

**Footnote. Article 244 as amended by the Law of the Republic of Kazakhstan No. 118-VI dated 21.12.2017 (shall be enforced dated 01.03.2018).**

**Article 245. Unofficial collection of information from computers, servers and other devices for collecting, processing, accumulation and storage of information;**

1. The unofficial collection of information from computers, servers and other devices for collecting, processing, accumulation and storage of information – is a secret removal by special scientific and technical means (or) computer programs of information from computers, servers and other devices for collecting, processing, accumulation and storage of information, if necessary, produced by undercover penetration and surveys.

2. Having recognized the need for the secret removal of information from computers, servers and other devices intended for the collection, processing, accumulation and storage of information, the pre-trial investigation body gives the appropriate order to the inquiry body.

3. The results of unofficial removal of information from computers, servers and other devices for collecting, processing, accumulation and storage of information shall be recorded in the relevant material carrier, which is packed, sealed and certified by the signatures of the official of the authorized body, carried out the uncover investigative action.

Material carrier is transmitted to the investigator, interrogating officer.

#### **Article 246. Undercover control of postal and other items**

1. If there are sufficient grounds to believe that letters, telegrams, radiograms, packets, parcels and other mail may contain information, documents and objects that are relevant to the case, they may be under the undercover control.

2. Having recognized the necessity of tacit control of postal and other items, the investigator, the inquirer shall issue a reasoned decision.

The decision shall specify: the name of the communication institution, which shall be responsible for the detention of postal and telegraphic items, the surname, name, patronymic (if any) of persons whose postal and telegraphic items are subject to covert control, their address, the type of postal and telegraphic items subject to covert control, the period of time for which it is imposed.

The said decision shall be submitted to the investigating judge and, if sanctioned, shall be forwarded by the investigator, inquirer to post offices or persons providing services for the delivery of items for execution.

3. Post offices or persons, providing services for the delivery of parcels, shall immediately inform the investigator, the interrogating officer on finding at their disposal the mail and other item, subject to control.

The investigator, the interrogating officer within twenty-four hours of receipt of the notice in the presence, if necessary, an authorized official of the post office or the person, providing services for the delivery of parcels, shall inspect and (or) get acquainted with the contents of the mail, and make decisions about the future delivery of this mail with fixing its content or without it.

4. In each case of inspection and (or) review of the postal and other items, the investigator, the interrogating officer in compliance with the provisions of Article 199 of this Code shall make a protocol, which reflects the data of the persons, involved in the production of activities, the name and type of postal and other items, subjected to inspection and (or) review, the details of further delivery of mail with fixing its content or without it.

5. Where necessary, the investigator, the interrogating officer shall have the right to call the appropriate specialist, as well as translator to participate in the production of inspection and seizure of postal and telegraph dispatches.

6. Uncontrolled control of mail and other items shall be cancelled by the investigator (inquirer) with the sanction of the investigating judge, when there is no need for this measure, but in any case not later than the end of the investigation, and the post office or the person providing services for the delivery of items shall be notified within three days.

**Footnote. Article 246 as amended by the Law of the Republic of Kazakhstan No. 118-VI dd. 21.12.2017 (shall be enforced dated 01.03.2018).**

#### **Article 247. Unspoken penetration and (or) site survey**

1. Unspoken penetration and (or) site survey is carried out by the authorized body by penetrating the residential premises, offices, industrial premises, building, structure, storage, vehicle or land plot, if necessary, with their examination, as well as the preparation and conduct of the investigative actions.

2. At the end of this action, the authorized body shall present to the investigator, the interrogating officer all materials received in full under the seal, with a cover letter.

#### **Article 248. Secret surveillance of a person or place**

1. The secret surveillance of persons, referred to in the seventh part of Article 232 of this Code, or a place shall be carried out, if necessary, using technical means of video and photo surveillance, without making audio record of speech or other audio information.

2. An official of the authorized body, performing secret surveillance of a person or place, shall be entitled to carry out secret surveillance of other persons, coming into contact with the observed person or place within forty-eight hours from the time of entering into contact.

3. A daily report shall be made on the results of secret surveillance of the person or places, and the received items and documents shall be attached to it.

4. At the end of this action, the authorized body shall present to the investigator, the interrogating officer all materials received in full, under seal, with a cover letter.

**Footnote. Article 248, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015).**

#### **Article 249. Secret controlled delivery**

**Footnote. Article 249 is excluded by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 250. Secret controlled purchase**

1. Secret controlled purchase is conducted to obtain actual data about committing or committed criminal offence by creating situations of imaginary deal.

In this case, the objects or substances, the free sale of which is prohibited or the circulation of which is restricted by law, as well as which are the objects or instruments of criminal infringement shall be purchased from the person in respect of whom there are sufficient grounds to believe that he (she) is involved in a criminal offence.

2. The separate protocols shall be made in accordance with Article 199 of this Code on the issuance for the official of the authorized body or a person who voluntarily indicated his (her) intention to participate in undercover investigative action, the scientific, technical and other means for fixing its progress and results, as well as funds for the purchase of paid

objects or substances, free sale of which is prohibited or the circulation of which is restricted by law, or which are the objects and (or) instruments of criminal infringement.

3. The protocol shall be made in accordance with the rules of Articles 199 and 219 of this Code on receipt of an official of the authorized body or a person who voluntarily indicated his (her) intention to participate in the investigative action of the acquired objects or substances, as well as on the results of their inspection.

#### **Article 251. Secret introduction and (or) imitation of criminal activity**

**Footnote. Article 251 is excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Chapter 31. Search and seizure Article 252. Search**

1. The search is performed for the purpose of detection and withdrawal of objects or documents, relevant to the case, including the detection of the property to be seized.

2. The grounds for performing search are the existence of sufficient evidence to believe that these objects or documents may be in a particular premise or any other place or at a particular person.

3. The search can be performed to detect the wanted person and a human corpse.

#### **Article 253. Seizure**

The seizure is performed with the purpose of withdrawal of certain objects and documents relevant to the case, and if it is known exactly, where they are and who has them, as well as the property subject to confiscation.

#### **Article 254. Procedure of search and seizure**

1. Search and seizure are carried out by the person conducting the pre-trial investigation, according to a reasoned decision. The resolution on the conduct of a search, as well as the seizure of documents, items, information contained in them, containing state secrets or other secrets protected by law, must be authorized by the investigating judge.

Authorization of the decision on search and seizure shall be carried out in the manner prescribed by paragraphs 13-1, 13-3 and 13-4 of Article 220 of this Code.

2. Seizure in a dwelling against the will of the persons residing in it shall be carried out in accordance with the rules of parts of the thirteenth, 13-1, 13-3 and 13-4 of article 220 of this Code.

3. In exceptional cases, when there is a real fear that the person wanted and (or) subject to be seized due to the delay of its discovery may be lost, damaged or used for criminal purposes

, or the wanted person can escape, the search and seizure may be carried out without the sanction of the investigating judge in the manner prescribed by part fourteen of Article 220 of this Code.

4. The search is conducted with the participation of identifying witnesses, and if necessary - with the participation of a specialist and an interpreter.

The seizure is conducted with the mandatory application of scientific and technical means of progress and results, if necessary, a specialist and an interpreter may be involved in it.

5. The search or seizure in the residential premises, the premises of the organizations are carried out in the presence of the persons, mentioned in the fifteenth and sixteenth parts of Article 220 of this Code.

6. The search and seizure in the premises, occupied by diplomatic missions, as well as inhabited by members of diplomatic missions and their families are carried out in compliance with the requirements established by the seventeenth part of Article 220 of this Code.

7. Prior to the beginning of the search or seizure, the person conducting the pre-trial investigation shall submit the decision on their production.

8. When starting the search, the person conducting the pre-trial investigation, offers to give voluntarily the objects and documents to be seized that may be relevant to the case. If they are given voluntarily and there is no reason to fear of concealment of the objects and documents to be seized, the person conducting the pre-trial investigation, shall have the right not to perform further searches.

The voluntariness of the issue by the person of the objects and documents, for the detection of which the search can be conducted, must be indicated in the search protocol.

9. When conducting a search, a locked room and storage can be opened, if the owner refuses to open them voluntarily. In this case, it should not be allowed the unnecessary damage to locks of doors and other items.

10. When conducting the seizure, the person conducting the pre-trial investigation, offers to give objects and documents to be seized, and in case of refusal he (she) seizes it by force.

11. The person conducting the pre-trial investigation is obliged to take measures to ensure that the circumstances of the private life of the person occupying this premises or other persons revealed during the search and seizure, as well as information containing state secrets or other secrets protected by law, are not disclosed.

12. The person, conducting the pre-trial investigation, shall have the right to prohibit the persons in the room or place where the search or seizure is conducted, and the persons who come into this room or place, to leave it, as well as communicate with each other or other persons before the end of the search or seizure.

13. When conducting the search and seizure, the person conducting the pre-trial investigation shall be limited to the seizure of objects and documents that may be relevant to the case. Objects and documents that are prohibited for circulation shall be seized regardless of their relation to the case.



14. Seized objects and documents during a search shall be presented to identifying witnesses and other attending persons and shall be packed, sealed on the place of search and certified by the signatures of identifying witnesses and attending persons.

15. Seized objects and documents during seizure shall be presented to the attending persons, and shall be packed, sealed on the place of seizure and certified by the signatures of the attending persons.

16. Where necessary, the photographing, filming and video recording is made during the search.

**Footnote. Article 254 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); from 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 02.07.2021 No. 62-VII (shall be enforced upon the expiration of sixty calendar days after the day of its first official publication).**

### **Article 255. Personal search**

1. If there are grounds provided for in Article 252, and in compliance with the requirements of Article 254 of this Code, the person conducting the pre-trial investigation shall be entitled to carry out a personal search for the detection and seizure of objects and documents that are on the body or inside the body of the searched, in his (her) clothes and things.

2. Personal search is carried out only by a person of the same sex with the searched, and with the involvement of the identifying witnesses and experts of the same sex.

3. A personal search can be carried out without issuing a special resolution and the sanction of the investigating judge in the presence of one of the following cases:

1) if there are reasonable grounds to believe that a person who is in a room or in another place where a search is carried out in compliance with the requirements of Article 254 of this Code, conceals documents or objects that may be relevant to the case;

2) if it is performed during the arrest of a person or his detention in custody. In this case, a personal search can be carried out in the absence of witnesses.

If necessary, the detection of objects inside the body of the searched person, specialists of the appropriate profile shall be involved in a personal search.

**Footnote. Article 255 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).**

### **Article 256. Protocols of the search or seizure**

1. The person, conducting the search or seizure, shall make a protocol in compliance with the requirements of Article 199 of this Code.

2. The protocol shall indicate where and under what circumstances the objects or documents are detected, if they are issued voluntarily or forcibly seized. All seized objects must be listed in the protocol with the exact quantity, measure, weight, individual features and, if possible, the cost.

3. If during a search or seizure the attempts to destroy or hide the objects or documents to be seized are made, this should be noted in the protocol, specifying the measures taken.

4. A copy of the protocol of a search or seizure shall be given to the person, from whom they are made, or an adult member of his (her) family, and in their absence - the representative of the housing organization or local executive body. If the search or seizure is made in the organization, a copy of the protocol shall be given on receipt to its representatives

### **Chapter 32. Verification and clarification of the testimony on the site. Investigative experiment Article 257. Verification and clarification of the testimony on the site**

1. Verification and clarification of the testimony of the victim, witness, suspected on the site, connected with the event under investigation, is carried out in order to:

- 1) identify the credibility of the testimony by comparing them with the situation of past events;
- 2) clarify the route and places where verifiable actions are committed;
- 3) establishment of new evidence.

2. Verification and clarification of the testimony on the site is that the previously interrogated person plays on the spot the situation and the circumstances of the test events; searches and indicates objects, documents, traces relevant to the case; demonstrates certain actions; shows the role played in the test event by these or other objects; draws attention to the changes in the environment field; elaborates and clarifies his (her) previous testimony. Any outside interference in these actions and leading questions are not allowed.

3. The simultaneous verification and clarification of the testimony of several people on the site is not allowed.

4. Verification and clarification of the testimony begins with the offers to the examined voluntarily indicate the route and place where his (her) testimony will be checked. After the presentation of evidence and demonstration of actions, the person whose testimony is verified, may be asked questions. This person, as well as other involved persons shall be entitled to demand their additional questioning in connection with the conducted investigative action.

5. The detected during the verification and clarification of the testimony on the site objects and documents that may have evidentiary value in the case, shall be seized, packed and sealed, the fact of their seizure shall be noted in the protocol.

6. When verification and clarification of the testimony on the site, the measurements, photographs, audio and video recording, filming is made, the plans and schemes are drawn up

. A specialist shall be entitled to participate where necessary in verification and clarification of the testimony on the site. Using in the verification and clarification of the testimony on the site the means of audio and video recording is compulsory and is made according to the rules, laid down in Article 210 of this Code.

7. The protocol shall be drawn up in compliance with the requirements of Article 199 of this Code on the verification and clarification of the testimony on the site. The protocol reflects in detail the conditions, process and results of the verification and clarification of the testimony on the site.

### **Article 258. Investigative Experiment**

1. Investigative experiment is performed to verify and clarify the information relevant to the case, by playing certain actions, conditions, circumstances of the investigated events and experiments. In the production of the experiment, in particular, the ability of perception of any facts, performing certain actions, the occurrence of any event can be checked, as well as the sequence of the occurred event and mechanism of formation of traces are identified.

2. Investigative experiment is performed with the mandatory application of scientific and technological means of progress and results. If necessary, the suspected, victim, witness, specialist, expert or persons, performed skilled actions may be involved with their consent to participate in the investigative experiment. Participants of the experiment shall be explained its purpose and procedure.

3. Conducting the investigative experiment is allowed, provided that it is excluded the danger to life and health of persons involved, their honour and dignity is not humiliated, and there is no damage to their property.

4. Investigative experiment is performed in conditions closest to those in which the repeatable event or action is occurred.

5. The protocol on an investigative experiment shall be drawn up in compliance with the requirements of Article 199 of this Code. The protocol details the conditions, process and results of investigative experiment and states: for what purpose, when, where and in what conditions the experiment is carried out; what specifically expressed the playing of the situation and circumstances of the event; what actions, in what order, by whom and how many times are made; what are the results.

### **Chapter 33. Provision of objects and documents Article 259. Provision to the person conducting the pre-trial investigation of objects and documents on the initiative of persons, possessing them**

1. The parties, as well as other persons, heads and other officials of enterprises, institutions and organizations shall have the right to provide to the person conducting the pre-trial investigation, the objects and documents, which they believe may be relevant to the case.

2. The person conducting the pre-trial investigation shall inspect the given object, the document according to the rules of Article 220 of this Code and take it, if there is reason to believe that the object or document has or hereafter may be relevant to the case. The objects, documents, although not relevant to this case, but withdrawn from circulation, shall also be taken.

In the case of provision of the object, document not relevant to the case and not withdrawn from circulation, the person conducting the pre-trial investigation, shall immediately after the inspection return the object, document to origin.

#### **Article 260. Provision of objects and documents at the request of the person conducting the pre-trial investigation**

1. The person, conducting the pre-trial investigation may, without a search or seizure, require the head of the enterprise, institution, organization, as well as from the citizens the objects and documents that are needed for temporary use in the investigative actions. Such objects and documents include:

1) analogs or models to replay the situation and the conditions of the investigated events in the production of the experiment;

2) similar with object or document, presented for identification;

3) appliances, instruments, devices, materials for use in the investigative actions or expert study if the person conducting the pre-trial investigation, or acting on his (her) behalf specialist, expert or expert institution does not have them.

At the end of need, these objects, documents shall be returned to origin.

2. Heads and other officials of state bodies, enterprises, institutions and organizations shall, at the request of the person conducting the pre-trial investigation agreed with the procurator, carry out, within its competence the unscheduled inspection, documentary audit or other official investigation, and submit a certificate of audit or inspection with all applications within the prescribed period. The criminal prosecution body shall notify the procurator on demand of audits and inspections of business entities within a day.

3. Finding in the certificate of audit or inspection, or other document deviations from the established rules, gaps, contradictions and other inconsistencies, the person conducting the pre-trial investigation, may request that the errors noted in the document should be eliminated

#### **Article 261. Protocol for provision of objects and documents**

1. The person, conducting the pre-trial investigation shall make a protocol in accordance with the rules of Article 199 of this Code on the provision of objects and documents that may be relevant as material evidence.

The protocol shall also specify:

- 1) the information about the person who provided the object or document;
- 2) the application of the person to adduce the object or document;
- 3) the progress and results of examination of the object or document, and if it is provided by mail also the inspection of the packaging;
- 4) the features, properties, technical characteristics of these objects, if they may be relevant to the case, shall be recorded in the protocols of the investigative action, in the production of which the claimed objects are used;
- 5) the actual transfer of the object or document to the person conducting the pre-trial investigation, or return it to the person providing the object or document.

2. The person, conducting the pre-trial investigation shall issue a copy of the protocol, certified by the signature to the person providing an object or document that is or may be relevant as material evidence.

3. If the received object or document is received by mail, a copy of the protocol or an extract from it shall be sent to the sender, and a mail receipt shall be attached to the protocol. Receipt shall be attached to the protocol and in case, when the person, conducting the pre-trial investigation does not consider the received by mail object or document to be relevant to the case and returns it by mail to the sender.

4. The person, conducting the pre-trial investigation shall issue a decision on the refusal to satisfy an application to adduce the provided object or document as material evidence. Certificates of audit and other official inspection, provided as written evidence shall be attached to the case without special registration.

5. Receipt and return of objects, claimed for temporary use in the production of investigative actions shall be recorded in the protocols and certified by the signature of the person, who provided the object.

#### **Chapter 34. Obtaining of samples Article 262. Grounds for obtaining samples**

1. The body, conducting the criminal proceedings shall be entitled to obtain samples, reflecting the properties of a living person, a corpse, animal, plant, object, material or substance, if their expert research is needed to resolve the questions posed to the expert.

2. As samples, in particular, can be obtained:

- 1) blood, semen, hair, nail clippings, microscopic scrapings of external integument;
- 2) saliva, sweat and other secretions;
- 3) prints of the skin pattern, dental records;
- 4) handwritten text, products, and other materials that reflect the skills of the person;
- 5) the phonogram voice;
- 6) samples of materials, substances, raw materials, finished products;
- 7) samples of cartridges, bullets, guns and trace mechanisms.

3. A reasoned decision shall be made on receipt of the samples, which shall contain the following: the person who will receive the samples; person (organization), from which should

receive samples; what kind of samples and how much should be obtained; when and to whom the person should come to obtain samples; when and to whom samples should be submitted after their receipt.

#### **Article 263. Persons and bodies, entitled to obtain samples**

1. The person, conducting the pre-trial investigation personally, and, if necessary, with the participation of a doctor, other specialist may obtain samples, if it does not involve the exposure of a person of the opposite sex, which samples are taken, and does not require special skills. In other cases, samples can be obtained on behalf of the person conducting the pre-trial investigation, by a doctor or a specialist.

2. In cases, where obtaining samples is part of expert study it can be performed by an expert.

3. During the study, the experts can make experimental samples, as reported in the conclusion. The body, conducting the criminal proceedings shall be entitled to be present in making such samples, which is noted in the protocol, drawn up by it.

After investigation, the expert shall attach the samples to his (her) conclusion in a packed and sealed form.

#### **Article 264. Persons, who may be obtained samples**

1. Samples may be obtained from the suspected, the accused and the victim, as well as the person against whom the proceedings are conducted on the application of compulsory medical measures.

2. If there is sufficient evidence that the traces at the scene or on the material evidence could be left by other person, the samples can be obtained from that person, but only after his (her) interrogation as a witness (victim) about the circumstances in which these traces could be formed.

#### **Article 265. The procedure for obtaining samples**

1. The person, conducting the pre-trial investigation, calls a person to him (her) or comes to a place where he (she) is, introduces him (her) against signature with the decision or sent to him (her) court order on the receipt of the samples, explains to that person, a specialist of their rights and obligations, decides on the challenges, if they are declared. Then, the person, conducting the pre-trial investigation or the procurator takes the necessary actions to obtain samples for expert study. The scientific and technological means that do not hurt and are not dangerous to human life and health may be applied.

2. Obtaining samples from a corpse, as well as taken as samples the samples of raw materials, products and other materials shall be carried out by producing, respectively, exhumation, search or seizure.

3. Obtained samples shall be packed, sealed and certified by the signature of the person who received the samples. Then, the person conducting the pre-trial investigation or the procurator shall send them together with the protocol of obtaining samples to the relevant expert, and they are certified by the signature of the person who received the samples.

If obtaining the samples is carried out by court order, the investigator, the interrogating officer or the procurator, in compliance with this order, shall send the samples together with the protocol of their receipt to the court. The court, involving the parties shall inspect the samples to certify their authenticity and safety then shall send the samples together with this order and the protocol of their receipt to the relevant expert.

#### **Article 266. Obtaining samples by a doctor or other specialist**

1. The body, conducting the criminal proceedings shall send to the doctor or other specialist a person concerned, as well as the decision about obtaining his (her) samples. The body, taken the decision shall decide the issue of challenge to the doctor, other specialist.

2. A doctor or other specialist performs the necessary actions and obtains samples for expert study. The scientific and technological means that do not hurt and are not dangerous to human life and health may be applied. The samples shall be packed, sealed, and certified by the signature of the person who received the samples and shall be sent to the body, conducting the criminal proceedings.

3. If it is necessary to obtain samples for research in animals, the body conducting the criminal proceedings, shall send a corresponding decision to the veterinarian or other specialist.

#### **Article 267. Protection of the individuals rights in obtaining samples**

Methods and scientific and technical means of obtaining samples should be safe for human health and life. The application of complex medical procedures or methods that cause pain, is permitted only with the written consent of the person from whom the samples should be obtained, and if he (she) has not reached the age of majority or has a mental illness, with the consent of his (her) legal representatives.

#### **Article 268. Obligation of execution of the decision on obtaining the samples**

1. The samples can be obtained by force from the suspected or the accused.

2. The samples from the victim and witness can be obtained only with their consent, except in cases when the suspected, accused insists this action, to verify the evidence, incriminating their criminal offences, as well as, if necessary, to obtain samples for the diagnosis of sexually transmitted and other infectious diseases, if such a diagnosis is relevant for the case.



3. Forced receipt of samples from the victim, witness in the cases specified in paragraph two of this article, as well as from the applicant and the person whom the applicant directly refers to as a person who has committed a criminal offence, is permitted only with the approval of the investigating judge or by court order in the manner prescribed by paragraphs 13-1, 13-3 and 13-4 of Article 220 of this Code.

**Footnote. Article 268 as amended by the Law of the Republic of Kazakhstan No. 118-VI dated 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 269. Protocol of obtaining samples**

1. The person, conducting the pre-trial investigation, after obtaining samples, shall make a protocol, where describes all actions taken to obtain samples in the order in which they are produced, the applied scientific-research and other methods and procedures, as well as the samples.

2. If the samples are obtained at the request of the body conducting the criminal proceedings, by a doctor or other specialist, he (she) shall make an official document about this, which is signed by all participants of this action and transferred to the body conducting the criminal proceedings, to be attached to the criminal case in the manner prescribed in the ninth part of Article 199 of this Code.

3. The protocol shall be attached by the samples in the packed and sealed form.

#### **Chapter 35. Forensic examination Article 270. The appointment of the examination**

Examination is appointed in cases where the circumstances relevant to the case, can be obtained from the study of materials, conducted by experts on the basis of special scientific knowledge. The presence of such knowledge to other persons involved in criminal proceedings shall not exempt the person conducting the criminal proceedings, from need to appoint the appropriate examination.

#### **Article 271. Mandatory appointment of examination**

1. Appointment and production of examination is mandatory, if it is necessary to find in the case:

- 1) the cause of death;
- 2) the nature and severity of injury to health;
- 3) the age of the suspect, the witness entitled to protection, the accused, the victim, when this is important for the case, and documents on age are missing or in doubt;
- 4) the mental or physical state of the suspect, the witness, who has the right to protection, the accused, when there are doubts about their sanity or ability to independently protect their rights and legitimate interests in the criminal process;

5) mental or physical condition of the victim, a witness in cases where there are doubt about their ability to correctly perceive the circumstances relevant to the case, and give the testimony on them;

6) other circumstances of the case, which cannot be reliably established by other evidence

2. The appointment and production of a forensic psychiatric examination are mandatory if there are doubts about the mental state of the suspect, accused of committing a crime, for which the Criminal Code of the Republic of Kazakhstan provides for a life sentence.

Note. Based on the grounds listed in paragraphs 4) and 5) of part one of this article, an outpatient forensic psychiatric examination is appointed and carried out in relation to a suspect, a witness entitled to protection, an accused, a victim, a witness. If an expert declares that it is impossible to give an opinion without conducting a stationary forensic psychiatric examination and placing the subject for an inpatient examination, then a stationary forensic psychiatric examination is appointed in the criminal case in the manner prescribed by Article 279 of this Code.

**Footnote.** Article 271 as amended by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication); dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 272. Procedure for appointment of examination**

1. Recognizing the necessary appointment of a forensic examination, the body conducting the criminal proceedings, the investigating judge shall issue a decision, which shall include: the name of the appointing body, time, destination of the examination; type of examination; grounds for the appointment of examination; objects sent for examination, and information about their origin, as well as the permission of a possible total or partial destruction of these objects, changing their appearance or basic properties in the course of the study; the name of the forensic examination body and (or) surname, first name, patronymic (if any) of the person entrusted with the production of forensic examination.

2. The decision of the body conducting the criminal proceedings, the investigating judge to appoint examination shall be binding to the bodies or persons to whom it is addressed and included in their competence.

3. Forensic examination in respect of a victim or witness, except in cases provided for in paragraphs 2), 3) and 5) of the first part of Article 271 of this Code, is performed with their consent or the consent of their legal representatives, which is given by the said persons in writing.

4. The person who ordered the examination shall acquaint with the decision on the appointment of a forensic examination of the suspect, the accused, his/her defense lawyer, the victim, his/her representative, as well as the witness subject to the examination, including the

witness entitled to defense, his/her legal representative and explain to them the rights provided for in Article 274 of this Code. A protocol shall be drawn up about this, signed by the person who appointed the examination, and the persons who are familiar with the resolution.

5. The examination may be appointed at the initiative of the participants to the proceedings, defending their or represented rights and interests. Participants to the proceedings, defending their or represented rights and interests, shall present in writing to the body conducting the criminal proceedings the issues on which, in their conclusion, should be given the expert conclusion, indicate the objects of study, as well as indicate a person who may be invited to as an expert. The body conducting the criminal proceedings shall not be entitled to refuse the examination appointment, except in cases where issues submitted to it for approval, do not apply to the criminal proceedings or the object of forensic examination. The person conducting the pre-trial investigation shall issue a reasoned decision to dismiss the application within three days from the date of receipt of the application.

6. In deciding on the appointment of examination in accordance with paragraph 7) of the second part of Article 55 of this Code, the investigating judge offers the defense party to submit in writing the issues that need to be put to the expert, and listens to the conclusions of the participants to the proceedings on them.

The parties shall have the right to specify which objects are subject to expert studies, as well as who can be entrusted with the production of examination and to challenge the expert.

In the appointment of the examination by the investigating judge the person conducting the pre-trial investigation, provides the necessary items, materials in its production, to the expert.

7. Excluded by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII ( shall be enforced ten calendar days after the day of its first official publication).

8. Excluded by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII ( shall be enforced ten calendar days after the day of its first official publication).

9. The participant of the proceedings at the initiative of which, the examination is appointed may present the items and documents as objects of expert study. The body conducting the criminal proceedings shall be entitled to exclude them from among such by a reasoned decision.

10. After considering the issues submitted, the body conducting the criminal proceedings rejects those that are not relevant to the criminal case or the object of forensic examination, finds if there are grounds for challenge of an expert, and then makes a decision on the appointment of examination in compliance with the requirements specified in the first part of this article.

11. Reimbursement of expenses, associated with the production of examination, as well as salaries of the expert shall be made by the rules of Chapter 21 of this Code. In the case of the

examination at the request of defense counsel and representative of the victim, the reimbursement of expenses borne to the person in whose interest it produces.

12. The body conducting the criminal procedure shall ensure the delivery to the expert of a suspect, a witness entitled to protection, undergoing an examination, a victim, an accused, a witness, if their presence during the examination is deemed necessary, except for the cases provided for by the first part of Article 272-1 of this Code.

**Footnote. Article 272 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 09.06.2021 No. 49-VII (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

**Article 272-1. Request of a lawyer who is a defender, representative of the victim, on the production of a forensic examination**

1. Production of a forensic examination in the manner prescribed by paragraph 3) of part three of Article 122 of this Code, on the basis of a request from a lawyer who is a defense counsel, a representative of the victim, is carried out if there is no need to demand objects of research from the body conducting the criminal process.

2. The request shall indicate: surname, name, patronymic (if it is indicated in the identity document) of the lawyer, number of the license for the right to carry out advocacy, time, place of appointment of the examination; type of expertise; grounds for appointment of expertise; objects sent for examination, and information about their origin, as well as permission for the possible complete or partial destruction of these objects, changing their appearance or basic properties during the study; name of the body, organization of forensic examination and (or) surname, name, patronymic (if it is indicated in the identity document) of the person to whom he intends to entrust the conduct of forensic examination.

3. At the same time, the person conducting the criminal proceedings is notified about the direction of the request of a lawyer who is a defense counsel, a representative of the victim, about the conduct of a forensic examination, who checks the existence of grounds for challenging the expert, provided for in Article 93 of this Code, and also, if necessary, sends additional questions to the expert.

4. A lawyer who is a defender, a representative of the victim, hands the expert a request for the conduct of a forensic examination and objects of examination, explains to him the rights and obligations provided for in Article 79 of this Code, and warns him of criminal liability for giving a knowingly false conclusion with the withdrawal of a receipt.

The specified receipt is attached to the materials of the criminal case on the basis of a letter from a lawyer who is a defense counsel, a representative of the victim. Applications, petitions of the expert and reasons for their rejection shall be attached in the same way.

5. An expert opinion given on the basis of a request from a lawyer who is a defense counsel, a representative of the victim, is drawn up in two copies, one of which is sent to the

person conducting the criminal process, the other to the initiator of the request for a forensic examination.

6. During the production of a forensic examination at the request of a lawyer who is a defender, a representative of the victim, the reimbursement of expenses associated with its production, as well as the remuneration of the expert's labor, are made in accordance with the rules of Chapter 21 of this Code. Reimbursement of expenses is assigned to the person in whose interests the forensic examination was carried out.

**Footnote. Chapter 35 is supplemented by Article 272-1 in accordance with the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 273. Persons who may be entrusted with the performance of forensic examination**

1. Production of forensic examination may be instructed to:

- 1) employees of the body of forensic examination;
- 2) persons engaged in forensic expert activity on the basis of a license;
- 3) in a single order to other persons in the manner and on the conditions provided for by law.

2. Production of examination may be entrusted to a person from among those proposed by the participants of the proceedings.

3. The requirement of the body conducting the criminal proceedings, the investigating judge, who is entrusted with the production of examination, shall be binding for the head of the organization where the person works.

**Footnote. Article 273 as amended by the Law of the Republic of Kazakhstan dated 10.02.2017 № 45-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

### **Article 274. Rights of the suspected, accused, victim, witness, defense counsel and representative of the victim in the appointment and production of examination**

1. In the appointment of examination and its production, the victim, suspected, accused, defense counsel and representative of the victim shall have the right to:

1) prior to the examination, review the decision on its appointment and receive an explanation of their rights, as noted in the protocol;

2) challenge the expert, or a request for exclusion from the examination of the body of forensic examination;

3) apply for appointment as experts the specified persons or employees of specific bodies of forensic examination, as well as production of the examination by the commission of experts;

4) apply for the formulation additional questions to the expert or clarification the questions raised;

5) attend the examination in the manner provided in Article 278 of this Code, with the permission of the body conducting the criminal proceedings;

6) review the expert's conclusions or statement about the impossibility to give an conclusion in accordance with the procedure provided for in Article 284 of this Code.

2. A witness, including having the right to protection, and subjected to examination, and the person against whom the proceedings on the application of compulsory medical measures are conducted, shall also have the rights listed, if it allows his (her) mental state.

3. If the examination is held before recognition of the person as suspected or decision on the qualifications of the acts of the suspected, the criminal prosecution body shall acquaint him (her) with the decision on the appointment of the examination, the expert conclusion and explain to him (her) his rights under Article 286 of this Code.

4. Examination of victims and witnesses, as well as those affected by the commission of a criminal offence and the person in respect of which addressed the issue of recognizing as suspected, shall be performed only with their written consent. If these persons are underage or declared incompetent by a court, a written consent to the examination shall be given by their legal representatives. This rule shall not apply to the examination in the cases provided for in Article 271 of this Code.

5. In the case of satisfaction of the application, claimed by the persons specified in the first and second parts of this Article, the body conducting the criminal proceedings, respectively, changes or supplements its decision on the appointment of examination. In the case of non-approval of the application, it shall issue a reasoned decision that declared against signature to the person who made the request.

#### **Article 275. Guarantees of rights and legitimate interests of persons in respect of which the forensic examination is performed**

1. During the forensic examination of living persons it is prohibited to:

1) deprivation or oppression of their rights, guaranteed by law (including by means of deception, torture, abuse, violence, threats or other illegal means) in order to obtain information from them;

2) use of such persons as subjects of clinical research of medical technology, pharmaceutical and medical products;

3) application of research methods, involving surgery.

2. A person in respect of whom the forensic examination is held should be informed in an accessible form by the body, appointed forensic examination, on the methods used in forensic investigations, including alternative, on the possible pain or side effects. The above information shall be provided to the legal representative of the person in respect of whom the forensic examination is held, at his (her) request.

3. Medical assistance to a person in respect of whom the forensic examination is held, may be provided only on the grounds and in the manner prescribed by law.

4. A person, placed in a medical organization, is provided the opportunity to file complaints and applications. Complaints and applications filed in the manner prescribed by this Code shall be sent by the administration of the medical organization to the addressee within twenty-four hours and not subject to censorship.

5. Forensic examination, performed in respect of a person with his (her) consent, may be discontinued at any stage on the initiative of the said person.

#### **Article 276. Production of examination by the body of forensic examination. Rights and obligations of the head of the body of forensic examination**

1. When entrusting the forensic examination to the body of forensic examination, the body conducting the criminal proceedings, the investigating judge shall send the decision on the appointment of examination and the necessary materials to its head. The examination is performed by the employee of the body of forensic examination, specified in the decision. If a particular expert is not specified in the decision, the head of the body of forensic examination chooses the expert, as reported to the person appointing the examination, within three days.

2. In the case, where the examination is appointed by the decision of the investigating judge, the body conducting the criminal proceedings shall send the necessary materials, objects to the head of the body of forensic examination.

3. In the case of the examination at the request of defense counsel or representative of the victim, the necessary materials shall be provided by the defense counsel or representative of the victim.

4. The head of the body of forensic examination shall be entitled to:

1) state the reasons to return the body conducting the criminal proceedings, without the execution, the decision on the appointment of forensic examination and presented at the research objects, in the following cases: there is no expert in the body of forensic examination with the necessary special scientific knowledge; material and technical basis and conditions of the body of forensic examination does not solve specific expert tasks; questions posed to the forensic expert, beyond its competence; materials for the production of examination, submitted in violation of the requirements of this Code;

2) apply to the person conducting the criminal proceedings, on the inclusion in the commission of forensic experts the persons who do not work in the body of forensic examination, if their special scientific knowledge is necessary to give an conclusion.

The head of the body of forensic examination has also other rights, provided by law.

5. The head of the forensic examination may not:

1) independently reclaim the objects, needed for the examination;

2) without the consent of the body conducting the criminal proceedings, involve to its production the persons, who are not employees of the body of forensic examination;



3) give the expert instructions, predetermining the content of conclusions on specific examination.

6. The head of the forensic examination shall:

1) upon receipt of the decision on the appointment of forensic examination and research objects, charge the production to the specific expert or panel of experts of the body of forensic examination in compliance with the requirements of the first part of Article 272 of this Code;

2) without violating the principle of independence of the forensic expert, to ensure the control over the compliance with the period of production forensic examination, the thoroughness, completeness and objectivity of the conducted studies, ensuring the safety of forensic objects;

3) not disclose information that became known to him (her) in connection with the organization of the examination;

4) provide the conditions, necessary for research.

**Footnote. Article 276 as amended by the Law of the Republic of Kazakhstan dated 18.04.2017 № 58-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 277. Examination out of the body of forensic examination**

1. If the examination is supposed to charge the person who is not an employee of the body of forensic examination, the body conducting the criminal proceedings prior to the decision on his (her) appointment, shall ascertain the identity of the person to whom it intends to entrust the examination, check whether there is reason to challenge the expert, provided for in Article 93 of this Code.

2. The body conducting the criminal proceedings, the investigating judge shall make a decision on the appointment of the examination, handed it to the expert, explain to him (her) the rights and obligations provided for in Article 79 of this Code, and warn of criminal liability for giving knowingly false conclusion. The body, conducting the criminal proceedings, the investigating judge shall make a note on the implementation of these actions in the decision on the appointment of examination, which is certified by the signature of the expert. In the same way, the statements, made by the expert and his (her) applications are recorded. The person, appointed the examination shall make a reasoned decision to reject the application of the expert.

#### **Article 278. The presence of participants to the proceedings in the forensic examination**

1. The body conducting the criminal proceedings shall be entitled to be present during the examination, obtain clarifications of the expert about his (her) ongoing activities. The fact of

the presence of the body conducting the criminal proceedings in the examination is reflected in the expert conclusion.

2. The participants to the proceedings, defending their or represented rights and interests may be present during the examination with the permission of the body conducting the criminal proceedings. In this case, participation of the body conducting the criminal proceedings is mandatory.

3. Upon satisfaction by the body conducting the criminal proceedings of the corresponding application, the person, declared it, shall be notified of the time and place of the examination. Absence of the notified person shall not preclude the examination.

4. The participants to the proceedings, attended in the forensic examination, shall not be entitled to interfere in the course of research, but they can give explanations, relating to the subject of forensic examination.

5. If a participant to the proceedings, attended in the forensic examination, prevents a forensic expert activity, the latter may suspend research and apply to the body conducting the criminal proceedings, or the person who appointed the examination, on the cancellation of the permission of the specified participant to the proceedings to be present during the forensic examination.

6. When preparing conclusions by forensic expert, as well as on the stage of the meeting of forensic experts and drawing conclusions, if the forensic examination is performed by the commission of forensic experts, the presence of participants to the proceedings is not allowed.

7. The forensic psychiatric and forensic psychological and psychiatric examination shall be performed under conditions of confidentiality.

8. In carrying out forensic research in respect of a person to accompany him (her) naked, there can be only a person of the same sex. This limitation shall not apply to doctors and other health professionals, involved in these studies.

#### **Article 279. Placement in a medical organization for the examination**

1. If the forensic examination in respect of a person involves conducting forensic research in the hospital, the suspected, the victim, a witness may be placed in a medical organization on the basis of a decision on the appointment of the examination.

Placement in a medical organization of the victim or witness shall be allowed only with the written consent, except as provided for in Article 271 of this Code.

If the specified person has not reached the age of majority or recognized by court as incapable, the written consent shall be given by the legal representative. In case of objection or absence of a legal representative, the written consent shall be given by the tutorship and guardianship authority.

2. Direction to medical organization for the forensic medical or forensic psychiatric examination of the suspected, not detained in custody, as well as the victim or witness shall be made in the manner prescribed by the second part of Article 14 of this Code.

2-1. In cases provided in part two of this Article, the body (person) who initiated the forensic examination shall be obliged within twenty-four hours to notify the person who was forcibly placed in a medical organization for the production of forensic examination, any of adult members of his family, other relatives or close persons, and in the absence of such persons, the body of internal affairs in the place of residence of the person.

3. The rules of maintenance of persons in respect of whom an examination is conducted, in a medical institution shall be defined by the legislation of the Republic of Kazakhstan on health care.

4. When placing the suspected in the medical organization for the stationary forensic medical or forensic psychiatric examination, the period, during which he (she) must be declared the decision on the qualification of the acts of the suspected, shall be suspended from the date of receipt of sanction before receiving a conclusion of the commission of experts about the mental state of the suspected.

5. The total period of stay of the person in respect of whom the forensic medical or forensic psychiatric examination is conducted in a medical organization is up to thirty days. In case of failure to complete the forensic research, the specified period may be extended for thirty days by a reasoned application of the expert (commission of experts) in accordance with the second part of Article 14 of this Code.

Extension of the specified period for a person subjected to forensic examination on a voluntary basis shall be carried out with his consent by the body (person) who initiated the forensic examination, on the motivated petition of the head of the forensic body or a forensic expert (forensic experts) who is not an employee of the body of forensic examination.

The extension of the period of stay in the medical organization for persons forcibly placed in it for the purpose of forensic examination shall be carried out in accordance with the procedure established by law.

The application must be filed to the court no later than three days prior to the expiration of the examination period and shall be solved within three days from the date of receipt. In case of refusal of the court to extend the period, the person must be discharged from the medical organization. The head of the medical organization shall inform the person in respect of whom the examination is conducted, his (her) defense counsel, legal representative, representative, as well as the body, conducting the criminal proceedings on the application and the results of its consideration by the court.

6. A person in respect of whom the forensic examination is conducted in medical organization, his (her) defense counsel, legal representative, representative shall have the right to appeal against the decision on the extension of its period in the manner prescribed by this Code.

**Footnote. Article 279 as amended by the Law of the Republic of Kazakhstan dated 10.02.2017 № 45-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

## **Article 280. Object of examination**

1. Material evidence, documents, body and mental state of a person, corpses, animals, samples, as well as relating to the subject of examination information contained in the criminal case may be objects of examination.

2. The person appointed the examination guarantees the reliability and admissibility of objects of the expert research.

3. Objects of expert research, if their size and properties permit it, shall be transferred to the expert in the packaged and sealed form. In other cases, the person appointed the examination must ensure the delivery of an expert to the location of the objects of research, unhindered access to them and the conditions, required for the research.

4. The procedure for dealing with objects of forensic examination is established by the legislation of the Republic of Kazakhstan.

5. In the production of examination, its objects with the permission of the body appointed the examination may be damaged or used only to the extent that it is necessary to conduct research and provide an conclusion.

The approval shall be contained in the decision on the appointment of forensic examination or reasoned decision to satisfy the application of the forensic expert or partial refusal to satisfy.

## **Article 281. Individual and commission examination**

1. Examination is carried out by expert individually or by commission of experts.

2. The commission examination is appointed in cases of necessity to produce complex expert studies and carried out by at least two experts of one specialty.

3. At least three experts are assigned to for the forensic psychiatric examination on the issue of sanity.

4. In the production of commission forensic examination each of forensic experts independently and individually carries out forensic investigation in full. Members of the expert commission jointly analyze the results, and coming to a consensus, sign an conclusion or statement about the impossibility to give an conclusion. In the event of disagreement between the experts, each of them or part of experts gives a separate conclusion or the expert, which conclusion is at variance with the findings of other members of the Commission formulates his (her) conclusion separately.

5. The decision of the body conducting the criminal proceedings, the investigating judge on the commission examination shall be binding for the head of the body of forensic examination. The head of the body of forensic examination may independently decide to hold a commission examination on the submitted materials and organize its production.

## **Article 282. Comprehensive examination**

1. A comprehensive examination is appointed when to establish the circumstances relevant to the case, the research on the basis of the different branches of knowledge is required, and it is conducted by experts in various fields within its competence.

Complex examination may be conducted by one expert, if he (she) has the right to produce research on various expert professions.

2. The conclusion of a comprehensive examination must specify what kind of research and to what extent every expert conducted and what conclusions he (she) came. Each expert signs that part of the conclusion, which contains these studies.

3. Based on the results of research, conducted by each of the experts, they formulate a general conclusion (conclusions) of the circumstances to determine which the examination is appointed. The general conclusion (conclusions) shall be formulated and signed only by experts competent in assessment of the results. If the basis of the final conclusions of the commission or any part thereof are the facts, established by an expert (individual experts), then this should be stated in the conclusion.

4. In case of disagreement between the experts, the results of research are made in accordance with the fourth part of Article 281 of this Code.

5. The organization of a comprehensive examination, assigned to the body of forensic examination rests on its head. The head of the body of forensic examination may also independently decide to hold a comprehensive examination on the submitted materials and organize its production.

#### **Article 283. The content of the expert's conclusion**

1. After the necessary studies, the expert (s), taking into account their results, on its behalf makes a conclusion, certifies it with his (her) signature and personal stamp, directs to the person, appointed the examination. In the case of the examination by the body of forensic examination, the signature of the expert (s) shall be sealed by this body. The opinion of the expert(s) may be in the form of an electronic document.

2. The conclusion of the expert must include: the date of its registration, date and place of the examination; base for the forensic examination; information about the body, appointed the examination; information about the body of forensic examination and (or) expert (s), responsible for the production of examination (surname, first name, patronymic (if any), education, expert specialty, professional experience, academic degree and academic rank, position); mark, certified by the expert (s) that he (she) is warned of criminal liability for giving knowingly false conclusion; questions posed to the forensic expert (s); information about the participants of the proceedings, attended during the examination, and the explanations given by them; objects of research, their condition, packaging, sealed and signed

by the identifying witnesses with their participation; content and results of research showing the methods used; assessment of the results of the research, study and formulation of conclusions on the questions posed before the expert (s).

3. The conclusion shall contain the reasons for inability to answer to all or some of the above questions, if the circumstances referred to in Article 284 of this Code are identified in the process of research.

4. Materials that illustrate the expert's conclusion (photo tables, diagrams, graphs, tables, and other materials), shall be certified in the manner prescribed in the first part of this Article, and attached to the conclusion and shall be its integral part. The conclusion must also be attached by the objects, remaining after research, including samples.

**Footnote. Article 283 as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 12.07.2018 No. 180-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 284. Notice of inability to give a conclusion**

If the expert before the research confirms that questions put to him (her) beyond his (her) special scientific knowledge or presented objects of study or materials are unsuitable or insufficient to give a conclusion and cannot be replaced, or the state of science and forensic practice does not allow to answer the questions, he (she) makes a notice about the impossibility to give a conclusion and sends it to the person, appointed the examination.

#### **Article 285. Interrogation of an expert and specialist**

1. Interrogation of an expert or specialist shall be performed in order to:

- 1) clarify relating to the conclusion of the expert or specialist questions, relevant to the case and not requiring the further research;
- 2) clarify the methods and terms used by the expert, specialist;
- 3) get information about other facts and circumstances that are not part of the conclusion, but related to participation of the expert or specialist in the pre-trial proceedings;
- 4) determine the qualifications of the expert or specialist.

2. Interrogation of the expert and specialist shall be performed in accordance with the rules of Article 210 of this Code.

3. It is prohibited to interrogate the expert, specialist before giving their conclusions.

4. The expert may not be interrogated about the circumstances, not relevant to its conclusion, which became known to him (her) in connection with the production of forensic psychiatric and forensic medical examination of living persons.

#### **Article 286. Presentation to the suspected, accused, victim of expert conclusion**

1. The conclusion of the expert or his (her) notice on the impossibility to give a conclusion, as well as the protocol of the expert's interrogation shall be presented to the suspected, accused, victim or other persons, mentioned in the first and second parts of Article 274 of this Code, who are entitled to submit their comments, raise objections to the conclusions of the expert, submit applications for interrogation of the expert, appointment of additional or repeated examination, as well as new examination, before the end of the pre-trial investigation of the case. In the case of the satisfaction or refusal of such application, the criminal prosecution body issues a relevant decision that notified against the signature to the person who made the request.

2. The protocol on the acquaintance of persons referred to in the first part of this article, with the conclusion of the expert and his (her) interrogation protocol shall be made, and it shall include their statements or objections.

3. The provisions of this Article shall apply in cases when the examination is carried out before the decision on the qualifications of the acts of the suspected or the decision on the recognition as the suspected, the victim.

#### **Article 287. Additional and repeated examination**

1. Additional examination is appointed in the lack of clarity or completeness of the conclusion, as well as in the need to solve the additional issues, related to the previous research.

2. Additional examination may be entrusted to the same or another expert.

3. Repeated examination is appointed to study the same objects and solve the same issues in cases, where the previous expert conclusion is not entirely correct, or his (her) conclusions are questionable or the procedural rules on the appointment and production examination are substantially violated.

4. The decision on the appointment of the repeated examination should specify the reasons for disagreeing with the results of the previous examination.

5. Production of repeated examination is entrusted to the commission of experts. The experts, who conducted the previous examination, can be present during the repeated examination and provide the commission with an explanation, but they do not participate in the expert study and drawing the conclusion.

6. In the production of additional and repeated examination, the expert (s) must be submitted to the conclusion of the previous examinations.

7. Additional and repeated examination shall be appointed by and conducted in compliance with the requirements of Articles 270, 272 - 284 of this Code.

8. If a second or subsequent examination is appointed for several reasons, some of which relate to additional examination, and others - to repeated examination, such examination shall be carried out in accordance with the rules of repeated examination.



**Chapter 36. Termination and renewal of the pre-trial investigation, announcement of the suspected, accused in the search, recovery of lost criminal case Article 288. The decision to terminate the pre-trial investigation**

1. A reasoned decision shall be made on the termination of the pre-trial investigation.
2. The introductory part of the decision shall specify the time and place of its preparation, the name and position of the person who took the decision to terminate.
3. The descriptive and motivation part of the decision shall specify the circumstances giving rise to the termination of criminal case, together with the details of the person, suspected of committing a criminal offence, the nature of suspicion, qualifications in accordance with the criminal law and applied preventive measure.
4. The operative part shall set out the decision to terminate the case with reference to the article (part, paragraph) of this Code, which served as the ground for terminating the pre-trial investigation, an indication of the abolition of the measure of restraint, seizure of property, suspension from office, wiretapping and recording of talks, other measures of procedural coercion, investigative and procedural actions that restrict the rights of participants in the process, the disposal of material evidence, as well as a decision to cancel or continue the personal security measures for the protected person, if they were applied.
5. If several suspected persons, defendants are involved in the case, and the base for termination does not apply to all suspected persons, defendants, the criminal prosecution shall be terminated in respect of certain suspected and accused persons.  
Termination of criminal prosecution against certain suspected and accused persons shall not be an obstacle for the continuation of the pre-trial investigation of the respective criminal offence in relation to other persons.
6. Upon termination of the pre-trial investigation on the grounds, specified in paragraphs 1) and 2) of the first and the third part of Article 35 of this Code, the wording, questioning the innocence of the person against whom the decision is made, may not be included in the decision.

**Footnote. Article 288 as amended by the Law of the Republic of Kazakhstan dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication).**

**Article 289. Actions of the person conducting the pre-trial investigation after the termination of the pre-trial investigation**

1. If a decision is made to terminate the criminal case, the person conducting the pre-trial investigation shall, within 24 hours, send the decision and the criminal case to the prosecutor for approval.

When a criminal case is terminated in part or criminal prosecution of individual suspects in full or in part, a decision is sent to the prosecutor for approval.

2. After the receipt of the decision approved by the prosecutor, the person who conducted the pre-trial investigation shall notify the suspect, his defense counsel, legal representative, the victim and his representative, the civil plaintiff, the civil defendant and their representatives about the termination and the grounds for termination of the pre-trial investigation.

The said persons shall be explained the right to familiarize themselves with the materials of the case and the procedure for appealing against the decision to terminate the pre-trial investigation. At the request of these persons, they are given a copy of the decision to terminate the pre-trial investigation or criminal prosecution, approved by the prosecutor.

**Footnote. Article 289 - as amended by the Law of the Republic of Kazakhstan dated 19.12 . 2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 290. Actions of the prosecutor upon termination of the criminal case**

1. Based on the results of studying the received criminal case with a decision to terminate it or a decision to terminate the criminal case in part or the criminal prosecution of individual suspects, the prosecutor, within ten days from the moment of their receipt, shall take one of the following decisions:

1) approves the decision to terminate the criminal case or criminal prosecution in full or in part;

2) by a reasoned decision, refuses to approve the decision and returns it to the person conducting the pre-trial investigation, indicating that the necessary investigative and procedural actions have been taken;

3) terminates the criminal case or criminal prosecution in full or in part on other grounds provided for in Articles 35 and 36 of this Code.

2. In the event that decisions are made, provided for in paragraphs 1) and 3) of part one of this article, the decision is sent to the person who conducted the pre-trial investigation to notify interested persons, as well as to enforce decisions on the fate of material evidence, cancel preventive measures, arrest property, temporary removal from office, other measures of procedural coercion, cancellation or further implementation of security measures.

In case of cancellation of the measure of restraint in the form of detention chosen for the suspect, a copy of the decision is immediately sent by the prosecutor for execution by the administration of the place of detention.

3. At the request of the persons indicated in the second part of Article 289 of this Code, the prosecutor provides them with the opportunity to familiarize themselves with the materials of the terminated criminal case.

**Footnote. Article 290 - as amended by the Law of the Republic of Kazakhstan dated 19.12 . 2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

## **Article 291. Reopening of the terminated pre-trial investigation or criminal prosecution**

1. Reopening of the pre-trial investigation or criminal prosecution after its termination shall be effected by cancellation of the procurator or the court the decision on the termination.

If the terms of the procedural agreement on the admission of guilt and the return of illegally acquired assets are not fulfilled, the decision to terminate the pre-trial investigation or criminal prosecution is canceled at the request of the prosecutor by the court that issued such a decision.

2. The suspect, the accused, their lawyers, the victim and his representative, the civil plaintiff, the civil defendant or their representatives, as well as the person or organization upon whose application the pre-trial investigation was initiated shall be notified in writing about the resumption of proceedings on the case.

3. Reopening of the pre-trial investigation may be only if the statute of limitations for bringing the person to justice has not expired.

4. In the case of reopening of the pre-trial investigation in accordance with the provisions of this Article, the procurator shall be entitled to choose by a reasoned decision a preventive measure, with the exception of detention in custody or house arrest.

5. If the procurator sees the need for a preventive measure in the form of detention in custody or house arrest, he (she) is guided by Articles 146, 147 of this Code.

**Footnote. Article 291 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

## **Article 292. Announcement of the search for the suspected, accused**

1. The search for the suspected, accused includes the measures to establish his (her) location, arrest and transfer to the body conducting the pre-trial investigation.

Search can be declared in respect of the suspected after the decision on the qualifications of his (her) actions, as well as against the accused.

The person conducting the pre-trial investigation makes the decision on the search of the suspected, accused which indicates all information known about their identity, the reason for the search, and requests the search to the bodies of inquiry.

2. If there are grounds, specified in Article 136 of this Code, a preventive measure may be chosen to the suspected, the accused, put on the wanted list, in case of their detection. In the cases, provided for in Article 147 of this Code, a preventive measure in the form of detention in custody can be applied with the sanction of the investigating judge.

Decision on measures of restraint with respect to the person sought, as well as, where appropriate, a court decision sanctioning it shall also be sent to the body, conducting the search.

3. In case of finding of the suspected, the accused, they may be detained in accordance with the procedure established by Article 131 of this Code.

4. If there are grounds for declaring the international search, the criminal prosecution body shall make a separate decision on declaring the suspected, accused for the international search.

Sanctioning the decision on the international search is carried out in the manner prescribed by Article 56 of this Code.

**Footnote. Article 292, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015).**

#### **Article 293. Restoration of lost criminal case or its materials**

1. Restoration of lost criminal case or its materials is made by the decision of the procurator, the person conducting the pre-trial investigation, and in the case of loss of a criminal case or materials in the course of judicial proceedings – by the court decision, sent to the procurator for execution.

2. Restoration of the criminal case is made from the surviving copies of the criminal case materials, including information in electronic or paper form, which can be admitted as evidence in the manner prescribed by this Code or by conducting the procedural actions by the body conducting the criminal proceedings, as well as on the basis of information and records and other necessary materials.

3. The periods of pre-trial investigation and detention in custody when restoring the criminal case shall be calculated in accordance with the procedure, established by Articles 151, 192 of this Code.

4. If deadline for detention in custody for the lost criminal case is expired, the suspect must be released immediately.

#### **Chapter 37. Notice of termination of the investigative actions and familiarization of the participants to the criminal proceedings with the materials of the criminal case Article 294. Notice of termination of the investigation actions and clarification of the right to familiarize with the materials of the criminal case**

1. Recognizing that all the circumstances to be proven in accordance with the requirements of Article 113 of this Code are established in the criminal case, the person conducting the pre-trial investigation, shall notify the suspected, his (her) defense counsel, legal representative, if they are involved in the case, as well as the victim, his (her) representative, the civil claimant, civil defendant, their representatives about the end of investigative actions on the case.

Simultaneously with the notification to the persons specified in the first part of this Article , they shall be explained the right to examine the materials of the criminal case, the applications for the production of additional investigative actions or taking other procedural

decisions. The notification shall also contain a notice of the place of review and the time period during which they can familiarize with the criminal case materials.

2. If at the end of investigative actions in the criminal case or during the period of familiarization of the suspected and his (her) defense counsel with the case materials the period of detention in custody is expired, the person conducting the pre-trial investigation, shall make the decision to submit an application to the court for sanctioning of the period of detention in custody of the suspected for a period of familiarization with the materials of the criminal case.

Sanctioning of the period of detention in custody of the suspected shall be carried out according to the procedure provided for in Article 152 of this Code.

3. The person, conducting the pre-trial investigation shall clarify the party, representing the interests of a minor suspected or a minor victim for the criminal offences referred to in the first part of Article 307 of this Code, the right to trial, referred to the jurisdiction of the specialized inter-district juvenile court in the district and in an equivalent court.

4. The person conducting the pre-trial investigation shall make a protocol on familiarization of the participant to the criminal proceedings with the materials of the criminal case. At the request of the suspected or his (her) defense counsel, familiarization with the case materials can be carried out simultaneously, which shall be documented in a single protocol.

In case of refusal of the suspected to familiarize with the materials of the criminal case, it shall be noted in the protocol.

If a defense counsel, legal representative of the suspected, the victim, representatives of the victim, civil claimant, civil defendant cannot attend for valid reasons to familiarization in due time, the person conducting the pre-trial investigation, postpones the familiarization for a period of not more than five days.

In case of absence of the defense counsel of the suspected or the representative of the victim, the person conducting the pre-trial investigation, during this period, shall take measures for the presence of another defense counsel or representative.

#### **Article 295. Familiarization of the victim, civil claimant, civil defendant and their representatives with the case materials**

1. In the case of an oral or written request of the victim or his (her) representative, the person conducting the pre-trial investigation, introduces these persons with the case materials or part thereof, to familiarize with which they expressed their desire. Civil claimant, civil defendant or their representatives, if they filed an application, shall be acquainted with the case materials in the part that relates to the civil claim.

2. Familiarization is conducted in accordance with the procedure provided for in Article 296 of this Code.

#### **Article 296. Familiarization of the suspected and his (her) defense counsel with the case materials**

1. Complying with the requirements of Article 295 of this Code, the person conducting the pre-trial investigation, presents to the suspected and his (her) defense counsel all materials of the case, except for a list of charges that should be filed, numbered, listed in the inventory sheets of the case, tied together and sealed by the investigative body. Material evidence shall also be presented for familiarization, and at the request of the suspected or his (her) defense counsel the soundtracks, videos, films, slides, and other media, if any, attached to the protocols of the investigation shall be played back. At the request of the suspected or his (her) defense counsel, they can familiarize with the case materials together or separately.

2. The suspected and the defense counsel in the process of familiarization with the case materials, if it consists of several volumes, shall be entitled to re-apply to any of them, as well as write any information and in any volume, to make copies of documents, including by means of scientific and technical means, except for information containing state secrets or other secrets protected by law. Extracts and copies of documents from the case, which contain information constituting state secrets or other secrets protected by law, shall be kept at the case and handed to the suspected and his (her) defense counsel at the court hearing.

3. The suspected and the defense counsel cannot be limited in time necessary for them to familiarize with the case materials. If the suspected and the defense counsel is clearly delaying the familiarization with the case materials, the person conducting the pre-trial investigation shall have the right to make a schedule for reviewing the case materials, approved by the procurator, with establishment of a certain period.

4. When the suspect and defence counsel have finished familiarizing themselves with the case file, the person conducting the pretrial investigation must ask them whether they are submitting petitions and what they wish to do and what other statements they wish to make.

The suspect and his or her counsel must submit additional evidence and other information, which must be included in the criminal case. The person conducting the pretrial investigation is entitled to carry out additional investigative actions in accordance with the procedure set out in article 297, paragraphs 3 and 4, of the Code.

Failure of the parties to provide in full the evidence and other materials available at that time shall result in their being declared inadmissible as evidence.

In this case, the defense party has the right, regardless of the motives, not to provide the body of pre-trial investigation with the proof, which, in its opinion, is of particular importance for the interests of the protection of the suspect.

The suspect and his or her defence counsel must also be asked who exactly of the interviewed witnesses, as well as experts, specialists and witnesses involved in the case, they wish to summon to the hearing for questioning and confirmation of the defence's position.

**Footnote. Article 296 as amended by the Law of the Republic of Kazakhstan No. 118-VI dated 21.12.2017 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

**Article 297. Procedure for consideration and resolution of applications, declared at the end of familiarization with the materials of the criminal case**

1. At the end of the familiarization of the persons, referred to in Article 294 of this Code, with the materials of the criminal case, the person conducting the pre-trial investigation, finds out whether they have any applications or other statements.

2. The application of the suspected, his (her) defense counsel, legal representative, victim, civil claimant, civil defendant and their representatives, stated orally after familiarization with the case materials, shall be recorded in the protocol of familiarization.

In cases where the participant to the proceedings, declared its intention to present an application in writing, it is provided the necessary time to prepare it, but not more than three days, as is noted in the protocol of familiarization. Written application shall be attached to the case.

3. Applications are considered and resolved in the manner prescribed in Article 99 of this Code, on the basis of which the person conducting the pre-trial investigation, shall not have the right to dismiss the application for the establishment of the circumstances relevant to the case. In such cases, the person conducting the pre-trial investigation, recognizing the need to produce additional investigative actions, shall make an order for the reopening of investigation and satisfying the application, in this case, the continuation of the familiarization with the materials of the criminal case by other participants to the proceedings does not interfere the resolution of the application and, if it is satisfied, to conducting investigative actions.

4. After the production of additional investigative actions the person, conducting the pre-trial investigation, again announces the completion of investigative actions and explains the opportunity for participants to the proceedings previously acquainted with the materials of the criminal case, the right to familiarize with the materials of the additional investigative actions, or, upon request, with the materials of the criminal case within the rights of the respective parties, set out in this Chapter.

5. In the case of full or partial refusal to satisfy the application declared, the person conducting the pre-trial investigation, shall make an appropriate decision, a copy of which during the day shall give to the person who made the application in person or send to him (her ) through the available means of communication.

6. Refusal of the person, conducting the pre-trial investigation, to satisfy the application in a criminal case may be appealed to the procurator within three days of receipt of the copy of the decision to dismiss the application.

7. Prior to the resolution of the complaint by the procurator, a criminal case shall not be directed to the court. Deviation by the procurator of the complaint about the refusal to satisfy the application shall not preclude presenting the same application to the court.



## **Chapter 38. Preparation of a report on the completion of the pre-trial investigation and referral of the criminal case to the prosecutor**

Footnote. The heading of chapter 38 is as amended by the Law of the Republic of Kazakhstan dated 27.12.2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of the report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

### **Article 298. Drawing up a report on the completion of a pre-trial investigation**

Footnote. The heading of Article 298 is as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

1. The person conducting the pre-trial investigation, after familiarizing himself with the materials of the criminal case of the participants in the process and resolving their petitions, shall draw up a report on the completion of the pre-trial investigation.

Footnote. Part one - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the

prosecutor draws up the indictment, which are put into effect :

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

2. If a person is suspected of committing several criminal offences, a description of each shall be in chronological order, starting with the criminal offence committed earlier in time than the others.

Footnote. Article 298 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (for enactment, see Art. 2).

**Article 299. The content of the report on the completion of the pre-trial investigation in a criminal case**

1. The report on the completion of the pre-trial investigation shall indicate:

1) the time and place of drawing up a report on the completion of the pre-trial investigation;

2) the position, surname and initials of the person who compiled the report on the completion of the pre-trial investigation;

3) the surname, name and patronymic (if any) of the suspect, the day, month, year and place of his birth, the specific article, part and paragraph of the article of the criminal law, according to which the act incriminated to him is qualified;

4) the event, place and time of the commission of the criminal offense, its method, consequences and other circumstances;

5) a list of evidence confirming the circumstances that serve as the basis for accusing the person;

6) a decision to send the criminal case to the prosecutor to decide on the issuance of an indictment and to send the criminal case to the court for consideration on the merits.

2. The report on the completion of the pre-trial investigation is signed by the person who compiled it.

3. A list of persons to be summoned to the court session is attached to the report on the completion of the pre-trial investigation. The list shall indicate the surname, name, patronymic (if any) of the person, his procedural status, place of residence, reference to the number of the sheet and volume of the criminal case with his testimony.

The list must consist of two parts: the list of persons named by the suspect and the defense counsel (defence list), and the list compiled by the person who carried out the pre-trial investigation (the prosecution list).

The list is placed in a sealed envelope and attached to the criminal case.

The report on the completion of the pre-trial investigation is also accompanied by a certificate, which indicates the period of the pre-trial investigation, the preventive measure, the period of detention of the person, the available material evidence and the place of their storage, the measures taken to secure the civil claim and the execution of the court sentence, procedural costs and amounts to be recovered from the suspect, the stated claim.

**Footnote. Article 299 - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect:**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

### **Article 300. Sending a report on the completion of the pre-trial investigation and criminal case to the prosecutor**

**Footnote. The heading of Article 300 is as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

1. A criminal case with a report on the completion of the pre-trial investigation shall be sent to the prosecutor.

Footnote. Part one - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

2. If the suspected is in custody, the criminal case shall be attached by a document proving his (her) identity. In other cases, a copy certified by the person conducting the pre-trial investigation shall be attached.

3. In the absence of the suspected, who is a foreigner or stateless person, of the identity document, the materials in exceptional cases may be attached by another document.

Note. The identity documents in this Article shall be:

- 1) a passport of a citizen of the Republic of Kazakhstan;
- 2) an identity card of the citizen of the Republic of Kazakhstan;
- 3) the residence permit of the foreigner in the Republic of Kazakhstan;
- 4) a certificate of stateless persons;
- 5) a diplomatic passport of the Republic of Kazakhstan;
- 6) a service passport of the Republic of Kazakhstan;
- 7) a refugee certificate;
- 8) a seafarer identity card;
- 9) a foreign passport;
- 10) a driver's license;
- 11) a certificate of return;
- 12) the birth certificate of a person under the age to obtain identity documents;
- 13) a birth record;
- 14) a military ID.

Footnote. Article 300 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force).

## **Chapter 39. Decisions and actions of the prosecutor in a criminal case received with a report on the completion of the pre-trial investigation**

Footnote. The heading of chapter 39 is as amended by the Law of the Republic of Kazakhstan dated 27.12.2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of the report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

## **Article 301. Issues resolved by the prosecutor when studying a criminal case received with a report on the completion of a pre-trial investigation**

Footnote. The heading of Article 301 and the first paragraph are as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment , which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

The prosecutor studies the criminal case received with the report on the completion of the pre-trial investigation and checks:

- 1) whether there was the act and whether the act is part of a criminal offence;
- 2) whether there are the circumstances, leading to its termination;
- 3) whether the act of the suspect is subject to reclassification;

Footnote. Paragraph 3) - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

4) whether the incriminated act of the person is confirmed by the existing in the case evidence;

5) whether the person is recognized as suspected by the established criminal acts;

6) whether the measures taken to bring to justice all persons against whom in the case the evidence that they committed criminal offences is obtained;

7) whether there are grounds in the case for choosing, changing or canceling a preventive measure;

Footnote. Paragraph 7) - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

8) whether the measures taken to secure the civil claim and possible confiscation of property;

8-1) Whether the property of the suspect or accused person is linked to the criminal offence that is the basis for possible confiscation in the cases provided for in article 48 of the Criminal Code of the Republic of Kazakhstan, and whether evidence has been provided as to whether the property in question is the subject of confiscation;



9) whether the substantial violations of the criminal procedural law are made in the production of the pre-trial investigation;

10) whether the criminal prosecution body takes the measures to establish the amounts of procedural costs and other amounts to ensure their collection by the court;

11) whether there are grounds for concluding a procedural agreement.

Footnote. Article 301 as amended by the Law of the Republic of Kazakhstan No. 217-VI dated 21.01.2019 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force).

**Article 302. The decision and actions of the prosecutor in a criminal case received with a report on the completion of the pre-trial investigation**

Footnote. The heading of Article 302 is as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

1. As a result of the study of the materials of the criminal case, the procurator makes one of the following:

1) draws up an indictment;

Footnote. Paragraph 1) of part one - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;



from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

2) Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

3) directs the criminal case to the person conducting the pre-trial investigation for further investigation;

4) terminates criminal case in full or in part on the grounds, specified in Articles 35 and 36 of this Code;

5) at its discretion or application of the defense team decides to conclude a procedural agreement;

6) adds or reduces the list of persons subject to the call to the court, except for a list of defense witnesses.

2. The actions provided for by the first part of this article, the prosecutor carries out within ten days, and in complex, multi-episode criminal cases, these actions can be carried out within a period of up to one month.

Footnote. Part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

**Footnote. Article 302 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force).**

### **Article 302-1. Contents of the indictment**

1. The prosecutor's indictment consists of an introductory, descriptive and motivational and resolute parts.

2. In the introductory part, the prosecutor shall indicate the last name, first name, patronymic (if any) of the accused (accused), in respect of whom (who) the indictment is being drawn up, information about the accused (accused) (citizenship, marital status, occupation, education, place of residence, criminal record), other data characterizing him (theirs), the measure of restraint chosen in relation to him (theirs), the criminal law (article, part, paragraph), according to which his (their) actions are qualified.

3. The descriptive and motivational part sets out: the essence of the charge, the place and time of the commission of the crime, its methods, motives, consequences and other significant circumstances, information about the victim, evidence confirming the guilt of the accused; information about property subject to possible confiscation in accordance with Article 48 of the Criminal Code of the Republic of Kazakhstan; a list of evidence confirming that the property is subject to possible confiscation in accordance with Article 48 of the Criminal Code of the Republic of Kazakhstan; circumstances mitigating and aggravating his responsibility; information about the circumstances that are prerequisites for the use of treatment for mental, behavioral disorders (diseases) associated with the use of psychoactive substances; arguments of the defense in its favor and the results of verification of these arguments. The indictment must contain references to the volumes and sheets of the case.

4. The operative part of the indictment shall indicate the last name, first name and patronymic (if any) of the accused (accused), a specific article, part and paragraph of the article of the criminal law, according to which the act incriminated to him is qualified, the decision to bring the accused to court and refer the criminal case to the court to which it has jurisdiction.

5. The indictment is signed by the prosecutor, indicating the place and date of its preparation.

6. When accusing a person of committing several criminal offenses provided for by different articles, parts or paragraphs of articles of the criminal law, the indictment must indicate the qualification of each of these criminal offenses separately.

When accusing several persons of committing one criminal offense in the indictment, the qualification of the criminal offense is indicated for each accused.

7. A list of persons to be summoned to the court session is attached to the indictment. The list shall indicate the surname, name, patronymic (if any) of the person, his procedural status, place of residence, reference to the number of the sheet and volume of the criminal case with his testimony.

The list must consist of two parts: a list of persons named by the defense (defence list) and a list drawn up by the prosecutor (prosecution list).

The list is placed in a sealed envelope and attached to the criminal case.

A certificate is also attached to the indictment, which indicates the term of the pre-trial investigation, the measure of restraint, the period of detention of the person, the available material evidence and the place of their storage, the measures taken to secure the civil claim and the execution of the court verdict, the procedural costs and the amounts to be recovered from the accused, the stated claim.

Footnote. Chapter 39 is supplemented by Article 302-1, in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment acts to be put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

### **Article 303. The decision of the procurator on a preventive measure**

1. In addressing the issues, listed in the first part of Article 302 of this Code, the procurator shall have the right by a reasoned decision to cancel or change the previously chosen to the suspected preventive measure or to choose a preventive measure, if it has not been applied.

2. In cases where the prosecutor sees the need to cancel, change or select a measure of restraint in the form of bail, detention or house arrest, or extend the period of the suspect's detention or house arrest, he shall be guided by Articles 145, 146, 147, 152 and 153, respectively. of this Code.

Footnote. Part two - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

Footnote. Article 303 with the amendment introduced by the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force).

#### **Article 304. Presentation of the indictment**

1. The prosecutor shall ensure that the indictment is handed over to the accused. Signed acknowledgement confirming the receipt by the accused of the indictment, containing an explanation of the rights of the accused, shall be attached to the case.

2. In cases where the accused is outside the Republic of Kazakhstan and refuses to appear in the prosecutor's office, the procurator sends the indictment to the accused through the available means of communication.

If necessary, the procurator organizes the publication of reports on the direction of the criminal case to the court in the media, as well as in the public telecommunication networks.

3. A copy of the indictment shall be handed to the defense counsel of the accused, the victim and his (her) legal representative or sent to such persons through the available means of communication.

4. If the accused or the victim does not speak language of the proceedings, on which the pre-trial investigation is conducted, the indictment shall be handed in a language which he (she) speaks.

Footnote. Article 304 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

#### **Article 305. Sending a criminal case to court**

Footnote. The heading of Article 305 is as amended by the Law of the Republic of Kazakhstan dated 27.12.2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

1. After performing the actions provided for by Article 304 of this Code, the prosecutor sends the criminal case with the indictment to the court that has jurisdiction over it.

**Footnote. Part one - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :**

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

2. If the accused is in custody, the procurator shall notify the head of the administration of the place of detention on the direction of the criminal case in court and that the accused is registered for trial.

3. The received after sending the case to the court applications and complaints of the participants to the proceedings shall be sent directly to the court.

**Footnote. Article 305 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force).**

## **Section 7. The jurisdiction of criminal cases.**

### **Proceedings in the court of first instance**

#### **Chapter 40. The jurisdiction of criminal cases Article 306. Criminal cases within the jurisdiction of district and equivalent courts**

1. The district and equivalent courts act as a court of first instance.

2. The district and equivalent courts have the jurisdiction over all criminal cases, except in criminal cases within the jurisdiction of specialized courts, if their jurisdiction in the cases provided for in this Code is not changed.

3. At the pre-trial stage of criminal proceedings, specialized investigative courts and specialized inter-district investigative courts shall consider complaints about decisions and actions (or inaction) of persons conducting pre-trial investigations, the procurator supervising

the legality of operational and investigative activities and pre-trial investigations, and authorize procedural actions in the cases provided for by this Code, as well as exercise other powers provided for by this Code.

4. At the stage of execution of the sentence, the district and equivalent courts consider the matters, referred to in Articles 475 and 476 of this Code, falling within their jurisdiction.

5. In the cases, stipulated in this Code, the district and equivalent courts for cases within their jurisdiction consider the applications for initiation of proceedings on newly discovered circumstances.

Note. If on the territory of the respective administrative-territorial unit there are no specialized investigative courts, specialized inter-district investigative courts, materials referred to their jurisdiction have the right to consider district and equal to them courts (investigative judge), except for the cases provided by Articles 232, 234, 240 of this Code. An investigating judge (judges) of a district court and a court of equivalent status is appointed (appointed) from among the judges by the president of that court. If it is necessary to replace an investigating judge, he or she may be reappointed.

**A footnote. Article 306 as amended by the Law of the Republic of Kazakhstan No. 180-VI dd. 12.07.2018 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 307. Criminal cases within the jurisdiction of specialized inter-district juvenile court**

1. Specialized inter-district juvenile court acts as a court of first instance, which has jurisdiction over criminal cases:

1) on criminal offences, committed by minors, except in cases falling within the jurisdiction of specialized inter-district criminal court, specialized inter-district military court in criminal cases and military court of garrison;

2) on criminal offenses provided for in Articles 106 (paragraph 11) of part two), 107 (paragraph 8) of part two), 122 (parts one and two), 123 (part two), 124 (parts one and two), 132 (parts one and two), 133, 134, 135 (parts one, two and three), 136, 137, 138, 139 (in terms of non-fulfillment of obligations to pay funds for the maintenance of children), 140, 141, 142, 143 and 144 of the Criminal Code of the Republic of Kazakhstan.

2. At the stage of execution of the sentence, the specialized inter-district juvenile courts consider the matters, referred to in Articles 475 and 476 of this Code, falling within their jurisdiction.

3. In cases, stipulated by this Code, the specialized inter-district juvenile courts for cases within their jurisdiction consider the applications for initiation of proceedings on newly discovered circumstances.

4. A criminal case within the jurisdiction of the specialized inter-district juvenile court may be transferred to the court of general jurisdiction in the cases, provided for in Article 317 of this Code.



Footnote. Article 307 as amended by Law of the Republic of Kazakhstan No. 240-VI dated 01.04.2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication).

**Article 308. Criminal cases within the jurisdiction of the specialized inter-district criminal court**

1. Specialized inter-district criminal courts act as a court of first instance.

2. Specialized inter-district criminal courts have jurisdiction over criminal cases of particularly grave crimes, crimes provided for in Articles 116 (parts two and three), 146 (parts two and three), 249 (part two), 317 (part four), 335 (part four), 337 (parts four and sixth), 345 (part four), 345-1 (part four), 346 (parts five and six) of the Criminal Code of the Republic of Kazakhstan, with the exception of cases referred to the jurisdiction of specialized inter-district military courts for criminal cases.

3. At the stage of execution of the sentence, the specialized inter-district criminal courts consider the matters, referred to in Articles 475 and 476 of this Code, falling within their jurisdiction.

4. In the cases stipulated by this Code, the specialized inter-district criminal courts for cases within their jurisdiction consider the applications for initiation of proceedings on newly discovered circumstances.

Footnote. Article 308 as amended by the Law of the Republic of Kazakhstan dated 29.12.2022 No. 175-VII (effective from 01.01.2024).

**Article 309. Jurisdiction of criminal cases to the specialized inter-district military criminal courts and military courts of garrisons**

1. Specialized inter-district military criminal courts and military courts of garrisons act as a court of first instance.

2. Specialized inter-district military criminal courts have jurisdiction over the criminal cases:

1) about the particularly serious military crimes provided for in Chapter 18 of the Criminal Code of the Republic of Kazakhstan;

2) on other particularly grave crimes, on crimes provided for in Articles 116 (parts two and three), 146 (parts two and three), 249 (part two), 317 (part four), 335 (part four), 337 (parts four and six), 345 (part four), 345-1 (part four), 346 (parts five and six) of the Criminal Code of the Republic of Kazakhstan, committed by military personnel undergoing military service under conscription or contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations, citizens in reserve, during their military training, by persons of civilian personnel of military units, formations, institutions in connection with the performance of their official duties or at the location of these units, formations and institutions.



3. Military courts of garrisons, except in cases under the jurisdiction of the specialized inter-district military criminal court have jurisdiction over the criminal cases:

1) about the military criminal offences, provided for in Chapter 18 of the Criminal Code of the Republic of Kazakhstan;

2) on the other criminal offences, committed by military servicemen undergoing military service under conscription or contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations, the citizens in the reserve, while passing their military duties, by the civilian personnel of military units, formations, institutions in connection with the performance of their duties or in the arrangement of these units, formations and institutions.

4. At the stage of execution of sentence, the specialized inter-district military criminal courts and military courts of garrisons shall consider the matters referred to in Articles 475 and 476 of this Code under the cases falling within their jurisdiction.

5. In the cases, provided for in this Code, the specialized inter-district military courts and military courts of garrisons for cases within their jurisdiction consider the applications for initiation of proceedings on newly discovered circumstances.

**Footnote. Article 309 as amended by the Law of the Republic of Kazakhstan dated 29.12.2022 No. 175-VII (effective from 01.01.2024).**

#### **Article 310. Criminal cases within the jurisdiction of the regional and equivalent courts**

1. The regional court and the court equated to it shall act as a court of appeal.

2. In the appeal procedure, the regional court and the court equated to it shall consider cases on appellate (private) complaints, petitions of the prosecutor for unenforceable sentences and decisions of district and equated to them courts, specialized inter-district courts for juvenile cases, as well as specialized inter-district courts on criminal cases.

**3. Is excluded by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

4. At the pre-trial stage of the criminal process, the regional and equated to them courts shall consider complaints, petitions of the prosecutor against the decisions of the investigating judge.

5. At the stage of execution of the sentence, the regional and equated to them courts shall consider on the appellate procedure private complaints, petitions of the prosecutor against the decisions of the courts of first instance made during the consideration of the issues specified in Articles 475 and 476 of this Code.

6. In the cases, provided for in this Code, the regional and equivalent courts for cases within their jurisdiction consider the applications for initiation of proceedings on newly discovered circumstances.

Footnote. Article 310 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **Article 311. Jurisdiction of military court**

1. A military court acts as an appellate court.

2. In the appeal procedure, the Military Court shall consider cases on appellate (private) complaints, petitions of the prosecutor for unenforceable verdicts and orders of military courts of garrisons, specialized inter-district military courts in criminal cases, including those made during the consideration of the issues specified in Articles 475, 476 of this Code.

3. Is excluded by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).

4. In the cases provided for in this Code, the Military Court for cases within their jurisdiction considers the applications for initiation of proceedings on newly discovered circumstances.

Footnote. Article 311 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **Article 312. Consideration of cases on the application of compulsory medical measures**

Cases on the application of compulsory medical measures to persons who have committed in a state of insanity the prohibited by criminal law act or have mental illness after committing a crime shall be considered by the court of first instance in accordance with the jurisdiction, established by Articles 306, 307, 308 and 309 of this Code.

#### **Article 313. Criminal cases within the jurisdiction of the Supreme Court of the Republic of Kazakhstan**

1. The Supreme Court of the Republic of Kazakhstan acts as the highest judicial instance considering in the judicial board:

1) petitions for revision of sentences, decisions of courts of first instance after their consideration in the appellate instance, sentences, decisions of courts of appellate instance;

2) protests of the Prosecutor General against sentences and decisions of the court of first instance, regardless of their revision in the appellate instance, sentences and decisions of the appellate instance.

2. In the cases provided for in this Code, the board of the Supreme Court of the Republic of Kazakhstan for cases within their jurisdiction considers the applications for initiation of proceedings on newly discovered circumstances.

Footnote. Article 313 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).

#### **Article 314. The territorial jurisdiction of criminal cases**

1. A criminal case shall be considered by the court at the place of commission of a criminal offence.

2. If the criminal offence is started in the place of business of the court, and finished in the place of business of another court, the case shall be under the jurisdiction of the court at the place of termination of the investigation.

3. If the criminal offence is committed outside the Republic of Kazakhstan or the scene of a criminal offence can not be determined, or if the criminal offences are committed in different places, the case shall be considered by the court at the place of termination of the investigation.

The place of completion of the investigation is the place where the report on the completion of the pre-trial investigation, the record of the accusation, the record of the accelerated pre-trial investigation, the record of a criminal offence or the issuance of a decision to refer the case to the court for the application of coercive medical measures.

Footnote. Part three as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:

from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

Footnote. Article 314 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force).

#### **Article 315. Determination of jurisdiction in combining of criminal cases**

When the accusation of one person or group of persons in committing of several criminal offences, at least one of which is classified as particularly serious, the case shall be considered by the specialized inter-district criminal court, and the case of the criminal

offences referred to in Article 309 of this Code shall be considered by the specialized inter-district military criminal court.

In the case of complicity in committing of a criminal offence, not belonging to the category of particularly serious, and the inability to separate the case into separate proceedings, the cases shall be considered by:

the specialized inter-district juvenile court - cases in which at least one of the accomplices is a minor, if there are no accomplices among military servicemen;

the military court of garrison - cases in which at least one of the partners is a military or other person referred to in paragraph 2) of the third part of Article 309 of this Code.

**Article 316. Transfer of criminal case under the jurisdiction of the court, initiated proceedings in the case**

1. The Court shall transfer the case to another jurisdiction if it is established that the submitted case is not under its jurisdiction.

2. If the violation of the rules of the territorial jurisdiction of the case, provided for in Article 314 of this Code, is determined in the main court hearing, the court with the consent of all parties shall have the right to leave the case in its production.

3. In all cases, the case shall be sent to another jurisdiction, if it is established that it is under the jurisdiction of the specialized inter-district criminal court, specialized inter-district military criminal court, or military court of garrison.

**Article 317. Transfer of criminal case from the court, which has jurisdiction over it to another court**

1. In some cases, with the purpose of the most rapid, comprehensive and objective examination of the case, including that which is examined with the participation of jurors, with the consent of the defendant or at the request of the participants in the process, it can be transferred for consideration from one court to another of the same level.

In this case the transfer of the case shall be allowed only prior to its consideration at the court session.

2. At the request of the party, the presentation of a judge or Chairman of the court the case may also be submitted for consideration from one court to another of the same level, if the court is unable to consider the case because of the circumstances that prevent all judges of the court to participate in the proceedings, as well as in order to ensure comprehensive and objective consideration of the case or when the transfer to another court is related to the real threat to the personal safety of trial participants.

3. The issue of transfer of the case on the grounds, set out in the first and second parts of this Article from one court to another shall be permitted by a higher court and the decision

about it shall be made. Transfer of the case from appeal or cassation instance of one court to the appropriate instances of another court shall be carried out on the grounds and in the manner, provided for in this Article.

**Footnote. Article 317 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).**

#### **Article 318. Resolution of disputes over jurisdiction**

1. Disputes over jurisdiction between courts shall be resolved by a higher court, which decision is final and not appealable.

2. The statements of the parties on the non-jurisdiction of the case to this court shall be resolved by this court. The court decision on the issue of jurisdiction may be appealed to a higher court, which decision is final and cannot be appealed, revised at the petition of the prosecutor.

**Footnote. Article 318 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication)**

#### **Chapter 41. The decision on the appointment of the main trial and preparatory actions for the court hearing Article 319. Actions of the court on the submitted criminal case**

1. When submitting of a criminal case to the court, the Chairman of the court or another judge on his (her) behalf, resolves the adoption of a case in court.

2. The judge in the case submitted takes one of the following decisions on:

- 1) the appointment of the main trial in general or in short order;
- 2) conducting of a preliminary hearing of the case.

3. The decision on the case the judge takes in the form of a ruling, which shall specify:

- 1) the time and place of the ruling;
- 2) the position and name of the judge who issued the ruling;
- 3) grounds and essence of the decisions made.

4. The decision must be made no later than five days from receipt of the case to the court.

5. At the same time with making a decision the judge shall consider the reasonableness of the application or non-application to the accused of the preventive measure, and validity or invalidity of its type, if a preventive measure is chosen, to extend the application of the preventive measure, if it has expired by this time.

#### **Article 320. The issues to be clarified by submitted to the court case**

When deciding on the possibility of appointing a court hearing the judge shall find out in respect of each of the defendants the following:

- 1) whether the court has the jurisdiction over the case;

2) whether there are circumstances leading to termination or suspension of the proceedings;

3) whether the violations of criminal procedural law that prevent appointment of the hearing are made during the pre-trial investigation, the accelerated pre-trial investigation, concluding a procedural agreement, the agreement on reconciliation in order of mediation;

4) whether copies of the indictment, the protocol of the accelerated pre-trial investigation, the protocol of the accusation were handed over;

5) whether the preventive measure chosen to the accused is subject to change or cancellation, or the extension of its application;

6) whether the measures, ensuring the compensation for damage caused by a criminal offence are taken, and the possible confiscation of property;

7) whether there are applications and petitions.

**Footnote. Article 320 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 321. Preliminary hearing**

1. Conducting a preliminary hearing in cases of particularly serious crimes is mandatory. In other cases, a preliminary hearing is conducted, if necessary to decide to transfer the case to another jurisdiction, sending the case to the procurator, dismiss the case, suspend the proceedings, the combining and separation of criminal cases, as well as consideration of the application of the parties.

2. A preliminary hearing is conducted by a single judge in the court hearing within ten days from the date of the decision to hold it. The parties shall be notified about the time and place of the preliminary hearing. The protocol shall be kept during the preliminary hearing.

3. Participation in the court hearing of the defendant, who is accused of committing of a particularly serious crime, his (her) defense counsel and the public procurator is mandatory. In the absence of the defendant, who is accused of committing other criminal offences, a preliminary hearing shall be conducted, if so requested. In case of absence of the defense counsel without a valid reason, as well as his (her) participation in the preliminary hearing is not possible, the judge shall take measures to ensure the participation in the court hearing of the newly appointed defense counsel. Failure to appear in the court hearing of the victim and his (her) representative, civil claimant, civil defendant or their representatives shall not prevent preliminary hearing of the case.

4. During the preliminary hearing, the judge finds out from the defendant, who is accused of committing a particularly grave crime, as well as of committing crimes provided for in articles 116 (parts two and three), 125 (paragraph 1) part three), 128 (paragraph 1) part four), 132 (part five), 135 (paragraph 1) part four), 146 (parts two and three), 160, 163, 164 (part two), 168, 249 (part two), 317 (part four), 335 (part four), 337 (parts four and six), 345 (part

four), 345-1 (part four), 346 (parts five and six), 380-1 (paragraph 6) of part two) of the Criminal Code of the Republic of Kazakhstan, on whether he has a petition for consideration of his case with the participation of jurors, and if such a petition is filed, whether he supports his petition. Such a request is not requested in the case of consideration of cases on:

- 1) murders committed in an emergency situation and during mass riots;
- 2) crimes against the peace and security of mankind, against the foundations of the constitutional order and the security of the state;
- 3) terrorist and extremist crimes;
- 4) military crimes committed during wartime or in a combat situation;
- 5) crimes committed as part of a criminal group;
- 6) especially grave crimes against the sexual integrity of minors.

5. The judge shall issue a resolution on the results of the preliminary hearing of the case, in which he/she sets out the decision on the issues considered. In the absence of grounds for referring the case to the prosecutor's jurisdiction, suspending the proceedings on the case, dismissing the case, the court shall, in compliance with the requirements of Article 322 of this Code, issue a resolution on the appointment of the main trial.

6. If during the preliminary hearing the prosecutor changes the accusation, he submits to the court a new wording in writing and the judge reflects this in the decision. If the change by the prosecutor of the charge entails a change in jurisdiction, the judge returns the case to the prosecutor for redrawing the indictment, the protocol of the accelerated pre-trial investigation, the protocol of the prosecution and the direction of the case according to jurisdiction.

**Footnote. Article 321 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 30.12.2020 No. 393-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 29.12.2022 No. 175-VII (effective from 01.01.2024).**

## **Article 322. Appointment of the main trial**

1. The judge appoints the main trial in accordance with the fifth part of Article 321 of this Code or without a preliminary hearing of the case, coming to the conclusion that during the pre-trial proceedings all the requirements of this Code to ensure the rights of participants in the process are complied with and there are no other circumstances that prevent consideration of the case in court.

2. The decision on the appointment of the main trial must contain:
- 1) identification of the person, who is the defendant;
  - 2) a precise indication of the criminal law, under which he (she) brought to justice;
  - 3) the decision to maintain, to cancel, change or chose the preventive measure or the measures to secure the civil claim and the possible confiscation;



- 4) the decisions on the challenges, applications and other statements of the participants in the process;
- 5) the decision on the admission as a defense counsel of the person, chosen by the accused, or the appointment of the last a defense counsel;
- 6) a list of persons, subject to call to the main hearing. Persons whose testimony is deposited in the pre-trial investigation, shall not be called to the court hearing;
- 7) the decision on the hearing of the case in the absence of the defendant in the case where the law allows absentee consideration of his (her) case;
- 8) information on the place and time of the court hearing;
- 9) the decision on the consideration of the case in general or in short order, open or closed court hearing in the cases stipulated by this Code;
- 10) the language of the court proceedings;
- 11) the decision on the substitute judge.

3. If a preliminary hearing of the case is not conducted, the decision on the appointment of the main court hearing should specify the decisions on the issues which are put up for discussion.

4. The main trial shall commence no earlier than three days from the date of notification of the parties of the place and time of the court hearing and no later than ten days at a reduced order of consideration, and fifteen days under the general order of consideration from the issuance of the decision on its appointment. In exceptional cases, this period may be extended by the decision of the judge, but not more than thirty days.

5. The main trial must be completed within a reasonable time. In a reduced production, the main trial must be completed within the timeframe, established by Article 382 of this Code.

### **Article 323. The direction of the case to the procurator**

In establishing substantial violations of the criminal procedural legislation, preventing the appointment of the main trial, as well as their establishment in the main trial for accelerated pre-trial proceedings or concluded procedural agreement, the court returns the case to the procurator to address them.

### **Article 324. Suspension of the criminal proceedings**

1. Decision to suspend the proceedings may be made by the judge on the grounds, specified in the first, second, third parts of Article 45 of this Code.

2. The proceedings may be suspended in respect of one of the several defendants, provided that it does not infringe his (her) rights or the rights of other defendants to defense. In the case, where the defendants in respect of whom, the proceeding is not suspended, are in custody and the judge does not find it possible to change their preventive measure, the

suspension of proceedings shall be possible for a period not exceeding six months. If during this time the grounds for the suspension of proceedings against any of the defendants do not disappear, the proceedings against the other defendants should be renewed and the date of the main trial is appointed.

3. In case of suspension of the proceedings on the grounds provided by paragraph 1) of the first part of Article 45 of this Code, the case shall be returned to the procurator, except in cases, specified in the second part of Article 335 of this Code.

#### **Article 325. Measures to secure the civil claim and confiscation of property**

If the interrogating officer, investigator or procurator does not take measures to ensure compensation for damage caused by a criminal offence, and the possible confiscation of property, the judge shall require the criminal prosecution bodies to take the necessary measures to support them.

#### **Article 326. The direction of the criminal case to another jurisdiction**

If the judge finds that the case is not within his (her) jurisdiction, he (she) shall make a decision to transfer the case to another jurisdiction with bringing the legal basis of the decision and indicating the court, where the case is sent to, about what the participants to the proceedings are notified.

#### **Article 327. Termination of criminal case**

In the preliminary hearing or in the main trial the judge shall issue a decree on dismissing the case on the grounds specified in the first part of Article 35 and the first part of Article 36 of this Code, also in the main trial if the public prosecutor refuses to press charges. Having made a decision to terminate the case, the judge shall cancel the measure of restraint, measures to secure the civil claim and property confiscation and resolve the issue of material evidence, cancellation or continuation of the security measures for the protected person, if they have been applied. A copy of the judge's decree to dismiss the case shall be sent to the prosecutor, and also served to the person who was held criminally liable and to the person injured. When it is resolved to cancel or continue security measures, a copy of the resolution shall be sent to the bodies providing security measures.

**Footnote. Article 327 as amended by the Law of the Republic of Kazakhstan dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 328. Ensuring the parties an opportunity to study the case**

After the appointment of the main trial, the judge shall provide the parties an opportunity to get acquainted with all materials of the case, that they are not acquainted at the pre-trial

stage, to write out the necessary information from them and make copies using the scientific and technical means, except for information constituting the state secrets or other legally protected secret.

#### **Article 329. Delivery of the copies of documents**

If in deciding on the appointment of the court session the preventive measure is changed or the list of persons, subject to call to the court is changed, or the procurator changes the charge, the defendant, his (her) defense counsel, the victim and his (her) representative shall be handed a copy of the judge's decision on these decisions and the new wording of the charges, made by the procurator.

#### **Article 330. Calls to the court session**

1. A judge shall order the call to the court session of the persons, referred to in its decision , as well as take steps to prepare for the court session.
2. Ensuring attendance at the court session of the defense witnesses and prosecution witnesses may be assigned to the relevant parties. When appointing the main trial in a reduced order, the witnesses shall not be called to the court session.

#### **Chapter 42. General conditions of the main trial Article 331. The immediacy and orality of the trial**

1. In the proceedings all the evidence in the case shall be subject to direct research. The court must hear the testimony of the defendant, victim, witnesses, and announce and explore the findings of experts, examine material evidence, read out protocols and other documents, produce other judicial actions to study the evidence, except as provided in this Code.
2. Announcement of testimony, given during the pre-trial investigation is possible only in exceptional cases, stipulated by this Code.
3. The court's sentence can be based only on evidence, which is examined in the court session, and with reduced judicial investigation - on the evidence, obtained during the investigation and inquiry, and not disputed by the parties in court.

#### **Article 332. The constancy of the composition of the court in the proceeding**

1. The case must be considered by the same judge.
2. If it is impossible for the judge to continue to participate in the trial, he (she) shall be replaced by another judge, and the hearing begins again, except in cases provided for in Article 333 of this Code.

#### **Article 333. Substitute judge**

1. During consideration of the case, requiring a long time for its trial, a substitute judge may be appointed.

2. A substitute judge shall be in the main trial since the beginning of the opening of the court session or since the adoption of the court decision on his (her) participation, and in the case of disposal of the judge, he (she) replaces him (her). At the same time, the trial continues . A substitute judge enjoys the rights of judges from the disposal of the previous judge. A substitute judge, who took the place of the retired judge, is entitled to demand the resumption of any judicial action.

#### **Article 334. The powers of the presiding judge in the main trial**

1. A judge, charged with the consideration of the case shall preside in the main trial.

2. The presiding judge directs the court session, in the interests of justice takes all the measures provided for in this Code to ensure equality of rights of the parties, maintaining objectivity and impartiality, creates the necessary conditions for an objective and complete investigation of the circumstances of the case. The presiding judge also ensures compliance with regulations of the court session, explains to all participants of the trial of their rights and responsibilities, and procedures for their implementation. In case of objection of any of the persons involved in the trial against the actions of the presiding judge, these objections shall be recorded in the protocol of the court session.

#### **Article 335. Participation of the defendant in the main trial**

1. The main trial takes place with the obligatory participation of the defendant, except in cases specified in the second part of this Article. When defendant does not appear, the case must be postponed. The court may drive the defendant, who does not appear without a good reason, as well as apply or change a preventive measure against him (her).

2. The proceedings in the absence of the defendant may be allowed only in the following cases:

1) where a defendant, who is accused of committing a criminal infraction or a crime of small and medium gravity, requests for consideration of the case in his (her) absence;

2) when the defendant is outside the Republic of Kazakhstan and refuses to appear in court;

3) failure of the defendant, who is in custody to appear and be present at the court session.

#### **Article 336. Participation of a defense counsel in the main trial**

1. The defense counsel of the defendant participates in the main trial in the cases provided for in Article 67 of this Code, as well as at the invitation of the defendant, their legal representatives, as well as other persons on behalf of or with the consent of the defendant.

2. At absence of the defense counsel and the inability to replace him (her) in this court session, the proceedings shall be postponed. Replacement of the defense counsel, who does not appear at the court session, shall be permitted only with the consent of the defendant. If

the participation of the defense counsel, invited by the defendant is not possible within five days, the court in accordance with Article 68 of this Code, postponing the main trial, proposes to the defendant to choose another defense counsel, and at his (her) refusal appoints a new defense counsel.

In case of refusal of the defendant from the defense counsel, the court shall issue a ruling on the acceptance or rejection of refusal of the defense counsel.

3. The defense counsel, re-entering the case, shall be given the time required to prepare for participation in the trial. He (she) is entitled to apply for a repetition of any act committed in the proceedings prior to his (her) entry into the case.

4. The defense counsel of the defendant presents the objects, documents and information necessary for the provision of legal aid, collected in the order specified in the third part of Article 122 of this Code, participates in the study of other evidence, recites to the court his (her) opinion on the merits of the charge and its proof, on the circumstances mitigating liability of the defendant, or justifying him (her), measure of punishment, as well as other matters, arising in the court proceedings.

#### **Article 337. Participation of the public prosecutor in the main trial**

1. Participation in the main trial of the procurator as a public prosecutor is mandatory, except in the cases of private prosecution.

2. Several procurators may support public prosecution in complex and many-incident cases.

3. If the impossibility of further participation of the procurator in the court proceedings is detected, he (she) can be replaced. Entry into the case of a new procurator shall not result in the repetition of actions, which by that time are committed in court, but at the request of the procurator, the court may give him (her) time to study the case.

4. The procurator presents evidence and participates in their study, recites to the court his (her) opinion on the merits of the charge, as well as other issues that arise during the trial, expresses proposals to the court for the application of the criminal law and the appointment of punishment for the defendant.

5. The procurator makes or supports the civil claim brought in the case, if this is required to protect the rights of citizens, state or public interests.

6. Supporting the charges, the procurator is guided by the requirements of the law and his (her) inner conviction, based on a review of all the circumstances of the case. The procurator may change the charges. The procurator shall deny the charges (in whole or in part), if he (she) comes to the conclusion that it is not confirmed in the court proceedings. The refusal of the public prosecutor of the charges shall be permitted during the judicial investigation or court pleadings.

7. In the case of complete failure of the procurator to press charges, if the victim also denies the charges, the court shall dismiss the case by its decision. If the victim insists on the

charges, the court shall continue the proceedings and decide a case in a general procedure. The procurator in this case is exempted from further participation in the process, and the victim supports the charges in person or through a representative. At the request of the victim, he (she) shall be given time by the court to invite a representative. In partial refusal of the procurator and the private prosecutor from charges, the court dismisses the case in that part of the charges, refused by the prosecution party, and the case in the rest of the charges is considered in the general procedure. If the procurator changes the charges and at the same the victim does not insist on the previous charges, the court considers the case on new charges.

8. In the cases, provided for in this Code, the procurator has the right to conclude a procedural agreement with the defendant. If there are circumstances, specified in the third part of Article 68 of the Criminal Code of the Republic of Kazakhstan, the procurator may apply for the termination of the criminal case.

### **Article 338. Participation of the victim in the main trial**

1. The main trial takes place, with the participation of the victim or his (her) representative.

2. When the victim does not appear to the court, it is decided the issue of proceedings or postponing it, depending on whether it is possible the full clarification of all circumstances of the case in the absence of the victim and the protection of his (her) rights and legitimate interests. If the representative of the victim comes to the court session, the court decides the issue, taking into account the views of the representative.

3. At the request of the victim, the court may release him (her) from presence at the court session, by requiring him (her) to appear at a certain time to testify.

4. In the cases of private prosecution failure of the victim to appear without good reason at the court session shall result in termination of the case, but at the request of the defendant, the case may be considered on the merits in the absence of the victim.

### **Article 339. Participation of the civil claimant or civil defendant in the main trial**

1. The civil claimant, civil defendant or their representatives participate in the main trial.

2. At absence of the civil claimant or his (her) representative to the court, a civil claim may be left without consideration. The civil claimant retains the right to sue in civil proceedings.

3. The court may, at the request of the civil claimant or his (her) representative, consider a civil claim in the absence of the civil claimant.

4. The court considers a civil claim regardless of appearance of the civil claimant or his (her) representative, if the court considers it necessary or if the procurator supports the claim.

5. Absence of the civil defendant or his (her) representative does not stop consideration of the civil claim.

### **Article 340. Limits of the main trial**

1. The main trial is conducted only in relation to the defendant and to the extent of that charges on which he (she) is brought to trial, except in the case provided for in the second part of this article.

2. Changing the charges is permitted, provided that this is not violated the defendant's right to a defense.

3. If during the main trial it is necessary to combine the case under consideration with another criminal case, criminal prosecution of others, if their actions are associated with this case and the separate proceedings in respect of new persons is not possible, the court at the request of the prosecution party, taking into account the views of other participants in the process interrupts the proceedings and conducts a preliminary hearing in the manner, provided in Article 321 of this Code.

4. When joining the criminal case under consideration with a newly received case in the preliminary hearing, the court shall give the prosecutor time to draw up a new indictment , a record of an expedited pre-trial investigation, a record of prosecution.

5. If in the course of the main trial it becomes necessary to present a more serious charge to the defendant or one that differs from the initial one, the court postpones the consideration of the case and provides the prosecutor with the time necessary to draw up a new indictment , protocol of accelerated pre-trial investigation, protocol of prosecution .

6. Judicial proceedings in a joined case shall be carried out in the manner prescribed by Section 7 of this Code. A re-examination of the evidence that was examined by the court before the preparation of a new indictment, a protocol of an expedited pre-trial investigation, a protocol of prosecution, is carried out if the court recognizes such a need.

**Footnote. Article 340 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 341. Postponement of the main trial and suspension of the criminal case**

1. If it is impossible to hear the case due to the failure of any of the summoned persons to appear at the court session or due to the need to demand new evidence, draw up and serve a new indictment by the prosecutor , a record of an expedited pre-trial investigation, a record of prosecution or the conduct of a mediation procedure, the conclusion of a procedural agreement, the court decides to adjourn the proceedings for a specified period. At the same time, the court has the right to oblige the parties to ensure the appearance of witnesses for the prosecution and defense, respectively, as well as other persons summoned to the court session at the request. If necessary, the court assists the parties in obtaining evidence about which they filed a petition.



2. If the court proceedings are postponed due to the need to draw up a new indictment, a record of an expedited pre-trial investigation, a record of the prosecution, the court shall take measures to ensure the right of the defense party to familiarize itself with the additional materials of the case and provide a reasonable period for preparing for the defense against a new charge.

A new indictment, a record of an expedited pre-trial investigation, a record of the prosecution are handed over to the defendant, his defense counsel (with his participation), the victim, legal representative and representative and are attached to the case file.

3. If there are grounds, provided by the first - third parts of Article 45 of this Code, the court shall suspend the proceedings in respect of one or more of the defendants until the elimination of these circumstances and continue the proceeding against the remaining defendants.

4. Search of hiding defendant is declared by a court ruling.

**Footnote. Article 341 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 342. The decision on a preventive measure**

1. During the main trial, the court may choose, change, cancel or extend the preventive measure against the defendant.

2. The period of detention in custody of the defendant as a preventive measure may not exceed six months after receipt of the case to the court and prior to the sentence.

3. In cases of serious crimes after the expiration of the period specified in the second part of this article, the court is entitled by its decision to extend the detention period to twelve months.

3-1. In cases of especially grave crimes, after the expiration of the period specified in part two of this article, the court, by its decision, has the right to extend the period of detention up to eighteen months. In exceptional cases, the specified period may be extended by a reasoned court order, but each time by no more than one month.

4. After the expiration of the detention periods, specified in the second and third parts of this Article, the court shall change the defendant's preventive measure to house arrest or other preventive measure.

**5. Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

**Footnote. Article 342 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 343. Termination of the case in the main trial**

The case shall be subject to termination in the main trial, if the circumstances specified in paragraphs 3) - 12) of the first part of Article 35 of this Code are established, as well as the failure of the prosecutor to press charges in accordance with the rules of the sixth part of Article 337 of this Code. The case may be terminated in the main trial also on the grounds, specified in the first part of Article 36 of this Code.

Decision to terminate the criminal case shall be made in compliance with the requirements of Article 288 of this Code.

### **Article 344. The order of rulings in the main trial**

1. For all issues, resolved by the court during the main trial, the court shall issue decisions that must be made public in court.

2. Decisions to terminate the case, suspend the proceedings, choose, change, or cancel a preventive measure, on the challenges, appointment of examination and private decisions shall be made in the deliberation room and set out in the form of a separate document.

3. Other decisions at the discretion of the court shall be made either in the order, specified in the second part of this Article, or on the spot - in the courtroom with the entry of the decision in the protocol of the court session.

4. Decisions made in the main court proceedings on the issues of evidence, shall not be appealed, or revisioned at the petition of the prosecutor and are not subject to protest. Disagreement with the decisions made during the main court proceedings may be included in the appellate complaint, the prosecutor's petition, the protest.

**Footnote. Article 344 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

### **Article 345. The order of the main trial**

1. The main trial takes place under conditions ensuring the normal work of courts and security of participants to the proceedings. The main trial may take place in video, decided by the presiding judge.

2. Before entering the court in the courtroom the officer of justice, and in his (her) absence - the court session secretary announces: "The court is", and all persons, attending at the court session rise, after which by offer of the presiding judge take their places.

3. All the participants in the proceedings apply to the court, testify and make statements standing. Deviation from these rules is allowed with the permission of the presiding judge.

4. All participants in the main trial, as well as all those present in the courtroom citizens must obey the instructions of the presiding judge on compliance with the order of the court session.

5. Persons under the age of sixteen years, if they are not a party or a witness are not allowed in the courtroom. If necessary, the officer of justice is entitled to request a citizen the document, confirming his (her) age. The drunken persons are not allowed in the courtroom.

6. Photography, use of sound, video and filming in the courtroom shall be allowed with the consent of the participants in the process and the permission of the presiding judge. These actions should not interfere with the normal course of the trial.

7. The Court in order to ensure the safety of participants to the proceedings adopts measures and conducts court proceedings in accordance with the provisions of Article 98 of this Code.

8. Before the start of the main trial, the presiding judge explains all participants in the proceedings of the right to go to court to ensure security measures.

9. At the request of one of the parties or participants in the proceedings on the adoption of security measures, the court may rule on the matter.

#### **Article 346. Measures to be taken to ensure the order in the main trial**

1. In case of violation of the order at the court session, disobeying the orders of the presiding justice, as well as performing other actions (inaction), clearly demonstrating the contempt of court, the presiding judge shall have the right to expel a person from the courtroom or to announce the establishment of the fact of contempt of court in cases that do not contain elements of a criminal offence and impose on the guilty person a monetary penalty in the manner provided in Article 160 of this Code. Expelling may be made in respect of any participant in the proceedings or any other person, except the prosecutor and defense counsel. Monetary penalty may not be imposed on the defendant and his (her) lawyer, participating as a defense counsel.

2. If the defendant is expelled from the courtroom or he (she) refuses to participate in the proceedings of the case, the presiding judge before each court session shall find out from him (her) whether he (she) wishes to be present in the courtroom, if he (she) follows the rules. The sentence must be declared in the presence of the defendant, and in his (her) refusal to attend, this sentence shall be declared him (her) against receipt immediately after the declaration.

3. The court shall issue a decision on expelling from the courtroom of the participant in the process and imposing a monetary penalty.

4. The persons, attending at the court session, but are not the participants to the proceedings, in case of violation of the order shall be expelled from the courtroom by the order of the presiding judge. In addition, they may be imposed a monetary penalty by the court.

5. If there are signs of a criminal offence in the actions of the violator of the order in a court session, the court shall send materials to the procurator to decide on the beginning of the pre-trial investigation.

## **Article 347. Protocol of the main trial**

1. During the main court proceedings, the secretary of the court session shall keep a record.

2. The protocol shall be made by computer, electronic (including audio, video recording), typewritten or handwritten way.

3. In a protocol made on paper, if no audio or video recording of the trial was used, the following shall be indicated:

- 1) the number and date of the main trial, the time of its beginning and end;
- 2) which issue being considered;
- 3) the name and composition of the court, secretary, interpreter, state prosecutor, defender, defendant, as well as the victim, civil plaintiff, civil defendant and their representatives, other persons called by the court;
- 4) data on the identity of the defendant and the measure of restraint;
- 5) actions of the court in the order they took place;
- 6) statements, objections and petitions of the persons participating in the case;
- 7) court decisions made without removal to the advisory room;
- 8) instructions for making decisions in the advisory room;
- 9) explaining to the persons participating in the case their rights and obligations;
- 10) the detailed content of the testimony;
- 11) questions of the persons participating in the interrogation who were taken by the court or which the interrogated refused to answer;
- 12) questions asked to the expert, and his responses;
- 13) the results of the examinations performed in the court session and other actions to investigate the evidence;
- 14) the results of the consideration of applications for the use of torture, violence, other cruel or degrading treatment and the process of their investigation;
- 15) references to the facts, that the persons participating in the case have asked to certify in the protocol;
- 16) the main content of the speeches of the parties in the judicial debate and the last word of the defendant;
- 17) an instruction to announce the verdict, the resolution, the private resolution and the explanation of the procedure and the time period for their appeal.

The testimony shall be recorded from the first person and as far as possible verbatim, questions and answers to them are recorded in the sequence that took place during the interrogation. In addition, the protocol shall also indicate the facts showing contempt for the court, if any, and the identity of the offender, and the measures of influence taken by the court against the offender.

4. Protocol shall be made and signed by the presiding judge and the secretary no later than five days, and on many-incident cases and cases considered by a jury, within ten days after the end of the court session. Protocol in the trial may be made in parts, which, as a whole protocol shall be signed by the presiding judge and secretary of the court session. At the request of the parties, the made part of the Protocol shall be issued as soon as available.

5. If there is disagreement about the correctness of the entries in the protocol of the trial, made on paper between the presiding judge and the secretary of the court session, the last may attach to the protocol its objections in writing, together with the notes made during the court session, including sound, video recordings of the court session.

6. The presiding judge shall inform the parties about the protocol of the main trial and provide them with an opportunity to review it and the materials of sound and video recordings

7. The person, interrogated in the main trial, shall be entitled to petition for review the record in the protocol and the materials of sound and video recordings of his (her) testimony. Such an opportunity must be given not later than the next day after submission of such petition.

8. At the request of the parties or persons, referred to in the seventh part of this Article, the court is obliged to submit the protocol in the form of electronic document, certified by electronic digital signature of the presiding judge and the court session secretary.

9. The rules of technical application of means of submission of documents to courts in the form of an electronic document, their registration, processing, familiarization with them shall be approved by the body responsible for organizational and material and technical support of the courts' activities.

**Footnote. Article 347 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated 24.05.2018 No. 156-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article347-1. Fixing of the main trial by means of audio, video recording**

1. Fixing the progress of the court session shall be carried out by means of audio-video recording. The secretary of the court session shall make a record of the court session by means of audio and video recordings.

Fixation of court session by means of audio and video recording shall not be performed in cases of technically faulty equipment, its absence or impossibility to use for technical reasons.

The impossibility of using audio-video recording does not exclude the continuation of the court session.

The secretary of the court session, if it is impossible to use audio and video recording equipment, shall report of this fact to the court with a mandatory reflection of the reasons for not using the audio and video record in the protocol of the court session.

2. In the event that the proceeding is fixed with the use of audio-video recording, the secretary of the court session shall draw up a brief protocol in written form.

The summary record of the court session reflects the actions of the court in the order in which they took place, and indicates:

- 1) year, month, number and place of the court session;
- 2) the time of the beginning and end of the court session;
- 3) the name and composition of the court, revisioning the case, the names and initials of the judges, the secretary of the court session;
- 4) the name of the case;
- 5) data on the defendant identity;
- 6) information on the use of audio-video recording by the court;
- 7) the name of the file, containing audio and video recording;
- 8) information on the appearance of an interpreter, accuser, defender, defendant, as well as the victim, civil plaintiff, civil defendant and their representatives, other persons summoned by the court;
- 9) information about the statements, objections and petitions of the participants in the proceedings and other persons participating in the case; court rulings; persons interrogated in court, indicating the number of the file and the time of their interrogation, the time for the examination by the court of written documents, material evidence, on the inclusion of additional materials in the case, the time for the judicial debate, the last word of the defendant, the removal of the court to the deliberation room and the announcement of the judicial act;
- 10) the date of the protocol in the final form.

A brief protocol of the court session shall be signed by the chairman and the secretary.

The material carrier containing audio, video recording, and a brief protocol of the court session shall be attached to the case materials.

2-1. The presiding judge on the case checks the completeness and quality of the audio and video recording of the court session. If the audio and video recordings of the court session are of poor quality, then a protocol of the main trial is drawn up in accordance with the requirements of Article 347 of this Code.

3. At the petition of the persons participating in the case and their representatives, the court shall provide a copy of the audio, video record or record of the court session. In cases, when the case is considered in a closed hearing, the persons participating in the case are not provided with audio, video recording and the record of the court session, they are provided with the opportunity to get acquainted with the audio, video recording and the protocol of the court session in the court.

4. Audio and video recordings of court sessions are used only for judicial purposes to accurately record the progress of the trial, and also for the purpose of establishing factual data in civil, criminal, administrative offenses or in disciplinary proceedings.

5. The procedure for the technical application of audio and video recording means that ensure recording of the court session, the storage and destruction of audio and video recording, as well as the procedure for access to audio and video recordings shall be determined by the body that carries out organizational and logistical support of the court activity, taking into account the requirements of this Code.

**Footnote.** Chapter 42 is supplemented by Article 347-1 in accordance with the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII ( shall be enforced ten calendar days after the day of its first official publication).

#### **Article 348. Comments on the protocol of the main trial**

Within five days after the signing of the protocol of the main trial on the paper, the parties , as well as other persons referred to in the seventh part of Article 347 of this Code, may familiarize with the protocol of the court session, submit comments on the protocol in writing or in the form of electronic document, certified by electronic digital signature. In the case, when the protocol of the court session of a large volume, the presiding judge at the request of the parties shall establish a longer reasonable period of time to become familiar with it and to submit comments.

#### **Article 348-1. Comments on audio, video, and a brief protocol of the main trial**

Within five days after the signing of the brief protocol of the main court proceeding on the paper, the parties, as well as other persons mentioned in part seven of Article 347 of this Code , shall have the right to get acquainted with audio, video recording and a brief protocol of the court session, submit comments in written form or in the form of an electronic document.

Consideration of comments on audio, video recording and a brief protocol of the court session shall be carried out according to the rules provided in Article 349 of this Code.

**Footnote.** Chapter 42 is supplemented by Article 348-1 in accordance with the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).

#### **Article 349. Consideration of comments on the protocol of the main trial**

1. Comments on the protocol of the main trial, made on paper shall be considered by the presiding judge, and in his (her) long-term (at least five days) absence by another judge of the same court, which has the right to call the persons who submitted them.

2. Based on the results of consideration of the comments, the judge shall issue a reasoned decision to certify their correctness or reject them, which shall not be subject to appeal, revision at the petition of the prosecutor, disagreement with him/her may be included in the appellate complaint, the prosecutor's petition, the protest. Comments on the protocol and the decision of the judge shall be attached to the record of the main trial.



Footnote. Article 349 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

## **Chapter 43. Preparatory part of the main trial**

### **Article 350. Opening of the main trial**

At the time appointed for the main trial, the secretary of the court session or the bailiff shall announce to those present in the courtroom: "All rise, the court is now in session!" After that, the presiding judge shall enter the courtroom, invite all those present to take their places and announce which criminal case will be considered in an open or closed court session. If a closed court hearing is announced, the presiding judge shall invite everyone present, except for the participants in the process and the persons summoned to the court session, to leave the courtroom.

Persons participating in a closed court session shall be warned by the court about the inadmissibility of disclosing the information available in the case without its permission, about which a subscription is selected with a warning of responsibility.

The presiding judge shall announce the use of audio and video recordings of the court session by the court.

The impossibility of using the means of audio and video recording shall not exclude the continuation of the court session.

The reasons for the lack of audio and video recording shall be reflected in the minutes of the court session.

Footnote. Article 350 as reworded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

### **Article 351. Checking attendance of persons, called in the main trial**

The court session secretary shall report to the court about the appearance of persons, who should be involved in the main court session, and informs about the reasons for non-attendance of absent persons.

### **Article 352. Explanation of the interpreter his (her) rights and obligations**

1. If an interpreter is invited to participate in the court session, the presiding judge reports who participates as an interpreter and explain to him (her) his rights, obligations provided for in Article 81 of this Code.

2. The interpreter is warned by the presiding judge about the criminal liability for knowingly false translation, as he (she) has shown subscription, which is attached to the

protocol of the court session. The interpreter is also warned that in case of failure to perform their obligations, he (she) may be imposed a monetary penalty in the manner, prescribed in Article 160 of this Code.

**Article 353. The issue of challenge of an interpreter**

The presiding judge explains the appeared parties, witnesses, experts, specialists of their right to challenge the interpreter and explains the statutory grounds, entailing challenge of an interpreter. The court resolves the declared challenge in accordance with the rules, established by Article 86 of this Code. If challenge of the interpreter is satisfied, the court invites another interpreter, in respect of which the issue of challenge is considered in the same procedure.

**Article 354. Removal of witnesses from the courtroom**

The appeared witnesses are removed from the courtroom prior to their interrogation. The presiding judge shall take measures to ensure that witnesses, who are not interrogated by the court, do not communicate with the interrogated witnesses, as well as with other persons in the courtroom.

**Article 355. Establishing the identity of the defendant and the timeliness of handing him a copy of the indictment, the protocol of the accelerated pre-trial investigation, the protocol of the prosecution**

The presiding judge establishes the identity of the defendant, finding out his last name, first name, patronymic (if any), year, month, day and place of birth, compares the data with a document proving his identity or a certified copy thereof, knowledge of the language in which the proceedings are conducted, place residence, occupation, education, marital status and other data relating to his personality. Then the presiding judge finds out whether and when exactly the copies of the indictment, the protocol of the accelerated pre-trial investigation, the protocol of the prosecution were handed over to the defendant. At the same time, the trial of the case cannot be started earlier than three days from the date of delivery of copies of the indictment, the protocol of the accelerated pre-trial investigation, the protocol of the prosecution, unless the defendant so requests, and also with the exception of the case provided for by part two of Article 411 of this Code.

**Footnote. Article 355 - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

**Article 356. Announcement of the composition of the court and other participants to the proceedings**

The presiding judge announces the composition of the court, informs who is the prosecutor, defense counsel, victim, civil claimant, civil defendant or their representatives, as well as the court session secretary, officer of justice, expert, specialist.

**Article 357. The procedure for resolution of challenges**

1. The presiding judge shall explain to the parties of their right to challenge the composition of the court, as well as the persons referred to in Article 356 of this Code, on the grounds specified in Articles 87, 88, 89, 90, 91, 92 and 93 of this Code. These rules shall apply in respect of a substitute judge.

2. The court resolves the declared challenges in accordance with the rules, established by Articles 86 and 87 of this Code.

**Article 358. Explanation to the defendant of his (her) rights**

The presiding judge shall explain to the defendant his (her) rights in the main trial, provided for in Article 65 of this Code, as well as the right to conclude a procedural agreement, reconciliation with the victim in cases prescribed by law, including by way of mediation.

**Article 359. Explanation to the victim, the private prosecutor, civil claimant and civil defendant of their rights**

The presiding judge shall explain to the victim, the private prosecutor, civil claimant, civil defendant and their representatives their rights in the main trial, provided for in Articles 71, 72, 73, 74, 76 and 77 of this Code. The victim in cases of private prosecution, as well as in cases of criminal infraction and crimes of small and medium gravity, committed for the first time, as well as in the cases provided for by Article 68 of the Criminal Code of the Republic of Kazakhstan, shall be explained his (her) right to a reconciliation with the defendant, including by way of mediation.

**Article 360. Explanation to the expert of his (her) rights and duties**

The presiding judge shall explain to the expert his (her) rights and duties provided for in Article 79 of this Code, and warns him (her) of criminal liability for giving knowingly false conclusion about what the expert gives a subscription, which is attached to the protocol of the main trial.

**Article 361. Explanation to the specialist of his (her) rights and duties**

The presiding judge shall explain to the specialist his (her) rights and duties provided for in Article 80 of this Code, and warns him (her) about the liability, established in this article for refusal or failure to perform his (her) duties.

## **Article 362. Application and resolution of petitions**

1. The presiding judge asks the parties whether they have a petition to call new witnesses, experts and specialists and the discovery of material evidence and documents, including the procedures for mediation or conclusion of a procedural agreement. The person, who filed the petition, shall specify to determine what the circumstances the additional evidence is required.

2. The presiding judge shall also ask the parties whether they have a petition to exclude from the proceedings materials, inadmissible as evidence.

An application for declaring evidence inadmissible due to the existence of the circumstances provided for by part three of Article 112 of this Code shall be resolved immediately after its application. In other cases, it can be resolved both during the judicial investigation and after removal to the deliberation room simultaneously with the verdict. The decision of the court on the petition is drawn up in the manner prescribed by Article 99 of this Code.

3. The court, having heard the opinion of the other participants in the trial, in the manner and within the time limits established by Article 99 of this Code, must consider each petition filed, including for the conclusion of a procedural agreement and the mediation procedure, satisfy it or issue a reasoned decision to refuse satisfaction of the request.

4. The court may not refuse an application for the conclusion of the procedural agreement or reconciliation in the mediation procedure, as well as questioning at the court session of the individuals as experts or witnesses, who appeared in court on the initiative of the parties.

5. The person to whom the court denied the petition may submit it in the future.

**Footnote. Article 362 as amended by the Law of the Republic of Kazakhstan dated 09.06.2021 No. 49-VII (shall be enforced ten calendar days after the day of its first official publication).**

## **Article 363. The question of possible hearing of the case in the absence of any of the persons involved**

At absence of any of the trial participants, as well as a witness, expert or specialist, the court hears the opinion of the parties on the possibility of a hearing of the case and issues a decision to postpone the trial or its continuation and calling to the next court session of absent persons or their drive.

## **Chapter 44. The judicial investigation Article 364. Beginning of the judicial investigation**

1. The judicial investigation is carried out in full or in short order, and begins with a statement by the prosecutor of the essence of the presented against the defendant charges, and in cases of private prosecution – with a statement of the complaint by the person who filed it, or his (her) representative, and in their absence – by the court session secretary.

2. In case of changing of the charges to a less serious or refusal on the part of the charges, the prosecutor shall present to the court a new reasoned wording of the charges in writing. The prosecutor after the presentation of the essence of the charges shall have the right to inform the court of the intention to enter into a procedural agreement.

#### **Article 365. Clarification of the position of the defendant**

1. The presiding judge asks the defendant whether he (she) understood the charge, explains the essence of the charges and finds out if he (she) wants to inform the court of his (her) attitude to the charge in cases stipulated by this Code, finds out whether he (she) wishes to conclude with the procurator a procedural agreement or a reconciliation agreement with the victim in the mediation procedure.

2. The defendant shall be explained that he (she) is not bound by confession or denial of guilt, made during pre-trial proceedings, is not obliged to answer the question of whether he (she) admits his (her) guilt or not, and that the defendant's failure to respond cannot be interpreted to his (her) detriment. The defendant shall also be explained that the recognition of guilt and sincere repentance is a circumstance, mitigating his (her) liability and punishment. The defendant is entitled to motivate his (her) answer. The silence of the defendant shall be construed as non-recognition of guilt.

3. The presiding judge asks the defendant whether he (she) recognizes (in whole, in part) the presented to him (her) civil claim. If the defendant answers this question, he (she) is entitled to motivate it. The silence of the defendant shall be construed as non-recognition of the civil claim.

4. The parties shall have the right to ask the defendant questions, aimed at clarifying his (her) position, including on the conclusion of a procedural agreement with the procurator.

#### **Article 366. The order of presentation and examination of the evidence**

1. The evidence presented by the prosecution and the defense parties are examined in the judicial investigation.

2. The prosecution party presents evidence first. The order of examination of the evidence is determined by the court in consultation with the parties. The court shall issue an order on establishing or changing the order of examination of the evidence.

3. The defendant with the permission of the presiding judge is entitled to give evidence at any time of the judicial investigation.

4. Summoning and interrogation in court of a witness and a victim shall not be carried out in cases where their testimony has been deposited by the investigating judge in the manner prescribed by Article 217 of this Code.

If by the time of the consideration of the case in court the grounds that served as a reason for deposition of evidence have disappeared, if the person can appear in court, as well as if

the witness and the victim express their will voluntarily, the court, at the request of the participants in the criminal process, has the right to summon and interrogate such persons, including using scientific and technical means in the video mode (remote interrogation).

Witnesses are not called or questioned in an abridged trial.

**Footnote. Article 366 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 367. Interrogation of the defendant**

1. Prior to the interrogation of the defendant, the presiding judge explains him (her) his (her) right to give or not to give evidence about the charges and other circumstances of the case, as well as that all of the defendants said may be used against him (her).

2. With the consent of the defendant to testify, he (she) shall be interrogated by his (her) defense counsel and participants in the process on the defense party first, then by the public prosecutor and the participants in the process on the prosecution party. The presiding judge removes the leading questions and the questions irrelevant to the case.

3. The court asks questions to the defendant after interrogation by the parties, but clarifying questions can be asked at any time of the interrogation.

4. The interrogation of the defendant in the absence of another defendant is allowed at the request of the parties or at the court's initiative and a ruling about it shall be made. In this case, after the return of the defendant in the courtroom, he (she) shall be read out the testimony, given in his (her) absence and recorded in the protocol of the court session, and shall be given the opportunity to ask questions to the defendant, interrogated in his (her) absence.

#### **Article 368. Disclosure of the testimony of the defendant**

1. The disclosure of the testimony of the defendant, given by him during the pre-trial proceedings on the case, as well as the reproduction of the audio , video recording or filming of his testimony attached to the protocol of interrogation is allowed:

- 1) in the defendant's failure to testify in court;
- 2) if the case is considered in the absence of the defendant;
- 3) when there are significant inconsistencies between the testimony, given at the trial and during the pre-trial investigation.

2. Playback of sound, video and filming without prior disclosure of testimony, contained in the corresponding protocol of the interrogation or protocol of the court session, is not allowed.

Footnote. Article 368 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 369. Interrogation of the victim**

1. The victim shall be interrogated in accordance with the rules of interrogation of witnesses, provided for in Article 370 of this Code.

2. The victim with the permission of the presiding judge is entitled to give evidence at any time of the trial.

#### **Article 370. Interrogation of witnesses**

1. Witnesses shall be interrogated separately and in the absence of the witnesses, who are not interrogated.

2. Prior to interrogation the presiding judge establishes the identity of the witness, finds out his (her) relation to the defendant and other persons involved in the case, explains the civic duty and the obligation to give truthful testimony in the case, as well as liability for refusing to testify and perjury. The witness is also explained that he (she) has the right to refuse to testify against him(her)self, his wife (husband), and close relatives, and clergymen - to testify against those who confided in them in confession. The persons, exempt by law from the obligation to testify, but wishing to give them, is clarified the liability for perjury. The witness is also explained his (her) other rights and duties, provided for in Article 78 of this Code. The witness takes an oath as follows: "I swear to tell the court all I know of the case, to tell the truth, the whole truth and nothing but the truth". The witness is taken a subscription that he (she) is explained to his (her) duties and liability. Subscription is attached to the protocol of the court session.

3. Witness shall be interrogated by the prosecutor, victim, civil claimant, civil defendant and their representatives, the defendant and his (her) defense counsel. The first asks the questions the party at whose request the witness is called to the court session. The presiding judge asks questions to the witness after his (her) interrogation by the parties.

4. A witness may use written notes, which must be presented to the court at its request.

5. The witness is allowed to read the available documents, related to his (her) testimony. These documents shall be submitted to the court and by its rulings can be attached to the case.

6. The interrogated witnesses stay in the courtroom and may not leave it until the end of the judicial investigation without the permission of the court and the consent of the parties.

7. In the cases, provided for in Article 98 of this Code, in order to ensure the safety of the witness and his (her) family, the court without disclosing the actual data on the identity of the witness, has the right to interrogate him (her) in conditions excluding the visual observation by other participants to the process, and a ruling shall be made about it.



8. Interrogation of witness by the court can be made according to the rules of Article 213 of this Code, with using video conferencing facilities with calling him (her) in court of the region (s), on the territory of which he (she) is or he (she) lives.

9. The procedure for technical application of videoconferencing facilities shall be determined by the body responsible for organizational, material and technical support of court activities, taking into account the requirements of this Code.

**Footnote. Article 370 as amended by the Law of the Republic of Kazakhstan No. 156-VI dated 24.05.2018 (shall be enforced upon expiration of ten calendar days after the day of its first official publication).**

#### **Article 371. Features of the interrogation of a minor victim or witness**

1. During the interrogation of a minor witness or victim his (her) legal representatives and teacher shall present. These persons may with the permission of the presiding judge ask questions to the victims and witnesses.

2. Prior to interrogation of the victim, witness who has not attained the age of sixteen, the presiding judge shall explain him (her) the importance for the case of the complete and truthful testimony. These persons are not warned on the liability for refusal to testify and for perjury, and they are not taken a subscription.

3. At the request of the parties or the court's initiative the interrogation of a minor victim or witness may be conducted in the absence of the defendant, and the court shall issue an order about it. After the return of the defendant in the courtroom, he (she) is announced the testimony of the minor victim, witness, and he (she) is given the opportunity to ask questions to the victim, witness and give their testimony in connection with their testimony.

4. Victim, witness who have not attained the age of eighteen shall be removed from the courtroom at the end of their interrogation, unless the court finds necessary their continued presence.

5. Call to the court session and interrogation of minor victims and witnesses are not performed, if their testimony during the pre-trial proceedings is deposited by the investigating judge.

#### **Article 372. Disclosure of testimony of the victim and witness**

1. Disclosure in the court session of testimony of the victim and the witness, given by them in pre-trial proceedings or the prior proceedings, as well as video recording and filming of their interrogation is allowed in accordance with the procedure provided for in Article 377 of this Code:

1) when there are significant inconsistencies between the testimony and the testimony, given by them in court;

2) in the absence at the court session of the victim or witness for reasons, excluding the possibility of their appearance before the trial;

3) when depositing testimony by the investigating judge.

2. Playback of a sound recording of testimony of the victim and witness, video and filming of their interrogation can take place according to the rules, set out in the second part of Article 368 of this Code.

### **Article 373. Examination in the court trial**

1. At the request of the parties or its own initiative, the court may appoint examination.

2. The examination is carried out by expert (experts), who gave the opinion in the pre-trial investigation, or by other expert (s) appointed by the court.

In the latter case, the presiding judge shall inform who is supposed to assign the production of examination, then, in the absence of a request for disqualification and rejection of the specified person, the court shall issue an order on bringing him (her) in as an expert on the case without removing the court in the deliberation room. Further, the expert shall be explained his (her) procedural powers, he (she) shall be warned about the criminal liability for giving knowingly false conclusion, and he (she) gives a subscription about it.

3. Production of examination in court is carried out according to the rules set out in Chapter 35 of this Code, taking into account the requirements of this Article.

4. At the court session an expert with the permission of the presiding judge shall have the right to participate in the investigation of the circumstances, relating to the subject matter of the examination: ask questions to the interrogated persons, get acquainted with the materials of the criminal case, participate in all legal proceedings, relating to the subject matter of the examination.

5. In all the circumstances relevant to the case, the presiding judge invites the parties to submit written questions to the expert. These questions should be announced and the views of trial participants on them shall be presented.

6. The Parties may submit the objects, documents as objects of expert research. Excluding them from among themselves, the court shall make a reasoned decision.

7. After considering the questions and hearing the views of the parties on them, the court by its decision eliminates those that are not relevant to the case or the jurisdiction of the expert, and formulates new questions.

8. The person, appointed as an expert, shall be handed a copy of the court decision for examination and explanation of his (her) rights and obligations provided for in Article 79 of this Code. The Court, after hearing the views of the parties, shall be entitled to postpone the hearing for the time required to conduct the study.

9. The expert shall give a conclusion in writing and announce it at the hearing, after which he (she) can be interrogated by the rules, provided for in Article 374 of this Code. The expert conclusion shall be attached to the case.

10. After the examination in the court trial in the cases, provided for in Article 287 of this Code, the court may appoint additional or repeated examination.

11. In the case of calling to the court of an expert, who gave a conclusion during the pre-trial proceedings, the court after the announcement of the conclusion, if it does not cause objections of the parties, shall be entitled not to appoint examination and to restrict by the interrogation of an expert.

#### **Article 374. Interrogation of an expert**

1. Interrogation of an expert can be made only after the announcement of the conclusion to its explanations, clarifications or additions taking into accounts the requirements of the fourth part of Article 285 of this Code.

2. At first, the expert shall be interrogated by the party at whose request the examination is appointed.

3. If the examination is made by agreement between the parties or by initiative of the body conducting the criminal proceedings, the expert shall be interrogated by the prosecution party first, then by the defense party.

4. The Court shall have the right to ask questions to the expert at any time of interrogation

#### **Article 375. Inspection of material evidence**

1. The attached to the case during the investigation and the newly submitted material evidence must be inspected during the judicial investigation and presented to the parties. Inspection of material evidence shall be made at any time of the court trial at the request of both parties, and the court's initiative. Material evidence may be presented for inspection of witnesses, experts and specialists. The persons, who are presented material evidence, shall have the right to address the court's attention to the relevant to the case circumstances, identified during the inspection of material evidence.

2. Inspection of material evidence may be made by the court on their location in compliance with the rules, established by the first part of this Article.

#### **Article 376. Announcement of the protocols of investigative actions and documents**

The protocols of the investigative actions, certifying the circumstances and facts, established during the inspection, examination, seizure, search, seizure of property, detention, presentation for identification, investigative experiment, wiretapping, and the documents attached to the case or presented at the hearing shall be disclosed in whole or in part, if they set out or certified by the circumstances relevant to the case. The documents, presented at the hearing may be attached to the case by the court decision.

**Article 377. Procedure for announcement of testimony of the defendant, victim, witnesses, as well as protocols and documents**

In the cases provided for in Articles 368, 372 and 376 of this Code, the testimony of the defendant, victim, witness, as well as protocols of investigative actions and documents shall be made public by the party that requested their disclosure, or by the court.

**Article 378. Inspection of the area and premises**

1. Inspection of the area or premises is carried out by a court with the participant of the parties, and, if necessary, witnesses, expert, specialist.

2. Upon arrival at the place of inspection, the presiding judge announces the continuation of the court hearing and the court proceeds to inspection. In this case, the defendant, victim, witnesses, expert and specialist may be asked questions in connection with the inspection.

**Article 379. Presentation for identification, examination, verification and refinement of testimony at the place, production of the experiment, obtaining samples**

1. Presentation for identification, examination, verification and refinement of testimony at the place, production of the experiment, obtaining samples shall be produced in the court trial by the court decision in compliance with the rules, stipulated in Articles 223, 229, 257 and 258 and Chapter 34 of this Code, with the participation of the parties.

2. If it is necessary to the circumstances of the case, the presentation for identification, examination, experiment, obtaining samples can be produced in a closed court session.

3. Examination, accompanied by exposure of the examined, shall be carried out in a separate room by a doctor or other specialists, who compiles and signs the inspection certificate. After that, the specified persons return to the courtroom, where they, in the presence of the parties and persons examined inform the court of the traces and the signs on the body of the examined, if they are found, answer the questions of the parties and judges. Inspection certificate shall be attached to the case.

**Article 379-1. Consideration by the court of a civil lawsuit**

1. The court considers a civil claim in a court session in accordance with the rules of Chapter 20 of this Code.

2. A participant in proceedings may additionally submit evidence to resolve a civil claim. At the same time, he must substantiate in order to confirm what circumstances of importance in the case he wants to provide evidence.

3. Evidence must be submitted within the time limit set by the court.

**Footnote. Chapter 44 is supplemented by Article 379-1 in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

### **Article 380. Limitation of the study of evidence**

1. The public prosecutor may request that the study of evidence of the prosecution is limited by the evidence, considered at the time of commencement of the specified request. The court, after hearing the views of the parties shall be entitled to satisfy the request.

2. The defense party shall have the right to refuse to study the evidence, submitted and attached to the case at the request of the defendant, defense counsel, legal representative of the defendant, the civil defendant or his (her) representative. Such refusal is obligatory for the court.

### **Article 381. The end of the judicial investigation**

1. Upon completion of the study of evidence, the presiding judge shall:

1) explain to the parties that they are in pleadings, and the court at sentencing judgment is entitled to rely only on the evidence, considered in the judicial investigation;

2) ask the parties whether they wish to supplement the judicial investigation and in what way.

2. In case of application of requests to supplement the judicial investigation, the court discusses these requests and resolves them.

3. After resolution of the requests and performance of the necessary legal actions, as well as in cases where the requests to supplement the judicial investigation is not excited or reasonably dismissed by the court, the presiding judge shall announce the judicial investigation as completed.

### **Article 382. The trial of the case in an abbreviated order**

1. In cases of crimes of small, medium gravity, as well as serious crimes, the abbreviated trial procedure is carried out under the following conditions:

1) the defendant admits his (her) guilt in full, including the amount of harm caused by the criminal offence and the presented to him (her) claim;

2) if during the pre-trial proceedings it is not allowed the violation or infringement of the rights of participants in the process, established by this Code;

3) the participants in the process do not dispute the relevance and admissibility of evidence, collected in the case, and do not insist on their study at the court hearing;

4) for accelerated pre-trial proceedings;

5) when concluding an agreement on reaching reconciliation through mediation.

2. The abbreviated procedure for the trial of a case consists only of interrogations of the defendant, the victim, clarification of the circumstances of the agreement to achieve reconciliation through mediation, questions about the time and procedure for payments on a

civil claim and procedural costs. An abbreviated trial must be completed within a period of up to ten days, in exceptional cases this period may be extended by a reasoned decision of the judge up to twenty days.

3. If the circumstances preventing litigation in an abbreviated manner is found during the trial, the court decides to conduct the judicial investigation in its entirety.

**Footnote. Article 382 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Chapter 45. Pleadings and the last word of the defendant Article 383. The content and order of pleadings**

1. After the end of the judicial investigation the presiding judge announces that the court proceeds to pleadings and explains to the participants of the pleadings that they are not entitled to refer in their speeches on the materials that are not examined at the court session. If necessary to present new evidence to the court, they may request the reopening of the judicial investigation.

2. At the request of participant of the pleadings, he (she) is granted time to prepare for the pleadings, for which the presiding judge shall announce a break at the court session, indicating its duration.

3. Pleadings consist of speeches of the prosecutor, the victim or his (her) representative, civil claimant and civil defendant or their representatives, and the defendant and defense counsel. In the abbreviated judicial investigation for the cases with the procedural agreement or agreement on reconciliation in the mediation procedure, the pleadings are not held. The sequence of speeches of the participants in the process is established by the court on their proposals, but in all cases the prosecutor acts first.

4. If the public prosecution is supported by several public prosecutors, and the case involves several victims, defense counsels, civil defendants and their representatives, civil claimants and their representatives, the defendants, the presiding judges shall give them time for agreement between them about the sequence of their speeches. If necessary, the break for this is announced at the court session. If these persons do not come to an agreement on the sequence of their oral arguments, the court, after hearing their views, shall make a decision about the sequence of speeches.

5. The court cannot limit the length of pleadings by certain time, but the presiding judge shall have the right to stop the persons participating in the pleadings, if they relate to circumstances, unrelated to the case, or based on the evidence, not studied at the court session

6. After reciting speeches by all participants of the pleadings, each of them has the right to speak once more with brief objections or comments (remarks) about what is said in the

speeches of representatives of the parties. The right to the last comment, in all cases belongs to the defendant and his (her) defense counsel.

7. Each participant of pleadings may submit to the court in writing his (her) proposed wording of the decision on the matters, specified in paragraphs 1) - 6) of the first part of Article 390 of this Code. The proposed wording shall not be binding to the court.

#### **Article 384. The last word of the defendant**

1. After the end of pleadings the presiding judge gives the defendant the last word. No questions to the defendant during his (her) last words are allowed.

The court may not set the duration of the last word of the defendant. The presiding judge shall have the right to stop the defendant in cases if he (she) concerns the circumstances unrelated to the case.

2. In the abbreviated judicial investigation for the cases with the procedural agreement or the agreement on reconciliation in the mediation procedure, the last word by the defendants is not pronounced.

#### **Article 385. The reopening of the judicial investigation**

If the persons, acting in the pleadings or the defendant in the last word informs about new circumstances relevant to the case, the court at the request of the parties or its own initiative reopens the judicial investigation. At the end of the reopened judicial investigation, the court reopens pleadings and gives the defendant the last word.

#### **Article 386. Removal of the court in the deliberation room**

1. Having heard the last word of the defendant, the court removes to the deliberation room for passing the sentence, as the presiding judge declares to the persons, present in the courtroom.

2. Time of announcement of the sentence could be declared to the participants in the process before removing judges in the deliberation room.

### **Chapter 46. Sentencing Article 387. Sentencing in the name of the Republic of Kazakhstan**

Courts in the Republic of Kazakhstan decide sentences in the name of the Republic of Kazakhstan.

#### **Article 388. Legality and validity of the sentence**

1. The court sentence shall be lawful and justified.

2. The sentence shall be recognized as legal, if it is decided in compliance with all requirements of the law and on the basis of the law.



3. The sentence shall be recognized as justified, if it is decided on the basis of a comprehensive and objective investigation at the court session of the evidence presented to the court.

#### **Article 389. The secret of sentencing**

1. The sentence is decided by the judge, considering the case under the conditions precluding the possibility to render him (her) any impact. When sentencing, the presence of other persons, including a substitute judge is not allowed.

2. At the end of working hours, as well as during the working day, the judge may take a break to rest with going out of the deliberation room.

3. Prior to the announcement of the sentence, the judge may not disclose his (her) opinions and judgments that determine the decision in the case.

#### **Article 390. Issues, to be resolved by the court in sentencing**

1. In sentencing, the court resolves the following questions in the deliberation room:

1) whether it is proved that the act in the commission of which the defendant is charged, occurred;

2) whether the act is a criminal offence, and how exactly it is provided by the criminal law (Article, part, paragraph);

3) whether it is proved the commission of the act by the defendant;

4) whether the defendant is guilty of committing the criminal offence;

5) whether there are circumstances, mitigating or aggravating his (her) liability and punishment;

6) whether the defendant is subject to punishment for the commission of the criminal offence;

7) what punishment should be imposed to the defendant;

7-1) it has been proved that the property is subject to confiscation in accordance with Article 48 of the Criminal Code of the Republic of Kazakhstan;

8) whether there are grounds for passing a sentence without imposing a punishment or release from punishment, or to postpone the serving of a criminal punishment in the cases provided for by Articles 74, 75 and 76 of the Criminal Code of the Republic of Kazakhstan;

9) in what institution of the penal system and what kind of regime the sentenced to imprisonment should serve his (her) sentence;

10) should the civil claim be satisfied, in whose favor and in what amount;

11) what to do with the property under arrest, in order to ensure the civil claim or possible confiscation;

12) how to deal with material evidence;

13) for whom, in what amount should the procedural costs be imposed;

14) whether the court should deprive (make a presentation to the President of the Republic of Kazakhstan on deprivation) the defendant of honorary, military, special or another title, class rank, diplomatic rank, qualification class, state awards;

15) on the application of compulsory medical measures in the cases, provided for in Article 91 of the Criminal Code of the Republic of Kazakhstan;

15-1) On the application of other criminal-legal measures in cases provided for in articles 98-1 and 98-2 of the Criminal Code of the Republic of Kazakhstan;

16) on the circumstances, contributing to the commission of a criminal offence;

17) on the preventive measure against the defendant;

18) on cancellation or preservation of probation by the previous sentence;

19) on the abolition of the exemption from criminal liability with the establishment of a guarantee under the previous sentence.

2. In sentencing of acquitting judgment, the court decides on compensation for harm caused to the acquitted by illegal actions of the bodies of investigation, prosecution, court.

3. When charging the defendant in committing of several criminal offences, the court decides the issues, referred to in paragraphs 1) - 7) of the first part of this Article, for each criminal offence separately.

4. If in committing of a criminal offence several defendants are charged, the court resolves all issues, identified in the first part of this Article, in respect of each defendant separately, defining the role and the extent of his (her) participation in the acts committed.

5. After resolving the main issues, listed in the first part of this Article, the court proceeds to resolve the following additional questions:

1) about the arrangement of minor children of the convicted, left without parents, and, if necessary - the victim;

2) on the protection of the property of the convicted person, and, if necessary - the property of the victim;

3) the necessity of adoption of the private ruling;

4) the fate of the bail in case of cancellation of exemption from criminal liability with the establishment of a guarantee under the previous sentence.

6. The court is obliged to postpone the decision of the verdict if the Constitutional Court of the Republic of Kazakhstan, on the initiative of another court, has accepted for production a recommendation on recognition of a law or other regulatory legal act to be applied in this criminal case as unconstitutional.

**Footnote. Article 390, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 10.01.2018 No. 132-VI (shall be enforced dated 01.07.2018); of 21.01.2019 No. 217-VI (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).**

### **Article 391. The question of the defendant's sanity**

1. In cases when, during the pre-trial proceedings or the proceedings there is a question about the sanity of the defendant, the court shall discuss in sentencing this issue once again.

2. Recognizing that the defendant during the commission of the act was in a deranged state or after the commission of a criminal offence became ill by mental disease, preventing him (her) realize the actual character and social danger of his (her) actions (inaction) or to control them, the court may terminate the criminal case and make a decision on the application to the defendant of compulsory medical measures. Such a decision the court may adopt in the deliberation room, provided that the defense counsel was in the main trial.

3. If the defense counsel does not participate in the main trial, the court under the circumstances, specified in the second part of this Article, shall rule to refer the case to the appropriate court for consideration in accordance with the procedure provided for in Article 519 of this Code.

### **Article 392. Types of sentences**

The court's verdict may be guilty or not guilty.

### **Article 393. Judgment of conviction**

1. Judgment of conviction includes a court decision on the recognition of the defendant as guilty of committing a criminal offence.

2. The judgment of conviction decides:

- 1) with criminal sentencing, to be served by the convicted;
- 2) with the exemption of a person from criminal liability;
- 3) with the criminal sentencing and exemption from its serving;
- 4) without criminal sentencing;
- 5) with a delay of serving the criminal sentencing.

3. The judgment of conviction cannot be based on assumptions and decides only on the condition that during the court proceedings the defendant's guilt of committing a criminal offence is confirmed by a set of evidence, examined by the court.

4. In sentencing of conviction with imposition of the punishment, to be served by the convicted, the court shall specify its type, extent, regime, and beginning of calculating the term of serving.

5. The Court decides a conviction with the exemption of a person from criminal liability, if the statute of limitations to bring the person to criminal liability for the criminal offence is expired, as well as in the cases, specified in the first part of Article 36 of this Code.

6. The court decides a conviction with imposition of the punishment and exemption from it in cases, if at the time of sentencing:

1) the act of amnesty is issued, which exempts from sentencing or serving by the convicted the designated by the sentence punishment;

2) the time of the defendant's detention in custody in this case subject to the rules of set-off detention, established by Article 62 of the Criminal Code of the Republic of Kazakhstan, and takes the sentence imposed by the court.

7. The Court dismisses the case or at the request of the parties decides a conviction without sentencing, if at the time of its issuance death of the defendant occurred.

8. The Court decides a conviction with the delay of serving of criminal punishment in the cases provided for in Article 74 and the second part of Article 76 of the Criminal Code of the Republic of Kazakhstan.

#### **Article 394. Judgment of acquittal**

1. The court recognizes and proclaims by the judgment of acquittal the innocence of the defendant in committing of a criminal offence on a charge for which he (she) is prosecuted and put on trial.

2. The judgment of acquittal is decided, if:

1) there is no event of a criminal offence;

2) the defendant's act does not constitute a criminal offence;

3) there is no evidence of the participation of the defendant in committing of a criminal offence.

3. Justification by any of the listed grounds means the recognition by the court of the innocence of the defendant and entails his (her) complete rehabilitation.

4. If in sentencing of acquittal, a person who committed a criminal offence, remains unknown, the court in the operative part of the judgment indicates the sending of the case to the procurator for a decision on the need for prosecution of another person.

#### **Article 395. Drafting sentence**

1. After resolving the issues, referred to in Article 390 of this Code, the court proceeds to the drafting of the sentence.

2. The sentence is presented in the language in which the trial is held.

3. The sentence consists of introductory, descriptive-motivation and operative parts.

4. A sentence may be handwritten, typewritten or made by computer by the judge, and it is signed by him (her).

5. Corrections in the sentence must be specified and certified by the signature of the judge on the appropriate page of the sentence before its announcement.

6. Amendment of the sentence after its announcement is not allowed.

#### **Article 396. The introductory part of the sentence**

The introductory part of the sentence indicates:

- 1) that the sentence is decided in the name of the Republic of Kazakhstan;
- 2) the time and place of sentencing. In the case of judicial deliberations for several days, the time of sentencing is determined by the day of its announcement;
- 3) the name of the court, passed the sentence, the composition of the court, the court session secretary, participants in the process, their representatives, the interpreter;
- 4) surname, name and patronymic (if any) of the defendant, year, month, date and place of birth, residence, place of employment, occupation, education, marital status and other information about the identity of the defendant, relevant to the case;
- 5) criminal law, providing for the criminal offence for which the defendant is charged (Article, part, paragraph).

### **Article 397. The descriptive-motivation part of the judgment of conviction**

1. The descriptive-motivation part of the judgment of conviction must contain a description of the criminal offence, recognized by the court as proved, specifying the place, time and method of its commission, the form of guilt, reasons and consequences of the criminal offence. The judgment indicates the evidence on which the conclusions of the court in respect of the defendant are based, and the reasons on which the court rejected other evidence. It is specified the circumstances, mitigating or aggravating liability, as well as the limits of sentencing, set forth in the procedural agreement. In the case of recognition of the part of charges as unreasonable or setting incorrect qualifications of the criminal offence, it is specified the grounds and reasons for changing the charges. Coming to the conclusion of requalification of the defendant's actions or finding that some of the Articles (part of the Article, paragraph of the part of the Article) are presented excessively, the court in the descriptive-motivation part of the sentence indicates the Article (part of the Article, paragraph of the part of the Article) of the criminal law, according to which the act should be qualified, and indicates the exclusion of the Article presented excessively (part of the Article, paragraph of the part of the Article).

2. The Court shall also indicate the reasons for the solution of all questions, relating to criminal sentencing, exemption from it or his (her) real departure, and the use of other enforcement actions.

In determining the confiscation of property, the court shall specify the grounds provided by Article 48 of the Criminal Code of the Republic of Kazakhstan on which a particular property is referred to the subject of confiscation and the evidence on which such conclusions in respect of such property are based.

3. The descriptive-motivation part should contain the legal background for decisions and other matters, referred to in Article 390 of this Code.

4. For the cases, considered in a closed court session, the descriptive-motivation part of a judgment of conviction should not contain the wording of the circumstances, giving rise to the limitations of publicity of the trial.

5. For the cases with the procedural agreement or the agreement of reconciliation in the mediation procedure, the descriptive-motivation part of a judgment of conviction shall be made in accordance with Article 627 of this Code.

**Footnote. Article 397 as amended by Law No. 217-VI of 21.01.2019 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication).**

#### **Article 398. The operative part of the judgment of conviction**

1. The operative part of the judgment of conviction shall specify:

1) the surname, name and patronymic (if any) of the defendant;

2) the decision on the recognition of the defendant as guilty of committing a criminal offence;

3) the Criminal Law (article, part, paragraph), on which the defendant is found guilty;

4) the type and amount of the main and additional punishments imposed on the defendant for each criminal offense of which he was found guilty, the type of recidivism of crimes, as well as the decision to cancel or maintain a conditional sentence under the previous sentence, to cancel the release from criminal liability with the establishment of bail under the previous sentence and the final measure of punishment to be served on the basis of Articles 58 and 60 of the Criminal Code of the Republic of Kazakhstan.

The court in sentencing to imprisonment indicates in the sentence the type and regime of the institution, where the convicted person must serve his (her) sentence, and in sentencing, not connected with isolation of the convicted person from society, establishes his (her) obligation to appear within ten days after the entry into force of the sentence to the probation service for registration;

The court, when imposing a penalty of confiscation of property, shall indicate in the sentence which property is to be confiscated and/or list the items to be confiscated.

In the cases provided for in paragraph three of article 48 of the Criminal Code of the Republic of Kazakhstan, the court shall indicate the amount of money to be confiscated;

5) the duration of the probationary supervision period in a conditional conviction, to limit the freedom and responsibilities entrusted to the convicted, as well as the statutory consequences of failure, the duration of the term of the guarantee upon exemption from criminal liability with the establishment of the guarantee and the consequences of committing in this period a new criminal offence;

6) the decision to deprive (presentation to the President of the Republic of Kazakhstan on deprivation) the convicted of honorary, military, special or another title, class rank, diplomatic rank, qualification class, state awards;

6-1) decision on deprivation of citizenship of the Republic of Kazakhstan;

- 6-2) a decision to expel a foreigner or stateless person from the Republic of Kazakhstan;
- 7) the decision to offset pre-trial detention, if prior to the sentencing the defendant is detained or subjected to preventive measures in the form of detention in custody, house arrest, or he (she) is placed in a special medical organization;
- 8) the decision on compulsory medical treatment and the establishment of guardianship over the convicted;
- 9) a decision on the measure of restraint and the measure of procedural coercion in relation to the defendant before the entry into force of the sentence;
- 10) the solution of the issue on a delay of execution of the basic punishment;
- 11) the solution of the issue on punishment by deprivation of the right to occupy certain positions or engage in certain activities.

2. In the case of charges of the defendant on several Articles (parts of Articles, paragraphs ) of the criminal law, the operative part of the sentence shall indicate, for which of them the defendant is acquitted and for what convicted.

3. In the case of the defendant's exemption from punishment or sentencing without imposition of punishment or application of delay of sentence, this shall be indicated in the operative part of the sentence.

**Footnote. Article 398, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 217-VI of 21.01.2019 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication); No. 385-VI dated 19.12.2020 (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 399. The descriptive-motivation part of the judgment of acquittal**

1. The descriptive-motivation part of the judgment of acquittal indicates: the nature of the charges; circumstances of the case, established by the court; the reasons for which the court considers the evidence on which the statement on the defendant's guilt of a criminal offence is based, as unreliable or insufficient; the evidence giving rise to the acquittal of the defendant ; the reasons of the decision regarding the civil claim.

2. It is not allowed to use in the judgment of acquittal the wording that cast doubt on the innocence of the acquitted.

3. For the cases, considered in a closed court session, the descriptive-motivation part of the judgment of acquittal should not contain the wording of the circumstances, giving rise to the limitations of publicity of the trial.

#### **Article 400. The operative part of the judgment of acquittal**



The operative part of the judgment of acquittal shall contain:

- 1) the surname, name and patronymic (if any) of the defendant;
- 2) the decision on the recognition of the defendant as innocent and his (her) acquittal, the grounds for acquittal;
- 3) the decision to cancel a preventive measure, if it was chosen;
- 4) on the recognition of the right of the acquitted to reasonable compensation for harm, caused by unlawful criminal prosecution.

#### **Article 401. Other issues to be resolved in the operative part of the sentence**

The operative part of both the guilty and acquittal verdicts, except for the issues listed in articles 398 and 400 of the present Code, must contain them:

- 1) The decision on the civil action brought;
- 2) To resolve the issue of material evidence;
- 3) Decision on the distribution of procedural costs;
- 4) an indication of the procedure and term of appeal or review upon the prosecutor's request;
- 5) resolution on cancellation, application, change or continuation of the security measures for protected persons;
- 6) The decision to repeal, maintain confiscation measures, as well as measures to secure civil action, if any.

The operative part of the guilty verdict should also contain a decision on the collection of forced payments to the Compensation Fund for victims, their amounts and a decision on the regressive demands to the guilty person to return the money paid as compensation to the victim from the Fund.

When deciding on an acquittal, the court prepares a notice explaining the procedure for compensating for the harm caused by the unlawful imposition of criminal liability, which is handed over to the acquitted person after the verdict has been pronounced.

**Footnote. Article 401 of the Law of the Republic of Kazakhstan dated 10.01.2018 No. 132 -VI (shall be enforced dated 01.07.2018); as amended by the Law of the Republic of Kazakhstan dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 402. The announcement of the sentence**

1. After the signing of the full text of the sentence, the presiding judge returns to the courtroom and proclaims the sentence standing. All those present in the courtroom listen to the sentence standing.

If the text of the sentence of a large volume, the presiding judge may, in its announcement, make short breaks, then continue reading the entire text of the sentence or announce only the introductory and the operative part of the judgment.

2. If the sentence is written in the language, which the convicted (acquitted) does not know, then after the announcement of the sentence, it shall be synchronously translated aloud by the interpreter into the native language of the defendant or another language, which he (she) speaks.

3. The presiding judge explains the convicted (acquitted), other participants in the process the procedure and term of appeal of the sentence, the right of access to the protocol of the court session and bringing to it the comments, as well as the right to apply to participate in the appeal proceedings. The acquitted shall be given notice and explained his (her) right to compensation for damage, caused by unlawful detention, charged with a criminal offence, application of preventive measures, illegal bringing to trial, as well as the procedure for exercising this right.

4. Excluded by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).

5. If the defendant is appointed a probationary supervision and charged with his (her) appearance in the probation service within ten days after the entry of the sentence, the court shall explain him (her) the consequences of non-fulfillment of this obligation.

6. If the defendant is released from criminal liability in connection with the establishment of a bail, the court shall explain to the defendant, as well as the person who acts as a bailor, the consequences of committing by the defendant during the bailment of a new criminal offence.

Footnote. Article 402, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 403. The release of the defendant from custody**

Upon acquittal of the defendant or judgment of conviction without sentencing or release from punishment, as well as the conviction to the punishment not connected with the deprivation of liberty, or the deprivation of liberty of the defendant, who is under arrest must be immediately released from custody in the courtroom.

#### **Article 404. Presentation of copies of the sentence**

Not later than five days, and when a large volume no later than fifteen days after the announcement of the sentence, a copy must be presented to the convicted or acquitted, the defense counsel and prosecutor. A copy of the sentence shall be handed others involved in the process at same period from the date of receipt of the application.

## **Article 405. Private ruling**

1. The Court, if there is a reason, makes in the deliberation room a private ruling which draws the attention of the state bodies or officials, organizations or their heads to the violations of the law in the case, the causes and conditions that contributed to the commission of a criminal offence and requires the appropriate actions. If in the actions of the person an administrative misconduct contributing to the commission of a criminal offence is found, the court may impose on him (her) the penalty, provided for by law.

2. Private ruling may also be made by the court when it detects violations of citizens' rights and other violations of law, committed during the initial inquiry, the preliminary investigation.

3. The court may by the private ruling draw the attention of the organizations and labour collectives in the wrong behavior of individuals at work or at home, or on the violation of their official or civil duty.

4. The Court based on the trial materials may issue a private ruling, and in other cases, if it deems necessary.

5. The Court may by a private ruling inform the organizations and labour collectives of high manifested citizen awareness, courage in the performance of civil or official duty that contributed to suppression or detection of a criminal offence.

6. No later than one month the necessary measures must be taken on the private ruling and the results shall be reported to the court which issued the private ruling, as specified by the court in the operative part of a private ruling.

## **Article 406. Issues resolved by the court simultaneously with the sentencing**

1. In the presence of a person sentenced to imprisonment minor children, elderly parents, other dependents, left unattended, along with the decision of conviction, the court shall order the transfer of the said persons in the care or under guardianship of relatives or other persons or institutions, and in the presence of the convicted person the property or home, left unattended, it shall take measures to protect them. If necessary, the court shall make a decision on the placement of the unaccompanied minors, disabled parents, other dependents of the victim, due to his (her) severe injury or death as a result of a criminal offence, as well as the protection of the property and home of the victim.

2. In the case of participation of the defense counsel or the victim's representative on the designation of the body conducting the criminal proceedings, the court simultaneously with the decision of the sentence shall issue an order for payment of legal assistance, provided to the defendant or the victim, and reimbursement of costs related to the protection and representation.

3. Procedural decisions, mentioned in the first and second parts of this Article may be taken after the announcement of the sentence on the applications of the persons concerned.

4. Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

Footnote. Article 406 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 406-1. Issues to be resolved by the court before the entry of the verdict, decision into legal force**

The court, without changing the essence of the sentence or resolution, before they enter into force, has the right to issue an additional ruling on the correction of obvious typos and clarification of the ambiguities contained in them, material evidence, the fate of which was not resolved by the sentence or court order, the correction of technical and arithmetic errors in resolution of a civil claim, as well as the amount of procedural costs, compulsory payment to the Victims Compensation Fund and the state fee in case of their incorrect calculation.

Footnote. Chapter 46 is supplemented by Article 406-1, in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Chapter 47. Features of proceedings on cases of private prosecution Article 407. The order of proceedings on cases of private prosecution**

Proceedings on cases of private prosecution, which include cases of criminal offences provided by second part of Article 32 of this Code, shall be determined by the general rules of this Code with the exceptions, established in this Chapter.

#### **Article 408. Excitation of private prosecution**

1. The private prosecution is instituted by a person (several persons) by filing to the court in compliance with the rules on jurisdiction a complaint on bringing a person to criminal liability. When filing a complaint in the body of inquiry, the investigator or procurator, it should be sent to the court.

2. The complaint must contain the name of the court to which it was filed, a description of the event of the criminal offense, the place and time of its commission, indicating evidence, a request to the court to accept the case for proceedings, information about the person subject to criminal liability, criminal law (Article part, paragraph), according to which the person is brought to criminal responsibility, a list of witnesses who need to be summoned to court. The complaint is signed by the person who filed it. Anonymous complaints will not be accepted for production.

3. A complaint may also contain a request for consideration of a civil claim, if the complaint is attached by a civil claim and necessary materials in support of the claim.

4. The application is filed to the court in accordance with the territorial jurisdiction of the case with copies to the number of persons against whom proceedings on a case of private prosecution are instituted.

5. If a private prosecution is instituted by several persons in respect of one and the same person, they shall submit one complaint together or individually, independently of each other.

6. Since the adoption by a court of the complaint to its production, the person who filed it, shall be a private prosecutor and the victim, and he (she) should be explained the rights provided for in Article 72 and the third and fourth parts of Article 410 of this Code, and about this the protocol, signed by the judge and the person filed a complaint, shall be drawn up.

7. If, in respect of the same criminal offence several persons are entitled to initiate a private prosecution, and at the request of one of them, it has already initiated, the other persons may join already started production. In this case, it is not required a separate excitation at the request of each of these persons.

8. The accused shall have the right to submit the prosecutor a counter-charge, if it is related to the subject of the criminal offence, for which a proceeding is initiated. Accusation and counter-charge must be resolved at the same time. The withdrawal of the charges does not affect the proceedings on the counter-charges.

9. Private prosecution may not be re-opened, if it was previously withdrawn.

**Footnote. Article 408 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 409. Actions of judge on the case of a private prosecution prior to the trial**

1. If the complaint filed does not meet the requirements specified in the second part of Article 408 of this Code, the judge by its decision offers a person filed it to bring it into compliance with these requirements and sets term for this. In case of non-fulfillment of this, the judge by its decision refuses to accept the complaint to the production and notifies the person filed it. Refusal to accept the complaint for the specified circumstances does not preclude re-filing a similar complaint to the court within the time limit of criminal liability.

2. After considering the complaint on the case of a private prosecution, the judge within three days shall rule:

- 1) on accepting the complaint to its production;
- 2) on the transfer of the complaint to another investigative or judicial jurisdiction;
- 3) on refusal to accept the complaint for its production.

The judge takes a complaint to its production if it meets the requirements specified in the second part of Article 408 of this Code, and is in the jurisdiction of this court.

If the complaint is not under the jurisdiction of this court, or when it contains a request to the accusation of the person of committing other acts that are not specified in the second part

of Article 32 of this Code, the judge by its decision directs complaint to the court under the judicial jurisdiction or the criminal prosecution body under the investigative jurisdiction.

Judge by its decision refuses to accept the complaint, if the complainant fails to comply with the requirements of the first part of Article 409 of this Code or it is established the circumstances provided for in Article 35 of this Code, under which the criminal prosecution cannot be started.

3. A copy of the decision taken on the complaint shall be sent to the applicant, and in the case provided for in paragraph 1) of the first part of this Article, as well as to the accused.

4. If there are grounds for the appointment of the court session, the judge for up to seven days from the date of receipt of the complaint to the court shall call the person against whom the complaint is filed, to acquaint him (her) with the case materials, give a copy of the complaint, clarify the rights of the defendant at the court session, provided by Article 65 of this Code, and shall take a receipt about it. A judge asks the private prosecutor and the defendant the lists of witnesses, who will be called to the court session. In case of absence of the person against whom the complaint is filed to the court, a copy of the complaint with an explanation of the rights of the defendant, as well as the need to provide the court with a list of defense witnesses, shall be sent by mail or other means of communication.

5. A judge must explain to minors and their representatives their right to apply for transfer of the case under the jurisdiction to the district and equivalent courts.

6. A judge shall explain to the parties the possibility of reconciliation, including by way of mediation. In the case of the applications about reconciliation or reaching an agreement on reconciliation in the mediation procedure, the proceedings by order of a judge is terminated in accordance with paragraph 5) of the first part of Article 35 of this Code.

7. If the reconciliation between the parties is not reached, the judge after the requirements of the fourth and sixth parts of this article appoints the consideration of the case at the court session in accordance with the rules of Article 322 of this Code.

#### **Article 410. Presentation and collecting the evidence at the initiative of the parties**

1. The victim, other person who filed a complaint about a committed criminal offence, must indicate what evidence can prove in court the circumstances of the criminal offence, mentioned in the complaint, and the guilt of the accused.

2. The civil claimant, civil defendant in person or through a representative informs the judge prior to the hearing of the case, by the testimony of any individual (surname, first name, patronymic (if any), place of residence), documents, other evidence may be established the circumstances relevant for the protection of their interests.

3. The private prosecutor, his (her) representative, the defendant, his (her) defense counsel and representatives may submit to the court before the start of the proceedings and in the course of its consideration the items, documents relevant to the case, and apply for their interrogation at the court session.

4. A judge shall assist the parties in the collection of evidence at their request, and call of the witnesses, specified by them.

**Article 411. The consideration of the case of private prosecution in a court session**

1. Consideration of the case of private prosecution in a court session shall be carried out by the general rules of the trial with the exceptions set out in this Article.

2. The trial shall commence no later than fifteen days from the date of receipt of the complaint to the court, but not earlier than three days from the receipt of the copy of the complaint by the defendant with an explanation of his (her) rights.

3. Consideration of the complaint on the case of private prosecution may be combined in one proceeding with the consideration of a counter-claim. Combination is allowed by the decision of the judge before the judicial investigation. In combining the complaints into one proceeding, the persons who submitted them shall participate in the process at the same time as the private prosecutor and the defendant. The case could be delayed for a period of not more than three days to prepare a defense in connection with the receipt of a counter-claim and combination of proceedings at the request of the person against whom the complaint is filed. The interrogation of these persons on the circumstances set out in their own complaints shall be made by the rules of interrogation of the victim, and the circumstances set forth in the counter-claim, - according to the rules of interrogation of the defendant.

In the trial, the private prosecutor and the defendant shall have the right to appear in person or to be represented by their representatives.

4. Before the start of the judicial investigation, the presiding judge shall explain to the parties the possibility of reconciliation with each other, the procedure and the consequences of reconciliation. Reconciliation is possible without any conditions and obligations of the parties. An application for reconciliation may be made before the court in the deliberation room.

5. The judicial investigation begins with the presentation of the complaint by the private prosecutor or his (her) representative. At the same considering on the case of a private prosecution of the counter-claim, its arguments are presented in the same order after the presentation of arguments of the main complaint. Prosecutor presents evidence, has the right to participate in their study, expresses his (her) opinion to the court on the merits of prosecution, on the application of the criminal law to the defendant and his (her) sentence, as well as other issues that arise during the trial. Prosecutor in the hearing may change the charge, if it does not deteriorate the situation of the defendant and does not violate his (her) right to defense, as well as he (she) has the right to refuse to press charges.

6. Failure of the private prosecutor or his (her) representative to appear at the court session without good reason, specified in the second part of Article 157 of this Code, if the prosecutor does not personally participate in the proceedings, shall result in termination of the case, but at the request of the defendant the case may be heard on the merits in their absence.



## **Article 412. The court's decision in the case of private prosecution**

1. After considering the case of private prosecution, the judge, guided by the rules of this Code, shall take one of the following decisions:

- 1) make a judgment of conviction or acquittal;
- 2) dismiss the case;

3) in establishing the elements of a criminal offence, pursued in the public or private-public order, transfer the case to the relevant procurator to decide on the conduct of the pre-trial investigation.

2. The decision of the court in the case of private prosecution may be appealed by the parties in the manner and time, prescribed by this Code on a common basis.

## **Article 413. Termination of private prosecution**

1. Production of private prosecution shall be terminated if there are the circumstances, provided for in Article 35 of this Code, as well as in connection with the death of a private prosecutor, except in cases where close relatives of the victim or the defendant insists on the case.

2. The procedure for termination of the private prosecution is determined by the general rules of this Code with the specifications, provided in this Chapter.

## **Section 8. Revision of sentences and decisions of the court on the appellate procedure**

**Footnote.** The title of Section 8 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).

## **Chapter 48. Appellate appeal, revision of court decisions that have not entered into force at the petition of the prosecutor**

**Footnote.** The title of Chapter 48 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

## **Article 414. The right to file an appellate (private) complaint, to bring a petition of the prosecutor to sentences, decisions**

**Footnote.** The title of Article 414 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

1. The right of appeal against a sentence or decision shall belong to the convicted person, acquitted person, their defenders, including those who entered the proceedings after the sentence or resolution is announced, their legal representatives, the victim (private prosecutor)

, their representatives and legal representatives. The civil plaintiff, the civil defendant, their representatives and legal representatives shall have the right to appeal against the verdict in the part related to the civil claim.

2. An appeal by a prosecutor to review a judicial act on an appeal basis may be brought by a prosecutor who participated in the consideration of the case as a public prosecutor. The Prosecutor General of the Republic of Kazakhstan and his/her deputies, prosecutors of regions and prosecutors equated to them and their deputies, prosecutors of districts and prosecutors equated to them, within the limits of their competence, may bring an appeal of the prosecutor to revise a sentence, a resolution, regardless of participation in the consideration of the case.

3. Persons who are not parties to this case shall also have the right to appeal against a judicial act if the decision concerns their rights and legitimate interests.

**Footnote. Article 414 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 415. Judicial acts, subject to review in the appeal proceedings**

1. The sentences of the district and equivalent courts, specialized inter-district criminal courts, specialized inter-district military courts for criminal cases, specialized inter-district juvenile courts, military courts of garrisons that have not entered into force, shall be subject to review in the appeal proceedings.

2. Private complaint may be filed and prosecutor's petition may be brought in the manner prescribed by this Chapter to the decisions of the courts of first instance that have not entered into legal force, except for those specified in part three of this Article.

3. The decisions on the issues specified in part two of Article 10 of this Code, as well as the procedure and method of investigating the evidence, the petitions of the participants in the proceedings, keeping of order in the courtroom, shall not be subject to revision by the rules of this Chapter, except for the decisions of a preventive measure, imposition of monetary punishment. Objections to the above decisions may be set out in appellate complaints, petitions of the prosecutor brought on the sentence.

**Footnote. Article 415 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 416. Courts considering appellate (private) complaints, petitions of the prosecutor against unenforceable sentences, decisions**

1. Appellate (private) complaints, petitions of the prosecutor for unenforceable sentences, decisions of district and equated to them courts, specialized inter-district courts in criminal cases, specialized inter-district courts for juvenile cases shall be considered by the appellate instance of the relevant regional court and court equated to it.

2. Appellate (private) complaints, petitions of the prosecutor for unenforceable sentences, decisions of military courts of garrisons, specialized inter-district military courts in criminal cases shall be considered by the Military Court.

3. If the sentence and decision are issued in the case, the appellate complaints, the prosecutor's petitions to the sentence and private complaints, the prosecutor's petition to the decision shall be considered in one session of the appellate instance of the regional court or court equated to it.

4. Private complaints, the petitions of the prosecutor to the decisions on a preventive measure and imposition of a monetary penalty, taken out during the main trial shall be considered by the appellate instance before the end of the proceedings. Consideration of these complaints, petitions of the prosecutor in the appellate instance shall not interrupt the further consideration of the criminal case in the court of first instance.

**Footnote. Article 416 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 417. The procedure for filing an appellate (private) complaint, bringing a petition of the prosecutor**

1. Appellate (private) complaints shall be submitted, the prosecutor's petitions shall be brought through the court that issued the sentence, decision. Appellate (private) complaints, petitions of the prosecutor, sent directly to the appellate instance, shall be subject to the direction to the court that passed the sentence, decision, to meet the requirements of Article 420 and part two of Article 421 of this Code.

2. The sentence, the decision made at the repeated consideration of the case, may be appealed, revised at the petition of the prosecutor in the same manner.

**Footnote. Article 417 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 418. Terms for filing an appellate (private) complaint, bringing a petition of the prosecutor**

**Footnote. The title of Article 418 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

1. Appellate (private) complaints are submitted, the procurator's petitions are brought within fifteen days from the date of announcement of the sentence, decision, and to the convicted in custody - in the same date from the day of delivery of the copy of the sentence, decision.

2. During the period set for the appeal of the judicial act, the case cannot be demanded from the court of first instance.

3. Appellate (private) complaint, the petition of the prosecutor, filed after the deadline, in the absence of a petition for its restoration by the court decision that passed the sentence, decision, shall be returned to the author specifying this reason. If, after the adoption of the complaint, the petition of the prosecutor by the court of first instance, missing the deadline for their submission is revealed in the appellate instance, the judge of the appellate instance leaves them without consideration by its resolution.

**Footnote. Article 418 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

**Article 419. The procedure for restoration of the term for filing an appellate (private) complaint, bringing a petition of the prosecutor**

1. In case of missing the deadline for filing an appellate (private) complaint, bringing a petition of the prosecutor, the persons entitled to file a complaint, a petition of the prosecutor, may apply the court that passed the sentence, decision, on restoration of the missed deadline. A petition for restoration of the term for filing an appellate (private) complaint, a petition of the prosecutor may be submitted in written or in the form of an electronic document. A petition for restoration the term shall be considered in the court session by the judge who presided at the main trial of the case, and in his/her long-term absence (at least five days) - by another judge of the same court who is entitled to call the person, initiated the petition, to give explanations.

2. A judge's decision to refuse the restoration of a missed term may be appealed, revisioned at the petition of the prosecutor to the relevant regional or equated to it court, which has the right to retrieve the missed deadline and to consider the complaint case, the prosecutor's petition in compliance with the requirements set forth in Article 420 and part two of Article 421 of this Code. The participants of the process who do not agree with the court decision on restoration of the missed deadline for filing an appellate complaint, bringing a petition of the prosecutor, before the start or in the meeting of the appellate instance shall have the right to submit their arguments and apply to cancel this decision. Upon satisfaction of such application, the appellate instance leaves an appellate complaint, the prosecutor's petition without consideration, by its decision.

3. The court specified in part one of this Article is obliged to restore the missed term for filing an appellate (private) complaint, bringing the appellate petition of the prosecutor in

violation of the law, which limits the ability of the party of the process to protect their rights and legal interests (delayed preparation of the court session protocol, delivery of a copy of judicial act to the participant in the case who does not know the language of the proceedings, without translation, inaccuracy in the indication of the term for appeal in the operative part of the judicial act), as well as in other circumstances that objectively prevented him/her to timely file a complaint or bring a petition of the prosecutor.

4. The decision of the appellate judge on restoration of the missed deadline together with the complaint, the petition of the prosecutor and other materials shall be immediately sent to the court that passed the sentence, decision to perform actions provided for in Articles 420 and 421 of this Code.

**Footnote. Article 419 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

**Article 420. Notice of filing an appellate (private) complaint, bringing a petition of the prosecutor**

1. On filing an appellate (private) complaint, bringing a petition of the prosecutor, the court that passed the sentence, decision, shall inform the convicted or acquitted, his/her defense counsel, representative, prosecutor, the victim and his/her representative, as well as the civil claimant, civil defendant or their representatives, if the complaint, the petition of the prosecutor affects their interests.

2. Persons, specified in part one of this Article shall be provided with copies of the complaint, the petition of the prosecutor or a notice of the possibility of acquaintance with their electronic copies through the Internet resource of the court that passed the sentence, decision. At the same time, the parties are explained their right to file an objection to the complaint, the prosecutor's petition in written form or in the form of an electronic document specifying the date of submission. The parties shall also be explained the right to submit their arguments on the consent with the judicial act, for which revision the complaint was filed, the petition of the prosecutor was brought. Objections to the complaint, the petition of the prosecutor, and the arguments of the parties shall be attached to the case, subject to revision in the appellate instance together.

3. The parties shall have the right, together with the objection to the appellate (private) complaint, the petition of the prosecutor or separately to submit new materials to the court of appeal or to apply for their reclamation and investigation, as well as on the call the court and interrogation of the victims, witnesses, experts and specialists indicated by them.

**Footnote. Article 420 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

**Article 421. The consequences of filing an appellate (private) complaint, bringing a petition of the prosecutor**

1. Filing of an appellate (private) complaint and the bringing of a petition of the prosecutor shall suspend entering of the sentence, decision, except for the decision on preventive measure into legal force and its implementation.

2. The court of first instance, not later than one day after the expiration of the term established for appeal, revision, upon the petition of the prosecutor of the sentence, decision and the fulfillment of the requirements of Article 420 of this Code, shall send the case with the received complaints, the prosecutor's petition, as well as objections to them.

**Footnote. Article 421 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

**Article 422. Appeal, revision at the petition of the prosecutor of the decision of the court of first instance**

1. A private complaint, petition of the prosecutor by persons indicated in Article 414 of this Code may be brought to the decision of the court of first instance for seizures specified in part 4 of Article 344 of this Code.

2. A private complaint, the petition of the prosecutor to the decisions of the court of first instance shall be submitted to a higher court within fifteen days from the date of issuing the decision and shall be considered according to the rules of appeal proceedings. In the case of filing a complaint, bringing a petition of the prosecutor to the decision made during the trial that ended by sentencing, the case shall be directed to the higher court only after the deadline set for appeal against the sentence.

**Footnote. Article 422 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

**Article 423. Appellate (private) complaint, petition of the prosecutor**

1. Appellate complaints, the petition of the prosecutor shall contain:

1) the name of the court of relevant appellate instance to which the complaint, the petition of the prosecutor is addressed;

2) information about the person who filed the complaint or brought the petition of the prosecutor, indicating his procedural status, place of residence or location, contacting numbers;

3) the sentence or decision to which the complaint was filed, the petition of the prosecutor was brought, and the name of the court that made this decision;

4) an indication as to which part of the sentence, decision or in full the complaint is filed against them, a petition of the prosecutor is brought;

5) the arguments of the person who filed the complaint and brought the petition of the prosecutor, what is, in his/her opinion, the incorrectness of the sentence, the court's decision, what norms of the law were violated during the pre-trial proceedings or consideration of the case and affected on decision -making on it, and the essence of his/her request ;

6) the evidences by which the author of the complaint, the petition of the prosecutor justifies his claims, including those that were not investigated by the court of first instance;

7) the list of materials attached to the complaint, the petition of the prosecutor;

8) the date of filing the complaint, bringing in the petition of the prosecutor and the signature of the author of the complaint, the prosecutor who brought the petition.

2. If the filed complaint, petition brought by the prosecutor does not comply with these requirements, they shall be considered as filed, but returned by the court that passed the sentence, indicating the deadline for re-registration. If during the mentioned period an appellate (private) complaint is not filed, the prosecutor's petition is not brought to the court after re-constriction, they shall be considered as not filed, as the author of the complaint, the petition of the prosecutor, is informed. In the same procedure, the court of appeal shall have the right to return the complaint for its registration in accordance with part one of this Article.

3. The parties shall have the right in confirm the grounds for the appellate (private) complaint, the petition of the prosecutor, together with the complaint or after its filing, to submit new materials to the appellate court or to apply for their reclamation and investigation, as well as interrogation of the witnesses, victims, experts, specialists, indicated by them, committing of other actions aimed at filling gaps in the judicial investigation at the first instance.

4. The person, submitted the appeal (private) complaint, brought the petition of the prosecutor, shall have the right to change or add new arguments to his/her complaint, petition of the prosecutor before the court session. However, in the additional petition of the prosecutor or his application for changing the petition of the prosecutor, as well as in the additional complaint of the victim, private prosecutor or representatives filed after the appeal period has expired, the issue of deteriorating the situation of the convicted person, if not included in the initial petitions of the prosecutor or the complaint cannot be raised. The defender who entered the proceedings on the case after the expiry of the term for appealing the judicial act may change or add new arguments to the complaint, present an additional argument of the arguments of the complaint filed earlier by the defender participating in the case.

5. The person who appealed the brought prosecutor's petition to the sentence, decision, shall have the right to withdraw his complaint, the petition of the prosecutor prior to the beginning of the appellate court session. The petition of the prosecutor may also be withdrawn by a higher prosecutor. The defender, the legal representative shall have the right



to withdraw his complaint only with the consent of the convicted person. A convicted person shall have the right to withdraw a complaint filed by his lawyer, a legal representative, the withdrawal of the complaint of the mentioned persons shall be binding for the court.

**Footnote.** Article 423 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **Chapter 49. Consideration of cases on appellate complaints, petitions of the prosecutor**

**Footnote.** The title of Chapter 49 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **Article 424. Subject of the appellate revision**

1. On appellate complaints, petitions of the prosecutor, the court of appellate instance on the available in the case and additionally submitted materials examined in the appeal instance, shall verify the correctness of establishing the facts of the case and the application of criminal law, compliance with the rules of criminal procedure law in the implementation of proceedings, justice, legality and validity of the sentence or decision of the court of first instance within the limits established in part one of Article 426 of this Code.

2. The procedure of consideration of complaints, petitions of the prosecutor for sentences, court decisions with the participation of jurors shall be carried out according to the rules of Chapter 69 of this Code.

3. Consideration of the case in the appellate instance in the event of cancellation by the cassation instance of the sentence and all subsequent decisions with the direction of the case for a new trial in the appellate court shall be carried out in accordance with the rules of Chapters 41-46 of this Code.

**Footnote.** Article 424 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

#### **Article 425. Terms of consideration of the case in appellate instance**

Case in the appellate procedure must be considered not later than one month from the date of its receipt. In cases where the court sees no reason to the need to study new materials and evidence and make a new sentence, the case in the appellate procedure shall be considered no later than two months from the date of its receipt. The deadlines for good reasons may be extended to one month by the decision of the appellate court, in the production of which the

case is. If necessary, a further extension of consideration of the case in the appellate procedure may be carried out by decision of the Chairman of the board of the relevant regional and equivalent court. In addition, each extension of consideration of the case may not exceed one month.

#### **Article 426. Limits of consideration of the case in the appellate instance**

1. The court considering the appeal case shall check the legality, relevance, fairness of the verdict, the court ruling in full and it has the right to amend them on the grounds not indicated in the complaint, petition of the prosecutor, if the situation of the convicted person does not worsen at that.

2. If, during the case review, violations of the rights and legitimate interests of other convicted persons are established, which led to an unlawful sentence, resolutions, then the court, in compliance with the rules prescribed by this Code, shall have the right to cancel or change them also in the parts not appealed, not revised on the appellate petition of the prosecutor and in respect of persons on whom the complaint, the prosecutor's petition is not filed, if the convicted person's situation does not worsen at that.

Changing or reversal of a sentence on persons on whom a complaint, a prosecutor's petition has not been filed, shall be permitted only in the event of revocation or change of the sentence in respect of a person affected by the complaint, prosecutor's petition, and only to conform the qualifications of the actions of other convicted persons who jointly committed the criminal offense.

The court shall not have the right to worsen the position of the convicted person at his request or the request of his defense counsel or legal representative.

3. Considering the case on appellate complaint, the petition of the prosecutor to the sentence of the court of first instance, the court shall also have the right, in the absence of private complaints, the petition of the prosecutor to cancel or change the private and other decisions of the court if they conflict with the decision of the appellate instance accepted on complaints, petitions of the prosecutor, or do not correspond to the case materials and the law.

4. The proceedings on this case in the court shall be completed by the decision (sentence), issued to revision the appellate complaint, petitions of the prosecutor, objections to them and the parties' arguments.

**Footnote. Article 426 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 27.03.2023 No. 216-VII (shall be enforced from 01.07.2023).**

#### **Article 427. Preparation of the session of the appellate instance**

1. If, in order to check the arguments of complaints, the prosecutor's petitions it is necessary to implement relevant procedural actions, the judge within ten days from the day of

receipt of the case shall make a decision on preparation of the case for consideration in the appellate court, which specifies the call and interrogation of the concerned persons (the convicted, justified, victims, witnesses, experts, specialists) at the collegium meeting, demanding materials and performing other actions necessary for the proper resolution of the case. Taking into account the time required for the execution of the preparatory actions, the judge in the decision indicates the date of the consideration of the case in the appellate instance. A copy of the judge's decision on the preparation of the appellate session shall be sent to the participants of the process within three days from the date of issue.

2. A judge at the request of the parties or its own initiative shall decide whether to preserve, select, cancel or change the preventive measure against the defendant or convicted, what shall be indicated in the decision.

**Footnote. Article 427 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 428. The purpose of the court session of the appellate instance**

1. The court of appellate instance upon the receipt of the criminal case with the complaints, the petition of the prosecutor shall appoint the court session, and shall inform the parties about the time and place of consideration of the case.

2. On receipt from the convicted in custody, the petition for participation at the court session of the appellate instance in consideration of complaint or petition of the prosecutor, aimed at the deterioration of his position, the appellate court shall issue a decision on consideration of the case with the direct participation of the convicted person or by using scientific and technical means to provide remote participation of the specified person, which it sends to the appropriate bodies for execution.

3. The question of calling to the court session of the convicted in custody in other cases shall be decided by the court of appeal. Participation of the convicted (acquitted) at the court session of the appellate instance shall be mandatory, if the court considers new evidence that is not the subject of consideration of the court of first instance. Proceedings in such cases in the absence of the convicted (acquitted) shall be allowed in the circumstances, referred to in Article 335 of this Code.

4. Participation of the defender in the appellate instance shall be carried out in cases provided by part one of Article 67 of this Code.

In those cases, when it is considered in relation to the convicted juvenile or on the appellate complaint of the victim (civil defendant), their representatives, the prosecutor's petition, in which the question the deterioration of the situation of the convicted person is raised, or when the pre-trial proceedings and the consideration of the case in the court of first

instance were conducted without the participation of the accused, or if the court of appeal considers new evidence, the participation of a defense counsel in appellate instance is mandatory.

5. Persons who, in accordance with Article 414 of this Code, have been granted the right to appeal against the judgment, shall in all cases be admitted to the court of appeal. Upon their request, they shall be given the floor to speak in support of the complaint filed or the prosecutor's petition brought or objections to them.

6. Participation of the procurator in the appellate instance is necessary, except in cases of private prosecution.

In the appellate instance, the procurator shall have the authority, provided for in Article 337 of this Code.

Absence of other participants in the process, except for the defense counsel, timely notified of the place and time of the meeting of appeal, shall not preclude consideration of the case.

**Footnote. Article 428 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 429. Procedure for consideration of the case in appellate instance**

1. The Court of appeals shall consider cases in open court session, except for the cases specified in Article 29 of this Code. The presiding judge opens the court session, declares which case is being considered and on whose appellate (private) complaints or petition of the prosecutor. After that, the presiding judge announces the composition of the court, the names of the persons present, who are the parties to the case, as well as the names of the translators.

2. The presiding judge shall explain to persons participating at the session their procedural rights in the consideration of the case on appeal, including the conclusion of the procedural agreement or reconciliation by way of mediation, and ask the parties about the presence of the challenges and applications and, if they are declared, he (she) clarifies the opinion of the participants in the process on them, after that, the court in compliance with the procedure provided for in Article 344 of this Code, shall issue a decision on the results of their review.

If the participant in the process applies for verifying the legitimacy of the decision of the court of first instance for restoration of the missed deadline of appellate complaint, revision of the sentence, decision on the prosecutor's petition, then this petition shall be considered immediately after the resolution of challenges. When recognition of the decision on the restoration of the missed period as illegal, the court of appeal shall issue a decision on its cancellation and termination of the appeal proceedings on the complaint, the prosecutor's

petition, filed out of time. If the restoration of the missed deadline is recognized as correct, the court of appeal shall continue the consideration of complaints, prosecutor's petitions in the manner provided in this Article.

3. The person, representing the court additional materials, shall specify the way how they are received, and why it becomes necessary to submit them, as well as justify the need to fill a judicial investigation conducted by the court of first instance. Additional materials cannot be obtained by the conduct of investigative actions.

4. If the parties request to adduce new materials or their reclamation and research, as well as the interrogation of these witnesses, victims, experts, specialists, the commission of other actions aimed at filling the gaps in the judicial investigation in the first instance, the court hears the opinion of the participants in the process, and then makes a decision on their approval or rejection. If the court of appeal decides to conduct the judicial investigation, the applications of the parties on the interrogation of the witnesses, attended on their initiative shall be satisfied. If, in connection with the approval of the application it is necessary the time to conclude procedural agreement or reconciliation by way of mediation or performing other actions, the court announces a break and, if necessary, extends the period of consideration of the case on appeal.

If the appointed examinations take the time, the court announces a break and, if necessary, extends the period of consideration of the case on appeal.

5. The court of appeal under the rules provided for the court of first instance examines additional materials, relevant to the proper resolution of the case and submitted by the parties or required by their requests, the obtained expert opinions, and interrogates the people called to the session.

If in the court of first instance a procedural agreement or an agreement on reconciliation by way of mediation is concluded, the court examines the legality within these agreements. After the cancellation of the sentence of the court of first instance on the grounds provided by law in the consideration of the case at the court session of the appellate instance according to the rules of the court of first instance, the parties may conclude a procedural agreement or an agreement on reconciliation by way of mediation.

6. After the conduct of judicial investigation, the court, according to the rules of the judicial debate, shall hear the statements of the participants in the process, who state the motives and arguments of their complaints, the prosecutor's petitions or objections to them. The parties in their speeches have the right to refer both to materials investigated by the court of first instance, and additional materials investigated by the appellate instance. The first speaker is the participant of the process who filed the complaint, brought the petition of the prosecutor, if there are several, the court, taking into account their opinion, determines the order of their speech. If the complaint, petition of the prosecutor raises the issue of worsening the situation of the convicted (justified), the defense party speaks after hearing the speech of the prosecution.

7. The prosecutor participating in the court of appeal gives an opinion on the considered appellate complaints, sets forth the arguments specified in the prosecutor's petition, gives an opinion on the legality of judicial acts held in the case, and also, if necessary, supports the state prosecution.

8. The protocol of a court session shall be kept in the study by the court of appeal of new evidence, interrogation of the convicted (acquitted), witness, victim, experts, specialists and others and it shall be registered in accordance with the requirements of Article 347 of this Code. The parties and persons, interrogated at the session of appellate instance, shall have the right to examine the protocol of the court session and to bring comments to it on the procedure provided for in Article 348 of this Code. Comments to the protocol shall be considered in accordance with the procedure, provided for in Article 349 of this Code.

9. The schedule of court proceedings and measures taken against violators shall be determined by the rules of Articles 345, 346 of this Code. Decision-making procedure in the consultation room shall be determined by the rules of Article 389 of this Code.

**Footnote. Article 429 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 430. Powers of the court of appeal**

1. When considering a case that has been submitted with an appellate complaint or a petition of the prosecutor, the court, at the request of the parties, in order to verify the legality of the sentence and the proper resolution of the case, shall have the right to:

1) demand documents related to health status, marital status and data on past convictions of the convicted person, the victim and the other persons involved, and at the request of the parties - other documents;

2) appoint a forensic psychiatric or other examination;

3) call at the hearing and interrogate additional witnesses, experts, specialists, research writing, material and other evidence, submitted by the parties or required, upon their request by the court;

4) recognize the materials examined by the court of first instance as inadmissible evidence and exclude them from the evidence;

5) recognize the materials excluded by the court of first instance from the evidence, as admissible and explore them;

6) investigate the circumstances relating to the civil claim, and make a decision in the civil claim;

7) perform other actions, necessary to ensure the completeness, comprehensiveness and objectivity of the study of all the materials of the case and establish the truth in the case.

2. If there are uncertainties set forth in the protocol of the court hearing in the testimony of the convicted (acquitted), victims, witnesses and other persons, interrogated by the court of



first instance, which allow them to different interpretations, the court on its own initiative or initiative of the parties shall be entitled to specify their evidence by questioning at the court session about these circumstances.

3. At the conclusion of the procedural agreement or reconciliation agreement by way of mediation in the court of first instance, the court of appeal shall examine the circumstances of their conclusion.

**Footnote. Article 430 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 431. Decisions, made by the court of appeal**

1. As a result of consideration of the case on appeal, the court shall take one of the following decisions on:

1) leaving the sentence, decisions of the court of first instance unchanged and appellate (private) complaint, the petition of the prosecutor - without satisfaction

2) changing the sentence;

3) cancellation of the sentence and dismissal of the case in full or in part;

4) cancellation of the judgment of conviction and making a new judgment of conviction or acquittal;

5) cancellation of the acquittal and making a new judgment of acquittal or conviction;

6) cancellation of the sentence, made with the participation of jury, and direction of the case for a new trial;

7) changing the decision, cancellation of the decision with the adoption of a new decision;

8) excluded by the Law of the Republic of Kazakhstan dated 27.03.2023 No. 216-VII (shall be enforced from 01.07.2023);

9) excluded by the Law of the Republic of Kazakhstan dated 27.03.2023 No. 216-VII (shall be enforced from 01.07.2023);

10) cancellation of the court decision and sending the case for a new trial, if the case has not been considered on the merits.

2. The court of appellate instance shall have the right to take a decision that worsens the situation of the convicted (justified) only within the limits and on the grounds indicated in the complaints, the petition of the prosecutor.

3. In determining the circumstances referred to in Article 405 of this Code, the court of appeal shall issue a private ruling.

**Footnote. Article 431 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 27.03.2023 No. 216-VII (shall be enforced from 01.07.2023).**



### **Article 432. Consideration of a civil claim in criminal proceedings by the appeals instance**

1. The court of appellate instance during the consideration of the case shall also verify the legality, validity and fairness of the sentence in the part of the civil claim, if this is requested in the complaints, the petition of the prosecutor, and takes a decision in compliance with the requirements of Article 170 of this Code.

2. The court of appeal has the right to change the sentence in a part of the civil claim.

3. The decision on a civil suit that worsens the situation of a convicted person is allowed only if there are appropriate arguments in the complaints of the prosecuting party or the petition of the prosecutor.

**Footnote. Article 432 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

### **Article 433. Grounds for cancellation or change of the sentence**

The grounds for cancellation or change of the sentence of the court of first instance are:

- 1) one-sidedness and incompleteness of the judicial investigation;
- 2) inconsistency of the court's findings set out in the sentence, decision to the facts of the case;
- 3) a material breach of the criminal procedure law;
- 4) incorrect application of the criminal law;
- 5) non-compliance of the punishment to the severity of the criminal offence and the personality of the convicted.

### **Article 434. The one-sidedness or incompleteness of the judicial investigation**

1. One-sided or incomplete judicial investigation is the judicial investigation, which left unexplained such circumstances, the establishment of which would be essential for the proper resolution of the case.

2. The judicial investigation shall be incomplete in any case, when in the case the persons whose evidence is essential to the case are not interrogated, or when the examination, which conduct is required by law, is not carried out, and the documents or material evidence, which are essential are not required.

3. After filling the gaps of the judicial investigation, the court of appeal shall take one of the decisions, referred to in the first part of Article 431 of this Code.

4. The judicial investigation, conducted in a shortened manner in compliance with the requirements of this Code or by limiting the examination of evidence in connection with the request of the parties, may not be regarded as incomplete or one-sided and entail the cancellation of the sentence, decisions of the court on these grounds.

**Article 435. The inconsistency of the court's findings set out in the sentence, decision to the facts of the case**

1. The sentence, decision shall be recognized as inconsistent to the facts of the case, if:
  - 1) the court's findings are not supported by the evidence, considered in the hearing;
  - 2) the court does not take into account the circumstances that could significantly affect the court's findings;
  - 3) there is contradictory evidence, which is essential for the court's findings, and the sentence, the decision does not specify on what grounds the court took one of this evidence and rejected other evidence;
  - 4) the court's findings set out in the sentence, decision, contain essential contradictions that affected or could affect the resolution of the case, including the decision of the court on the question of the guilt or innocence of the convicted, acquitted, the correct application of the criminal law or the determination of punishment.
2. After examining the case materials, the evidence submitted by the parties and obtained during the appeal proceedings, the court may re-evaluate them and make a new decision as provided in the first part of Article 431 of this Code.

**Article 436. A material breach of the criminal procedure law**

1. A material breach of the criminal procedure law is a violation of the principles and other general provisions of this Code, committed in the course of pre-trial proceedings or judicial proceedings, as well as other violations of the law, which, through deprivation or restraint of rights of the persons involved in the case, guaranteed by the law, non-compliance the procedure of court proceedings or otherwise prevented from comprehensive, full and objective investigation of the circumstances of the case, affected or could affect the legal sentencing or other court decisions.
2. The sentence is subject to cancellation or change when the admitted by the court of first instance one-sidedness or incompleteness of the judicial investigation was due to the understudiedness of evidence, subject to mandatory study and entailed the erroneous exclusion from the proceedings of the admissible evidence or unjustified refusal to the party to the study of evidence that may be relevant to the case, or study of inadmissible evidence.
3. The sentence, decision shall be subject to cancellation in any case, if:
  - 1) the court on the grounds provided for in Article 35 of this Code, does not terminate the criminal case;
  - 2) the sentence is decreed by illegal composition of the court;
  - 3) the case is considered in the absence of the defendant, except as provided for by the second part of Article 335 of this Code;

4) the case is considered in court without defense counsel or representative of the injured person, when their participation is mandatory by law, or the defendant's right to protect is violated in other ways;

5) the court violates the right of the defendant or the injured person to use their native language or the language, which he (she) speaks, or the services of an interpreter;

6) the defendant is not provided the right to participate in the court debate, unless in accordance with the requirements of this Code it is not carried out;

7) the defendant is not given the last word, except when its pronouncing in accordance with the requirements of this Code is not provided;

8) the secrecy of sentencing is violated;

9) the sentence is not signed by the judge.

4. Absence of the protocol of the court session in the case shall not be the grounds for cancellation of the appealed (revised at the prosecutor's request) judicial act. In such cases, the court of appellate instance sends the case to the court of first instance for its further re-registration

**Footnote. Article 436 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 437. Incorrect application of the criminal law**

Incorrect application of the criminal law is:

1) the violation of the requirements of the General Part of the Criminal Code of the Republic of Kazakhstan;

2) the use of the wrong article, part of the Article, paragraph of the Article of the Special Part of the Criminal Code of the Republic of Kazakhstan, which were subject to the application;

3) the punishment is more strict than it is provided by the sanction of this Article of the Special Part of the Criminal Code of the Republic of Kazakhstan.

#### **Article 438. The non-compliance of the punishment to the severity of the criminal offence and the personality of the convicted**

1. Inconsistency of the severity of the criminal offence and the personality of the convicted is the punishment that is assigned without regard to the general principles of sentencing and, although not beyond, the sanctions of the relevant Article of the Criminal Code of the Republic of Kazakhstan, but in its form and size is unfair due to excessive softness or excessive severity.

2. The court of appellate instance shall have the right to mitigate the punishment or decide to impose more severe punishment both in connection with the application of the law on a

more serious criminal offense, and without re-qualification of the actions of a convicted. Making a decision, worsening the position of a convicted person shall be allowed only if there are appropriate arguments in the complaints of the prosecution or the petition of the prosecutor and only within them. Application of the law on a more serious criminal offense may not go beyond the charge brought against the defendant and supported by the prosecution in the court of first instance.

3. In cases where the court of first instance made a decision on qualification of a criminal offense on the basis of part seven of Article 337 of this Code in connection with the change by the state and private prosecutors of charges for a less serious, the appellate instance shall not be entitled to apply the law on a more serious criminal offense, but within the limits of arguments of complaints, petitions of the prosecutor shall have the right to increase the term or size of punishment or to assign to the convicted another more severe form of punishment than specified in the sentence.

**Footnote. Article 438 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 439. Cancellation of the judgment of conviction with the termination of the case**

1. When considering appellate complaints and petitions of the prosecutor, the court of appellate instance shall cancel the sentence and terminate the case if there are grounds provided in paragraphs 3) to 10) of the first part of Article 35 and part one of Article 36 of this Code.

2. Upon the termination of the case on the grounds specified in paragraph 9) of the first part of Article 35 of this Code, the court of appeal resolves the issues referred to in Article 520 of this Code, and in accordance with Article 521 of this Code shall rule.

3. The parties shall have the right to request to terminate the case due to reconciliation of the convicted with the injured person. In such cases, the court of appeal shall check the availability and the accuracy of the circumstances, specified in the request. In establishing the grounds under which the case is subject to termination or may be terminated due to the reconciliation of the parties, the court shall issue a decision to cancel the sentence and terminate the case on the specified base.

**Footnote. Article 439 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 440. Cancellation of acquittal**

1. The acquittal, the decision to terminate the case or another decision in favor of the defendant may be canceled by the appellate instance only at the petition of the prosecutor or

on the complaint of the victim or his representative and also acquitted by the court that does not agree with the grounds for the acquittal.

2. The acquittal, the decision to terminate the case or other decision in favor of the defendant, may not be canceled based on a material breach of the criminal procedure law, referred to in Article 436 of this Code, if the innocence of the acquitted, the grounds of justification, or the essence of a decision, reached in favor of the defendant, are not in dispute.

3. The decision of the court to terminate the case due to the failure of the public prosecutor and the injured persons in consideration of the case on the court of appeal shall not be subject to cancellation.

**Footnote. Article 440 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 441. Cancellation of the sentence with a new sentence**

1. The court of appeal in compliance with the requirements of Chapter 46 of this Code shall have the right to:

1) cancel the conviction and decide an acquittal on the grounds, provided for in paragraphs 1) and 2) of the first part of Article 35 of this Code;

2) on the complaint or petition of the prosecutor to cancel the acquittal and to decide a new conviction;

3) cancel the conviction and decide a new conviction;

4) cancel the acquittal and decide a new acquittal.

2. When making a new conviction the court of appeal shall not have a right to go beyond the charges, as well as beyond the size of the charges and punishment which at the main trial was supported by the public or private prosecutor.

**Footnote. Article 441 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 442. Changing the sentence**

1. The court of appeal shall have the right to change the sentence:

1) to mitigate the sentence and the type of institution of the penal system;

2) to apply the law on a less serious criminal offence and impose punishment in accordance with the changed qualifications;

3) impose a more severe punishment or apply an additional punishment if there are grounds for satisfying the complaint of the prosecution, the prosecutor's petition;

4) to apply additional punishment if the circumstances properly installed,

the full study and analysis of the evidence, the correct legal qualification of actions of the convicted and properly appointed principal punishment;

5) to cancel the appointment to the convicted of a softer type of institution of the penal system than provided by law, and to appoint a type of institutions of the penal system in accordance with the Criminal Code of the Republic of Kazakhstan;

6) to recognize the corresponding recidivism, if it was not done or done wrong by the court of first instance;

6-1) to cancel a conditional conviction or postponement of serving a sentence;

7) cancel, in accordance with part five of Article 64 of the Criminal Code of the Republic of Kazakhstan, a conditional conviction under a previous sentence, or cancel, in accordance with part five of Article 69 of the Criminal Code of the Republic of Kazakhstan, release from serving a sentence under a previous sentence and, in this regard, impose a sentence according to the rules of Article 60 The Criminal Code of the Republic of Kazakhstan, if this has not been done by the court of first instance;

8) in the cases, provided for in paragraphs 2) and 3) of the seventh part of Article 72 of the Criminal Code of the Republic of Kazakhstan, to cancel release on parole and to impose punishment according to the rules of Article 60 of the Criminal Code of the Republic of Kazakhstan;

9) amend the verdict in terms of a civil claim, recovery of procedural costs and compulsory payment to the Victims Compensation Fund;

10) to apply in accordance with Article 98 of the Criminal Code of the Republic of Kazakhstan compulsory medical measures.

2. The court of appellate instance shall have the right to take decisions that worsen the situation of the convicted person only if on these grounds the petition was brought by the prosecutor or the complaint was filed by the private prosecutor, the victim, or their representatives.

**Footnote. Article 442, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 443. Contents of an appellate sentence, decision**

1. In the cases provided for by paragraphs 1), 2), 3) and 8) of the first part of Article 431 of this Code (on leaving the sentence of the court of first instance unchanged, changing the sentence, reversing the sentence with dismissal of the case, canceling the sentence and

sending the case to the prosecutor in accordance with Article 323 , part three of Article 340 of this Code and in view of the drawing up of a procedural agreement with a violation of the criminal procedure law at the stage of pre-trial proceedings), an appeal ruling is issued.

The appeal ruling consists of an introductory, descriptive and motivational and resolute parts.

2. The introductory part of the decision shall specify:

- 1) the time and place of the sentence;
- 2) the name of the court and the composition of the court which made the decision;
- 3) persons who have filed an appellate complaint or have brought an appeal petition of the prosecutor;
- 4) the persons, participating in the proceedings on appeal.

3. The descriptive-reasoning part of the resolution should contain a brief summary of the essence of the judicial act, the arguments of the complaints submitted, the petition of the prosecutor brought in, objections to them, as well as the arguments of the participants in the process that did not file complaints about the consent or disagreement with the judicial act, along with the objections to the complaint, the petition of the prosecutor of another party to the proceedings, the opinions of the persons who participated in the court of appellate instance, as well as the reasons for the decision.

4. In the event of leaving the complaint, the petition of the prosecutor without satisfaction in connection with the absence of new arguments in the descriptive-reasoning part of the appeal decision, only the absence of grounds provided for in this Code for making changes to the judicial act or its cancellation is indicated.

5. When canceling or changing the sentence, the decision shall specify any violation of the requirements of provisions of the criminal or criminal procedure law, these violations, grounds on which the sentence of the court of first instance is amended.

6. The operative part of the appellate resolution shall specify the decision of the appellate court on the complaint or petition of the prosecutor, the time when the decision enters into legal force, the procedure and terms of its appeal.

7. In the event of an annulment of the sentence with a decision of a new sentence in accordance with the first part of Article 441 of this Code, the court of appeal, without issuing an additional ruling on the annulment of the sentence, issues an appeal sentence in accordance with the rules of Chapter 46 of this Code, in which it indicates the annulment of the sentence of the court of first instance .

8. The structure and content of the appellate sentence shall comply with the requirements of Articles 393 - 401 of this Code.

9. If the appellate court makes the decisions, provided for in the first part of Article 442 of this Code, the descriptive-motivation part of the decision shall specify the reasons for which the decision of the court of first instance considered as improper, as well as the grounds for worsening the situation of the convicted person.



10. The court of appeal may, without changing the essence of the appellate sentence or decision, make an additional decision on the correction of apparent misprints and clarifying ambiguities contained therein.

**Footnote. Article 443 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 444. The issuance of the appellate sentence, decisions and their entry into force**

1. An appellate verdict or ruling shall be passed in the deliberation room, signed by the judge(s), and after the return of the judge(s) from the deliberation room, the introductory and operative parts of the judicial act shall be announced in the courtroom.

2. Copies of the verdict, resolution shall be sent to the parties no later than ten days from the date of their issuance.

3. Appellate verdict, resolution come into force from the moment of their announcement.

4. The decision of the appeals instance may be reviewed in the cassation procedure.

**Footnote. Article 444 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 445. Address to the execution of the sentence, the decision of the court of appeal**

1. The sentence or resolution of the appellate instance shall be sent together with the case to the court of first instance no later than ten days from the date of its issuance for application for execution.

2. The sentence, decision, according to which the convicted shall be released from detention shall be enforced in this part immediately, if the convicted attends a meeting of the court of appeal. In other cases, a copy of the appellate sentence, decision or extract from their conclusion part shall be immediately sent to the administration of the place of detention for execution of the decision on the release of the convicted from custody.

**Footnote. Article 445 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 446. Re-consideration of the case on appeal**

1. Re-consideration of the case on appeal without canceling the first appellate sentence, decision made in checking the legality of the sentence of the court of first instance, shall be allowed, if:

1) Appellate complaints, petition of the prosecutor in respect of some convicted persons, complaints of other participants in the process with the right of appeal against the sentence, decisions submitted within the established time will be submitted to the appellate court after consideration of the case on complaints of other participants in the proceedings;

2) the missed deadline for appealing, bringing a petition of the prosecutor was restored by the court in the manner prescribed by this Code, after considering the case in the appellate instance on complaints of other participants in the process.

2. The court of appellate instance shall be obliged to consider the complaints of the convicted person, his defense counsel or representative, and in cases where the case against the person concerned was considered on the appeal petition of the prosecutor, the complaints of other participants in the proceedings.

3. In the event that the newly issued sentence, decision contradict the previous sentence, decision of the appellate instance, the Chairman of the regional court shall submit a representation eliminate the contradictions that have arisen to the cassation instance.

**Footnote. Article 446 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 447. Consideration of the case in the first instance after the cancellation of the original sentence, issued with the participation of jury**

After cancellation of the original sentence, the case shall be subject to review in accordance with the procedure provided for in Chapter 65 of this Code.

If the sentence, issued in the case, considered by jury is canceled with the direction of the case for a new trial from the stage of the main trial, the court at the new trial shall conduct a preliminary hearing and, depending on the will of the defendant shall decide to reconsider the case involving jurors or without their participation. If the original sentence is canceled with the direction of the case to a new trial from the stage of the main trial, the court shall appoint the main trial, and shall conduct the formation of a new jury and hear the case in accordance with the provisions of Chapter 65 of this Code.

In this case, the court may not worsen the situation of the convicted person in comparison with the previous conviction, which is canceled due to the violation by the presiding judge of the requirements of Chapters 67, 68 and Article 658 of this Code.

**Footnote. Article 447, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015).**

#### **Chapter 50. Consideration of cases upon cassational complaints, protests**

**Footnote. Chapter 50 is excluded by Law of the Republic of Kazakhstan No 378-V dated 31.10.2015 (shall be enforced from 01.01.2016).**

## **Section 9. Execution of court decisions**

### **Chapter 51. Execution of sentences and decisions**

#### **of the court Article 470. The entry into force of the sentence and its execution**

1. The sentences of the court of first instance, issued by the district and equated to them courts, the specialized inter-district criminal court, the specialized inter-district military court for criminal cases, the specialized inter-district juvenile court, the military court of the garrison, shall enter into force and are subject to implementation upon the expiration of the term for an appellate complaint and bringing of a petition of the prosecutor, if they were not appealed or revised at the petition of the prosecutor.

2. In case of revision of the case in the appellate instance, if it has not been canceled, the sentence shall enter into force on the day of issuing the appellate sentence. If the appellate (private) complaints, the petition of the prosecutor were withdrawn before the beginning of the court of appeal, the sentence shall enter into force on the day of issuance the decision to cease production due to the withdrawal of the complaint, the petition of the prosecutor.

3. The sentence shall be executed by the court of first instance within three days from the date of the sentence enters into force or return of the case from the superior court.

4. A person, convicted of a criminal offence shall be exempt from punishment, if a guilty verdict is not executed within the time frame established by Article 77 of the Criminal Code of the Republic of Kazakhstan.

5. The sentence of the court shall be subject to immediate execution on the part of the release of the convicted, acquitted from custody.

**Footnote. Article 470 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 471. The entry into force of the court decision and its execution**

1. The decision of the court of first instance shall enter into legal force and apply to execution after the expiration of the period for appeal or bringing the petition of the prosecutor either in the case of filing a private complaint or bringing the petition of the prosecutor for consideration of the case by a higher court.

1-1. Court rulings on release from punishment or deferral of serving the sentence of the convicted person, replacement of the unserved part of the punishment with a more lenient punishment due to illness are subject to immediate execution in the part that concerns the convicted person's release from custody.

At the same time, these decisions may be appealed and revised at the request of the prosecutor in the appeal procedure in accordance with the rules established by Chapters 48 and 49 of this Code.

2. A court decision that is not subject to appeal, revision at the petition of the prosecutor or to protest, enters into force and refers to execution immediately upon its issuance.

3. The decision of the court to dismiss the case, issued at the preliminary hearing or in the main trial shall be subject to immediate execution in the part that deals with the release of the accused or the defendant from custody.

4. The decision, the sentence of the appellate court shall enter into force from the date of their announcement.

5. The sentences and decisions of the courts of appeal shall be executed in the manner provided by Article 445 of this Code.

6. Private ruling of the court after expiration of three days from the date of entry into force shall be sent to the appropriate official, performing administrative functions. Not later than one month the necessary measures shall be taken for the private decision and the court which made the decision shall be reported about the results.

**Footnote. Article 471 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 472. The procedure of execution of the sentence, decision of the court**

1. The sentence and decision of the court, entered into force are compulsory for all state bodies, bodies of local self-government, legal entities, officials and citizens without exception and are subject to strict execution in the whole territory of the Republic of Kazakhstan. Failure to comply with the sentence, decision of the court shall entail the criminal liability.

2. The execution of the sentence and the decision lies with the court, considered the case at first instance. The order on execution of the sentence shall be sent by the judge together with a copy of the sentence to the body which in accordance with the penal legislation is assigned the duty of enforcing the sentence. The court of appeal shall be responsible to report the results of appeal proceedings against those detained. In the case of changing the sentence in the consideration of the case on appeal the copy of the sentence shall be attached by a copy of the decision of the appellate court.

3. If the sentence specifies the need to put the question of depriving the convicted person of the state awards of the Republic of Kazakhstan, honorary, military, special or another title, class rank, diplomatic rank or qualification class, assigned by the President of the Republic of Kazakhstan, the court sentencing shall send a representation on depriving the convicted person of the state awards, these titles, class rank, diplomatic rank or qualification class, as

well as a copy of the sentence and a certificate of its entry into force to the President of the Republic of Kazakhstan.

4. The institution or body, executing the punishment shall immediately notify the court that issued the sentence about its execution. The institution or body, executing the punishment shall notify the court that issued the sentence about the place of detention of the convicted. A notice on the execution of the sentence of the appeal court shall be sent to the appropriate court of first instance.

#### **Article 473. Notification of relatives of the convicted person and civil claimant on the execution of the sentence**

1. After the entry into legal force of the sentence, by which the convicted person, who was in custody, is sentenced to arrest or imprisonment, the administration of the place of imprisonment shall be obliged to inform the family of the convicted about the place of his serving a sentence.

2. The civil claimant shall be notified by the enforcement agent on the execution of the sentence in the case of satisfying of a civil claim.

**Footnote. Article 473 as amended by the Law of the Republic of Kazakhstan dated 18.04.2017 № 58-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 474. Provision for relatives a meeting with the convicted**

Before applying to the execution of the sentence the presiding judge in the case or the Chairman of the court shall provide a spouse (wife), close relatives of the convicted in custody, upon their request, the possibility of visiting and telephone conversation with the convicted.

#### **Article 475. Postponement, installment of execution of the sentence**

**Footnote. The heading is as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

1. Execution of the judgment of conviction of a person to community service, corrective labour, limitation of freedom or imprisonment may be postponed, if one of the following reasons:

1) serious illness of the convicted person, preventing the execution of the punishment - until his (her) recovery;

2) pregnancy of the convicted woman or if the convicted woman has young children and against men, alone raising young children - in the manner provided in Article 74 of the Criminal Code of the Republic of Kazakhstan;

3) when an immediate serving of the punishment may entail serious consequences for the convicted or his (her) family because of fire or other natural disaster, serious illness or death of the only able-bodied member of the family or other emergencies - for a period specified by the court, but not more than six months, and in respect of the persons referred to in the second part of Article 76 of the Criminal Code of the Republic of Kazakhstan, - no more than three months.

2. The payment of a fine and other sums subject to recovery from a convicted person by a court verdict may be deferred or spread over a period of up to one year, if its immediate payment is impossible for the convicted person.

3. The question of the postponement of execution of the sentence, if it is not resolved by the court in sentencing, shall be decided by the court that passed the sentence, or by the court, in whose district the sentence is executed at the request of the convicted, his (her) legal representative, close relatives, the defense counsel or by representation of the procurator or the body entrusted with the execution of the sentence.

Postponement of execution of the sentence in respect of additional punishment is not allowed.

**Footnote. Article 475 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 476. Issues to be considered by the court in execution of the sentence**

The jurisdiction of the court is to consider the following issues, related to the execution of the sentence:

1) on replacement:

Submission of a fine for engaging in community service, arrest, restriction of liberty or deprivation of liberty (article 41 of the Criminal Code);

Correctional work - engaging in community service, arrest, restriction of liberty or deprivation of liberty (Article 42 of the Criminal Code of the Republic of Kazakhstan);

Engagement in community service - by arrest, restriction of liberty or deprivation of liberty (Article 43 of the Criminal Code of the Republic of Kazakhstan);

Restrictions of freedom - deprivation of liberty (Article 44 of the Criminal Code of the Republic of Kazakhstan);

2) Deferment of the payment of a fine (art. 41 of the Criminal Code) and exemption from the rest of correctional labour in the event of complete incapacity for work (art. 42 of the Criminal Code);

3) on declaring, termination of the search, including the international one, and choosing a preventive measure against persons sentenced to punishment not connected with isolation from the society, hiding from control and evading punishment;

4) on changing the type of institution of the penitentiary system, appointed by a sentence to a person sentenced to imprisonment in accordance with the penitentiary legislation, or by a court order issued during the execution of the sentence;

5) on conventional pre-schedule relief from serving the punishment (Article 72 of the Criminal Code of the Republic of Kazakhstan), the replacement of the unserved part of the punishment with a milder punishment or reduction of term of the punishment (Article 73 of the Criminal Code of the Republic of Kazakhstan);

5-1) on the early release of a minor from coercive educational measures in the form of placement in the organization of education with a special detention regime (part five of Article 85 of the Criminal Code of the Republic of Kazakhstan);

6) on the abolition of conventional pre-schedule relief from serving the punishment (the seventh part of Article 72 of the Criminal Code of the Republic of Kazakhstan);

7) on release from punishment or deferral of serving a sentence, replacement of the unserved part of the punishment with a more lenient punishment due to illness with or without application of coercive medical measures (Article 75 of the Penal Code of the Republic of Kazakhstan), also on abolition of decisions on exemption from punishment or deferral of serving the sentence of the convict for further execution of sentences, including in connection with recovery;

8) on cancellation of conditional condemnation or extend the period of probation control (Article 64 of the Criminal Code of the Republic of Kazakhstan);

9) on abolition of fully or partially the previously established for the convicted to imprisonment duties (Article 44 of the Criminal Code of the Republic of Kazakhstan);

10) to abolish the postponement of execution of the punishment (Article 74 of the Criminal Code of the Republic of Kazakhstan);

11) to release from punishment due to the expiration of the limitation period of the judgment of conviction (Article 77 of the Criminal Code of the Republic of Kazakhstan);

12) on the execution of the sentence in the presence of other unexecuted sentences, if this is not resolved in the latest sentence (part six of Article 58 , Article 60 of the Criminal Code of the Republic of Kazakhstan);

13) set-off time of detention, as well as stay in medical institution (Article 62, 97, 98 of the Criminal Code of the Republic of Kazakhstan);

14) on the appointment, extension, change or termination of the application of compulsory medical measures ( Articles 93 , 96 , 98 of the Criminal Code of the Republic of Kazakhstan);

14-1) on the establishment, extension of administrative supervision over persons who have served their sentence;

15) on release from punishment or mitigation of punishment, change of qualification of the act committed by the convicted person, reduction of the sentence, recidivism of crimes as a result of the issuance of a criminal law retroactive or canceling criminal liability for the committed act, recognition by the Constitutional Court of the Republic of Kazakhstan as



unconstitutional of the law or other regulatory legal act applied by the court when passing sentence, as well as the act on amnesty (Article 6 of the Criminal Code of the Republic of Kazakhstan);

16) Reducing the amount of deductions from the wages of convicts for correctional labour in accordance with the penal enforcement legislation of the Republic of Kazakhstan;

17) on clarification of all sorts of doubts and uncertainties arising from the execution of the sentence;

18) on termination of production in connection with the death of the convicted person;

19) on consideration of complaints of the convicted persons to the actions and decisions of the officials of the correctional system facility, the procurator on the issues related to the execution of the sentence;

20) on clearing of a criminal record;

21) Appointing a forensic psychiatric examination of persons sentenced to imprisonment for a crime against the sexual inviolability of minors to determine whether or not they have any mental deviations or tendencies to sexual violence;

22) on the release of property from arrest;

23) on physical evidence, the fate of which was not resolved by the court, on the correction of technical and arithmetic errors in the resolution of a civil claim, as well as on the amount of procedural costs, compulsory payment to the Victims Compensation Fund and the state fee in case of their incorrect calculation;

24) on cancellation, application, modification or continuation of the security measures in respect of protected persons.

**Footnote. Article 476 as amended by the Laws of the Republic of Kazakhstan dated 18.04.2017 № 58-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 21.01.2019 № 217-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 01.04.2019 № 240-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023); dated 03.01.2023 No. 188-VII (shall be enforced sixty calendar days after the date of its first official publication); dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication).**

**Article 477. The courts, resolving the issues related to the execution of the sentence**

1. Issues related to the execution of a sentence shall be resolved by a district court and a court equivalent to it, acting at the place of execution of the sentence, and in its absence, by a higher court, with the exception of the issues specified in part three of this article.

The same courts shall consider issues related to the execution of the appeal judgment.

Specialized interdistrict courts shall not consider these issues, with the exception of the issues specified in part three of this article and paragraph 22) of article 476 of this Code.

2. The issue on clearing a criminal record is considered by the court, specified in the first part of this Article, acting at the place of residence of the convicted person.

3. The court that delivered the sentence shall consider the issues specified in paragraphs 13), 17), 22) and 23) of Article 476 of this Code.

4. All materials and a copy of the court decision on the issues related to the execution of the sentence, after the entry into force shall be attached to the criminal case. If the court decision is reviewed by higher courts, the criminal case shall be also attached by the copies of the decisions of these courts.

**Footnote. Article 477 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 478. The procedure for resolving issues related to the execution of the sentence**

1. The court shall consider the issues referred to in article 476 2), 5), 16), 19) and 20) of the present Code at the request of the sentenced person.

2. The issues referred to in paragraphs 1), 3), 6), 8), 10), 12), 14), 14-1), 18) and 21) of Article 476 of this Code shall be considered on the proposal of an institution or body, executing punishment.

2-1. The issues referred to in paragraph 3) of Article 476 of this Code in respect of declaration and termination of the international search shall be considered at the request of the body conducting the search for persons convicted to punishment not related to isolation from the society, hidden from control and evading punishment.

3. The issues, referred to in paragraphs 4), 7), 9), 11), 13), 15) and 17) of Article 476 of this Code, shall be considered by the court at the request of the convicted person or by representation of the institution or body, executing the sentence.

3-1. The issue specified in paragraph 22) of Article 476 of this Code is considered by the court that delivered the verdict, at the request of the authorized state body that accepted the property confiscated by the court verdict, and other interested persons .

3-2. The issue specified in paragraph 23) of Article 476 of this Code is considered by the court at the request of the convict, his defense counsel, as well as other interested persons, the presentation of the institution or body executing the punishment.

4. The court considers issues related to the execution of the sentence, alone in an open court session within a month from the date of receipt of the petition with the participation of the convicted person. Consideration of the issues provided for by paragraphs 1), 3), 6), 7), 8), 10), 14), 17) and 23) of Article 476 of this Code may be carried out without the participation of the convicted person.

5. The issues, referred to in paragraph 5) of Article 476 of this Code, may be considered by the court at the request of the Procurator General of the Republic of Kazakhstan or his (her) deputy within the procedural agreement on cooperation.

6. In considering by the court of the issues, related to the execution of the sentences of the convicted persons, the participation of the defense counsel is mandatory in the cases, stipulated by the first part of Article 67 of this Code.

In cases of legal aid to the convicted persons by lawyers on the basis of the court decision, the payment of their work shall be performed in accordance with Article 68 of this Code.

7. When considering the release from punishment or deferral of serving of punishment of a convict due to his illness or placement in a medical institution, the presence of a representative of the medical commission that gave the conclusion is mandatory, and in the case of a forensic medical or forensic psychiatric examination, an expert who gave the conclusion shall participate in the court session.

8. When announcing the search of the probationer, the court indicates in the decision the beginning of stay of the time limit for probationary control and the time of its renewal.

9. In considering the issue on conventional pre-schedule relief from serving the punishment in a court session an injured person shall have a right to participate or he (she) may be represented by his (her) representative.

10. If the issue relates to the execution of the sentence in part of the civil claim, a civil claimant or his (her) representative shall be called the court session. The failure of these persons shall not preclude consideration of the case.

11. The procurator shall participate at the court session.

12. Consideration in court of the issues related to the execution of the sentence begins with the presentation by the convicted, the procurator or a representative of the institution or body, executing the sentence, the corresponding application. Then the presented materials are studied, the explanations of the persons who appeared at the court session, the opinion of the procurator are heard, after which the judge shall rule in the deliberation room.

13. The protocol shall be kept during the court session.

**Footnote. Article 478 as amended by the Law of the Republic of Kazakhstan dated 18.04.2017 № 58-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 21.01.2019 № 217-VI ( shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 27.12.2019 No. 292-VI (see Article 2 for the order of entry into force );**

dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication).

**Article 479. Consideration of applications for clearing of a criminal record**

1. The issue of clearing of a criminal record in accordance with Article 79 of the Criminal Code of the Republic of Kazakhstan is resolved by the court at the place of residence of the person who served the punishment, at his (her) request.

2. Participation at the court session of the person, against whom the application for clearing of a criminal record is considered, is mandatory.

3. Consideration begins with the hearing of the explanation of the person, who filed the application, and then the presented materials are studied and the called persons are heard.

4. In case of refusal to clear a criminal record, a repeated request about it may be brought before the court not earlier than one year after the date of the decision of refusal.

**Article 480. Consideration of the issue on conventional pre-schedule relief from serving the punishment or replacement of the unserved part of the punishment with a milder punishment**

1. The issue of conventional pre-schedule relief from serving the punishment or replacement of the unserved part of the punishment with a milder punishment is considered at the request of the convicted person, as well as in the case specified in the fifth part of Article 478 of this Code.

2. The institution or body executing the punishment shall be obliged to submit to the court materials relevant to the adoption of a lawful decision, including those confirming the term of the sentence served by the convicted person imposed by the court's verdict, information on compensation for damage caused by the crime, detailed data characterizing the behavior of the convicted person. while serving his sentence, including information about his treatment for mental, behavioral disorders (diseases) associated with the use of psychoactive substances, and its results, about the presence of other diseases that require mandatory treatment, about his relationship with family members and others. The petition of the Prosecutor General of the Republic of Kazakhstan or his deputy must be accompanied by a final judgment issued within the framework of a procedural agreement on cooperation. The institution or body executing the punishment shall provide the court with an opinion on the degree of correction of the convicted person at the given moment and the need for him to serve the entire term of punishment or the absence of it. Also, the court must be presented by the institution or body executing the punishment, and by the convict himself, data on the intended place of residence of the convict after release and the prospect of his employment (the written consent of relatives, provision of housing, places of work by organizations, local authorities).

3. A convicted person shall have the right before the trial to examine the materials presented to the court, to submit his (her) explanations and evidence, make applications.

4. When the representation raises the issue on replacing the unserved part of the punishment with a milder punishment, the institution or body executing the punishment, in addition to the information specified in the second part of this article, shall provide the court a on the form, the size of the punishment, which based on its degree of correction and individual qualities may be determined to the convicted to serve as an alternative.

5. When considering the issue on conventional pre-schedule relief from serving the punishment or replacement of the unserved part of the punishment with a milder punishment, the participation at the court session of the convicted person, defense counsel, representative of the institution or body executing the sentence, the procurator is mandatory. The failure of the injured person, civil claimant and their representatives shall not preclude consideration of the application.

6. After the preparatory part of the court session, accordingly the convicted or institution or body executing the punishment, sets out the application. Then the court examines the received materials and listens to the explanations of the present at the hearing persons. The convicted has the right to participate at the court session in the study of all the materials, to appear in court and express his (her) opinion on the issue considered.

The procurator presents the court a reasoned opinion on the possibility of approval of the application or leaving it without satisfaction.

7. After reviewing the court shall make a decision:

1) on approval the application on conventional pre-schedule relief of the convicted from further serving of punishment or the application for replacement of the unserved part of the punishment with other milder punishment;

2) to dismiss the application on conventional pre-schedule relief from serving the punishment or the application for the replacement of the unserved part of the punishment with other milder punishment;

3) to dismiss the application on conventional pre-schedule relief from serving the punishment with the decision on the replacement of the unserved part of the punishment with other milder punishment.

The decision to replace the unserved part of the sentence with another milder punishment, the court may adopt in satisfaction of the received about this application, and in dismissing of the application on conventional pre-schedule relief.

**Footnote. Article 480 as amended by the Law of the Republic of Kazakhstan dated 07.07.2020 No. 361-VI (shall be enforced ten calendar days after the day of its first official publication).**

**Article 481. Consideration of petitions for release from punishment or deferral of serving a sentence due to illness**

Footnote. The heading of Article 481 as amended by the Law of the Republic of Kazakhstan dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication).

1. The issue of release from punishment or deferral of serving punishment due to illness shall be considered at the request of the convicted person (his legal representative or representative) or the institution or body executing the punishment.

2. The institution or body executing the sentence shall be obliged to submit to the court materials relevant to the adoption of a lawful decision, including those confirming the term of the sentence served by the convicted person imposed by the court's verdict, detailed data characterizing the behavior of the convicted person during serving the sentence, including information about the treatment of mental, behavioral disorders (diseases) associated with the use of psychoactive substances, and its results, the conclusion of the medical commission on the presence of a mental disorder or other serious illness in the convict that prevents the serving of the sentence, on the need for appropriate treatment and the impossibility of its implementation in institutions penitentiary system.

3. The institution or body executing the sentence shall submit to the court the information on the convicted person's intended residence place after release from punishment or reprieve from serving the sentence due to illness, and if the disease requires the application of compulsory treatment to him in the cases prescribed by law, the name of the institution the convicted person will be referred to, or in which he will be placed.

4. When considering the issue of release from punishment or deferral of serving punishment due to illness, the participation in the court session of a defense counsel, legal representative, prosecutor, representative of the institution or body executing the punishment, representative of the medical commission that issued the conclusion is mandatory. Where necessary, the expert who conducted an expert examination on the court order and gave the conclusion shall participate in the court session.

The court investigates the compliance of the medical report with the established by the competent authority list of diseases that is the basis for release from punishment.

The convicted shall participate at the court session, if the nature of his (her) illness shall not prevent it.

5. After the preparatory part of the court session, accordingly the convicted (if he (she) is involved) or the institution or body executing the punishment, sets out the application. Then, the court examines the received materials and listens to the explanations of the present at the hearing persons. If necessary to specify the diagnosis and severity of illness, as well as to resolve other issues, requiring special knowledge, the court may appoint a forensic medical or psychiatric examination, including the repeated.

6. As a result of consideration of the application, the court shall make a decision:

1) to approve the application and release of the convicted from further serving the sentence due to illness with or without the use of compulsory measures of a medical nature;



2) to dismiss the application, if the mental disorder or another serious illness shall not preclude the execution of punishment.

7. In deciding on the application of compulsory medical measures after the release of the convicted person from punishment due to the presence of a mental disorder, the court resolves the following issues:

1) whether the painful mental disorders of the convicted person do not represent a danger to him(her)self or others, or an opportunity for other harm;

2) whether the application of compulsory medical measures, and what kind.

Recognizing that the mental disorder of the convicted person does not a danger to him(her)self or others, or an opportunity for other harm, the court does not appoint the use of compulsory measures of a medical nature.

The court decision should specify that after recovery of the convicted, the serving of his (her) sentence is renewed if the statute of limitations of the judgment of conviction is not expired. Time of the convicted spent at the compulsory treatment is included in the term of the sentence.

**Footnote. Article 481 as amended by the Law of the Republic of Kazakhstan dated 07.07.2020 No. 361-VI (shall be enforced ten calendar days after the day of its first official publication); dated 17.03.2023 No. 212-VII (shall be enforced sixty calendar days after the date of its first official publication).**

#### **Article 482. Consideration of complaints of the convicted persons**

1. The convicted shall have the right to appeal the court against the actions (inaction) and decisions of the institution or body executing the punishment that affect their rights and legitimate interests, as well as the procurator's decision on matters related to the execution of the sentence, or the procurator's refusal to meet their similar complaints. Consideration of complaints of the convicted persons is carried out by the district court at the place of punishment of the convicted.

2. Participation at the court session of the convicted person and the person, whose actions are appealed, is mandatory.

3. Consideration of complaints of the convicted persons is carried out in the manner provided in Article 106 of this Code.

4. Upon review the judge shall make a decision in the deliberation room:

1) on satisfaction of the complaint, invalidation of the appeal against actions (inaction) and decisions, and their cancellation;

2) on leaving the complaint without satisfaction;

3) on sending the complaints to the appropriate procurator for investigation of allegations of torture and other illegal acts, cruel treatment.

#### **Article 483. Appeal and revision of a judge's ruling upon an appeal by a prosecutor**



1. Judicial decisions made when resolving issues related to the execution of the sentence may be appealed and reviewed upon the request of the prosecutor on appeal in accordance with the rules established by chapters 48 , 49 of this Code.

2. For judicial decisions made in accordance with Article 482 of this Code, the prosecutor's petition may be filed within ten days from the date of the announcement of the decision.

Complaints and petitions shall be subject to consideration on appeal within three days.

**Footnote. Article 483 as reworded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

## **Section 10 Proceedings for review of the court decisions, entered into force Chapter 52. Revision of judicial acts in cassation procedure by the Supreme Court of the Republic of Kazakhstan**

**Footnote. The title of Chapter 52 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).**

### **Article 484. Judicial acts that can be revisioned in cassation procedure**

1. In cassation procedure, the Supreme Court shall consider cases on petitions for sentences and decisions entered into legal force and issued by the courts of first instance, after their consideration in the appellate instance, the protests of the prosecutor, as well as the sentences and decisions of the appellate instance.

2. Judicial acts are not subject to revision in cassation procedure:

1) on cases of criminal offenses and crimes of minor gravity;

2) taken in the process of the trial on the issues specified in part two of Article 10 of this Code, as well as concerning the order and method of investigating the evidence, the petitions of the participants in the proceedings, the keeping of order in the courtroom, in connection with the refusal from the prosecution of the state and private prosecutor, on issues related to the enforcement of the sentence;

3) passed by the investigating judge.

3. The judicial acts of local and other courts that have entered into legal force in case of non-compliance with the appellate procedure for their appeal, as well as those specified in paragraph 1) of part two of this article, may be revisioned in cassation procedure:

1) on the protest of the General Prosecutor of the Republic of Kazakhstan in the presence of the grounds provided in Article 485 of this Code;

**2) Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).**

4. The decision of the cassation instance may be reviewed upon the protest of the Prosecutor General of the Republic of Kazakhstan if there are grounds provided for by the second part of Article 485 of this Code.

Footnote. Article 484 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).

### **Article 485. Grounds for revisioning in cassation procedure of court sentences and decisions entered into legal force**

1. The basis for the review in cassation of judicial acts that have entered into legal force, specified in the first part of Article 484 of this Code, is the incorrect application of criminal and criminal procedure laws, which entailed:

- 1) conviction of an innocent person;
- 2) unjustified acquittal or termination of a case;
- 3) incorrect qualification of the convicted person's act, incorrect definition of the type of relapse and the regime of the penitentiary institution of the penitentiary system;
- 4) depriving the victim of the right to judicial protection;
- 5) incorrect sentencing of punishment or inconsistency of the punishment imposed by the court for the gravity of the criminal offense and the person of the convicted;
- 6) incorrect resolution of a civil claim, incorrect resolution of the issue of confiscation of property;
- 7) unlawful or unjustified issuance of a decision when applying compulsory medical measures;
- 8) contradictions in judicial acts, on which a submission was made to eliminate them in the case provided for by part three of Article 446 of this Code.

2. The grounds for revisioning the cassation procedure of judicial acts specified in parts three and four of Article 484 of this Code are cases where:

- 1) the judicial act affects state or public interests, the security of the state or may lead to serious irreversible consequences for the life, health of people;
- 2) the person is serving life imprisonment;
- 3) Excluded by the Law of the Republic of Kazakhstan dated 27.12.2021 No. 88-VII ( shall be enforced from 01.07.2022).

3. Excluded by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).

Footnote. Article 485 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); as amended by the Laws of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (see Article 2 for the enforcement procedure ); dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).

### **Article 486. Persons who have the right to file a petition, to bring a protest against judicial acts that have entered into legal force**

1. A petition for revision of judicial acts provided by part one of Article 484 of this Code may be filed by the persons specified in part one of Article 414 of this Code and by other persons whose interests are affected by judicial acts and their representatives.

2. The Prosecutor General of the Republic of Kazakhstan shall have the right to file a protest on the review in cassation of judicial acts that have entered into legal force, both on their own initiative and at the request of the persons specified in part one of this article, on the grounds specified in article 485 of this Code.

The petition is attached to the protest.

3. A criminal case may be claimed from the relevant court for examination in cassation procedure by the Chairman of the Supreme Court of the Republic of Kazakhstan, judges of the Supreme Court of the Republic of Kazakhstan, as well as by the General Prosecutor of the Republic of Kazakhstan or, on his instructions, by the deputies of the General Prosecutor of the Republic of Kazakhstan, regional prosecutors and prosecutors equated to them.

4. The request for reclamation of the case shall be executed by the court not later than seven days from the date of its receipt to the court. Requests can be sent in written form or in the form of an electronic document.

In case of reclamation of the case, the petition for bringing a protest in cassation procedure shall be considered by the prosecutor within thirty days from the day the case is brought to the prosecutor's office. This period, due to the complexity or large volume of the case, can be extended, but each time no more than one month.

**Footnote. Article 486 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (see Article 2 for the procedure for enactment ).**

#### **Article 487. Terms of appeal in cassation procedure of judicial acts that have entered into force**

1. Filing a petition, a protest on the review of a judgment of conviction that has entered into legal force on the grounds of the innocence of the convicted person, as well as in connection with the need to apply the law on a less serious criminal offense, due to the severity of the punishment or on other grounds that lead to an improvement in the situation of the convicted person, within the time limits not limited.

2. Filing a petition, a protest on the review of an acquittal that has entered into legal force, a conviction on the grounds of the need to apply the law on a more serious criminal offense, for leniency of punishment or on other grounds that lead to a worsening of the situation of the convicted person, or a court decision to dismiss the case , is allowed within one year after their entry into force.

Restoration of the specified period is not allowed.

A petition or protest is subject to consideration in the cassation instance with the adoption of a decision that worsens the situation of the convicted, acquitted, and after the expiration of

a year from the date of entry into force of the disputed judicial act, if they were received by the Supreme Court before the expiration of one year.

**Footnote. Article 487 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).**

**Article 488. The procedure for filing a petition, a protest for the review of a sentence, a court order that has entered into legal force**

1. A petition, a protest on the revision of judicial acts that have entered into legal force shall be submitted in writing or in the form of an electronic document to the Supreme Court of the Republic of Kazakhstan. In the petition, protest, in addition to the circumstances listed in Article 423 of this Code, it must be indicated what violations of the law were committed during the proceedings on the case and how these violations affected the court decisions made, and which of those listed in Article 485 of this Code there are grounds for review the contested judgment. The petition must indicate whether they are considered with or without the participation of the persons who filed them.

1-1. A petition for review of judicial acts provided for by part one of Article 484 of this Code shall be submitted to the Judicial Collegium for Criminal Cases of the Supreme Court of the Republic of Kazakhstan.

2. The petition or protest must be accompanied by materials confirming the validity of the arguments of the petition or protest.

3. Petitions for legally enforceable sentences, court decisions, addressed to other state bodies or public organizations, cannot be accepted for the production of the Supreme Court of the Republic of Kazakhstan.

4. Filing of a petition, a protest for the revision of judicial acts that have entered into legal force does not suspend their execution, except for the cases provided for in Article 493 of this Code.

5. The person who has filed a petition or protest has the right to change or supplement his petition or protest with new arguments before the start of the court session. At the same time, in an additional protest of the prosecutor or his application for changing the protest, as well as in an additional petition of the victim, private prosecutor or representatives filed after the expiration of the period for appealing the sentence established by the second part of Article 487 of this Code, the question of the worsening of the situation of the convicted person cannot be raised if such a requirement was not contained in the initial protest, petition.

6. A petition or protest may be withdrawn by the person who submitted them before the case is considered in the cassation instance. The convict has the right to withdraw a petition filed in his interests by his defense counsel or legal representative.

**Footnote. Article 488 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); as amended by the Law of the**

Republic of Kazakhstan dated December 27, 2021 No. 88-VII (see Article 2 for the procedure for enactment ).

**Article 489. Return of petitions, protests without consideration**

**Footnote.** The title of Article 489 is in the wording of the Law of the Republic of Kazakhstan dated 27.12.2021 No. 88-VII (effective from 01.07.2022).

1. Petitions, protests for the revision of judicial acts that have entered into legal force are subject to return to the persons who filed them, on the following grounds:

- 1) petitions, protests do not meet the requirements of Article 488 of this Code;
- 2) petitions, protests are filed by persons who, in accordance with Article 486 of this Code , do not have the right to appeal, protest this judicial act that has entered into legal force;
- 3) petitions, protests were filed after the expiration of the period specified in the second part of Article 487 of this Code;
- 4) prior to consideration of petitions, protest on the merits, they were withdrawn;
- 5) petitions filed for judicial acts which, in accordance with part two of Article 484 of this Code, are not subject to revision in cassation procedure;
- 6) there is a decision of the judge (judges) to refuse to transfer the petition with the case for consideration in the cassation instance on the same grounds that were previously considered, except for the cases provided for by paragraph three of Article 484 of this Code.

2. If the shortcomings specified in paragraphs 1) and 2) of part one of this article, which served as the basis for the return of petitions, protests, are eliminated, they may be filed again on a general basis.

3. A petition or protest shall be returned by the letter within three days, except for the cases provided in paragraphs 3) and 4) of part one of this article.

**Footnote.** Article 489 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); No. 88-VII dated December 27, 2021 (see Article 2 for the order of entry into force ).

**Article 490. Preliminary consideration of a petition for revision of entered into force judicial acts**

1. A petition for revision of a judicial act shall be studied by a judge of the cassation instance who, within a period of not more than ten days, resolves the following issues:

- 1) on the presence or absence of grounds for the return of a petition on the grounds provided by the part one of Article 489 of this Code;
- 2) On the presence or absence of grounds for demanding a court case;
- 3) on the date of the preliminary consideration of the application with the summons of the parties.

2. The petition must be considered within thirty days from the date of its receipt by the court of cassation instance, and in case of reclamation of the case - within thirty days from the

date of receipt of the case. The petitions of several persons referred to in Article 486 of this Code, filed for the same case, may be combined and considered together. This period, in view of the complexity or large extent of the case, and also with other valid reasons, can be extended by a court of cassation instance, but each time no more than one month.

3. Prior to the preliminary consideration of the petition, the judge shall have the right to instruct the relevant specialists to prepare a scientific opinion regarding the norms of the laws applied in the criminal case under consideration. If necessary, specialists can give explanations at a meeting of the court of cassation.

3-1. Preliminary consideration of a petition for the revision of judicial acts that have entered into legal force is carried out by three judges in an open court session with the invitation of the parties, whose failure to appear does not prevent the consideration of the petition.

3-2. During the preliminary consideration of the petition, the judges check both the arguments of the petition and the existence of the grounds provided for by the second part of Article 485 of this Code.

4. The rules provided for in Articles 490 and 491 of this Code, the protest of the Prosecutor General of the Republic of Kazakhstan, the presentation of the chairman of the regional court, made in accordance with part three of Article 446 of this Code, as well as the petitions of persons serving life imprisonment, or their lawyers do not apply and they are considered by the court of cassation directly.

**Footnote. Article 490 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); as amended by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).**

#### **Article 491. Decisions made on the results of the preliminary consideration of the petition**

1. Based on the results of the preliminary consideration of the petition, the judges issue a decision:

1) on the transfer of the petition with the case for consideration in the court session of the cassation instance, if there are grounds for revision of the judicial acts;

2) refusal to transfer the petition for consideration at a court session of the cassation instance due to the absence of grounds for revision of judicial acts;

3) On the return of the petition on the grounds specified in paragraphs 3) and 4) of part one of Article 489 of this Code.

2. In an order issued by the judges Based on the results of the preliminary consideration of the application, the following must be indicated:

1) the date and place of decision;

2) surnames and initials of the judges who considered petition;



- 3) the case on which the decision was made, specifying the contested judicial act;
- 4) surname, name, patronymic (if it is indicated in the identity document) of the person who filed the petition;
- 5) the reasons given in the petition;
- 6) motives of the adopted procedure decision;
- 7) Conclusions on the results of consideration of the petition.

3. If there are grounds for revision of judicial acts, the decision, petition and attached documents together with the case shall be submitted to the court of cassation no later than five days from the day of preliminary consideration.

4. A copy of the decision made on the basis of the preliminary consideration of the petition shall be sent to the person who filed the petition. If the petition is returned, the documents attached to it shall also be returned.

5. The decision made on the basis of the preliminary consideration of the petition is not subject to appeal, but it does not prevent the filing of a repeated petition by the same person or other persons specified in Article 486 of this Code, but on other grounds.

**Footnote. Article 491 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).**

#### **Article 492. Appointment of the court session of the cassation instance**

1. The court of the cassation instance, after receiving the case with the decision of the judge, with the protest of the Prosecutor General of the Republic of Kazakhstan, within three days, sends to the parties copies of these documents, a notice of the consideration of the case in the court of the cassation instance indicating the date, time, place of the court session or with a notice of the possibility of getting acquainted with their electronic copies through the Internet resource of the Supreme Court of the Republic of Kazakhstan.

2. When preparing for judicial consideration of a petition, a judge of the collegiums of the Supreme Court of the Republic of Kazakhstan shall have the right to request from a relevant specialist a scientific opinion on the norms of the laws applied in the criminal case under consideration and, if necessary, to call him to a court session.

3. The case must be considered within thirty days from the date of its transfer to the court of cassation instance or the receipt of the representation, protest. This period, in view of the complexity or high volume of the case, and also with other valid reasons, can be extended by a court of cassation instance, but each time no more than one month.

**Footnote. Article 492 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (shall be enforced from July 1, 2022).**

#### **Article 493. Suspension of execution of sentence, court decision**



The Chairman of the Supreme Court of the Republic of Kazakhstan, the General Prosecutor of the Republic of Kazakhstan, simultaneously with the reclamation of the case, shall have the right to suspend the execution of the sentence, the court decision for examination in cassation procedure for a period not exceeding three months.

**Footnote. Article 493 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

**Article 494. The procedure for consideration of the case in cassation instance, the decisions of the court of cassation instance**

**Footnote. The title of Article 494 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).**

1. The court session of the cassation instance shall be opened by the announcement of the presiding judge about which court decision and whose petition, representation, protest is being reconsidered, who is included in the court and who of the participants of the trial is present in the courtroom. The absence of the person who filed the petition, duly notified of the time and place of consideration of the case, does not exclude the possibility of continuing the court session. Participation of the prosecutor in the court session of the cassation instance is mandatory, except for cases of private prosecution. The case can be considered without the participation of duly notified parties in case of their failure to appear or receipt of a corresponding application from them. In cases provided in Article 495 of this Code, the participation of defense counsel is mandatory.

2. After the resolution of the declared challenges and applications, the court takes a decision to continue the hearing or its suspension. When the court decides to continue the hearing, the presiding judge shall call the participant in the process, who filed the application, protest. If there are several participants, they shall communicate to the court the order of their performances. If they do not reach agreement, the order shall be determined by the court.

3. The person, who filed the application, protest, states the reasons and arguments, by virtue of which, in his (her) opinion, the contested decision is unlawful, unreasonable, and unfair. Then, the presiding judge calls the other participants in the process.

4. If the application is filed by the defense party, the participants in the process representing them shall act first. The order of their acting is determined either in accordance with their agreement, or in the absence of such by a court decision.

5. The prosecutor participating in the court of cassation instance expresses an opinion on the cassation petitions, sets forth the arguments specified in the protest, and gives an opinion on the legality of the judicial acts held in the case.

6. If a petition or protest is filed by the prosecution, then its representatives speak first, after which the presiding judge gives the floor to other participants in the process.

The motives and arguments set forth in the protest of the Prosecutor General of the Republic of Kazakhstan, on his instructions, at the court session may be stated by the relevant prosecutor.

7. As a result of the consideration of the case in cassation procedure, the court, in compliance with the requirements of Article 389 of this Code, shall take one of the following decisions in the advisory room:

1) leaves the sentence, the decision of the court of the first, appellate instance, the decision of the court of cassation instance without change, and the petition, representation, protest about their revision without satisfaction;

2) changes the sentence, the decision of the court of the first, the appellate instance, the decision of the cassation instance;

3) annuls the sentence and all subsequent decisions and terminates the case;

4) annuls the sentence and all subsequent decisions and directs the case to a new trial before the court of appeal or the court of first instance, if the case in the court of first instance was examined with the participation of jurors, and also in case of violation of procedure law norms provided in paragraphs 2) , 5) and 9) part three of Article 436 of this Code;

5) Cancels the decisions made in the appeal and cassation instance, changing the sentence of the court or leaving it unchanged.

The decision to direct the case to a new court consideration cannot be canceled, if a trial has been initiated in the case taken by the relevant court to proceed.

**8. Is excluded by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V ( shall be enforced from 01.01.2016).**

9. The grounds for canceling or changing the sentence are the circumstances, specified in Article 433 of this Code.

10. The judicial acts of the courts of the first, appellate and cassation instances are subject to cancellation or change, if it is recognized that they have made an unlawful and unreasonable decision by the court of first instance or previous decisions or sentence in the case have been unlawfully and unreasonably canceled or changed by a higher court or if, upon consideration the case in a higher court, there were significant violations of the law that affected or could affect the correctness of the decision.

11. If the unlawful termination of the case or mitigation of the sentence to the convicted was made in the consideration of a case in appeal, cassation instances, the Supreme Court shall have the right to cancel the appeal and cassation decisions and to remain the sentence of the court of first instance with or without change.

12. The court of cassation has the right to change judicial acts and:

1) apply the law on a less serious criminal offense and impose a punishment in accordance with the changed qualification;

2) mitigate the punishment imposed by the court;

3) apply the law on a more serious criminal offense, impose a more severe punishment or apply an additional punishment if there are grounds for satisfying the complaint of the prosecution, the prosecutor's protest within the limits of the charge on which the convicted person was brought to trial;

4) change the type of institution of the penitentiary system;

5) recognize the existence of a corresponding recurrence of crimes, if this was not done or done incorrectly by the court of first instance;

6) cancel, in accordance with part five of Article 64 of the Criminal Code of the Republic of Kazakhstan, the conditional conviction under the previous sentence, or cancel, in accordance with part five of Article 69 of the Criminal Code of the Republic of Kazakhstan, the exemption from criminal liability under the previous sentence and, in this regard, impose a punishment in accordance with the rules of Article 60 the Criminal Code of the Republic of Kazakhstan, if this was not done by the court of first instance;

7) in the cases provided for in paragraphs 2) and 3) of the seventh part of Article 72 of the Criminal Code of the Republic of Kazakhstan, cancel the parole and impose a punishment in accordance with the rules of Article 60 of the Criminal Code of the Republic of Kazakhstan;

8) amend the verdict in terms of a civil claim, as well as on the issues of recovery of procedural costs, decisions on physical evidence;

9) apply, in accordance with Article 98 of the Criminal Code of the Republic of Kazakhstan, compulsory medical measures.

The court, at the request of the parties or on its own initiative, resolves the issue of maintaining, choosing, canceling or changing the measure of restraint in relation to the defendant or convicted person, as indicated in the decision.

When a criminal case is terminated or a punishment not related to deprivation of liberty is imposed, the convict held in custody shall be subject to immediate release from custody. The court shall immediately send to the institution or body executing the sentence a copy of the court decision and a telegraph message on the decision taken to bring the convicted person to notice and execute it.

13. In cases, where the case is sent for retrial, the court shall not: prejudge questions and conclusions that may be made by the court under the new consideration of the case, prejudge the question of proof or unproven accusations, the reliability or unreliability of one or another proof and the advantages of one evidence over the other, the application by the court of first instance of one or another criminal law and punishment, as well as prejudge the conclusions that may be made by the court.

14. The court considering the case checks the legality, validity and fairness of the court verdict in full and has the right to amend it on the grounds not indicated in the presentation, protest or petition, if the position of the convicted person does not worsen.

Amendments to a judicial act in relation to other convicts in respect of whom a presentation, protest or petition has not been brought are allowed only for criminal offenses

committed in complicity with the convicted person in respect of whom a presentation, protest or petition has been brought, if their situation does not worsen. .

The court has the right to make a decision on the deterioration of the situation only in relation to those convicted (acquitted) and on the grounds indicated in the presentation, protest of the prosecutor or petition of the victim. The court does not have the right to worsen the situation of the convicted person at his request or the request of his defense counsel or representative.

The court does not have the right to establish or consider proven facts that were not the subject of the trial.

15. Following the consideration of representation of the Chairman of the regional court, introduced in the case provided for in part three of article 446 of this Code, the cassation instance shall cancel one of the decisions of the appeal collegium with the abandonment of another decision, or cancel both decisions and direct the case to a new appellate consideration .

16. Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88 -VII (see Article 2 for the order of entry into force ).

17. Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88 -VII (see Article 2 for the order of entry into force ).

18. Excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88 -VII (see Article 2 for the order of entry into force ).

19. Based on the results of consideration, the cassation instance takes one of the decisions specified in part seven of this article, in the form of a resolution. The resolution must comply with the requirements provided in Article 496 of this Code.

20. Consideration of the case after abolition of the sentence, the court decision and appealing, protesting the judicial acts, made in the new trial, shall be carried out in accordance with Articles 497 and 498 of this Code.

Footnote. Article 494 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016); dated December 27, 2021 No. 88-VII (see Article 2 for the order of entry into force ).

#### **Article 495. The grounds for mandatory participation of the defense counsel in the court of cassation**

Participation of the defender in the court session of the cassation instance is mandatory in the cases provided by part one of Article 67 of this Code.

In such cases, the issues related to the invitation, appointment, replacement of the defense counsel, his/her remuneration, shall be resolved in the manner established by Article 68 of this Code.

Footnote. Article 495 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V (shall be enforced from 01.01.2016).

## **Article 496. Content of the decision of the court of cassation instance**

The decision of the court of cassation instance shall comply with the requirements established by this Code for the appeal decision. The decision of the court of cassation instance shall be signed by the presiding judge and all judges who are members of the court

**Footnote. Article 496 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).**

## **Article 497. Consideration of the case after the cancellation of the sentence and decision of the court**

1. After the cancellation of a sentence or a court decision in cassation procedure, the case is subject to consideration in the general procedure. Instructions of the court of cassation instance are mandatory at reconsideration of a case by the lower court.

2. Strengthening of punishment or application of the law on a more serious criminal offense in the consideration of a case by a court of the first, appellate instance is allowed only if the initial sentence or decision was canceled on cassation instance due to the softness of punishment or in connection with the need to apply the law on a more serious criminal offense. The sentence passed by the appellate court in the new proceedings, can be appealed and protested in the general order.

3. The sentence, decision made in the new proceedings in connection with the cancellation of the previous ones, may be reviewed by higher courts in a general manner, regardless of the motives for which the first sentence or court decision is canceled.

**Footnote. Article 497 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).**

## **Article 498. Filing of a petition, a protest on the revision of the sentence and the court decision made in the new consideration of the case**

A petition, a protest on revision a new sentence or decision in cassation procedure, made in connection with the cancellation of the previous ones, may be filed on general grounds, regardless of the reasons for which the first sentence or court decision were abolished.

**Footnote. Article 498 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).**

## **Chapter 53. The renewal of the criminal proceedings on the newly discovered circumstances**

### **Article 499. Grounds for the renewal of criminal proceedings**

1. The entered into force sentence, decision of the court, including the issued in the manner provided by the Chapter 71 of this Code, may be canceled and the proceedings in a

criminal case or the application for confiscation in accordance with the procedure, stipulated by Chapter 71 of this Code, is renewed on newly discovered circumstances.

2. The grounds for renewal of the proceedings on newly discovered circumstances shall be:

1) the established by the entered into force sentence of the court the deliberate falsity of the testimony of the injured person or witness, expert opinion, as well as forgery of material evidence, protocols of investigative and judicial actions and other documents or knowingly incorrect translation, which led to the resolution of illegal or unreasonable sentence or decision;

2) the established by the entered into force sentence of the court the criminal actions of an interrogating officer, investigator or procurator, which led to the resolution of illegal and unreasonable sentence, decision;

3) the established by the entered into force sentence of the court the criminal actions of the judges, committed by them in the consideration of the case;

4) other circumstances established by an audit or an investigation in the manner provided for in Article 502 of this Code, and set out in the prosecutor's petition, unknown to the court at the time of sentencing, rulings, which by themselves or together with previously established circumstances testify to the innocence of the convicted person or to the commission by him of another according to the severity of the criminal offense than the one for which he was convicted, or the guilt of the acquitted person or the person in respect of whom the case was terminated;

5) recognition by the Constitutional Court of the Republic of Kazakhstan as unconstitutional of a law or other regulatory legal act that was applied by the court when issuing a judicial act;

6) exemption from criminal liability for the crime, which served as the basis for the confiscation in the procedure stipulated by Chapter 71 of this Code, on the basis of the entered into force judgment of acquittal of the court or the decision to terminate the criminal prosecution in the absence of an event or elements of a criminal offence or the partial or total non-use of confiscation of property in the sentence of the court that considered the case on merits;

7) the will of the convicted person in respect of whom the case was heard in the manner provided by paragraph 2) of the second part of Article 335 of this Code, in the case of his (her) appearance before the body, conducting the criminal proceedings.

3. The circumstances, listed in paragraphs 1), 2) and 3) of the second part of this Article, may be established, in addition to the sentence, by the decision of the court, procurator, investigator or interrogating officer on the termination of criminal case due to the statute of limitations, as a result of an amnesty act, in connection with the death of the accused, or failure to reach the age of criminal liability.

**Footnote. Article 499 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).**

**Article 500. Court decisions in criminal cases, to be reviewed on newly discovered circumstances**

According to newly discovered circumstances:

- 1) the judgment of conviction;
- 2) the judgment of acquittal;
- 3) the decision to terminate the case;
- 4) the decision on confiscation of property before the court sentence, may be reviewed.

**Article 501. Terms of the renewal of production**

1. Review of the judgment of conviction or the decision on confiscation of the property before the sentencing of the court, on newly discovered circumstances in favor of the convicted, acquitted person is not limited by any terms.

2. The death of the convicted person is not an obstacle to the renewal of production on newly discovered circumstances for the purpose of rehabilitation.

3. Review of the judgment of acquittal, the decision to terminate the case, as well as the review of the judgment of conviction on the grounds, deteriorating the position of the convicted person, shall be permitted only within the period of limitations for criminal prosecution and not later than one year from the date of opening of the new circumstances.

4. The day of opening of the new circumstances shall be:

1) the date of entry into force of the sentence, decision in respect of persons, who are guilty of perjury, submitting false evidence, wrong translation or criminal actions, committed in the course of the investigation or consideration of the case, in the cases provided for in paragraphs 1), 2) and 3) of the second part of Article 499 of this Code;

2) the date of adoption of the final decision of the Constitutional Court of the Republic of Kazakhstan on the recognition as unconstitutional of the law or other regulatory legal act in the case specified in paragraph 5) of part two of Article 499 of this Code;

3) the day the prosecutor submits a petition to the court to initiate proceedings on newly discovered circumstances based on the results of an inspection or investigation in accordance with paragraph 4) of part two of Article 499 of this Code.

**Footnote. Article 501 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).**

**Article 502. The procedure for initiating proceedings on newly discovered circumstances**



1. The right to petition to initiate proceedings on newly discovered circumstances belongs to the convicted, acquitted, victim or their legal representatives and defense counsel, as well as to the prosecutor.

2. The reasons for initiating proceedings on newly discovered circumstances are the statements of citizens, including participants in the process in this case, reports of officials of organizations, as well as data obtained during the investigation and consideration of other criminal cases.

3. Petitions on the grounds provided for in paragraphs 1), 2), 3), 5), 6) and 7) of the second part of Article 499 of this Code shall be submitted to the court that issued the verdict or decision.

4. Applications, reports on the initiation of proceedings on newly discovered circumstances, provided for in paragraph 4) of the second part of Article 499 of this Code, shall be submitted to the prosecutor.

Based on the results of consideration of the application, report, the prosecutor, having seen the existence of the circumstances provided for in paragraph 4) of the second part of Article 499 of this Code, organizes an inspection, investigation or refuses to satisfy the application, report.

The response of the prosecutor on the refusal to satisfy the application, the report on the initiation of proceedings due to newly discovered circumstances is sent to the applicant within three days with an explanation of his right to appeal against the decision to a higher prosecutor or to the court in the manner prescribed by Article 106 of this Code.

When investigating newly discovered circumstances, interrogations, examinations, examinations, seizures and other investigative actions may be carried out in compliance with the rules of this Code.

5. When an inspection or investigation establishes other circumstances that are not known to the court at the time of sentencing, decisions that, by themselves or together with previously established circumstances, testify to the innocence of the convicted person or to the commission of a criminal offense of a different severity than the one for which he convicted, or about the guilt of the acquitted person or the person in respect of whom the case was terminated by the court, the prosecutor submits to the court that issued the sentence, decision, a petition to initiate proceedings on newly discovered circumstances, attaching the criminal case and materials of verification or investigation.

**Footnote. Article 502 - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

**Article 503. The actions of the procurator at the end of inspection or investigation**

Footnote. Article 503 is excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

**Article 504. The procedure for consideration by the court of petitions to initiate proceedings in the case on newly discovered circumstances**

1. When a court receives a petition to initiate proceedings on newly discovered circumstances, the judge, within ten days, checks the compliance of the petition with the requirements of Article 499 of this Code and makes one of the following decisions:

1) issue a decision on accepting the petition for court proceedings and resuming the proceedings due to newly discovered circumstances;

2) returns the application without consideration, if it does not meet the requirements of Article 499 of this Code and no judicial or other acts confirming the grounds provided for in paragraphs 1), 2), 3), 5), 6) and 7) of part two are attached to it Article 499 of this Code, if it concerns court decisions that are not subject to review due to newly discovered circumstances in accordance with Article 500 of this Code, or filed by the same party on the same grounds on which the decision to refuse to satisfy it was already made.

In the court of cassation, as well as in the court of appeal, if the case was considered collectively, verification of the compliance of the application with the requirements of Article 499 of this Code is carried out solely by the judge of the corresponding court.

The prosecutor's petition to initiate proceedings on newly discovered circumstances is considered by the court directly.

2. A copy of the resolution issued as a result of the preliminary consideration of the application shall be sent to the person who filed the application. If the application is returned, the documents attached to it shall be returned.

3. A petition on which there is a decision of a judge to resume proceedings due to newly discovered circumstances shall be subject to consideration by the court in an open court session no later than thirty days from the day the proceedings were resumed or the prosecutor's petition was received.

4. An application for the resumption of proceedings due to newly discovered circumstances is considered solely by the judge of the court of first instance, who issued the verdict or decision. If decisions were made on the case by the courts of appeal, cassation instances, the review of court decisions is carried out:

1) by the court of appeal - individually, if the case is considered by the court of appeal alone, and collegially, if the case is considered collectively;

2) by the court of cassation - collectively.

5. The applicant, his representative, defense attorney, prosecutor, other participants in the process and persons summoned to the court session participate in the court session. The failure of the said persons, duly notified of the time and place of the trial, does not prevent the

consideration of the petition. If necessary, the court has the right to oblige them, as well as other persons, to appear at the court session. Participation in the trial of a convicted person in custody may be ensured using scientific and technical means in the video link mode.

6. After consideration of challenges and motions, the applicant is the first to speak at the court session, who sets out a petition on the grounds for reviewing the judicial act due to newly discovered circumstances, or the prosecutor, when applying to the court with a corresponding petition, then the court hears the speeches of other persons who have appeared at the court session, investigates materials submitted by the applicant, the prosecutor based on the results of the verification or investigation.

**Footnote. Article 504 - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 505. The court decision, issued following consideration of the application for review of judicial acts on newly discovered circumstances**

1. After considering the applications for review of judicial acts on newly discovered circumstances, the court shall make one of the following decisions on:

- 1) satisfying the application;
- 2) leaving the application without satisfaction.

2. The court shall issue a decision on satisfying the application, if in considering it is established the circumstances provided for by the second part of Article 499 of this Code, and they are preceded by, or led to the imposition of illegal or unreasonable sentence, decision of the court. In such cases, the court shall indicate in the decision the abolition of the relevant entered into force judicial act and send the case for a new investigation or consideration. If the new investigation or court hearing is not required, the court shall terminate the proceedings with an indication of the grounds for termination.

When satisfying the application for review of the decision on confiscation of the property on the newly discovered circumstances, the court cancels the decision said.

3. The court leaves the application for review of the entered into force judicial act without satisfaction, if the circumstances specified therein are not confirmed or if they occurred, but did not affect the legality and validity of the sentence, decision.

4. A court ruling issued following the consideration of a petition to initiate proceedings in a case on newly discovered circumstances shall be announced upon the court leaving the deliberation room, brought to the attention of interested persons who were not present at the same time, with an explanation of the procedure for its appeal, review at the request of the prosecutor, protests. A copy of the decision is sent to the prosecutor and the person who filed the petition. A copy of the resolution is sent to other interested parties at their request.

5. Decisions of the court of the first, appellate instances, issued following the consideration of a petition to initiate proceedings on newly discovered circumstances, enter

into force upon the expiration of fifteen days from the date of their issuance, and if they were appealed and upheld by a higher court, then on the day ruling by a higher court.

The decision issued by the Supreme Court of the Republic of Kazakhstan, as well as the decision of the court of appeal to leave unchanged, cancel or change the appealed decision of the court of first instance, are final and are not subject to further appeal or protest.

**Footnote.** Article 505 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

**Article 506. The court decision, issued following consideration of the request of the procurator for review of judicial acts on newly discovered circumstances**

**Footnote.** Article 506 is excluded by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).

**Article 507. Review of court decision and production after the abolition of court decisions**

**Footnote.** Title of Article 507, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015).

1. Complaints, petitions of the prosecutor, protests against the decisions of the court of the first, appellate instances, issued following the consideration of the petition for initiation of proceedings on newly discovered circumstances, may be filed by the persons indicated in the first part of Article 502 of this Code, to the appropriate higher court within fifteen days from the date of issuance.

2. The consideration of complaints, petitions of the prosecutor, protests at the specified decisions by a higher court is carried out in the manner provided for the consideration of appeals, cassation complaints, petitions of the prosecutor, protests. The decision of a higher court to leave unchanged, to cancel or change the appealed decision is final and is not subject to further appeal, revision at the petition of the prosecutor.

The rules provided for by Articles 490 and 491 of this Code do not apply to complaints, protests against decisions of the court of appeal and they are considered by the court of cassation directly.

3. The investigation and trial of the case after the abolition of court decisions on it due to new circumstances shall be made under the general procedure, established by this Code.

In the case of satisfying of the application for review of the entered into force judicial act, issued with the jury on newly discovered circumstances with sending the case for retrial to the stage of the preliminary hearing, the court at the new trial shall hold a preliminary hearing

and, depending on the will of the defendant shall decide a new trial with the jury or without their participation. If the judicial act is canceled with the direction for a new trial from the stage of the main trial, the court shall appoint the main trial, conduct the formation of a new jury and investigate the case in accordance with the provisions of Chapter 65 of this Code.

**Footnote. Article 507, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 31.10.2015 No. 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 No. 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 508. Civil claim when reopening of the case on newly discovered circumstances**

In the event of quashing of the sentence due to newly discovered circumstances the civil claim, brought in the initial consideration of the criminal case shall be reviewed on a general basis. The reopening of the case only in part of civil claim shall be allowed only in civil proceedings.

### **Section 11. Special proceedings**

#### **Chapter 54. Judicial proceedings for the application**

#### **of compulsory medical measures to insane Article 509. Grounds for proceedings for the application of compulsory medical measures**

1. Proceedings for the application of compulsory medical measures, referred to in Article 93 of the Criminal Code of the Republic of Kazakhstan shall be carried out in cases against the persons, committed the prohibited by the criminal law act in a state of insanity or have mental health problems after committing the act, prohibited by the criminal law that make it impossible to appoint or execute punishment.

2. Compulsory medical measures shall be appointed only when the painful psychiatric disorders are associated with danger to themselves or others, or the possibility of causing other significant harm.

3. Proceedings for the application of compulsory medical measures shall be determined by the general rules of this Code and the provisions of this Chapter.

#### **Article 510. Circumstances to be proven**

1. For the cases against the persons, referred to in the first part of Article 509 of this Code a preliminary investigation is mandatory.

2. The following circumstances shall be clarified in the preliminary investigation:

- 1) the time, place, method and other circumstances of the committed act;
- 2) committing the act, prohibited by the criminal law, by the person;
- 3) the nature and extent of the damage, caused by the act;

4) the behaviour of the person, who committed the act, prohibited by the criminal law, as before its committing, and after it;

5) the presence of the person a mental disorder in the past, the extent and nature of the mental illness at the time of committing the act, prohibited by the criminal law, or during the consideration of the case.

#### **Article 511. Security measures**

1. Preventive measures may not be applied to the persons who committed the acts, prohibited by the criminal law and who have mental illness.

2. The following security measures, if necessary, shall be applied to these persons:

1) the transfer of a patient under the care of relatives, guardians, care-givers notifying the health authorities;

2) the placement in a special medical organization providing psychiatric care.

#### **Article 512 Transfer under the care of relatives, guardians, care-givers**

1. Since the establishment of the fact of mental illness, the body conducting the criminal proceedings cancels application to that person of the previously chosen preventive measure, and shall rule on the application to him (her) the security measures.

2. If a diseased person is not a danger to him(her)self or others, he (she) may be transferred under the care of the relatives, guardians, care-givers with their consent notifying the health authorities.

3. In case of refusal of persons, referred to in the second part of this Article to care over the diseased person or in the cases provided for in Article 513 of this Code in respect of the diseased person may be applied a security measure as placement in a medical organization.

#### **Article 513. Placement in a specialized medical organization**

1. The decision of the investigating body on the placement of a person in a medical institution in connection with the need to apply a security measure to a person shall be considered by the investigating judge, who shall take a decision.

A copy of the decision is also sent to the prosecutor by the investigating authority.

2. The investigating judge according to the nature of the disease, a danger to him(her)self or others, the recommendations of a psychiatric expert shall decide and in satisfying the application shall specify in the decision the type of medical organization, providing mental health care, where placed the person in respect of whom this type security measures is applied , as well as on the abolition of the previously applied preventive measure.

3. The security measure in the form of placement in a medical organization is maintained throughout the pre-trial proceedings, but not more than one month, after which its application may be extended at the request of the pre-trial investigation body by the investigating judge



for a period not exceeding one month or it may be cancelled. During the course of the proceedings, this security measure is maintained until the entry into force of the court ruling on the consideration of a criminal case involving the use of a coercive medical measure.

4. If the court in consideration of the case against a person, whose criminal case is considered, makes a decision on the application of the compulsory medical measure in the form of placement of a person in a medical organization, the security measure shall be canceled after placement of the person to the said organization. If the court makes a decision on the application of the compulsory medical measure in the form of observation by a psychiatrist at the place of residence or non-application of compulsory medical measures, he (she) also cancels the security measure. A person who is in medical organization, after abolition of this security measure shall be immediately discharged from hospital.

**A footnote. Article 513 as amended by the laws of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 514. Separation of the case against the person who committed the prohibited criminal offence in a state of insanity or have mental disorder after committing a criminal offence**

If during the pre-trial investigation it is determined that any of the partners committed the offence in a state of insanity or have mental disorder after committing the prohibited by criminal law offence, the case against him (her) could be separated.

#### **Article 515. Rights of the person against whom the case on application of compulsory medical measures is considered**

1. The person against whom the case on application of compulsory medical measures is considered, shall have a right to, if the conclusion of the forensic psychiatric examination does not interfere with the nature and severity of the illness:

- 1) know, in the commission of what act he (she) is convicted;
- 2) give explanations;
- 3) submit evidence;
- 4) make requests and challenges;
- 5) explain in his (her) native language or a language he (she) speaks;
- 6) have the free assistance of an interpreter;
- 7) have a defense counsel and meet with him (her) in private and in confidence;
- 8) participate with the permission of the investigator in the investigative actions, conducted at his (her) request or the request of his (her) defense counsel;
- 9) get acquainted with the protocols of these actions and submit comments on them;
- 10) get acquainted with the decision on appointment of expertise and the expert opinion;



11) get acquainted at the end of the preliminary investigation with the case materials and copy out any information in any volume, make copies of documents, including through scientific and technological means, except for information containing state secrets and other secrets protected by law;

12) make complaints against the actions and decisions of the person, carrying out the pre-trial proceedings, the procurator and the court;

13) receive a copy of the decision to terminate the criminal case or direction of the case to the court for the application of compulsory medical measures.

In the trial of the case, the specified person shall have the right to participate in the study of evidence and judicial debates; to get acquainted with the protocol of the court session and submit comments to it; appeal the decisions of the court and receive copies of the appealed decisions; to know about the complaints filed in the case brought by the prosecutor's petitions and protests and to file objections to them; participate in the judicial consideration of the submitted complaints, the petitions of the prosecutor, the protests.

2. To the person, mentioned in the first part of this Article, the investigator shall explain his (her) rights and present a list in writing. A note on the clarification of the rights in court proceedings shall be made in the protocol of the court session.

**Footnote. Article 515 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 516. Participation of the legal representative**

1. A close relative of the person against whom the proceedings on the application of compulsory medical measures are conducted, or any other person shall be recognized as the legal representative of the person and shall be involved to participate in the case by the decision of the person, conducting pre-trial investigation, or the procurator or the court decision.

2. Participation in the court of the legal representative of the person, against whom the proceedings on the application of compulsory medical measures are conducted, is mandatory.

3. The legal representative shall have the right to:

1) know in the commission of what act, prohibited by the criminal law the person he (she) represents is convicted;

2) make requests and challenges;

3) submit evidence;

4) participate with the permission of the person conducting pre-trial investigation in the investigative actions conducted at his (her) request or the request of the defense counsel;

5) get acquainted with the protocols of the investigative actions in which he (she) participated, and make written comments on the correctness and completeness of the records made therein;

6) at the end of the preliminary investigation, get acquainted with the case materials, write out any information and in any volume, make copies of documents, including through scientific and technological means, except for information containing state secrets and other secrets protected by law;

7) receive a copy of the decision to terminate the criminal case or direction of the case to the court for the application of compulsory medical measures;

8) participate in the court proceedings;

9) make complaints against the actions and decisions of the person conducting the pre-trial investigation, the procurator and the court;

10) appeal against the court decisions, and receive copies of the contested decisions;

11) be aware of the complaints filed in the case brought by the prosecutor's petitions and protests and file objections to them;

12) participate in the judicial consideration of the complaints submitted, the petitions of the prosecutor and the protests.

4. The protocol on clarification of the rights to legal representative shall be made.

**Footnote. Article 516 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 517. Participation of the defense counsel**

1. In proceedings for the application of compulsory medical measures the participation of the defense is mandatory since the establishment of the fact of insanity or mental disorder of the person against whom the proceedings are conducted, if the defense counsel is not joined the case on other grounds.

2. The defense counsel since the entry the case shall have a right to meet with his (her) client in private, if this does not prevent the defendant's state of health, as well as enjoy all the other rights provided for in Article 66 of this Code.

#### **Article 518. Completion of the preliminary investigation**

1. Upon completion of the preliminary investigation the person conducting the pre-trial investigation shall decide:

1) to terminate the case by the proceedings in the cases provided for in Article 35 and the fifth part of Article 288 of this Code, as well as when the painful mental disorders are not associated with danger to themselves or others, or causing other possible serious harm;

2) to send the case to the court for the application of compulsory medical measures.

2. On termination of the case or direction of the case to the court, the person conducting the pre-trial investigation shall notify the person, in respect of whom a preliminary investigation is carried out, if under his (her) mental state the person is able to participate in

the investigative actions, his (her) legal representative and the defense counsel, as well as the injured person. The person, conducting the pre-trial investigation shall explain the named participants in the process their right to examine the case materials and tell where and when they may use this right. The procedure of familiarization with the case, the applications and resolution of the applications for supplement of the investigation shall be defined in Articles 295 - 297 of this Code.

3. The decision to terminate the case shall be made according to the rules of Article 288 of this Code. The decision to send the case to the court for the application of compulsory medical measures shall specify the circumstances, provided in Article 510 of this Code and established in the case; the grounds for the application of compulsory medical measures; the arguments of the defense counsel and others, challenging the grounds for the application of compulsory medical measures, if they are made.

4. An annex to the decision to send the case to court is drawn up according to the rules of part three Article 299 of this Code.

**Footnote. Part four as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up a report on the completion of the pre-trial investigation by the person conducting the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

5. The person conducting the pre-trial investigation shall send the case with the decision on direction of it to the court, to the procurator who, after studying the case, shall take one of the following decisions:

1) to send the case to the court for the application of compulsory medical measures;

2) to return the case for additional investigation;

3) to terminate the case in the cases, provided for in paragraph 1) of the first part of this Article.

6. A copy of the decision to terminate the case or to send the case to the court for the application of compulsory medical measures shall be sent to the participants in the process and handed to the person in respect of whom the proceedings in the case is carried out, and his (her) legal representative.

Footnote. Article 518 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force ).

#### **Article 519. Proceedings in the court**

1. The cases on application of compulsory medical measures shall be considered by a judge of a district court or a court equated to it. In cases stipulated by this Code, the issue of application of compulsory medical measures to the insane may be considered by the court of appeal instance in consideration of the criminal case on appellate complaints or the petition of the prosecutor filed or brought to the sentence, the decision of the court of first instance.

2. On receipt to the court of the case on application of compulsory medical measures, the judge shall consider it at the hearing by the rules provided in this Code.

3. The composition of the court in considering of the cases on application of compulsory medical measures shall be determined in accordance with Article 52 of this Code.

Footnote. Article 519 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **Article 520. Issues, resolved by the court in decision making on the case**

1. During the proceedings of the case the following issues should be investigated and resolved:

- 1) whether there was the act, provided for in criminal law;
- 2) whether the act was committed by person, whose case is considered;
- 3) whether the act was committed by person, whose case is considered, in a state of insanity;
- 4) whether the person after committing the prohibited by criminal law act was ill by a mental disorder that makes it impossible to appoint or execute the punishment;
- 5) whether the painful mental disorders of the person present a danger to him(her)self or others, or possibility to make significant harm to others;
- 6) whether compulsory medical measures are applied, and what kind.

2. The court resolves the issues, referred to in paragraphs 10), 11) and 12) of the first part of Article 390 of this Code.

#### **Article 521. Court decision**

1. Recognizing proven that the act prohibited by the criminal law, committed by the person in a state of insanity or that the person after committing the prohibited by criminal law act was ill from a mental disorder that makes it impossible to appoint or execute the punishment, the court shall issue a decision in accordance with Articles 16 and 75 of the Criminal Code of the Republic of Kazakhstan for the release of the person respectively from

criminal liability or punishment and the application to him (her) of compulsory medical measures, and what kind.

2. If the person, referred to in the first part of this Article, is not danger by his (her) mental state, the court shall issue a decision to terminate the case, and the non-application of compulsory medical measures.

3. If the court recognizes that the participation of the person in committing the act is not proved, as well as in establishing the circumstances, specified in paragraphs 1), 2), 3), 4), 5), 6), 7), 8 ), 9), 10, 11) and 12) of the first part of Article 35, first part of Article 36 of this Code, the court shall issue a decision to terminate the case on its established base, regardless of the presence and nature of the disease of the person.

4. Upon termination of the case on the grounds, specified in the second and third parts of this Article, a copy of the court decision within five days shall be sent to the health authorities for a decision on treatment or direction to a mental institution of those, who are in need of psychiatric care.

5. Recognizing that the mental disorder of the person, whose case is considered, is not established or that the disease of the person, who committed the prohibited by criminal law act, does not preclude the application to him (her) of penalties, the court by its decision shall send the case to the procurator for investigation in the general manner.

6. The decision of the court resolves the issues, referred to in Article 401 of this Code.

#### **Article 522. The appeal and protest of the court decision**

1. The decision of the district and equivalent court may be appealed in the appeal order by the rules provided by Chapter 48 of this Code, and the decision of the appellate court, issued in the case provided for by Article 439 of this Code to the court of cassation by the defense counsel, the injured person and his (her) representative, legal representative or a close relative of the person, which case is considered, as well as protested by the procurator. In the case, when in accordance with Article 515 of this Code, the person in respect of whom compulsory medical measures are applied, participates in the proceedings of the case, he (she) has the right to appeal against the court decision, if according to the conclusion of the forensic psychiatric examination the nature and severity of the illness does not prevent this.

2. The decision on the application of compulsory medical measures shall be executed in accordance with the procedure, stipulated by Chapter 51 of this Code.

#### **Article 523. Termination, change and extension of the application of compulsory medical measures**

1. Issues about the termination, change or extension of the application of compulsory medical measures in the manner provided in Article 96 of the Criminal Code of the Republic of Kazakhstan, shall be considered by the court that made the decision on the application of compulsory medical measures, and if the use of preventive measures is carried out outside the

area of activity of this court – by the competent court at the place of application of this measure.

2. The court shall notify the legal representative of the person to which a compulsory medical measure is applied, the administration of the institution, carrying out compulsory treatment, the defense counsel and the procurator on the appointment of the case to hearing. Participation in the court session of the defense counsel and the procurator is mandatory, and the absence of others does not preclude consideration of the case.

3. At the hearing the representation (conclusion) of the institution, carrying out compulsory treatment, the opinion of the commission of psychiatrists is examined, and the opinions of persons participating in the hearing are heard. If the opinion of the commission of psychiatrists is doubtful, the court at the request of the persons participating at the hearing or on its own initiative may appoint a forensic psychiatric examination, request additional documents, as well as interview the person in respect of whom the issue of the termination, change or extension of the use of compulsory medical measures is addressed, if it is possible for his (her) mental state.

4. The court stops or changes a compulsory medical measure in the event of such a person's mental condition in which there is no need to use any previously assigned measure, or there is a need to appoint another medical measure. The court extends compulsory treatment in the absence of grounds for the termination or change of the compulsory medical measure.

5. On termination, change or extension, as well as refusal to terminate, change or extend the application of compulsory medical measure, the court shall make a decision in the advisory room and announce it at the court session. The decision of the court may be reviewed on the appeal procedure under the complaints of participants in the process or at the petition of the prosecutor.

**Footnote. Article 523 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 524. Reopening of the criminal case against the person to whom a compulsory medical measure is applied**

1. If the person to whom due to his (her) mental disorder after the commission of the prohibited by criminal law act is applied to the compulsory medical measure, will be recognized by the commission of psychiatrists as recovered, the court based on the opinion of the medical organization, carrying out compulsory treatment, in accordance with paragraph 14 ) of Article 476 of this Code shall decide to discontinue the use of the compulsory medical measure and send the case to the procurator for a decision on the criminal liability of the person in the general manner. If the compulsory medical measure is canceled in connection with the recovery of the convicted person, who is not served full sentence, the court shall send a copy of the decision to the institution or body, carrying out the punishment to resume the



serving by that person rest of the sentence, if by that time the statute of limitations for execution of conviction has not expired.

2. The time spent in a medical institution, shall be included in the term of punishment.

## **Chapter 55. Features of proceedings on criminal**

### **infractions Article 525. The order of proceedings on criminal infractions**

*A footnote. Article 525 is excluded by the Law of the Republic of Kazakhstan No. 118-VI dd. 21.12.2017 (shall be enforced upon expiration of ten calendar days after the day of its first official publication).*

### **Article 526. The protocol form of pre-trial investigation**

1. The body of inquiry shall draw up a protocol on a criminal offense within ten days from the moment of interrogation of a person as a suspect in the manner prescribed by paragraph 4) of part one of Article 64 of this Code, within the limitation period for bringing to responsibility.

*2. Is excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).*

*3. Is excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).*

4. In the criminal case against several criminal offences, including, in addition to the offences there is a criminal infraction or criminal infractions, the proceedings shall be carried out in the form of inquiry or preliminary investigation.

*Footnote. Article 526 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).*

### **Article 527. The procedure for preparation of the protocol**

1. On the circumstances of the criminal infraction against the suspected the protocol shall be made, stating: the time and place of its preparation, who made the protocol, the identity of the suspected, the time and place of the commission of the criminal infraction, the event, its methods, motives, consequences and other significant circumstances, the evidence confirming the existence of the criminal infraction and the guilt of the offender, the elements of a criminal infraction under the Special Part of the Criminal Code, the data about the injured person, the nature and extent of damage caused to him (her).

1-1. The protocol also states:

1) last names, first names, patronymics (if any), addresses of witnesses and victims, if any

;

2) scientific and technical means and electronic media, if they were used during fixation or traces of a criminal offense were recorded on them.



1-2. The protocol on a criminal offense may reflect the decisions of the person conducting the pre-trial investigation on determining the language of the proceedings, choosing the format of the criminal proceedings, engaging a defense counsel, an interpreter, including on explaining their rights and obligations, recognizing objects, documents and other property as material evidence and attachment to the case, establishment of procedural costs, recognition as a civil plaintiff, as well as an application to refuse the services of a defense counsel.

Documents confirming the fact of committing a criminal offense are also attached to the protocol on a criminal offense.

2. The person conducting the pre-trial investigation shall have the right to carry out only those investigative and other procedural actions, the results of which record traces of a criminal offense and other evidence of the guilt of the suspect, the accused.

The person conducting the pre-trial investigation shall have the right to confine himself/herself to the collected evidence, if the established circumstances of the case are not disputed by the suspect and his/her defense lawyer, the victim.

When appointing an inquiry or preliminary investigation in a criminal offense case in accordance with the procedure provided for in Article 189 of this Code, the pre-trial investigation shall be ended with the drawing up of a criminal offense report.

When the qualification is changed from a crime to a criminal offense, the pre-trial investigation shall be ended with the drawing up of a criminal offense report.

3. The suspected, the accused and defendant may be taken the obligation to appear at the call of the bodies of inquiry, the court and tell them about the change of the place of residence

**Footnote. Article 527 as amended by the Law of the Republic of Kazakhstan dated 03.07.2017 № 84-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII ( shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 528. Procedure for forwarding the minutes to the court**

1. The person conducting the pre-trial investigation shall present the protocol and the materials attached thereto to the suspect for familiarization, which shall be noted in the protocol and certified by the signature of the suspect and the defence counsel (with his/her participation). After the suspect is familiarized with the report and the case file, the criminal case is forwarded to the head of the body of inquiry.

2. The head of the body of inquiry, having studied the protocol and the materials attached to it, performs one of the following actions:

1) agree on a protocol on a criminal offense and send the criminal case to the prosecutor;

2) refuses to agree on the protocol and returns the criminal case for the production of an inquiry.

If a suspect is detained in accordance with Article 128 of this Code, the case of a criminal offense is sent to the prosecutor no later than twenty-four hours before the expiration of the period of detention.

3. The prosecutor, having studied the criminal case, no later than 24 hours, and in cases in which the suspect is detained in accordance with Article 128 of this Code, shall immediately take one of the following actions:

- 1) approve the report on the criminal offense and send the criminal case to the court;
- 2) refuses to approve the protocol and terminates the criminal case or criminal prosecution in full or in part on the grounds provided for in Articles 35 and 36 of this Code, and returns it for conducting an inquiry or preliminary investigation.

If a suspect is detained in accordance with Article 128 of this Code, the case of a criminal offense is sent to the court no later than twelve hours before the expiration of the period of detention.

**A footnote. Article 528 of the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 529. The order and terms of consideration of the case on criminal infractions in court**

1. After receiving the case in court, the judge accepted the case in the production and started the consideration of the case on criminal infraction:

1) announces, who is considering the case, what case is subject to consideration, who and on the basis of which article of the Criminal Code of the Republic of Kazakhstan shall be held liable;

2) verifies the appearance of the defendant, as well as other persons participating in the proceedings;

3) establishes the identity of the participants of the proceedings and verifies the credentials of legal representatives if any, defense counsel;

4) finds out the reasons for non-appearance of participants of the proceedings and takes the decision on the consideration of the case in the absence of the said persons or on postponement of the proceedings;

5) where necessary, makes a decision to drive a person, whose participation is mandatory in the consideration of the case, appoints an interpreter;

6) explains to the persons participating in the proceedings, their rights and responsibilities ;

7) solves the stated objections and motions;

8) announces the protocol on the criminal infraction and, if necessary, other materials of the case;

9) makes a decision to postpone the consideration of the case in connection with: a motion for self-disqualification or disqualification of a judge, if its disqualification prevents the consideration of the case on the merits; with the disqualification of the defense counsel, the authorized representative, expert or interpreter, if the specified disqualification precludes consideration of the case on merits; with the need to appear of the persons, participating in the proceedings, or the delivery of additional materials on the case. If necessary, the judge shall issue the decision on the appointment of expertise.

2. The judge, considering the case on a criminal infraction, hears the defendant and other persons, involved in the proceedings, explanations of the specialist and expert, explores the other evidence. Where necessary, he (she) carries out other procedural actions, provided by this Code.

3. Cases on criminal infractions are subject to judicial review within fifteen days of receipt of the court.

In the case of receipt of the applications of the participants in the process or the need for additional clarification of the circumstances of the case, the term of consideration of the case may be extended, but not more than one month.

4. Cases on criminal infraction for which the punishment shall be the expulsion from the Republic of Kazakhstan, as well as those for which the suspected is detained in accordance with Article 128 of this Code shall be considered at the day of receipt of the court.

5. The participation of the procurator is mandatory in considering by the court of the cases of criminal infractions.

6. After considering the case on a criminal infraction, the judge shall:

1) make a judgment of guilty or acquittal in accordance with the procedure stipulated by Chapter 46 of this Code;

2) terminate the proceedings if there are the circumstances provided for in Articles 35 and 36 of this Code;

3) in establishing the elements of a crime shall send the case to the relevant procurator to decide on the conduct of pre-trial investigation.

7. The court sentence, made in a case of a criminal infraction, in the form and content shall meet the requirements of Articles 388 and 389 of this Code.

8. The decision in the case of a criminal infraction is declared immediately after the termination of the proceedings. A copy of the decision on the case shall be immediately given to the convicted, the injured person and the procurator. In the absence of these persons, a copy of the decision shall be sent them within three days.

9. The decision of the court in the case of a criminal offense may be appealed, reviewed at the petition of the prosecutor and challenged in the manner and within the term provided by this Code on general grounds.

Footnote. Article 529 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

#### **Chapter 56. Proceedings on criminal offences of minors Article 530. The order of proceedings on criminal offences of minors**

1. The provisions of this Chapter shall apply in cases of persons, who have not reached at the moment of committing a criminal offence the age of majority that is the age of eighteen.

2. The order of proceedings on criminal offences of minors is determined by the general rules, established by this Code, as well as by Articles of this Chapter.

3. The order of proceedings on criminal offences of minors does not apply in cases where:

1) several criminal offences of the person are combined into one case, some of which committed after reaching the age of eighteen;

2) the suspected, accused, defendant, convicted at the time of the proceedings reached the age of majority.

#### **Article 531. Circumstances to be established in cases of criminal offences of minors**

In the production of pre-trial investigation and court proceedings, except the circumstances to be proved, provided for in Article 113 of this Code, the following shall be established in the cases of minors:

1) the minor's age (the day, month, year of birth);

2) living conditions and upbringing of a minor;

3) the degree of intellectual, volitional and mental development, character traits and temperament, needs and interests;

4) the influence of the adults and other minors on the minor.

#### **Article 532. Limitation of publicity in cases of minors**

The right of a minor suspected, accused or defendant to confidentiality shall be respected at all stages of criminal proceedings.

#### **Article 533. Separation of cases of minors in separate proceedings**

1. The case of a minor, who participated in the commission of a criminal offence together with adults, in accordance with paragraph 2) of the first part of Article 44 of the Code is allocated in separate proceedings at the stage of pre-trial investigation.

2. In cases where separate proceedings against a minor may create significant obstacles for a comprehensive, complete and objective investigation of the circumstances of the case, the rules of this Chapter shall apply to the minor suspected, accused, attracted in one case with adults.

#### **Article 534. The procedure for calling a minor suspected, accused or defendant**

1. A minor suspected, accused, defendant is called to the person conducting the pre-trial investigation or the court through his (her) parents or other legal representatives, and in their absence - by the guardianship authorities.

2. A minor who is in the organization, carrying out in accordance with the law the functions for the protection of children's rights, or in detention - through the administration of the place of detention.

#### **Article 535. Interrogation of a minor suspected, accused or defendant**

1. Interrogation of a minor suspected, accused, defendant is held in accordance with Articles 216 and 367 of this Code, in the presence of a defense counsel, legal representative, and if necessary - a psychologist and teacher. Defense counsel shall have the right to ask questions to the interrogated person, and after interrogation, familiarize with the protocol and make comments on the correctness and completeness of the record evidence.

2. Interrogation of a minor suspected, accused, defendant shall be made during the day and may not go on without a break for more than two hours, and in total - more than four hours a day. In cases of obvious fatigue of a minor, the interrogation shall be interrupted before the expiry of this period.

#### **Article 536. Participation of a defense counsel**

1. The participation of a defense counsel in cases of criminal offences of minors in accordance with paragraph 2) of the first part of Article 67 of the Code is mandatory.

2. In cases of criminal offences of minors the defense counsel shall be involved from the first interrogation of a minor as a suspected, and in the case of detention – from the time of detention.

3. If a minor suspected, accused or his (her) legal representatives do not conclude an agreement with a lawyer, the person performing the pre-trial investigation, the procurator, the court shall ensure the participation of a defense counsel in the case.

#### **Article 537. Participation of the legal representative of a minor suspected, accused in the pre-trial proceedings**

1. In the presence of a minor suspected, the accused of the parents or other legal representatives, their participation in the case is mandatory. One or both parents of a minor may be legal representatives. Parents and other close relatives, involved in the case as defense counsels, may not simultaneously participate as legal representatives of the minor. In their absence the participation of representatives of the guardianship authority is mandatory.

2. The legal representative, and in his (her) absence - the representative of the guardianship authority is allowed to participate in the case by the decision of the investigator

from the first interrogation of a minor as a suspected. In the admission to participate in the case, the legal representative, and in his (her) absence the representative of the guardianship authority shall be explained the rights specified in third part of this Article.

3. The legal representative has the right: to know what the minor is suspected of; be present at the acquaintance with the resolutions on recognition as a suspect, qualification of the suspect's act, with the indictment drawn up by the prosecutor, participate in the interrogation of a minor, and also, with the permission of the person conducting pre-trial proceedings, in other investigative actions carried out with the participation of a minor suspect and his defense counsel; get acquainted with the protocols of investigative actions in which he took part, and make written comments on the correctness and completeness of the entries made in them; file petitions and challenges, bring complaints against the actions and decisions of the investigator and the prosecutor; present evidence; at the end of the investigation, get acquainted with all the materials of the case, write out any information from it and in any volume, make copies of documents, including using scientific and technical means, with the exception of information containing state secrets and other secrets protected by law.

**Footnote. Part three as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of the preparation by the person conducting the pre-trial investigation of a report on the completion of the pre-trial investigation, the preparation of the indictment by the prosecutor and the recognition of the person as accused from the moment the prosecutor draws up the indictment, which are entered into action:**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

4. The person, performing the pre-trial investigation shall have a right at the end of the pre-trial proceedings to make a decision not to present to the minor for familiarization those materials that may have a negative effect on him (her), and familiarize with these materials the legal representative and defense counsel.

5. The legal representative may be removed from the case, if there is reason to believe that his (her) actions are detrimental to the interests of a minor or are aimed at hindering the objective investigation of the case or at the request of the legal representative. The person carrying out pre-trial investigation makes a reasoned decision about this. Another legal representative of the minor may be allowed to participate in the case.

Footnote. Article 537 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (see Article 2 for entry into force ).

**Article 538. Participation of a teacher and a psychologist**

1. The participation of a teacher or a psychologist is mandatory in proceedings involving a minor suspected, accused, defendant, who have not attained the age of sixteen, as well as those who attained that age, but with signs of mental retardation.

2. In cases of minors who have attained the age of sixteen, a teacher or a psychologist is allowed to participate in the case at the discretion of the investigator or the court, or at request of the defense counsel, the legal representative.

3. The teacher, psychologist has the right with the permission of the investigator or the court, to ask questions to the minor suspected, accused, defendant and at the end of the procedural act - to get acquainted with the protocol of investigative action (the protocol of the court session in part, reflecting their participation in the proceedings) and to make written comments on the correctness and completeness of records made therein, and shall have the right, at the discretion of the investigator, the court to get acquainted with the case materials, characterizing the identity of the minor. These rights the investigator, procurator or court shall explain to the teacher, psychologist before the procedural action, and the relevant note shall be made in the protocol of the investigative action, the protocol of the court session.

**Article 539. The complex psychological and psychiatric and psychological examination of the minor**

1. In cases involving minors, the psychological and psychiatric examination is mandatory to determine the ability of the suspected or accused to account for their actions and to guide them in the situations set out in the case, his (her) sanity, the presence (or absence) of a mental disorder, not excluding sanity.

2. A psychological examination may be appointed to determine the level of intellectual, volitional, mental development and other psychological traits of a minor suspected or accused

**Article 540. Placement of the minor in the organization, carrying out in accordance with the law the functions for the protection of children's rights, or the return under the patronage**

In cases where a minor suspected in the conditions of life and education may not be left in the same place of residence, he (she) by the decision of the body conducting criminal proceedings, with the participation of the guardianship authorities may be placed to stay for the period of the proceedings in the organization performing in accordance with the law the functions for the protection of the rights of the child, or placed under the patronage.

**Article 541. The detention and the application of preventive measures to minors**



1. A minor may be detained and may be applied to the preventive measure in the manner provided by this Code. To a minor suspected, accused of committing a criminal offence, a crime of minor or medium gravity, the preventive measure in the form of detention shall not be applied.

2. At a choice of a type of a preventive measure concerning the minor suspect accused in commitment of a heavy or especially heavy crime it is necessary to consider, except for the circumstances specified in article 138 of the present Code, conditions of a life and education of the minor, his age and degree of intellectual, willful and mental development, features of character and temperament, requirements and interests, influence on minor adult persons and other minors, presence at minor mental disorder, not.

3. The preventive measure in the form of detention shall be applied to the minor only in cases where other preventive measures available in the circumstances, may not be applied.

4. Minors, who are applied a preventive measure in the form of detention, shall be kept separately from adults. The period of detention of minors during pre-trial proceedings may not be extended in the manner provided by this Code for a period of more than six months.

5. Parents or other legal representatives of minors, and in their absence - close relatives and (or) the guardianship authorities shall be immediately notified of their detention, electing the measure in the form of detention or extension of detention of the minor.

**Footnote. Article 541 with the change introduced by the Law of the Republic of Kazakhstan dated 01.04.2019 № 240-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 542. Features of the proceedings in case against the minor in court**

1. Cases of minors are considered by the specialized inter-district juvenile courts. In cases stipulated by this Code, the case is considered by the specialized inter-district criminal court or by the military court of the garrison or by the specialized inter-district military court. At the request of a minor suspected, accused the case may be considered by a court of jury in accordance with Chapter 65 of this Code.

2. The court proceedings in the cases of minors shall be carried out by the general rules laid down in this Code, with the following features:

- 1) the hearing of the case is conducted under conditions of limited publicity;
- 2) the legal representatives of a minor defendant participate in the proceedings, and are present throughout the trial, enjoy all their rights and with their consent, they may be questioned as witnesses about the circumstances of lifestyle and education of minors; in case of failure to appear of the legal representative, involved in the case, he (she) may be replaced by another;
- 3) participation of a defense counsel in the hearing is mandatory, the refusal of the minor defendant of the defense counsel may not be accepted by the court;

4) in cases provided by this Code, a teacher, psychologist, and where necessary, the psychiatrist, the representatives of the guardianship authorities, representatives of the communities, where the minor studied or worked, participate in the hearing.

3. A minor defendant with participation of a legal representative and defense counsel has the right to come to terms with the injured person, including by way of mediation, as well as conclude a procedural agreement with the procurator.

#### **Article 543. Removal of the minor defendant from the courtroom**

1. At the request of the defense counsel or legal representative, as well as on its own initiative, the court may, taking into account views of the parties, by its decision remove the minor defendant from the courtroom at the time of examination of the circumstances that may have a negative influence on him (her).

2. After returning to the courtroom of the minor defendant, the presiding judge tells him (her) in the necessary scope and form the content of the proceedings that took place in his (her) absence, and provides an opportunity to the minor to ask questions to the persons interrogated without his (her) participation.

#### **Article 544. Issues, resolved by the court when sentencing in the case of a minor**

1. When addressing the issue of juvenile sentencing, the court shall discuss and motivate in the sentence the possibility of punishment, not related to deprivation of liberty, or release of the minor from criminal punishment due to the application of compulsory educational measures. The court shall take into account the limits of the application of certain types of minor penalties, established by the criminal law, bearing in mind that their application is determined by the age of the defendant at the time of committing the offense.

2. In cases of probation, the appointment of punishment, not related to the deprivation of liberty, placement in educational institutions with a special regime of detention or the application of compulsory educational measures, the court shall notify the specialized state body and lay upon it monitoring the behavior of the convicted person.

#### **Article 545. Release of a minor from punishment with application of compulsory educational measures**

If in the case of a criminal infraction or a crime of minor, medium gravity or serious crime it is recognized that a minor who has committed the criminal offence may be corrected without the use of criminal penalties, the court may, ruling conviction, release the minor defendant from punishment, and apply to him (her) compulsory educational measures provided for in Article 84 of the Criminal Code of the Republic of Kazakhstan. A copy of the sentence shall be sent to the specialized state body.

## **Article 545-1. Early release of a minor from coercive educational measures in the form of placement in an educational organization with a special regime**

1. A minor may be exempted from compulsory educational measures in the form of placement in an educational establishment with a special detention regime on the grounds that he or she has reached the age of majority, or if, on the basis of the opinion of that establishment, the court finds that the minor does not need to apply that measure in the future in order to correct the situation.

2. The minor, his/her legal representative or defence counsel is entitled to file an application for consideration of the early termination of his/her stay in an educational organization with a special detention regime with the said organization, if, in their opinion, the minor does not need to apply this measure in order to rectify the situation in the future.

**Footnote. Chapter 56 was supplemented by Article 545-1 in accordance with the Law of the Republic of Kazakhstan dated 01.04.2019 № 240-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **Chapter 57. Features of proceedings of persons, enjoying privileges and immunity from criminal prosecution Article 546. Limits of application of features of proceedings in the cases of persons, enjoying privileges and immunity from criminal prosecution**

Features of criminal proceedings provided for in this Chapter shall not apply to persons, whose stay in the respective positions at the time of registration of the reason to the beginning of the pre-trial investigation on the grounds defined by the law, is terminated.

## **Article 547. Production of the pre-trial investigation against the deputy of the Parliament of the Republic of Kazakhstan**

1. After registration of the reason to the beginning of the pre-trial investigation in the Unified Register, the pre-trial investigation against the deputy of the Parliament of the Republic of Kazakhstan may be continued only with the consent of the Procurator General of the Republic of Kazakhstan.

In cases where a deputy of the Parliament of the Republic of Kazakhstan is detained at the crime scene or established the fact of the preparation or attempt to commit serious or especially serious crime or he (she) committed a serious or especially serious crime, the pre-trial investigation against him (her) may be extended to obtain the consent of the Procurator General of the Republic of Kazakhstan, but with mandatory notification of him (her) during the day.

A preliminary investigation of cases against deputies of the Parliament of the Republic of Kazakhstan is mandatory.

Procurator General of the Republic of Kazakhstan within two days after receipt of the notification shall study the legality of the procedural actions and agrees to the continuation of

the pre-trial investigation with making a decision about it or denies it with the termination of the pre-trial investigation. If the pre-trial investigation before obtaining the consent of the Procurator General of the Republic of Kazakhstan is continued illegally, its results may not be admitted as evidence in criminal proceedings.

2. Decision on the qualification of the actions of the suspected deputy of the Parliament of the Republic of Kazakhstan shall be made by the Procurator General of the Republic of Kazakhstan.

3. A deputy of the Parliament of the Republic of Kazakhstan during his (her) term of office may not be arrested, subjected to detention, house arrest, drive, prosecuted without the consent of the relevant Chamber to the deprivation of immunity, except in cases of flagrante delicto or committing serious or especially serious crimes.

4. To obtain the consent for criminal prosecution, arrest, detention in custody, house arrest, drive of the deputy of the Parliament of the Republic of Kazakhstan, the Procurator General of the Republic of Kazakhstan submits a representation to the Senate or the Mazhilis of the Parliament of the Republic of Kazakhstan. The representation is submitted before presenting to the deputy a decision on the qualification of the actions of the suspected, making the court an application for sanctioning of a preventive measure in the form of detention in custody, house arrest, resolving the issue on the need for detention, forced to drive of the deputy to the body of pre-trial investigation.

5. The issue of authorizing a preventive measure in the form of detention or house arrest of a deputy of the Parliament of the Republic of Kazakhstan suspected of committing a crime is resolved by the investigating judge of the specialized interdistrict investigative court of the capital on the basis of the resolution of the person conducting the pre-trial investigation, supported by the Prosecutor General of the Republic of Kazakhstan. A petition for the extension of the period of detention or house arrest in respect of a deputy of the Parliament of the Republic of Kazakhstan in accordance with the procedure provided for by this Code may be sent to the court only with the support of the Prosecutor General of the Republic of Kazakhstan.

6. If the relevant Chamber of the Parliament of the Republic of Kazakhstan agrees to the criminal prosecution of the deputy, further investigation shall be conducted in the manner provided by this Code, taking into account the peculiarities stipulated by this Article.

7. If the relevant Chamber of the Parliament of the Republic of Kazakhstan agrees to the arrest, detention in custody, house arrest, the drive, the issue of application to the deputy of the preventive measures, procedural compulsion is decided in the manner provided by this Code.

8. If the relevant Chamber of the Parliament of the Republic of Kazakhstan does not give the consent to bring the deputy to criminal liability, the criminal case shall be terminated on this ground.

9. If the relevant Chamber of the Parliament of the Republic of Kazakhstan does not give the consent to the application to the deputy of the preventive measure, procedural compulsion in the form of detention in custody, house arrest, detention, drive, such measures may not be applied to him (her). In the application to the deputy of the other measures of procedural compulsion the consent of the Chambers of Parliament is not required, and they may be applied in the manner provided by this Code.

10. Supervision of the legality of the pre-trial investigation against a deputy of the Parliament of the Republic of Kazakhstan is carried out by the Prosecutor General of the Republic of Kazakhstan. Sanctions for the conduct of investigative actions, which, according to this Code, are subject to authorization, in respect of a deputy of the Parliament of the Republic of Kazakhstan, are given by the investigating judge of the specialized interdistrict investigative court of the capital on the basis of the resolution of the person conducting the pre-trial investigation, agreed with the Prosecutor General of the Republic of Kazakhstan.

11. Upon completion of the investigation, the criminal case with a report on the completion of the pre-trial investigation is transferred in accordance with the procedure established by this Code to the Prosecutor General of the Republic of Kazakhstan, who performs the actions provided for in Articles 301-305 of this Code. A case investigated against a deputy may be accepted for proceedings by the relevant court only if there is an indictment drawn up by the Prosecutor General of the Republic of Kazakhstan.

**Footnote. Part eleven - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up by the person conducting the pre-trial investigation, a report on the completion of the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;**

**from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;**

**from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).**

Note. In Articles of this Chapter, the deprivation of immunity means the giving consent to criminal prosecution and the application of measures procedural compulsion.

**Footnote. Article 547 as amended by the Law of the Republic of Kazakhstan No. 118-VI dated 21.12.2017 (for the procedure of implementation, see Article 2); No. 291-VI dated December 27, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (see Article 2 for the order of**

entry into force ); dated 05.11.2022 No. 157-VII (shall be enforced ten calendar days after the date of its first official publication).

**Article 548. Production of the pre-trial investigation in respect of the candidate for the President of the Republic of Kazakhstan, the candidate for deputy of the Parliament of the Republic of Kazakhstan**

1. Production of the pre-trial investigation of cases against the candidate for the President of the Republic of Kazakhstan, the candidate for deputy of the Parliament of the Republic of Kazakhstan is carried out by the same rules as in the case of the deputy of the Parliament of the Republic of Kazakhstan with the peculiarities, stipulated by the second part of this Article.

2. Consent to the deprivation of immunity of the candidate for the President of the Republic of Kazakhstan, the candidate for deputy of the Parliament of the Republic of Kazakhstan is requested at the Central Election Commission.

**Article 549. Pre-trial investigation against a Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan**

**Footnote. Title of Article 549 as amended by the Law of the Republic of Kazakhstan dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).**

1. After registration of the reason for the start of a pre-trial investigation in the Unified Register, pre-trial investigation against the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan may be continued only with the consent of the Prosecutor General of the Republic of Kazakhstan.

In cases when the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan is detained at the scene of a crime or the fact of preparation or attempt to commit a grave or especially grave crime is established, or he has committed a grave or especially grave crime, the pre-trial investigation against him may be continued until the consent of the Prosecutor General of the Republic of Kazakhstan is obtained, but with the mandatory notification within 24 hours.

The preliminary investigation of cases against the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan is mandatory.

Procurator General of the Republic of Kazakhstan within two days after receipt of the notification shall study the legality of the procedural actions and agrees to the continuation of pre-trial investigation, making a decision about it or denies it with the termination of the pre-trial investigation. If the pre-trial investigation before obtaining the consent of the Procurator General of the Republic of Kazakhstan is continued illegally, its results may not be admitted as evidence in the criminal case.

2. A resolution on the qualification of the act of the suspected Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan shall be issued by the Prosecutor General of the Republic of Kazakhstan.



3. The Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan during the term of their powers may not be arrested, subjected to detention, house arrest, brought to criminal responsibility without the consent of the Parliament of the Republic of Kazakhstan, to be deprived of immunity, except in cases of detention at the scene of a crime or the commission of grave or especially grave crimes.

4. In order to obtain consent to bring the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan to criminal responsibility, arrest, detention, house arrest, bringing to court, the Prosecutor General of the Republic of Kazakhstan submits a recommendation to the Parliament of the Republic of Kazakhstan. The recommendation is made before presenting to the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan a resolution on the qualification of the suspect's act, submitting a petition to the court for authorizing a preventive measure in the form of detention, house arrest, resolving the need for detention, forcibly bringing him to the pre-trial investigation body.

5. The issue of authorizing a preventive measure in the form of detention, house arrest of the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan suspected of committing a crime is resolved by the investigating judge of the specialized interdistrict investigative court on the basis of the resolution of the person conducting the pre-trial investigation, supported by the Prosecutor General of the Republic of Kazakhstan. A petition for the extension of the period of detention or house arrest in respect of these persons in accordance with the procedure provided for by this Code may be submitted to the court only with the support of the Prosecutor General of the Republic of Kazakhstan.

6. Upon receipt by the Procurator General of the Republic of Kazakhstan of the decision of the Parliament of the Republic of Kazakhstan, further proceedings in the case is made in the manner provided by the sixth, seventh, eighth, ninth, tenth and eleventh parts of Article 547 of this Code.

**Footnote. Article 549 as amended by the Law of the Republic of Kazakhstan No. 180-VI dd. 12.07.2018 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 291-VI dated December 27, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (for the procedure of entry into force, see Article 3).**

#### **Article 550. Production of the pre-trial investigation against the judge**

1. After registration of the reason to the beginning of the pre-trial investigation in the Unified Register, the pre-trial investigation against a judge may be extended only with the consent of the Procurator General of the Republic of Kazakhstan.

In cases where the judge is detained at the crime scene or established the fact of the preparation or attempt to commit serious or especially serious crime or he (she) committed a



serious or especially serious crime, the pre-trial investigation against him (her) may be extended to obtain the consent of the Procurator General of the Republic of Kazakhstan, but with his (her) mandatory notification during the day.

A preliminary investigation of cases against judges is mandatory.

Procurator General of the Republic of Kazakhstan within two days after receipt of the notification shall study the legality of the procedural actions and agrees to the continuation of the pre-trial investigation, making a decision about it or denies it with the termination of the pre-trial investigation. If the pre-trial investigation before obtaining the consent of the Procurator General of the Republic of Kazakhstan is continued illegally, its results may not be admitted as evidence in criminal proceedings.

2. Decision on the qualification of the actions of the suspected judge shall be made by the Procurator General of the Republic of Kazakhstan.

3. A judge may not be detained, subjected to detention in custody, house arrest, drive, prosecuted without the consent of the President of the Republic of Kazakhstan based on a conclusion of the Highest Judicial Council of the Republic of Kazakhstan or in the case stipulated by paragraph 3) of Article 55 of the Constitution of the Republic of Kazakhstan - without the consent of the Senate of the Parliament of the Republic of Kazakhstan to the deprivation of immunity, except in cases of flagrante delicto or committing serious or especially serious crimes.

4. To obtain the consent to criminal prosecution, arrest, detention in custody, house arrest, drive of the judge, the Procurator General of the Republic of Kazakhstan submits a representation to the President of the Republic of Kazakhstan, and in the case stipulated by paragraph 3) of Article 55 of the Constitution of the Republic of Kazakhstan – to the Senate of the Parliament the Republic of Kazakhstan. Representation is submitted before presenting to the judge the decision on the qualification of the actions of the suspected, making the court an application for sanctioning a preventive measure in the form of detention in custody, house arrest, resolving the issue on the need for detention, forced the judge to drive to the body for pre-trial investigation.

5. The issue of authorizing a preventive measure in the form of detention, house arrest of a judge suspected of committing a crime is resolved by an investigating judge of a specialized interdistrict investigative court on the basis of a resolution of a person conducting a pre-trial investigation supported by the Prosecutor General of the Republic of Kazakhstan. A petition for the extension of the period of detention or house arrest in respect of a judge in accordance with the procedure provided for by this Code may be submitted to the court only with the support of the Prosecutor General of the Republic of Kazakhstan.

6. Upon receipt by the Procurator General of the Republic of Kazakhstan of the decision of the President of the Republic of Kazakhstan, the Senate of the Parliament of the Republic of Kazakhstan, further proceedings in the case is made in the manner provided by the sixth, seventh, eighth, ninth, tenth and eleventh parts of Article 547 of this Code.

Footnote. Article 550 as amended by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforce upon the xpiration of ten calendar days after the day of its first official publication); No. 291-VI dated December 27, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced ten calendar days after the date of its first official publication).

## **Article 551. Production of the pre-trial investigation against the Procurator General of the Republic of Kazakhstan**

1. After registration of the reason to the beginning of the pre-trial investigation in the Unified Register, the pre-trial investigation against the Procurator General of the Republic of Kazakhstan may be continued only with the consent of the first Deputy Procurator General of the Republic of Kazakhstan.

In cases where the Procurator General of the Republic of Kazakhstan is detained at the crime scene or established the fact of the preparation or attempt to commit serious or especially serious crime or he (she) committed a serious or especially serious crime, the pre-trial investigation against him (her) may be extended to obtain the consent of the first Deputy Procurator General of the Republic Kazakhstan, but with his (her) mandatory notification during the day.

A preliminary investigation of cases against the Procurator General of the Republic of Kazakhstan is mandatory.

First Deputy Procurator General of the Republic of Kazakhstan within two days after receipt of the notification shall study the legality of the procedural actions and agrees to the continuation of the pre-trial investigation, making a decision about it or denies it with the termination of the pre-trial investigation. If the pre-trial investigation before obtaining the consent of the first Deputy Procurator General of the Republic of Kazakhstan is continued illegally, its results may not be admitted as evidence in criminal proceedings.

2. Decision on the qualification of the actions of the suspected Procurator General of the Republic of Kazakhstan shall be made by the first Deputy Procurator General of the Republic of Kazakhstan.

3. The Procurator General of the Republic of Kazakhstan during his (her) term of office may not be arrested, subjected to detention in custody, house arrest, drive, prosecuted without the consent of the Senate of the Parliament of the Republic of Kazakhstan, on the deprivation of immunity, except in cases of flagrante delicto or committing serious or especially serious crimes.

4. To obtain the consent to criminal prosecution, arrest, detention in custody, house arrest, drive of the Procurator General of the Republic of Kazakhstan, the first Deputy Procurator General submits a representation to the Senate of the Parliament of the Republic of Kazakhstan. Representation is submitted before presenting the Procurator General of the Republic of Kazakhstan a decision on the qualification of the actions of the suspected,

making the court an application for sanctioning of a preventive measure in the form of detention in custody, house arrest, resolving the issue on the need for detention, forced him (her) to drive to the body of pre-trial investigation.

5. Upon receipt by the First Deputy Procurator General of the Republic of Kazakhstan the decision of the Senate of the Parliament of the Republic of Kazakhstan, further proceedings in the case is made in the manner provided by the sixth, seventh, eighth and ninth parts of Article 547 of this Code.

6. The issue of authorizing a preventive measure in the form of detention or house arrest of a suspect in the commission of a crime by the Prosecutor General of the Republic of Kazakhstan is resolved by the investigating judge of the specialized interdistrict investigative court of the capital on the basis of the resolution of the person conducting the pre-trial investigation, supported by the First Deputy Prosecutor General of the Republic of Kazakhstan. A petition for the extension of the period of detention or house arrest in respect of the Prosecutor General of the Republic of Kazakhstan in accordance with the procedure provided for by this Code may be submitted to the court only with the support of the First Deputy Prosecutor General of the Republic of Kazakhstan.

7. The legality of the pre-trial investigation in respect of the General Prosecutor of the Republic of Kazakhstan shall be supervised by his first deputy. Extension of the investigation term in respect of the General Prosecutor of the Republic of Kazakhstan in the manner prescribed by this Code shall be made by the First Deputy General Prosecutor of the Republic of Kazakhstan.

Sanctions for the conduct of investigative actions, which, according to this Code, are subject to authorization, in relation to the Prosecutor General of the Republic of Kazakhstan are given by the investigating judge of the specialized interdistrict investigative court of the capital on the basis of the resolution of the person conducting the pre-trial investigation, agreed with the First Deputy Prosecutor General of the Republic of Kazakhstan.

8. Upon completion of the investigation, the criminal case with a report on the completion of the pre-trial investigation is transferred in accordance with the procedure established by this Code to the First Deputy Prosecutor General of the Republic of Kazakhstan, who performs the actions provided for in Articles 301 - 304 of this Code. A case investigated against the Prosecutor General of the Republic of Kazakhstan may be accepted for proceedings by the relevant court only if there is an indictment drawn up by the First Deputy Prosecutor General of the Republic of Kazakhstan.

**Footnote. Part eight - as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (in terms of drawing up by the person conducting the pre-trial investigation a report on the completion of the pre-trial investigation, drawing up the indictment by the prosecutor and recognizing the person as accused from the moment the prosecutor draws up the indictment, which are put into effect :**

**from January 1, 2022 in relation to cases of especially serious crimes investigated by**

investigators of the internal affairs bodies, the anti-corruption service and the economic investigation service, including those connected with cases of other criminal offenses;

from January 1, 2023 in relation to cases of corruption offenses provided for in paragraph 29) of Article 3 of the Criminal Code of the Republic of Kazakhstan, including those connected with cases of other criminal offenses;

from January 1, 2024 in respect of cases of other criminal offenses completed in the form of a preliminary investigation).

Footnote. Article 551 as amended by the Law of the Republic of Kazakhstan dated 21.12.2017 No. 118-VI (for the procedure of implementation, see Article 2); No. 291-VI dated December 27, 2019 (shall be enforced upon expiry of ten calendar days after the day of its first official publication); dated December 27, 2021 No. 88-VII (See Article 2 for the order of entry into force ); dated 05.11.2022 No. 157-VII (shall be enforced ten calendar days after the date of its first official publication).

### **Article 551-1. Production of a pre-trial investigation against the Commissioner for Human Rights in the Republic of Kazakhstan**

1. After the registration of the reason for the start of the pre-trial investigation in the Unified Register, the pre-trial investigation against the Commissioner for Human Rights in the Republic of Kazakhstan may be continued only with the consent of the Prosecutor General of the Republic of Kazakhstan.

In cases where the Commissioner for Human Rights in the Republic of Kazakhstan is detained at the scene of a crime or the fact of preparation or attempt to commit a grave or especially grave crime is established , or he has committed a grave or especially grave crime, the pre-trial investigation against him may be continued until the consent of the Prosecutor General is obtained. Republic of Kazakhstan, but with obligatory notification within 24 hours.

Preliminary investigation of cases against the Commissioner for Human Rights in the Republic of Kazakhstan is mandatory.

The Prosecutor General of the Republic of Kazakhstan, within two days after receiving the notification, examines the legality of the procedural actions performed and agrees to continue the pre-trial investigation with the issuance of a decision on this, or refuses to do so with the termination of the pre-trial investigation. If the pre-trial investigation is continued illegally before obtaining the consent of the Prosecutor General of the Republic of Kazakhstan, its results cannot be admitted as evidence in a criminal case.

2. The Commissioner for Human Rights in the Republic of Kazakhstan during the term of his powers may not be detained, arrested, subjected to house arrest, brought to criminal responsibility without the consent of the Senate of the Parliament of the Republic of Kazakhstan, except in cases of detention at the scene of a crime or the commission of grave or especially grave crimes.

3. In order to obtain consent to bring the Commissioner for Human Rights in the Republic of Kazakhstan to criminal responsibility, detention, arrest, house arrest, bringing to court, the Prosecutor General of the Republic of Kazakhstan submits a recommendation to the Senate of the Parliament of the Republic of Kazakhstan. The submission is made before presenting to the Commissioner for Human Rights in the Republic of Kazakhstan a resolution on the qualification of the suspect's act, submitting a petition to the court for authorizing a preventive measure in the form of detention, house arrest, resolving the issue of the need for detention, forcibly bringing him to the pre-trial investigation body.

3-1. After the Prosecutor General of the Republic of Kazakhstan receives the decision of the Senate of the Parliament of the Republic of Kazakhstan, further proceedings on the case are carried out in accordance with the procedure established by parts six, seven, eight and nine of Article 547 of this Code.

4. The issue of authorizing a preventive measure in the form of detention or house arrest of a Human Rights Commissioner suspected of committing a crime in the Republic of Kazakhstan is resolved by an investigating judge of a specialized interdistrict investigative court of the capital on the basis of a resolution of the person conducting the pre-trial investigation, agreed with the Prosecutor General of the Republic of Kazakhstan. A petition for the extension of the period of detention or house arrest in respect of the Commissioner for Human Rights in the Republic of Kazakhstan in accordance with the procedure provided for by this Code may be submitted to the court only if it is agreed with the Prosecutor General of the Republic of Kazakhstan..

5. Supervision over the legality of the pre-trial investigation in relation to the Commissioner for Human Rights in the Republic of Kazakhstan is carried out by the Prosecutor General of the Republic of Kazakhstan. Extension of the period of investigation in relation to the Commissioner for Human Rights in the Republic of Kazakhstan in the manner prescribed by this Code shall be carried out by the Prosecutor General of the Republic of Kazakhstan.

Sanctions for the conduct of investigative actions, which according to this Code are subject to authorization, in respect of the Commissioner for Human Rights in the Republic of Kazakhstan are given by the investigating judge of the specialized interdistrict investigative court of the capital on the basis of the resolution of the person conducting the pre-trial investigation, agreed with the Prosecutor General of the Republic of Kazakhstan.

6. Upon completion of the investigation, the criminal case with a report on the completion of the pre-trial investigation is transferred by the person conducting the pre-trial investigation, in accordance with the procedure established by this Code, to the Prosecutor General of the Republic of Kazakhstan, who performs the actions provided for in Articles 301-305 of this Code. A case investigated against the Commissioner for Human Rights in the Republic of Kazakhstan may be accepted for proceedings by the relevant court only if there is an indictment drawn up by the Prosecutor General of the Republic of Kazakhstan.

Footnote. Chapter 57 is supplemented by Article 551-1, in accordance with the Law of the Republic of Kazakhstan dated December 29, 2021 No. 91-VII (shall be enforced ten calendar days after the day of its first official publication); as amended by the Law of the Republic of Kazakhstan dated 05.11.2022 No. 157-VII (shall be enforced ten calendar days after the date of its first official publication).

**Article 552. Trial of a criminal case against a deputy of the Parliament of the Republic of Kazakhstan, a candidate for deputy of the Parliament of the Republic of Kazakhstan, a candidate for President of the Republic of Kazakhstan, Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan, judge, Prosecutor General of the Republic of Kazakhstan, Commissioner for Human Rights in the Republic of Kazakhstan**

Footnote. Title as amended by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 91-VII (shall be enforced ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (shall be enforced from 01.01.2023).

1. The consideration of the case is made by the general rules of the court proceedings subject to the provisions set forth in this Article.

2. The Court has the right to apply to the accused deputy of the Parliament of the Republic of Kazakhstan, a candidate for deputy of the Parliament of the Republic of Kazakhstan, a candidate for President of the Republic of Kazakhstan, the Chairman, Deputy Chairman, judge of the Constitutional Court of the Republic of Kazakhstan, judge, Prosecutor General of the Republic of Kazakhstan, Commissioner for Human Rights in the Republic of Kazakhstan as a preventive measure detention, house arrest, and as a measure of procedural coercion – a bringing to court, having applied with a recommendation for giving consent to this in the manner provided for, respectively, by part four of Article 547, part two of Article 548, part four of Article 549, part four of Article 550, part four of Article 551, part three of Article 551-1 of this Code, if in giving consent to detention, house arrest, bringing to court by the state bodies specified in paragraph 4 of Article 52, paragraph 5 of Article 71, paragraph 2 of Article 79, paragraph 3 of Article 83 and paragraph 3 of Article 83-1 of the Constitution of the Republic of Kazakhstan, during the pre-trial investigation, such consent was refused or not requested.

Footnote. Article 552 as amended by the Law of the Republic of Kazakhstan dated December 29, 2021 No. 91-VII (shall be enforced ten calendar days after the day of its first official publication); dated 05.11.2022 No. 157-VII (for the procedure of entry into force, see Article 3).

**Article 553. Persons with diplomatic immunity from criminal prosecution**

1. In accordance with the legislation of the Republic of Kazakhstan and international treaties, ratified by the Republic of Kazakhstan, the following persons enjoy immunity from criminal prosecution in the Republic of Kazakhstan:

1) heads of diplomatic missions of foreign states, members of the diplomatic staff of these representative offices and their family members, if they live together with them and are not citizens of the Republic of Kazakhstan;

2) on the basis of reciprocity employees of the service staff of diplomatic missions and their family members, who live with them if these employees and their family members are not citizens of the Republic of Kazakhstan, or do not reside permanently in Kazakhstan, heads of consulates and other consular officers in respect of acts, done by them in the performance of official duties, unless otherwise provided by the international treaty of the Republic of Kazakhstan;

3) on the basis of reciprocity, employees of administrative and technical staff of diplomatic missions and their family members who live with them if these employees and their family members are not citizens of the Republic of Kazakhstan, or do not reside permanently in Kazakhstan;

4) diplomatic couriers;

5) heads and representatives of foreign states, members of parliamentary and governmental delegations and, on a reciprocal basis, - employees of foreign delegations arriving in Kazakhstan to participate in international negotiations, international conferences and meetings or with other official assignments or following for the same purpose in transit through the territory of the Republic of Kazakhstan, and members of the families of such persons, accompanying them, if these family members are not citizens of the Republic of Kazakhstan;

6) heads, members and staff of foreign states in international organizations, officials of these organizations located on the territory of the Republic of Kazakhstan on the basis of international treaties or generally accepted international practices;

7) heads of diplomatic missions, members of the diplomatic staff of representative offices of foreign countries in a third country, transiting through the territory of the Republic of Kazakhstan and their family members accompanying these persons, or traveling separately to join them or to return to their country;

8) other persons in accordance with the international treaty of the Republic of Kazakhstan.

2. The persons, referred to in paragraphs 1), 4) - 7) of the first part of this Article, as well as other persons in accordance with international treaty of the Republic of Kazakhstan may be subject to criminal prosecution only if the foreign country will definitely give express waiver of immunity from criminal prosecution. The issue of such waiver is resolved by the Procurator General of the Republic of Kazakhstan through the Ministry of Foreign Affairs of the Republic of Kazakhstan by diplomatic way. In the absence of waiver of the relevant foreign state of immunity from criminal prosecution of these persons, the criminal case shall be terminated.

3. The rules of the second part of this Articles shall not apply to persons referred to in paragraphs 2) and 3) of the first part of this Article, except in cases where the offence



committed by such persons is related to the performance of their official duties, and not directed against the interests of the Republic of Kazakhstan, if otherwise provided by international treaty of the Republic of Kazakhstan.

#### **Article 554. Arrest and detention in custody of the persons enjoying diplomatic immunity**

1. The persons, listed in paragraph 1), 4) - 7) of the first part of Article 553 of this Code, as well as other persons in accordance with the international treaty of the Republic of Kazakhstan enjoy personal inviolability. They may not be arrested or detained in custody, except in cases where it is necessary for the execution of the issued against them sentence that entered into legal force.

2. The persons, referred to in paragraphs 2) and 3) of the first part of Article 553 of this Code may be arrested or detained in custody, unless otherwise provided by international treaty of the Republic of Kazakhstan, only in the case of their prosecution for committing a serious, extremely serious crime or execution of the sentence, entered into legal force.

#### **Article 555. Diplomatic immunity from testifying**

1. The persons listed in paragraphs 1), 3) - 6) of the first part of Article 553 of this Code, as well as other persons in accordance with the international treaty of the Republic of Kazakhstan may not testify as a witness, injured person, and with the consent to give such testimony are not obliged to come to the body conducting the criminal proceedings for this. Call for questioning, handed these persons shall not contain threats of compulsory measures for their failure to appear in the body conducting the criminal proceedings.

2. If these persons at the preliminary investigation are testified as injured persons, witnesses, and do not come to the court hearing, the court may announce their testimony.

3. The persons referred to in paragraph 2) of the first part of Article 553 of this Code, may not refuse to testify as witnesses and injured persons, except for the testimony on matters related to the performance of their official duties. In case of failure of consular officers to testify, they may not be applied measures of procedural compulsion.

4. The persons, enjoying diplomatic immunity, are not obliged to provide the body conducting the criminal proceedings, correspondence and other documents, relating to the performance of their official duties.

#### **Article 556. The diplomatic immunity of premises and documents**

1. The residence of the head of a diplomatic mission, the premise occupied by the diplomatic mission, accommodation of members of the diplomatic staff and their family members, the property located at them, and means of transportation shall be inviolable. Access to these premises, as well as search, seizure, seizure of property may be made only with the consent of the head of the diplomatic mission or the person replacing him (her).

2. On the basis of reciprocity, the immunity provided for by the first part of this Article shall apply to premises occupied by employees of the service staff of diplomatic missions and their family members who live with them if these employees and their family members are not citizens of the Republic of Kazakhstan.

3. The premises, occupied by the consular office and the residence of the head of the consular office enjoy inviolability on the basis of reciprocity. Access to these premises, search, seizure, seizure of property may take place only at the request or with the consent of the heads of the consular offices or diplomatic mission of the relevant foreign state.

4. The archives, official correspondence and other documents of diplomatic missions and consular offices shall be inviolable. They may not be subjected to inspection and seizure without the consent of the head of the diplomatic mission, consular office. The diplomatic mail shall not be unsealed and arrested.

5. The consent of the heads of diplomatic missions and consular offices to access to the premises specified in the first, second and third parts of this Article, their search, seizure, as well as inspection and seizure of the documents, specified in the fourth part of this Article, shall be requested by the procurator through the Ministry of Foreign Affairs of the Republic of Kazakhstan.

6. The search, seizure, inspection in these cases shall be conducted in the presence of the procurator and a representative of the Ministry of Foreign Affairs of the Republic of Kazakhstan.

## **Section 12. International cooperation in criminal proceedings**

### **Chapter 58. General Provisions Article 557. Procedural and other actions, carried out in order to provide legal assistance**

1. In order to provide legal assistance to the competent authorities of foreign states with which the Republic of Kazakhstan has concluded an international treaty, the service of documents, the execution of certain procedural actions, conducting criminal prosecution, extradition of persons (extradition), the temporary extradition of persons (extradition), transit, temporary transfer of persons, the transfer of convicted persons and persons suffering from mental disorders, who applied compulsory medical measures, recognition and enforcement of judgments may be made.

2. International treaty of the Republic of Kazakhstan may provide for other forms of cooperation in the criminal case, not covered by this Code.

3. If the provisions of the international treaty, ratified by the Republic of Kazakhstan, are in conflict with this Code, the provisions of the international treaty shall apply.

### **Article 558. Provision of legal or other assistance on the principle of reciprocity**

1. In the absence of an international treaty of the Republic of Kazakhstan legal or other assistance may be provided upon request of a foreign state or requested by the central authority of the Republic of Kazakhstan on the principle of reciprocity.

2. The central authority of the Republic of Kazakhstan, directing such request letter to a foreign state, guarantees to the requested party to consider the future its request for the provision of the same kind of legal assistance.

3. In accordance with the provisions of the first part of this Article, the central authority of the Republic of Kazakhstan shall consider a request of a foreign state only if there is a written guarantee of the requesting party to accept and consider the future request of the Republic of Kazakhstan on the principle of reciprocity.

4. The central authority of the Republic of Kazakhstan when applying for legal assistance and provision of legal assistance to a foreign state on the principle of reciprocity is governed by this Code.

5. In the absence of an international treaty with a foreign state, the central authority of the Republic of Kazakhstan shall send a request for legal assistance to the requested party by the diplomatic way.

#### **Article 559. The central authorities**

1. The Office of the Procurator General of the Republic of Kazakhstan or an authorized prosecutor shall submit requests (instructions, petitions) for legal assistance in the course of legal proceedings requiring the approval of an investigating judge (court), the conduct of criminal proceedings, the extradition of persons (extradition), temporary extradition (extradition) or transit, temporary transfer of persons, the transfer of convicted persons and persons suffering from mental disorders who have been subjected to coercive medical measures, the recognition and enforcement of sentences and executions

2. The Supreme Court of the Republic of Kazakhstan makes requests (orders, petitions) of the courts for legal assistance during court proceedings, and considers such requests of foreign courts.

3. The competent authority of the Republic of Kazakhstan shall apply to the competent authority of a foreign state with requests (instructions, petitions) for legal assistance in the course of proceedings that do not require the sanction of an investigating judge (court), and shall consider the relevant requests of foreign competent authorities.

**Footnote. Article 559 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 560. The request for legal assistance**

1. The request (order, petition) for legal and other assistance shall be made by the competent authority in accordance with the requirements of this Code and (or) the relevant international treaty of the Republic of Kazakhstan.

2. The request (order, petition) and the attached documents shall be made in writing on the appropriate blank, and certified by the signature of the authorized official and the official stamp of the relevant authority.

3. The request (order, petition) and the attached documents shall be accompanied by a translation into a language specified by the relevant international treaty of the Republic of Kazakhstan, and in its absence – into the official language of the requested party or other language acceptable to this party.

4. The request (order, petition) shall be sent by the central authority of the Republic of Kazakhstan to the foreign states by mail, and in urgent cases - by e-mail, fax or other means of communication. In this case, the original request shall be sent by mail not later than three days after its sending by e-mail, fax or other means of communication.

5. In the event of a failure in the direction of the request (order, petition), all the materials shall be returned by the central body of the Republic of Kazakhstan to the appropriate authority, leading the process, outlining the deficiencies that shall be addressed, or explaining the reasons of the impossibility for the direction of the order.

6. The central authority of the Republic of Kazakhstan may take into consideration the request (order, petition) received from requesting party by e-mail, fax or other means of communication. Execution of such request (order, petition) is carried out exclusively, subject to confirmation of sending or transfer of its original. The direction to the competent authority of a foreign state, the materials of the executed request (order, petition) is only possible in the receipt by the central body of the Republic of Kazakhstan of the original request.

#### **Article 561. Storage and transfer of material evidence**

1. Material evidence, transferred by the requested party in execution of a request (order, petition) of the competent authority of the Republic of Kazakhstan, shall be kept in the manner provided by this Code, and after the end of the proceedings shall be returned to the requested party if there is no other agreement between the parties.

2. During the transfer to the competent authority of the requesting party of material evidence in order to execute the request (order, petition), the competent authority of the Republic of Kazakhstan may waive the requirement for their return to the Republic of Kazakhstan after the end of the criminal proceedings in the requesting party, if there is no need for their use in the territory of the Republic of Kazakhstan for the pre-trial investigation and trial of other criminal proceedings or legitimate claims of third parties on the right to the relevant property or the dispute concerning it, is considered in the court.

#### **Article 562. The validity of official documents**

1. Documents, directed in connection with the request (order, petition) for legal and other assistance, if they are drawn up, certified in the relevant form by the official of the competent authority of the requesting or requested party and sealed by the competent authority, shall be accepted on the territory of the Republic of Kazakhstan without further certification (legalization).

2. The procedural status of the participant to the criminal proceedings, conducted in a foreign country does not need additional establishment according to the rules of this Code in the execution of the request (order, petition) in the Republic of Kazakhstan.

#### **Article 563. Admissibility of evidence, obtained in foreign country**

Evidence obtained in a foreign country by its officials in the execution by them of the requests (orders, petitions) for legal assistance or sent to the Republic of Kazakhstan as annexed to the request (petition) on the execution of the criminal prosecution in accordance with international treaties of the Republic of Kazakhstan or on the basis of the principle of reciprocity, certified and transferred in accordance with the established procedure, shall be recognized as valid if during their receipt the principles of fair trial, human rights and fundamental freedoms are not violated.

#### **Article 564. The costs, associated with the provision of legal assistance**

1. The costs, associated with the provision of legal assistance in the territory of the Republic of Kazakhstan are carried out at the expenses, provided by the state budget for the maintenance of the bodies for pre-trial investigation, procuracy, court and other institutions of the Republic of Kazakhstan, which are assigned to the execution of requests (orders, petitions) for legal assistance in the territory of the Republic of Kazakhstan, except for cases stipulated by the second part of this Article.

2. Unless otherwise stipulated by international treaties of the Republic of Kazakhstan, the costs arising from the execution of a request (order, petition) for legal assistance related to:

1) calling on the territory of the requesting party of the participants to the criminal proceedings, including in the case of temporary transfer of persons;

2) conducting examinations;

3) safety of participants in criminal proceedings;

4) transit through the territory of a third country of the person, issued by the requesting party, - shall be reimbursed at the expense of the requesting party.

#### **Chapter 59. Legal assistance Article 565. Content and form of the request (order, petition) for legal assistance**

1. The request (order, petition) for legal assistance shall contain:

1) the name of the body which sends the request (order, petition);

2) the name and address of the body to which the request (order, petition) is directed;  
3) the reference to the relevant international treaty or reciprocity;  
4) the name of the criminal case in respect of which legal assistance is requested;  
5) a brief description of the criminal offence, which is the subject of criminal proceedings and its legal qualification with the full text of the relevant Articles of the Criminal Code of the Republic of Kazakhstan, and if necessary - the data on the amount of damage, caused by the act;

6) information about the reported suspicion, charge with the full text of the relevant Articles of the Criminal Code of the Republic of Kazakhstan;

7) information about the person concerned, in particular his (her) surname, first name, middle name (if any), procedural status, place of residence or stay, nationality, for legal entities - their name and location, and other information that may contribute to the execution of the request (order, petition), as well as the relationship of the person with subject of the criminal proceedings;

8) a statement of the circumstances to be clarified, as well as the list of required procedural actions, documents, material and other evidence and justification of their connection with the subject of criminal proceedings;

9) information on persons, whose presence is deemed necessary in carrying out the proceedings, and a justification of the need.

2. The request (order, petition) to interrogate a person as a witness, injured person, expert, suspected or defendant is attached by the certified by the competent authority statement of the relevant Articles of this Code to clarify the person of his (her) procedural rights and obligations. The request (order, petition) also shall contain a list of questions to be put to the person or the information that shall be obtained from the person.

3. The request (instruction, petition) for procedural actions requiring the sanction of the investigating judge (court) in accordance with this Code or confiscation of property shall be accompanied by original or certified copies of the reasoned decisions of the competent authority on their proceedings.

4. The request (order, petition) for legal assistance in the form of confiscation shall additionally specify information about the property located on the territory of the Republic of Kazakhstan and subject to confiscation, as well as information about the owner, owner of this property, including data on the date and place of their birth, citizenship, occupation, place of residence or place of location, and for legal entities – their name and location.

The request (order, petition) for legal assistance in the form of confiscation may contain other information, including phone numbers, fax numbers, e-mail addresses, if they are necessary for the correct and timely consideration of the request (order, petition) for legal assistance.

5. Documents provided for by an international treaty of the Republic of Kazakhstan shall be attached to the request (order, petition) for legal assistance in the form of confiscation, and

if this is not provided for by an international treaty of the Republic of Kazakhstan, the following documents shall be attached:

- 1) a copy of a verdict, resolution or other decision of a foreign court certified by a foreign court, which provides for the confiscation of property located on the territory of the Republic of Kazakhstan, as well as evidence of their entry into force;
- 2) evidence confirming the presence of property subject to confiscation on the territory of the Republic of Kazakhstan;
- 3) translation of the documents specified in paragraphs 1) and 2) of this part in Kazakh and Russian languages.

**Footnote. Article 565 as amended by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Article 566. Consideration of the request (order, petition) for legal assistance**

1. The Central authority of the Republic of Kazakhstan or the body authorized for communication, according to the review of the request (order, petition) for legal assistance shall be decided on:

- 1) order its execution to the body of pre-trial investigation, procuracy or the court;
- 2) the possibility of execution of the request (order, petition) with application of the rules of procedural legislation of a foreign state;
- 3) postponement of execution of the request (instructions, requests), if it may interfere in criminal proceedings in the territory of the Republic of Kazakhstan;
- 4) failure to execute the request (order, petition) on the grounds provided for in Article 569 of this Code;
- 5) the possibility of execution of the request (order, petition), if the cost of this performance clearly exceed the applied criminal offence harm or clearly do not meet the severity of a criminal offence, and if it is not contrary to the provisions of the international treaty of the Republic of Kazakhstan.

2. In the event of a decision to satisfy the request (order, petition), the central authority of the Republic of Kazakhstan or the body authorized for communication, sends a request (order , petition) to the competent authority of the Republic of Kazakhstan for execution. In cases stipulated by an international treaty, the central authority of the Republic of Kazakhstan also takes a decision on the presence of a representative of the competent authority of the requesting party in the execution of the request (order, petition) for legal assistance.

3. Within the limits of its authority the appropriate procurator may give instructions with regard to ensuring the proper, full and timely execution of the request (order, petition) for legal assistance. The instructions of the procurator are binding on the competent authority of the Republic of Kazakhstan.



## **Article 567. The report on the results of consideration of the request (order, petition) for legal assistance**

1. In case of satisfying the request (order, petition) for legal assistance, the central authority of the Republic of Kazakhstan or the body authorized for communication shall ensure the transmission to the requesting party materials, obtained as a result of execution of the request (order, petition).

2. In case of refusal to satisfy the request (order, petition) for legal assistance, the central body of the Republic of Kazakhstan or the body authorized for communication informs the requesting party about the reasons for refusal, as well as the conditions under which the request (order, petition) may be considered repeatedly, and returns the request (order, petition).

3. If there are grounds for refusing to satisfy the request (order, petition) for legal assistance or postponing its execution, the central authority of the Republic of Kazakhstan or the body authorized for communication, may agree with the requesting party the procedure of execution of the request under certain restrictions. If the requesting party agrees to certain conditions, the request shall be satisfied after fulfillment of the conditions by the requesting party.

## **Article 568. Confidentiality**

1. At the request of the requesting party, the central body of the Republic of Kazakhstan or the body authorized to carry out communications takes additional measures to ensure confidentiality of the fact of receipt of a request (order, petition) for legal assistance, its content and information obtained as a result of its execution.

2. If necessary, the conditions and terms of storage of confidential information, obtained as a result of execution of the request (orders, requests) are agreed.

3. When transferring materials to the competent authority of a foreign state, the central authority of the Republic of Kazakhstan or the body authorized for communication, may establish, in accordance with this Code and the international treaty of the Republic of Kazakhstan restrictions on the use of such materials.

4. If as a result of execution in the Republic of Kazakhstan of the request (order, petition) for legal assistance, the information contained state secrets is received, they may be transferred to the requesting party, provided that such information does not harm the interests of the Republic of Kazakhstan or other state, which provides it to the Republic of Kazakhstan, only if there is agreement on the mutual protection of secret information and in accordance with the stipulated by it requirements and rules.

Footnote. Article 568 as amended by the Law of the Republic of Kazakhstan dated 01.07.2022 No. 131-VII (shall be enforced sixty calendar days after the date of its first official publication).

**Article 569. Refusal to execute the request (order, petition) for legal assistance**

1. The requesting party may be refused to satisfy the request (order, petition) for legal assistance in cases, stipulated by international treaties of the Republic of Kazakhstan.

2. In the absence of an international treaty of the Republic of Kazakhstan in the execution of the request (order, petition) it shall be refused if:

1) execution of the request (order, petition) will contradict the legislation of the Republic of Kazakhstan or may harm the sovereignty, security, public order or other essential interests of the Republic of Kazakhstan;

2) the requesting party does not provide reciprocity in this area;

3) a request (order, petition) for the production of procedural actions requiring the sanction of an investigating judge (court) concerns an act that is not a criminal offense in the Republic of Kazakhstan;

4) there are reasonable grounds for believing that the request (order, petition) is sent for the purpose of prosecution, conviction or punishment of a person on grounds of his (her) origin, social, official or property status, sex, race, nationality, language, religion, convictions, place of residence or any other circumstances.

Footnote. Article 569 as amended by the Law of the Republic of Kazakhstan dated 01.07.2022 No. 131-VII (shall be enforced sixty calendar days after the date of its first official publication).

**Article 570. The order of execution of the request (order, petition) for legal assistance**

1. The body, conducting the criminal proceedings, executes the transferred to it in the provided manner request (order, petition) for legal assistance by the general rules of this Code

2. In the execution of the request (order, petition) the rules of procedural legislation of a foreign state may be applied, if it is provided by an international treaty of the Republic of Kazakhstan with this State.

3. If the request (order, petition) for legal assistance may not be executed, the received documents shall be returned in the provided manner to the requesting party stating the reasons to prevent its execution.

**Article 571. Procedural actions, requiring special permission**

If in order to execute a request (assignment, petition) it is necessary to carry out a procedural action requiring the sanction of an investigating judge (court), such action shall be

carried out only if the appropriate sanction is obtained in the manner prescribed by this Code, even if the legislation of the requesting party does not provide for it. The grounds for deciding whether to authorize such proceedings are the materials of the request of the requesting party.

**Footnote. Article 571 as amended by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Article 572. The presence of representatives of the competent authorities of the requesting state**

1. The representative of the competent authority of a foreign country, permission for the presence of which is granted in accordance with the requirements of this Code, shall not have the right to conduct any procedural actions on the territory of the Republic of Kazakhstan. If they are present during the procedural actions, such representatives shall comply with the legislation of the Republic of Kazakhstan.

2. Persons, referred to in the first part of this Article, shall have the right to be present during procedural actions, apply and make comments on the procedure of their execution, which shall be included in the protocols of the procedural action, and with the permission of the investigator, the body of inquiry, the procurator or the court ask questions, as well as make recordings, including with the use of scientific and technical means.

#### **Article 573. Presentation of documents**

1. At the request (order, petition) for legal assistance the documents and decisions enclosed to this request (order, petition) shall be given to the person specified in the request (order, petition), in the manner provided by this Article.

2. The investigator, the body of inquiry, the procurator or the court for execution of the request (order, petition) for legal assistance shall call the person to the delivery of documents. If the person does not appear without good reason, he (she) may be driven in the manner provided by this Code.

3. The investigator, the body of inquiry, the procurator or the court makes a protocol on the delivery of the documents to the person with the location and the date of delivery. The protocol shall be signed by the person who submitted the documents, stating his (her) statements or comments in the delivery of documents. In cases stipulated by international treaties of the Republic of Kazakhstan, it is also made a separate statement, which shall be signed by the person, who received the documents, and the person delivered them.

4. If the person refuses to receive the documents to be delivered, this is indicated in the protocol. At the same time the documents to be delivered, shall be deemed as delivered, and this is indicated in the protocol.

5. If the documents to be delivered, do not contain a translation into Kazakh or Russian language and made in the language in which the person named in the request (order, petition)

does not speak, such a person has the right to refuse to receive the documents. In this case, the delivery of documents is not considered as valid.

#### **Article 574. Temporary transfer**

1. If to testify or otherwise participate in the procedural actions in a criminal case, the presence of a person in custody or serving a sentence of imprisonment in a foreign country and is not subject to criminal prosecution in the criminal case, is required, the body conducting the criminal proceedings shall make a request for a temporary transfer of the person in the Republic of Kazakhstan.

2. In the case of satisfaction by the requested party of the request for a temporary transfer of a person, such person shall be returned after carrying out the procedural actions for which he (she) was transferred in the agreed with a foreign country term.

In case of insufficiency of the agreed period for temporary transfer, the body conducting the criminal proceedings, not later than twenty days before its expiry shall send to the Central authority of the Republic of Kazakhstan the request for the extension of the deadline for an agreement with a foreign state.

3. The decision of the competent authority of a foreign state to detain a person in custody or his (her) sentence of imprisonment shall be the grounds for detention of the person in the Republic of Kazakhstan, who is temporarily transferred to the Republic of Kazakhstan.

4. The temporary transfer of the person to a foreign state, who is serving a sentence in the territory of the Republic of Kazakhstan, shall be possible at the request of the competent authority of a foreign state under the conditions, provided for in the first and second parts of this Article.

5. The temporary transfer of the person shall be carried out only with the written consent of such person.

#### **Article 575. Calling a person, who is outside the Republic of Kazakhstan**

1. A person who is outside the Republic of Kazakhstan shall be called by a writ for the production of procedural actions in the territory of the Republic of Kazakhstan based on the request (order, petition) for legal assistance. Such person shall be informed in advance of the call. The called person other than the suspected, accused and convicted persons shall be reported about the amount and manner of compensation of costs associated with the call.

2. A witness, a victim, a civil plaintiff, a civil defendant, their representatives, an expert located outside the territory of the Republic of Kazakhstan, who appeared on a call, cannot be on the territory of the Republic of Kazakhstan, regardless of their citizenship, brought to criminal or administrative liability, taken under custody or subjected to other measures of procedural coercion for acts or on the basis of sentences that took place before the said persons crossed the State Border of the Republic of Kazakhstan.

Such persons may not be brought to responsibility, detained or punished in connection with their testimony as a witness, injured person or conclusions as experts in connection with the criminal case in which they are called.

3. The called person loses the guarantees, provided for in this Article, if he (she) does not leave the territory of the Republic of Kazakhstan within fifteen days, or such other period as stipulated by international treaties of the Republic of Kazakhstan, from the receipt of written notification of the body conducting the criminal proceedings, on the absence of necessity to conduct the procedural actions with his (her) participation, or if he (she) returns voluntarily. This term does not include the time during which the person not by his (her) fault could leave the territory of the Republic of Kazakhstan, having the opportunity.

**Footnote. Article 575 as amended by the Law of the Republic of Kazakhstan dated 16.11.2020 No. 375-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 576. Conducting procedural actions via video**

1. Procedural actions at the request of the competent authority of a foreign state shall be conducted at the location of a person using a video in the following cases:

- 1) the impossibility of arriving of the called persons to the competent authority of a foreign state;
- 2) to ensure the safety of persons;
- 3) other grounds, provided by international treaty of the Republic of Kazakhstan.

2. Procedural actions via video shall be conducted in the manner provided by the procedural law of the requesting party to the extent that such a procedure is not contrary to the principles of criminal procedure legislation of the Republic of Kazakhstan.

3. The competent authority of the requesting party shall ensure the participation of an interpreter during the video.

4. If during a procedural action a violation of the procedure established in the second part of this Article is found, the body conducting the proceedings shall inform the participants of the procedural action and suspend it in order to take measures to eliminate the violations. Procedural actions continue only after consultation with the competent authority of the requesting party of the necessary changes in the procedure.

5. The protocol of the procedural action and the video shall be sent to the competent authority of the requesting party.

6. According to the rules laid down in this Article, the procedural actions via video are conducted at the request of the competent authority of the Republic of Kazakhstan.

#### **Article 577. The search, seizure and confiscation of property**

1. On the basis of the request (order, petition) for legal assistance, the competent authorities of the Republic of Kazakhstan carry out procedural actions under this Code in order to identify and seizure of property, money and valuables, obtained by criminal means, as well as property belonging to the suspected, accused or convicted persons.

2. In the seizure of the property, specified in the first part of this Article, the necessary measures are provided to ensure its preservation before the court's decision regarding a given property, as the requesting party is notified.

3. At the request of the requesting party the property discovered:

1) may be arrested in accordance with the requirements of Article 571 of this Code, and transferred to the competent authority of the requesting party as evidence for criminal proceedings or for the return to the owner;

2) may be confiscated if it is stipulated by the sentence or other court decision of the requesting party, entered into force.

The recognition of the sentence or other court decision of the requesting party on the confiscation of the property is made according to the procedure provided for in Article 608 of this Code.

4. The property, which is seized in accordance with paragraph 1) of the third part of this Article, is not transmitted to the requesting party or its transfer may be delayed or may be at the time when the property is necessary for the purposes of civil or criminal proceedings in the Republic of Kazakhstan or may not be exported abroad for other reasons provided by the law.

5. The property, confiscated in accordance with paragraph 2) of the third part of this Article, is transferred to the income of the Republic of Kazakhstan, except for cases specified in the sixth part of this Article.

6. At the request of the central authority of the Republic of Kazakhstan, the court may decide on the transfer of property, confiscated in accordance with paragraph 2) of the third part of this Article, as well as its monetary equivalent:

1) to the requesting party, which decided on the confiscation of compensation for injured persons of damage caused by a criminal offence;

2) in accordance with international treaties of the Republic of Kazakhstan regulating the issue of distribution of confiscated property or its cash equivalent.

7. At the request of the requesting party, the competent authorities of the Republic of Kazakhstan may also take other procedural measures provided for by international treaties of the Republic of Kazakhstan.

8. Requests provided for in this article shall be considered by a court at the place of residence or location in the Republic of Kazakhstan of a person in respect of whose property a decision on confiscation was made by a verdict, resolution or other decision of a court of a

foreign state, and if this person does not have a place of residence or location in the Republic of Kazakhstan or his location is unknown – at the location in the Republic of Kazakhstan of his property, which is subject to confiscation.

**Footnote. Article 577 as amended by the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

**Article 578. The establishment and activities of joint investigative, investigative-operational groups**

1. To carry out the pre-trial investigation of circumstances of the criminal offences, committed on the territory of several states, or if the interests of these states are violated, the joint investigative, investigative-operational groups may be created.

2. The General Procurator's Office of the Republic of Kazakhstan shall consider and decide on the establishment of joint investigative, investigative-operational groups at the request of the bodies of pre-trial investigation of the Republic of Kazakhstan and the competent authorities of foreign states.

3. The members of the joint investigative, investigative-operational group directly interact with each other, agree on the basic directions of the pre-trial investigation, procedural actions, exchange the information received. Coordination of their activities is carried out by the initiator of the joint investigative, investigative-operational group or one of its members.

4. Investigative (search) and other procedural actions are carried out by members of a joint investigative, investigative-operational group of the state in whose territory they are held

**Chapter 60. Extradition of persons (extradition) Article 579. The request for extradition of a person (extradition)**

1. The request for extradition of a person (extradition) is sent on the condition that at least one of the offences for which extradition of a person (extradition) is requested, is punishable by the imprisonment for a term not less than one year or a person is sentenced to the imprisonment and the unexpired term of not less than six months.

2. The request of the competent authority of a foreign state for extradition of a person (extradition) may only be considered if they meet the requirements stipulated by the first part of this Article.

3. The requests for the temporary extradition of a person (extradition) and the transit of a person are sent in the same manner as requests for extradition of a person (extradition).

4. The General Procurator's Office of the Republic of Kazakhstan has the right to deny the competent authority of the Republic of Kazakhstan in the direction of a request to a



foreign state if there are the circumstances, provided by this Code or an international treaty of the Republic of Kazakhstan that may impede the extradition of a person (extradition).

**Article 580. The procedure for preparation of documents and requests for extradition of a person (extradition)**

1. In the case and order, provided by this Code and the international treaties of the Republic of Kazakhstan, the body conducting the criminal proceedings applies for extradition of a person (extradition) that committed a crime on the territory of the Republic of Kazakhstan and left its territory, to the General Procurator's Office of the Republic of Kazakhstan with the application of the necessary documents.

2. The request for extradition of a person (extradition) shall be in writing and shall contain :

- 1) the name of the authority, responsible for the criminal case;
- 2) the name, first name, patronymic (if any) of the suspected (the convicted), the date of birth, nationality, photographs;
- 3) a statement of the factual circumstances of the crime committed, bringing the text of the law, providing the responsibility for this crime, with the mandatory indication of the sanction;
- 4) the information on the place and time of sentence that entered into force, or the decision on the qualification of the acts of the suspected.

3. A request for extradition of a person (extradition) shall be attached with:

- 1) certified copies of the decision on determining the preliminary qualification of the act of the suspect, the indictment, the record of the accusation, the record of the accelerated pre-trial investigation, the decision of the investigating judge or court on the detention of the person, if extradition of the person (extradition) is requested for bringing to criminal responsibility;
- 2) a copy of the sentence with a certificate of its entry into force, if the extradition of a person (extradition) is requested for the enforcement of the sentence;
- 3) extracts from the Criminal code of the Republic of Kazakhstan, containing articles, which qualify the crime, and provided for them statute of limitations;
- 4) the conclusion of the authorized body of the Republic of Kazakhstan on citizenship of the person whose extradition (extradition) is sought;
- 5) certificate of the unserved part of the punishment, if the extradition of the person (extradition), who has already served a part of the sentence is requested;
- 6) other information required by an international treaty of the Republic of Kazakhstan, which also applies to the foreign state on the territory of which the person wanted is established.

4. The Procurator General of the Republic of Kazakhstan or his (her) deputy on the grounds stipulated by international treaties of the Republic of Kazakhstan, appeals to the

competent authority of a foreign state with the request for extradition of a person (extradition) to the Republic of Kazakhstan.

**Footnote. Article 580 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 581. Temporary extradition of a person (extradition)**

1. If the delay in extradition of a person (extradition) may result in expiration of the statute of limitations for criminal liability or loss, the loss of evidence in a criminal case, the request for temporary extradition of a person (extradition) which is prepared in accordance with the procedure provided for in Article 580 of this Code may be sent.

2. In the case of satisfying a request for a temporary extradition of a person (extradition), the person shall be returned to the appropriate foreign state at the agreed time.

3. If necessary, the body conducting the proceedings prepares the documents for an extension of temporary extradition of a person (extradition), which are sent to the Procurator General of the Republic of Kazakhstan no later than twenty days before the expiry of the temporary extradition of a person (extradition).

#### **Article 582. The limits of criminal liability of the extradited (extradited) person**

1. A person, extradited (extradited) to a foreign state may not be prosecuted, punished for a crime that is not associated with the extradition (extradition), without the consent of the issuing state.

2. A person, extradited (extradited) to a foreign state may not be transferred to a third state without the consent of the issuing state.

3. The rules of the first and second parts of this Article shall not apply to offences committed by the person after his (her) extradition (extradition), as well as if the extradited (extradited) person before the expiration of thirty days after the end of the criminal proceedings, and in the case of a conviction - before the expiration of thirty days after serving the sentence or release from it does not leave the territory of the requesting party, or if he (she) returns here voluntarily. This term does not include the time during which the extradited (extradited) person could not leave the territory of the requesting party for reasons beyond his (her) control.

#### **Article 583. Information on the results of criminal proceedings against the extradited (extradited) person**

The procurator sends to the Procurator General of the Republic of Kazakhstan the information on the results of criminal proceedings against the extradited (extradited) person for further information of the authorized body of the requested party.

## **Article 584. Calculation of periods of detention**

1. The beginning of the period of detention applied to the extradited (extraditioned) person as a measure of restraint is calculated from the moment he crosses the State Border of the Republic of Kazakhstan.

2. The time of arrest and detention in custody of the person extradited to the Republic of Kazakhstan in the territory of a foreign state, as well as his (her) transfer is included in the total period of his (her) detention in sentencing.

3. The time of detention in custody of the person in the territory of the Republic of Kazakhstan during the temporary extradition (extradition) shall not be counted in the term of serving by this person the punishment, imposed by the court sentence of the Republic of Kazakhstan.

**Footnote. Article 584 as amended by the Law of the Republic of Kazakhstan dated November 16, 2020 No. 375-VI (shall be enforced ten calendar days after the day of its first official publication).**

## **Article 585. Detention during the transit and temporary extradition of a person (extradition)**

The decision of the competent authority of a foreign state to detain a person in custody or his (her) sentence of imprisonment shall be grounds for detention in the territory of the Republic of Kazakhstan of the persons who:

- 1) transported in transit through the territory of the Republic of Kazakhstan;
- 2) temporarily extradited (extradited) to the Republic of Kazakhstan.

## **Article 586. Rights of the person, whose extradition (extradition) is requested**

1. A person in respect of which the issue of extradition of a person (extradition) to a foreign state is considered, shall have the right to:

- 1) know for which offence a request for his (her) extradition (extradition) is received;
- 2) have a defense counsel and meet him (her) upon conditions ensuring the confidentiality of communication, to have defense counsel present during interrogation;
- 3) in the case of detention - to notify close relatives, family members or other persons of the detention and the place of his (her) stay;
- 4) participate in the court's consideration of matters related to his (her) detention and request for his (her) extradition (extradition);
- 5) examine the request for extradition (extradition) or get its copy;
- 6) appeal against the decision on detention, application of extradition arrest and satisfy the request for extradition;
- 7) express at the hearing his (her) view on the request for extradition (extradition).

2. If the person, in respect of which the issue of extradition (extradition) is considered, is a foreigner and detained in custody, he (she) shall have a right to meet with representatives of the diplomatic or consular mission of the state.

#### **Article 587. Features of detention of a person, who committed a criminal offence outside the Republic of Kazakhstan**

1. Detention on the territory of the Republic of Kazakhstan of the person sought by a foreign state for committing an offence shall be made by an official of the body of criminal prosecution in accordance with the procedure provided for in Article 131 of this Code.

2. Within seventy-two hours the identity of the detained person, his (her) nationality shall be established, the information about the circumstances of the offence, the text of the article, according to which the act is considered a crime, the decision of the competent authority to take him (her) into custody and the wanted, as well as the confirmation of the necessity of taking a person into custody shall be requested from the initiator of the search.

3. The request of the competent authority of a foreign state about taking a person in custody until the requirement of the extradition (extradition) may be transmitted by post, telegraph, telex, fax and other types of communication.

4. The detained person shall be released immediately if:

1) within seventy-two hours of detention, he (she) is not delivered to the investigating judge for a review of the request for temporary detention or application of the extradition arrest to him (her);

2) it is established the circumstances under which extradition (extradition) is not made.

#### **Article 588. The temporary detention of a person**

1. After reviewing the submissions and the availability of sufficient grounds to believe that the arrested is the person from the wanted list, and in the absence of the grounds set out in Article 590 of this Code, the procurator makes within twelve hours before the expiration of the seventy-two hour period of detention of the person to the district and equivalent court the application for temporary detention for a period of forty days from the moment of detention or other period, established by the relevant international treaty of the Republic of Kazakhstan before the request for his (her) extradition (extradition).

2. The application shall be attached by:

1) the protocol of detention of a person;

2) the documents containing information about a person who committed a crime in a foreign country and choosing a preventive measure to him (her) by the competent authority of a foreign state;

3) the documents confirming the identity of the detainee.

3. The investigating judge shall immediately, but not later than seventy-two hours after the arrest of the person, consider the application and issue an order for temporary detention or refusal to grant temporary detention.

4. In the event that a decision is made to refuse temporary detention, the investigating judge simultaneously makes a decision on keeping the wanted person in custody for the revision period, at the petition of the prosecutor of the decision, and consideration of a case in the regional court or court equated to it.

5. Appeal, revision at the request of the prosecutor and verification of the legality and validity of this decision of the investigating judge are carried out in the manner provided for in Article 107 of this Code.

6. On temporary detention of the person the procurator shall immediately notify the institution of a foreign country, sending or is able to send a request for extradition (extradition), a request for extradition arrest, with the proposed time and place of delivery (extradition).

7. The administration of place of detention not later than ten days before the expiry of the period of detention of such person in custody shall notify the procurator.

8. The person who is temporarily detained shall be released by the procurator if:

1) there is no a request for extradition (extradition) from the requesting party within forty days;

2) the extradition arrest is not applied within forty days;

3) it is known the circumstances that exclude the possibility of extradition (extradition).

9. Release of a person does not create barriers to apply to the court with a repeated request for his (her) detention and extradition (extradition) in the manner provided by this Code, if the request for extradition of a person (extradition) will come later.

10. In the event of a request for extradition of a person (extradition) before the expiry of the temporary detention, the decision of the investigating judge on the temporary detention becomes null and void from the moment of the investigating judge ruling on the application of extradition arrest in relation to the person.

**Footnote. Article 588 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 180-VI of 12 July 2018 (shall be enforced upon the expiration of ten calendar days after its first official publication).**

#### **Article 589. The extradition arrest**

1. After receiving by mail, telegraph, telex, fax and other types of communication the request from the requesting party for the extradition of the wanted person (extradition), the procurator shall make to the district and equivalent court in the place of detention of the person the request for the application of extradition arrest to the person for the purpose of extradition (extradition).

2. Along with the request, the following documents shall be submitted to the investigating judge:

- 1) a copy of the request of the competent authority of a foreign state for extradition of a person (extradition), certified by the appropriate authority of the Republic of Kazakhstan;
- 2) the documents on the nationality of the person;
- 3) the available materials of the extradition check.

3. The investigating judge considers the application and issues an order for the use of extradition arrest or refusal to use extradition arrest.

4. In considering the application, the investigating judge examines civil identity of the person sought, as well as whether the act for which his (her) extradition (extradition) is sought, is an offence punishable by imprisonment, without examining the question of guilt and checking the legality of procedural decisions, adopted by foreign authorities in the case against the person whose extradition (extradition) is requested.

5. The appeal and revision, at the petition of the prosecutor of the given resolution of the investigating judge are carried out in accordance with the procedure provided in Article 107 of this Code to the regional court or equated to it court, which verifies its legality and validity in accordance with part four of this Article.

6. In the event that a decision is made to refuse the application of an extradition arrest, the investigating judge shall simultaneously decide on keeping the wanted person in custody for the revision period, at the petition of the prosecutor of the decision and the case consideration in the regional court or equated to it court.

7. Extradition arrest in respect of the person subject to extradition (extradition) is used for a period of twelve months from the date of his (her) arrest, and against the person requested to enforcement of the court sentence, no more than for the period to which he (she) is convicted in the requesting state.

8. The administration of the place of detention not later than ten days before the expiry of the period of detention of a person, who is applied to the extradition arrest, shall notify the procurator about it.

9. The release of a person shall not prevent him/her from filing a second application for remand in custody and extradition in accordance with the procedure provided for by the present Code, if the request for extradition is received later:

- 1) the organization of transfer of the extradited person to the territory of the requesting state;
- 2) consideration of complaint of the extradited person against the decision of the Procurator General of the Republic of Kazakhstan or his (her) deputy for his (her) extradition.

10. Release of the person, who is applied to the extradition arrest shall be made on the basis of the decision of the procurator, including after the period specified in this Article, if the extradition (extradition) does not take place in that period, this is immediately reported to the Procurator General of the Republic of Kazakhstan.

11. Release of a person from the extradition arrest does not prevent its repeated application for the purpose of the actual transfer of a person to a foreign state pursuant to a decision on extradition (extradition), unless otherwise provided by international treaty of the Republic of Kazakhstan.

**Footnote. Article 589 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication); No. 180-VI of 12.07.2018 (shall be enforced upon the expiration of ten calendar days after the date of its first official publication).**

#### **Article 590. Refusal for extradition of a person (extradition)**

1. Extradition of a person (extradition) is not permitted if:

1) a person in respect of whom the extradition request (extradition) is received, is a citizen of the Republic of Kazakhstan and the international treaty of the Republic of Kazakhstan with the requesting party does not provide extradition (extradition) of own citizens;

2) the act which is the basis for the request for the extradition of a person (extradition), is not recognized as a crime in the Republic of Kazakhstan;

3) the offence for which extradition of a person is sought (the extradition), does not provide for the imprisonment in the Republic of Kazakhstan;

4) for the person in respect of whom the extradition request (extradition) is received, the Republic of Kazakhstan granted asylum;

5) in respect of a person there is the entered into force sentence for the same offence or the proceedings are terminated;

6) at the time of receipt of the request for the extradition of the person (extradition), the criminal prosecution under the legislation of the Republic of Kazakhstan may not be initiated or the sentence may not be executed due to the expiration of the statute of limitations or for other legitimate reasons;

7) there is a reason to believe that the person in respect of whom a request for extradition (extradition) is received, may be at risk of torture in the requesting party or his (her) health, life or freedom would be threatened on grounds of race, religion, nationality, citizenship (nationality), membership of a particular social group or political opinion, except for the cases stipulated by international treaties of the Republic of Kazakhstan;

8) the offence for which extradition of a person is requested (extradition), in accordance with the legislation of the Republic of Kazakhstan is pursued only in the private prosecution, unless otherwise provided by international treaty of the Republic of Kazakhstan with the requesting party;

9) the offence for which extradition of a person is requested (extradition), refers under the legislation of the Republic of Kazakhstan to the military crimes, unless otherwise provided by the international treaty of the Republic of Kazakhstan with the requesting State;



10) the central authority of a foreign state is not provided at the request of the Procurator General of the Republic of Kazakhstan additional materials or data without which it is impossible to make a decision on the request for extradition (extradition);

11) extradition of the person (extradition) is contrary to the obligations of the Republic of Kazakhstan under international treaties of the Republic of Kazakhstan;

12) there are other grounds provided by the international treaties of the Republic of Kazakhstan.

2. The extradition of a person (extradition) may be refused if the offence for which extradition of a person (extradition) is requested, committed in the territory of the Republic of Kazakhstan or outside, but directed against the interests of the Republic of Kazakhstan.

### **Article 591. The decision on the request for extradition of a person (extradition)**

1. After studying the materials of extradition check the Procurator General of the Republic of Kazakhstan or his (her) deputy shall decide on the extradition of the person (extradition), or refusal of the extradition (extradition) to a foreign state. In the presence of the requirements for extradition of the person (extradition) from several states, the decision on which country the person is subject to extradition (extradition), shall be adopted by the Procurator General of the Republic of Kazakhstan or his (her) deputy in the form of a resolution.

2. On the decision the Procurator General of the Republic of Kazakhstan, or his (her) deputy, informs the central authority of a foreign state, and the person against whom it is taken, and his (her) defense counsel.

3. In the case of a decision on extradition (extradition) this person shall be handed a copy of the decision and explained the right to appeal the decision to the Supreme Court of the Republic of Kazakhstan.

4. An order for the extradition of a person (or extradition) shall be enforced after the expiry of the time limit for appealing against it. In the event of appeal against the decision, the extradition of the person shall not be carried out until the decision of the judge of the Supreme Court of the Republic of Kazakhstan comes into force.

Participation of the person in respect of whom the decision to extradite (extradite) is made and his or her defence counsel may be ensured by means of technical means of videoconferencing.

5. In case of refusal to extradite the person (extradition) to a foreign state on the grounds not excluding the exercise of criminal prosecution, to the request of the competent authority of a foreign state the Procurator General of the Republic of Kazakhstan directs the production of pre-trial investigation in respect of that person in the manner provided by this Code.

**Footnote. Article 591 as amended by the Law of the Republic of Kazakhstan No. 156-VI dated 24.05.2018 (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

## **Article 592. Procedure for appealing the decision on the extradition of a person (extradition)**

1. Decision of the Procurator General of the Republic of Kazakhstan or his (her) deputy for extradition of a person (extradition) may be appealed by the person against whom the decision or his (her) defense counsel to the Supreme Court of the Republic of Kazakhstan, within ten days of receipt of the copy of the decision.

2. The administration of the place of detention of the person against whom a decision on extradition (extradition) is made, upon receipt of the appeal within twenty-four hours shall send it to the Supreme Court of the Republic of Kazakhstan and shall notify the General Procurator's Office of the Republic of Kazakhstan.

3. The Procurator General of the Republic of Kazakhstan, or his (her) deputy, within ten days from receipt of the notice of appeal against the decision to extradite the person (extradition), shall submit to the Supreme Court of the Republic of Kazakhstan materials, confirming the legality and validity of its decision.

4. Checking the legality and validity of the decision on the extradition of a person (extradition) shall be made within one month from the date of receipt of the appeal by the judge of the Supreme Court of the Republic of Kazakhstan in an open court session with participation of the procurator, the person against whom a decision on extradition (extradition) is made, and his (her) defense counsel. In exceptional cases, this period may be extended.

5. At the beginning of the session, the presiding judge announces which complaint is subject to consideration, explains to those present their rights, duties and responsibilities. Then the applicant and (or) his (her) defense counsel shall justify the appeal, after which the floor is given to the prosecutor.

6. During the trial the judge of the Supreme Court of the Republic of Kazakhstan does not examine the issues of guilt of the person against whom the decision on extradition (extradition) is made, and does not check the legality of procedural decisions taken by the competent authorities of a foreign state, and limited to checking the compliance of the decision to extradite (extradition) this person with the legislation and international treaties of the Republic of Kazakhstan.

7. As a result of checking the Supreme Court of the Republic of Kazakhstan shall make one of the following decisions:

1) to declare the decision on extradition of a person (extradition) as illegal or unreasonable, and its abolition;

2) leaving the appeal without satisfaction;

3) to suspend the extradition decision (extradition) to consider issues of significant importance to this decision with simultaneous extension of the period of detention of the person for a period of not less than one month.

8. The decision of the Supreme Court of the Republic of Kazakhstan on the recognition of the decision on extradition of a person (extradition) as illegal or unreasonable, and its

abolition or leaving the appeal without satisfaction shall enter into force from the moment of its announcement.

9. Release of the person against whom the Supreme Court of the Republic of Kazakhstan takes a decision on the recognition of the extradition (extradition) as illegal or unreasonable, and its abolition shall be made in the manner provided by the tenth part of Article 589 of this Code.

**Article 593. Postponement of the transmission and temporary extradition of a person (extradition) to a foreign state**

1. After the decision to extradite a person (extradition), the Procurator General of the Republic of Kazakhstan or his (her) deputy may postpone the actual transmission of a person to a foreign state, if:

1) the person against whom the decision on extradition (extradition) is made, is subject to criminal prosecution or serving a sentence for a criminal offence committed in the territory of the Republic of Kazakhstan, - before the end of the pre-trial investigation or trial, serving the sentence or exemption from punishment by any legal grounds;

2) the person against whom the decision on extradition (extradition) is made, suffers from a serious illness and for health reasons may not be extradited (extradited) without damage to his (her) health before his (her) recovery.

2. If there is no reason to further postponement of the actual transmission of the person, specified in the first part of this Article, the extradition arrest shall be applied to the extradited person (extradited) in the manner provided by this Code.

3. If during the period of postponement, there may be the circumstances that may prevent the extradition of a person (extradition), the Procurator General of the Republic of Kazakhstan or his (her) deputy shall have the right to reconsider its decision on extradition (extradition).

4. In case if the postponement of the actual transmission may result in the expiration of the statute of limitations of criminal prosecution or damage the investigation of a crime in a foreign state, the person whose extradition (extradition) is requested, may be temporarily extradited.

5. The temporarily extradited (extradited) person shall be returned after the proceedings in the criminal case, for which he (she) is extradited (extradited), but not later than ninety days from the date of transfer of the person. By mutual agreement, this period may be extended, but not more than the unserved term of punishment for the crime, committed in the Republic of Kazakhstan.

**Article 594. Transfer of the person (extradition)**

1. The internal affairs bodies, after the entry into force of the decision of the Prosecutor General of the Republic of Kazakhstan or his deputy on extradition (extradition), within thirty days, organize the transportation and transfer of the extradited (extraditioned) person to the appropriate body of the state to which he was extradited (extraditioned), and about execution is reported to the General Prosecutor's Office of the Republic of Kazakhstan.

2. During transfer of the extradited (extraditioned) person, the competent authority of a foreign state shall be informed of the period of his (her) detention in the Republic of Kazakhstan.

**Footnote. Article 594 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 595. Transit transportation**

1. The request of the competent institution of a foreign state on the transit through the territory of the Republic of Kazakhstan of the person, extradited (extraditioned) to the institution by a third state, is considered in the same manner as the request for extradition (extradition).

2. When considering the requests of the competent institutions of foreign states on the transit, only the circumstances provided for in Article 590 of this Code shall be subject to extradition check.

3. The method of transit is determined by the Procurator General of the Republic of Kazakhstan, or his (her) deputy, in coordination with the relevant departments.

4. The General Prosecutor's Office of the Republic of Kazakhstan instructs the internal affairs body to agree on the place, time and procedure for the transfer of persons in transit through the territory of the Republic of Kazakhstan.

State bodies, within their competence, assist the body of internal affairs in the implementation of the reception of persons following in transit through the territory of the Republic of Kazakhstan, and their transfer to third states.

**Footnote. Article 595 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Chapter 61. Continuation of the criminal prosecution Article 596. The procedure and conditions for the transfer of criminal proceedings to the competent authority of a foreign state**

1. If the crime is committed on the territory of the Republic of Kazakhstan by a person, who travels outside of the Republic of Kazakhstan, whose location is established in a foreign state, the body conducting the criminal proceedings shall make a reasoned decision about the direction of the criminal case materials in a foreign state for the continuation of the criminal prosecution, as well as the request (order, petition) on the implementation of the criminal

prosecution. The case materials are directed to the Procurator General of the Republic of Kazakhstan or an authorized procurator with a request for criminal prosecution to resolve the issue of sending the case to another state in accordance with the international treaties of the Republic of Kazakhstan or on the principle of reciprocity.

2. A criminal case may be transferred to a foreign state, provided that the extradition of a person (extradition), to be brought to criminal responsibility is impossible or the extradition (extradition) of the person is refused in the Republic of Kazakhstan.

#### **Article 597. Content of the request (order, petition) on criminal prosecution**

1. The request (order, petition) on criminal prosecution shall contain:
  - 1) the name of the competent institution of a foreign state;
  - 2) the name of the authority, conducting the criminal proceedings;
  - 3) a reference to the relevant international treaty of the Republic of Kazakhstan;
  - 4) a description of the acts for which the order for criminal prosecution is sent;
  - 5) the possible more precise time, place and circumstances of the offence committed;
  - 6) the name, first name and patronymic (if any) of the suspected or the accused, the date and place of birth, nationality, and other information about his (her) identity;
  - 7) an indication of the extent of damage caused by the crime.
2. The request (order, petition) on the criminal prosecution shall be attached by:
  - 1) the criminal case materials;
  - 2) the text of the criminal law under which the act is considered as a crime, as well as other legislative acts that are essential for the proceedings;
  - 3) the information on the nationality of the person.
3. Each page of the document of the case shall be certified by the official stamp of the prosecuting authority.
4. Together with the request (order) on the criminal prosecution and the documents provided by the second part of this Article, the available material evidence may be transferred to the competent authority of a foreign state.
5. The body, conducting the criminal proceedings in the Republic of Kazakhstan, shall save a copy of the criminal case materials.

#### **Article 598. The procedure and conditions for the acceptance of the criminal proceedings from foreign states**

1. The request of the competent institution of a foreign state on the continuation of the criminal prosecution against the person, who committed the crime in a foreign state and is in the Republic of Kazakhstan, shall be considered by the Procurator General of the Republic of Kazakhstan or an authorized procurator.

2. Acceptance of the criminal proceedings from the competent institution of a foreign state is carried out under the following conditions:

1) a person subject to criminal liability is a citizen of the Republic of Kazakhstan and is located on its territory;

2) a person subject to criminal liability is a foreigner or a stateless person and is located on the territory of the Republic of Kazakhstan, and his (her) extradition (extradition), in accordance with this Code or an international treaty of the Republic of Kazakhstan is impossible or the extradition (extradition) is refused;

3) the requesting party provides a guarantee that in the event of conviction in the Republic of Kazakhstan, the person brought to criminal liability, shall not be subject to prosecution in the requesting party for the same offence;

4) the act, which is indicated in the request is an offence under the criminal law of the Republic of Kazakhstan.

3. In the case of satisfying a request for criminal prosecution, the General Procurator's Office of the Republic of Kazakhstan in the manner provided by this Code, orders the production of the pre-trial investigation to the appropriate authority, as reported to the requesting party.

#### **Article 599. Refusal to continue the criminal prosecution**

1. Criminal proceedings may not be accepted, if:

1) the requirements of the second part of Article 598 of this Code or an international treaty of the Republic of Kazakhstan are not complied with;

2) the same person is acquitted by the court for the same offence in the Republic of Kazakhstan;

3) the same person is convicted by the court for the same offence in the Republic of Kazakhstan under which the punishment is served or is being served;

4) in respect of the same person the criminal proceedings for the same offence are terminated in the Republic of Kazakhstan or he (she) is exempted from punishment due to amnesty or pardon;

5) proceedings in respect of the considered crime may not be carried out due to the statute of limitations.

2. In case of refusal to continue the criminal prosecution the General Procurator's Office of the Republic of Kazakhstan returns materials to the central authority of a foreign state with justification for refusal.

#### **Article 600. The detention of a person to obtain request (order, petition) on criminal prosecution**

1. At the request of the competent authority of a foreign state a person in respect of whom the request on the criminal prosecution will be sent, may be detained on the territory of the

Republic of Kazakhstan. The request shall contain the information on the legislation under which the person brought to criminal liability, indicating the punishment provided, a reference to the decision on detention and an indication that the request for criminal prosecution will be presented later.

The request and decision on detention until receipt of the request for criminal prosecution may be transferred using the scientific and technical means of communication with simultaneous sending of originals by mail or by courier.

2. Detention of a person is carried out in a manner and according to the rules laid down in Article 588 of this Code.

3. The person in custody shall be released by the procurator in accordance with the first part of this Article, if the request for criminal prosecution is not received by the competent authority of the Republic of Kazakhstan within forty days after his (her) detention, which is immediately reported to the General Procurator's Office of the Republic of Kazakhstan.

## **Chapter 62. Recognition and enforcement of judgments and decisions of foreign courts Article 601. Judgments and decisions of foreign courts, recognized in the Republic of Kazakhstan**

1. In accordance with the procedure provided by this Code and the international treaties of the Republic of Kazakhstan, the judgments and decisions of foreign courts may be recognized and enforced in the Republic of Kazakhstan in the following cases:

1) upon receipt of a citizen of the Republic of Kazakhstan, who was convicted to imprisonment in a foreign state for serving the sentence;

2) upon receipt of a citizen of the Republic of Kazakhstan, who committed in a foreign state a socially dangerous act in a state of insanity, for which there is a court decision of a foreign state on the application to him (her) of compulsory medical measures, for compulsory treatment;

3) in respect of a person, extradited to the Republic of Kazakhstan, who was convicted by a foreign court and did not serve the sentence;

4) in respect of a person, convicted by a foreign court, and the Republic of Kazakhstan refused the extradition (extradition) of which to a foreign state;

5) when deciding on the confiscation of property located on the territory of the Republic of Kazakhstan, or its monetary equivalent;

6) other cases stipulated by the international treaties of the Republic of Kazakhstan.

2. The decision on the recognition and enforcement of the judgment of the foreign courts in a part of the civil claim shall be resolved in accordance with the Civil Procedure Code of the Republic of Kazakhstan.



**Article 602. Grounds for the transfer of the sentenced to imprisonment persons to serve their sentence or the persons with mental disorders, for compulsory treatment in the state, which citizens they are**

On the basis of the international treaty of the Republic of Kazakhstan with the relevant foreign state or achieved on the basis of reciprocity consent of the Procurator General of the Republic of Kazakhstan with the competent authorities and officials of a foreign state, the following persons may be transferred to their state of nationality:

1) a foreigner, who was convicted by a court of the Republic of Kazakhstan to imprisonment, as well as a citizen of the Republic of Kazakhstan, convicted by a court of a foreign state to imprisonment, - for the further punishment;

2) a foreigner, who committed on the territory of the Republic of Kazakhstan socially dangerous act in a state of insanity or became ill after committing a criminal offence with mental illness, which makes it impossible to appoint or execute the sentence, and in respect of which there is a decision of the court of the Republic of Kazakhstan on the application to him (her) of compulsory medical measures, as well as a citizen of the Republic of Kazakhstan, committed in a foreign state socially dangerous act in a state of insanity or became ill after committing a criminal offence with mental illness, which makes it impossible to appoint or execute the sentence, and in respect of which there is a court decision of a foreign state on the application to him (her) of compulsory medical measures - for the further compulsory treatment.

**Article 603. Conditions for the transfer of the convicted person or the person, who applied to the compulsory medical measures**

1. Transfer of foreigners, referred to in Article 602 of this Code shall be allowed to before their completion of the punishment of imprisonment or the completion of compulsory treatment at the request of the convicted person, or the person, who applied to compulsory medical measures, their legal representatives or close relatives, as well as at the request of the competent authority of the relevant state with the consent of the convicted person or the person, who applied to the compulsory medical measures, and in case of his (her) inability to free will - with the consent of his (her) legal representative.

2. Transfer of foreigners, referred to in Article 602 of this Code may be made only after the enforcement of the court judgment or decision by the decision of the Procurator General of the Republic of Kazakhstan, or his (her) deputy that reports about it to the court which issued the judgment or decision.

**Article 604. The order of resolving the issue of transfer of the convicted person or the person, who applied to the compulsory medical measures**

1. If the convicted person is a citizen of a foreign state, the institution of the penal system explains the convicted his (her) right to appeal to the General Procurator's Office of the Republic of Kazakhstan or the authorized body of the State, which citizen he (she) is, with a request to transfer him (her) to serve his (her) sentence in that State on the basis and in the order stipulated by this Code.

2. The Procurator General of the Republic of Kazakhstan, after investigation and verification of materials, in case of their proper registration and if there are grounds provided by this Code or an international treaty of the Republic of Kazakhstan, shall decide on the transfer of foreign citizens referred to in Article 602 of this Code, as reported to the appropriate authority of a foreign state and the person on whose initiative addressed the issue of the transfer of the person.

3. After receiving from the authorized body of a foreign state information on consent to accept a convicted person for serving a sentence or a person to whom compulsory medical measures have been applied, the Prosecutor General's Office of the Republic of Kazakhstan instructs the internal affairs body, respectively, to agree on the place, time and procedure for transfer and organization of transfer of this person from an institution of the penitentiary system or a medical organization providing compulsory treatment to a foreign state.

State bodies, within the limits of their competence, assist the internal affairs body in transferring the convict to a foreign state.

4. Transfer of foreigners, referred to in Article 602 of the Code shall not deprive them of their right to apply for parole, replacing the unserved part of the punishment with a milder, pardon, and the termination or amendment of the application of compulsory medical measures in accordance with the legislation of the Republic of Kazakhstan. Any documents or information necessary to consider the issue in the Republic of Kazakhstan may be requested from the competent authorities of the State of enforcement or implementation of compulsory medical treatment through the General Procurator's Office of the Republic of Kazakhstan.

5. The General Procurator's Office of the Republic of Kazakhstan informs the court that issued the sentence, about the decision on the transfer of the convicted person, as well as provides the information to the court about the results of execution of the sentence in a foreign state.

6. In the case of amnesty in the Republic of Kazakhstan the court, which received the information on the transfer of the convicted person, in accordance with this Article shall consider the amnesty for such convicted person. If necessary, the court may appeal to the General Procurator's Office of the Republic of Kazakhstan in order to obtain from the authorities of the State of enforcement the information necessary to consider the application of the amnesty.

7. In the case of adoption in accordance with the fourth and sixth parts of this Article a decision on parole, replacing the unserved part of the punishment with a milder, pardon or amnesty, termination or amendment of the application of compulsory medical measures, the

General Procurator's Office of the Republic of Kazakhstan shall send a copy of the relevant decision to the State of enforcement or implementation of the compulsory treatment.

**Footnote. Article 604 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

**Article 605. Notification of change or cancellation of the sentence of the court, termination or change of the application of compulsory medical measures in respect of the transferred foreign citizen**

1. In case of change or cancellation of the sentence of the court of the Republic of Kazakhstan, termination or change of the application of compulsory medical measures, appointed by the court of the Republic of Kazakhstan in respect of foreigners, referred to in Article 602 of this Code, transferred to serve sentence or compulsory treatment in a foreign state, as well as application to the convicted in the Republic of Kazakhstan of amnesty or pardon, the General Procurator's Office of the Republic of Kazakhstan shall send to the authorized body of a foreign state a copy of the relevant decision.

2. If the sentence is canceled and a new trial is ordered, the other necessary documents shall be sent simultaneously.

**Article 606. Refusal to the foreign state in the transfer of the convicted person or the person, applied to the compulsory medical measures**

1. The transfer of foreigners, referred to in Article 602 of this Code, may be refused, if:

1) none of the offences for which the person is convicted or applied to the compulsory medical measures, is considered as a criminal offence under the legislation of the state, which citizen is the convicted person or the person, applied to the compulsory medical measures;

2) there is no agreement on the transfer of the convicted person, or the person, applied to the compulsory medical measures, under the conditions provided for by the international treaty;

3) the transfer of the convicted person or the person, applied to the compulsory medical measures may harm the interests of the Republic of Kazakhstan;

4) the convicted person or the person, applied to the compulsory medical measures has a permanent residence in the Republic of Kazakhstan;

5) the person transferred is not a citizen of the state of enforcement.

2. In addition to the grounds, provided for in paragraph 1) of the first part of this Article, the transfer of the foreigner, who is convicted by a court of the Republic of Kazakhstan to prison, may be refused, if:

1) the punishment may not be enforced in a foreign state due to the expiration of the statute of limitations or other grounds stipulated by the legislation of that State;

2) at the time of request for the transfer of the convicted person, the term of imprisonment that is not served is less than six months;

3) there is no guarantee from the convicted person or a foreign state for the enforcement of the sentence in part of the civil claim.

3. In addition to the grounds, provided for in paragraph 1) of the first part of this Article, the transfer of the foreigner, who committed on the territory of the Republic of Kazakhstan socially dangerous act in a state of insanity, and there is a decision of the court of the Republic of Kazakhstan on the application to him (her) of compulsory medical measures may be refused, if:

1) the foreign legislation does not provide for similar measures of a medical nature;

2) the foreign state is not able to provide the necessary treatment and appropriate security measures.

4. Before taking a decision on the transfer of the convicted person to serve his (her) sentence to a foreign state, its competent authorities should provide assurance that the convicted person will not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

**Article 607. Consideration of an application for admission of a citizen of the Republic of Kazakhstan to serve the sentence or carrying out compulsory treatment, as well as the recognition and enforcement of the sentence or decision of the foreign court**

1. Citizens of the Republic of Kazakhstan referred to in Article 602 of this Code, their legal representatives, spouse or close relatives, as well as the competent authorities of a foreign state with the consent of the convict or the person to whom compulsory medical measures have been applied, and in case of his inability to to free will - with the consent of his legal representative, may apply to the Prosecutor General of the Republic of Kazakhstan with a request to serve the convicted sentence or conduct compulsory treatment in the Republic of Kazakhstan.

2. The competent institution of a foreign state may apply to the Procurator General of the Republic of Kazakhstan with the request for the recognition and enforcement of the sentence or decision of a foreign court in relation to the persons, referred to in paragraphs 3) and 4) of the first part of Article 601 of this Code, as well as the judicial acts providing for the confiscation of property, located on the territory of the Republic of Kazakhstan or its cash equivalent.

3. After the request to the Procurator General of the Republic of Kazakhstan for admission of the citizens of the Republic of Kazakhstan referred to in Article 602 of this Code , for further punishment or compulsory treatment in the Republic of Kazakhstan and confirmation of the citizenship of the Republic of Kazakhstan of that person, the General Procurator's Office of the Republic of Kazakhstan requests from the appropriate authority of a foreign state the documents required for resolving the issue on its merits.

4. In the case of approval of the requests, provided for in the first, second parts of this Article, the Procurator General of the Republic of Kazakhstan shall submit a representation on the recognition and enforcement of the sentence or decision of a foreign court to the district or equivalent court in the place of residence of persons against whom the sentence or decision of a foreign court is made. In the absence of these persons permanent residence, the representation shall be made to the district court at the location of the General Procurator's Office of the Republic of Kazakhstan.

**Footnote. Article 607 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

**Article 608. The order for resolving by the court the issues, related to the execution of the sentence or decision of a foreign court**

1. The representation of the Procurator General of the Republic of Kazakhstan is considered by the judge at the hearing in the absence of the convicted person or the person, applied to the compulsory medical measures, in the manner and within the timeframe established by this Code for resolving the issues related to the execution of the sentence.

1-1. Consideration of a request (order, petition) for legal assistance in the form of confiscation is carried out at a court hearing with notification of the person in respect of whose property a decision on confiscation was made by a verdict, resolution or other decision of a court of a foreign state, other interested persons in whose ownership, possession, use or disposal the property subject to confiscation is located, and (or) their representatives or defenders, the competent authority of a foreign state and the prosecutor about the place, date and time of consideration of the request.

The persons specified in paragraph one of this part, residing or staying in the territory of the Republic of Kazakhstan, must be notified of the place, date and time of the court session no later than thirty days before the day of the court session. Notifications to persons residing or located outside the Republic of Kazakhstan and to the competent authority of a foreign state are sent in accordance with the procedure provided for by an international treaty and the legislation of the Republic of Kazakhstan, no later than six months before the day of the court session.

The non-appearance of persons promptly notified of the place, date and time of the court session, with the exception of persons whose participation in the court session is recognized by the court as mandatory, does not prevent the consideration of the request of the competent authority of a foreign state.

2. The decision of the judge on the execution of the sentence or decision of a foreign court shall indicate:

1) the name of the court of a foreign state, the time and place of sentencing or ruling on the application of compulsory medical measures;

2) the information about the last place of residence in the Republic of Kazakhstan of the convicted person or the person, applied to the compulsory medical measures, the place of work and occupation before the conviction or the application of compulsory medical measures;

3) the qualification of the criminal offence, in the commission of which the person is found guilty, and on the basis of which criminal law he (she) is convicted or the compulsory medical measures are applied;

4) the Criminal law of the Republic of Kazakhstan providing for the liability for a criminal offence, committed by the convicted person or the person, applied to the compulsory medical measures;

5) the type and term of the punishment (primary and secondary), the start date and the end of the punishment, which the convicted person shall serve in the Republic of Kazakhstan; the type of penal institution, the order of compensation for the claim; the kind of compulsory medical measures, which shall apply in relation to a person in compulsory treatment.

2-1. The court's decision on the recognition and enforcement of a sentence, resolution or other decision of a court of a foreign state regarding the confiscation of property in whole or in part shall specify:

1) the name of the court of a foreign state, the time and place of the verdict, resolution or other decision on confiscation;

2) information about the last place of residence, place of work and occupation in the Republic of Kazakhstan of a person convicted by a court of a foreign state;

3) a description of the crime of which the convicted person was found guilty, and the criminal law of a foreign state on the basis of which he was convicted and a decision was made to confiscate property;

4) an article of the Criminal Code of the Republic of Kazakhstan providing for liability for a crime committed by a convicted person;

5) information on property located on the territory of the Republic of Kazakhstan and subject to confiscation;

6) the procedure for appealing the decision.

The court's decision on refusal to recognize and enforce a sentence, resolution or other decision of a court of a foreign state regarding the confiscation of property must specify the grounds for such refusal.

3. If under the law of the Republic of Kazakhstan the time limit of imprisonment for this crime is less than fixed by the sentence of the foreign court, the judge shall determine the maximum term of imprisonment for the commission of the offence under the Criminal Code of the Republic of Kazakhstan. If the imprisonment is not provided as a punishment, the judge shall determine another punishment within the proportion established by the Criminal Code of the Republic of Kazakhstan for this criminal offence and most relevant to the fixed by the sentence of the foreign court.

4. If the sentence relates to two or more acts, not all of which are recognized as crimes in the Republic of Kazakhstan, the judge shall determine what part of the punishment imposed by the sentence of the foreign court, applies to the act that constitutes a crime.

5. When considering the issue of execution of the punishment, the court may at the same time decide on the execution of the sentence of the foreign court in part of the civil claim and procedural costs if there is a corresponding request.

6. In case of cancellation or changes in the sentence or decision of the foreign court or the use of amnesty or pardon, issued in a foreign state or in the Republic of Kazakhstan, to the person serving the punishment or undergoing compulsory treatment in the Republic of Kazakhstan, the issues of execution of the revised sentence or decision of the court, as well as the use of amnesty or pardon shall be resolved by the rules of this Article.

7. If when considering the representation of the Procurator General of the Republic of Kazakhstan, the court concludes that the act for which the person is convicted or applied to the compulsory medical measures, is not a crime under the legislation of the Republic of Kazakhstan, or the sentence or the decision of the foreign court may not be executed due to the expiration of the statute of limitations, as well as on other grounds stipulated by the legislation of the Republic of Kazakhstan or international treaties of the Republic of Kazakhstan, he (she) shall make a decision to refuse to recognize the sentence or decision of the foreign court.

7-1. Recognition and enforcement of a sentence, resolution or other decision of a court of a foreign state regarding the confiscation of property located on the territory of the Republic of Kazakhstan is refused on the grounds provided for in part two of Article 569 of this Code, as well as in the following cases, if:

1) a sentence, resolution or other decision of a court of a foreign state providing for the confiscation of property has not entered into legal force;

2) the property that is subject to confiscation is located in a territory that is not subject to the jurisdiction of the Republic of Kazakhstan;

3) an act in connection with which the confiscation of property is provided for by a verdict, resolution or other decision of a court of a foreign state, was committed on the territory of the Republic of Kazakhstan and (or) this act is not a crime under the legislation of the Republic of Kazakhstan;

4) the legislation of the Republic of Kazakhstan does not provide for the confiscation of property for an act similar to an act in connection with which a sentence, resolution or other decision of a court of a foreign state imposed confiscation;

5) in respect of the person indicated in the request of the competent authority of a foreign state, a sentence has entered into force for the same act, criminal proceedings have been terminated, and there is also an unaltered decision of the preliminary investigation body to terminate the criminal case or to refuse to initiate criminal proceedings;



6) a sentence, resolution or other decision of a court of a foreign state providing for the confiscation of property cannot be executed on the grounds provided for by an international treaty or the legislation of the Republic of Kazakhstan;

7) in the Republic of Kazakhstan, in connection with the same act, criminal prosecution is carried out against a person whose property has been confiscated by a request from the competent authority of a foreign state;

8) the property, the confiscation of which was requested by the competent authority of a foreign state, was foreclosed upon by a verdict, decision or resolution of the court of the Republic of Kazakhstan in criminal, civil or administrative cases;

9) the property specified in the verdict, resolution or other decision of the court of a foreign state is not subject to confiscation in accordance with the legislation of the Republic of Kazakhstan.

7-2. On the basis of a court order that has entered into force on the recognition and enforcement of a sentence, resolution or other decision of a court of a foreign state regarding the confiscation of property located on the territory of the Republic of Kazakhstan, the court issues a writ of execution, which must indicate the operative part of the sentence, resolution or other decision of a court of a foreign state, as well as the operative part of the court decision on the recognition of a sentence, resolution or other decision of a court of a foreign state and their enforcement in whole or in part.

A writ of execution with copies of a sentence, resolution or other decision of a court of a foreign state and a copy of a court order on recognition and enforcement of a sentence, resolution or other decision of a court of a foreign state are sent for execution in accordance with the legislation of the Republic of Kazakhstan on enforcement proceedings and the status of bailiffs.

8. The decision of the court may be appealed or protested in the manner and terms, established by this Code for the revision of the court decision, which entered into force.

**Footnote. Article 608 as amended by the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Article 609. Organization of execution of the punishment or compulsory treatment in respect of the persons taken**

1. After satisfying the request for the admission of a citizen of the Republic of Kazakhstan to serve a sentence or conduct compulsory treatment and obtain the consent of the authorized body of a foreign state for such a transfer, the Prosecutor General's Office of the Republic of Kazakhstan instructs the internal affairs body to agree on the place, time and procedure for the transfer and organization of the transfer of this person to an institution of the penitentiary system or a medical organization providing compulsory treatment in the Republic of Kazakhstan.

State bodies, within their competence, assist the body of internal affairs in the implementation of the reception of a citizen of the Republic of Kazakhstan to serve a sentence or conduct compulsory treatment.

2. The enforcement of the sentence or execution of the compulsory treatment in the Republic of Kazakhstan in respect of the adopted citizens of the Republic of Kazakhstan referred to in Article 602 of this Code, shall be carried out in accordance with the legislation of the Republic of Kazakhstan.

3. In respect to the citizens of the Republic of Kazakhstan, referred to in Article 602 of this Code, the parole, amnesty or pardon, the termination or change of the application of compulsory medical measures may apply in accordance with the legislation of the Republic of Kazakhstan and international treaties of the Republic of Kazakhstan.

4. The General Procurator's Office of the Republic of Kazakhstan informs the authorized body of the state, which court made the sentence or decision, on the status and results of the execution of punishment or compulsory treatment in the case of:

1) completion of the punishment or compulsory treatment in accordance with the legislation of the Republic of Kazakhstan;

2) the death or escape of the citizens of the Republic of Kazakhstan, referred to in Article 602 of this Code.

**Footnote. Article 609 as amended by the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 610. Notification of change or cancellation of the sentence or decision of the foreign court**

1. Any issues, relating to the revision of the sentence or decision of the foreign court shall be settled by the court of the state, where the sentence or decision is made.

2. In case of change or cancellation of the sentence or decision of the foreign court, the issue of execution of this decision is considered in the manner provided by this Code.

3. If the sentence or decision of the foreign court is canceled, and a new pre-trial investigation or a new trial is assigned, the issue of the subsequent criminal proceedings shall be decided by the General Procurator's Office of the Republic of Kazakhstan in accordance with this Code.

#### **Article 611. Recognition and enforcement of the sentences of international judicial institutions**

Recognition and enforcement in the Republic of Kazakhstan of the sentences of international judicial institutions, as well as the adoption of the persons, convicted by such courts to imprisonment shall be carried out in accordance with the rules of this Code on the basis of an international treaty of the Republic of Kazakhstan.

**Section 13. Proceedings on cases, under which a procedural agreement is concluded**

**Chapter 63. Procedural agreement, a special procedure**

**for its conclusion Article 612. Pre-trial investigation at the conclusion of the procedural agreement**

1. Investigation of criminal cases in the framework of the concluded procedural agreement shall be made:

1) in the form of a plea bargain - for offences of minor, moderate gravity or serious crimes - in the case of the consent of the suspected, accused with suspicion, accusation;

2) in the form of a cooperation agreement - for all categories of crimes at facilitating the detection and investigation of crimes, committed by a criminal group, especially serious crimes, committed by other persons, as well as extremist and terrorist crimes;

3) in the form of a plea agreement and the return of illegally acquired assets for crimes of minor, medium gravity or grave crimes provided for by the Criminal Code of the Republic of Kazakhstan.

2. The procedural agreement may not be concluded with the persons who committed a prohibited by the criminal law act in a state of insanity or became ill after the crime by a mental disorder.

3. Conclusion of the procedural agreement does not constitute grounds for the person's release from civil liability to persons, recognized as an injured person and civil claimant.

**Footnote. Article 612 as amended by the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

**Article 613. The conditions for concluding a procedural agreement in the form of a plea bargain**

1. The procedural agreement in the form of a plea bargain may be concluded under the following conditions:

1) the voluntary expression of the suspected, accused wishes to conclude a procedural agreement;

2) the suspected, the accused does not dispute the suspicion, accusation and the available evidence in the case of a crime, the nature and extent of harm caused by them;

3) the consent of the victim to conclude a procedural agreement in the event of his/her participation in the case.

2. The procedural agreement in the form of a plea bargain may be concluded:

1) in respect of cumulative offences, if at least one of them does not meet the requirements of this Article and Article 612 of this Code;

2) if at least one of the injured persons does not agree with the conclusion of the procedural agreement.

Footnote. Article 613 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

**Article 614. Effect of the conclusion of a procedural agreement in the form of a plea bargain**

1. Effect of the conclusion of a procedural agreement in the form of a plea bargain shall be:

1) completion of the pre-trial investigation within the time limits established by Article 192 of this Code;

2) Court proceedings in the form of plea bargaining in accordance with paragraph two of Article 382 and Chapter 64 of this Code, except for criminal cases involving crimes committed in complicity, in which not all suspects, accused persons, persons brought before the court or defendants have concluded a procedural agreement on plea bargaining;

3) deprivation of the injured person, who gave consent to conclude a procedural agreement, from the right for the further change of the requirement for the amount of damages.

2. The suspected, the accused shall have the right to abandon the procedural agreement before the court goes to the deliberation room to decide.

3. The procedural agreement does not deprive the injured person and civil claimant of the right to bring a civil claim in this criminal case or in civil proceedings.

4. Failure of the parties to conclude a procedural agreement does not preclude a request for re-signing it.

Footnote. Article 614 with the change introduced by the Law of the RK from 12.07.2018 № 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

**Article 615. The order of consideration of the request to conclude a procedural agreement in the form of a plea bargain**

1. The suspected, the accused, the defendant shall have a right to make a request to conclude a procedural agreement in the form of a plea bargain at any time of the proceedings before the court goes to the deliberation room. Procedural agreement may be concluded on the initiative of the procurator.

2. The body, conducting the criminal proceedings, after receiving a request from the suspected, the accused or the defense counsel to conclude a procedural agreement in the form of a plea bargain, subject to the grounds provided for in Article 613 of this Code, shall send within three days the received request with the criminal case materials to the procurator for a decision on the conclusion of the procedural agreement.

The procurator seeks the case from the body conducting the investigation, performs the action envisaged by the fourth part of this Article, seeing in the case the possibility of concluding a procedural agreement, offers to the defense party to discuss its conclusion or reports in writing to dismiss the request.

3. The procurator when considering the possibility of concluding a procedural agreement shall check:

1) if the act committed by a person is subject to the procedural agreement on production in the form of a plea bargain;

2) the voluntariness of the request of the person for conclusion of a procedural agreement and awareness of the effect of its conclusion;

3) if the person has not contested the evidence collected and the qualification of the act;

4) the consent of the person with the nature and amount of damage and a civil claim;

5) the absence in the case of the circumstances leading to termination of the criminal prosecution.

In order to clarify these circumstances, the procurator calls the suspected, the accused (requires delivery of the person in custody), his (her) defense counsel and the injured person, and asks their opinion about the possibility of a procedural agreement. To the person, who submitted the request, the procurator shall explain the effect of conclusion of a procedural agreement, the right to refuse to conclude it.

4. If the victim does not agree, the procedural agreement shall not be concluded. If the victim agrees, then, taking into account his/her opinion on the issue of compensation for the harm caused by the crime, the prosecutor and the defense party shall conclude a procedural agreement, which shall be drawn up in writing and signed by the parties to the agreement.

The decision on the petition to conclude a procedural agreement on the admission of guilt shall be made within seven days from the date of the receipt of the criminal case by the prosecutor's office.

The refusal of the prosecutor to conclude a procedural agreement shall not be subject to appeal, however, this shall not prevent the conclusion of a procedural agreement in the future.

**Footnote. Article 615, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

**Article 616. The procedure for drawing up the procedural agreement in the form of a plea bargain**

1. The procedural agreement shall include:

1) the date and place of its preparation;

2) an official of the procurator's office, who concludes a procedural agreement;

3) the surname, name and patronymic (if any) of the suspected, the accused, concluding an agreement, the date and place of birth, place of residence and occupation, the surname, name, patronymic (if any) of his (her) defense counsel;

4) a description of the crime with the time, place of its commission, as well as other circumstances, to be proved in accordance with the provisions of this Code;

5) the paragraph, part, Article of the Criminal Code of the Republic of Kazakhstan providing for the liability for the crime;

6) the circumstances, mitigating the criminal liability and punishment, and the provisions of the criminal law that may be applied to the suspected, the accused, subject to their fulfillment of the conditions and obligations, set out in the procedural agreement;

7) the actions which the suspected or the accused obliges to perform after signing a procedural agreement;

8) the type and amount of the punishment, which the procurator will apply before the court;

9) the effect of conclusion of the procedural agreement, provided for in Article 614 of this Code;

10) the consent of the injured person to conclude a procedural agreement.

2. The procedural agreement shall be signed by the procurator, the suspected, the accused, his (her) defense counsel. Before the signing of the procedural agreement the suspected, the accused shall have the right in private and confidentially discuss his (her) situation with his (her) defense counsel.

**Article 617. The actions of the procurator, investigator and the interrogating officer in the criminal case after conclusion of the procedural agreement in the form of a plea bargain**

1. After signing the procedural agreement in the form of a plea bargain, the prosecutor shall consider the issue of the need to cancel or change the preventive measure in respect of the suspect, the accused . If it is necessary to conduct investigative and procedural actions on a case, the prosecutor shall forward the case to the pre-trial investigation body.

2. The investigator, interrogating officer shall collect evidence in an amount sufficient to confirm the guilt of the suspected or the accused.

3. If as a result of the pre-trial investigation the other circumstances of the offence, not provided by the procedural agreement, are established, this agreement shall be subject to review in the manner and time, stipulated in Articles 615 and 616 of this Code, or cease to have effect.

4. If there is no need to conduct investigative and procedural actions after the conclusion of a procedural agreement in the form of a plea deal, the pre-trial investigation of the case is considered completed and the prosecutor immediately sends it to the court without an indictment , a protocol of prosecution , of which he notifies the victim.

**Footnote. Article 617 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**



## **Article 617-1. Conditions for concluding a procedural agreement on admission of guilt and the return of illegally acquired assets**

1. A procedural agreement on the admission of guilt and the return of illegally acquired assets may be concluded if the following conditions are met:

1) voluntary expression by the suspect, the accused, the defendant of the desire to conclude a procedural agreement;

2) the suspect, the accused, the defendant do not dispute the suspicion, the accusation and the evidence available in the case of the commission of a crime, the nature and extent of the harm caused by them.

2. A procedural agreement on the admission of guilt and the return of illegally acquired assets may not be concluded in relation to a set of crimes if at least one of them does not meet the requirements provided for in this Article and Article 612 of this Code.

**Footnote.** Chapter 63 is supplemented by Article 617-1 in accordance with the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).

## **Article 617-2. The consequences of concluding a procedural agreement on admission of guilt and the return of illegally acquired assets**

1. The consequences of concluding a procedural agreement on the admission of guilt and the return of illegally acquired assets are:

1) completion of the pre-trial investigation within the time limits established by Article 192 of this Code;

2) conducting judicial proceedings in accordance with part two of Article 382 and Chapter 64 of this Code.

2. Failure by a person to comply with the terms of a concluded procedural agreement on the admission of guilt and the return of illegally acquired assets shall entail the resumption of a terminated pre-trial investigation or criminal prosecution in accordance with the procedure provided for in Article 291 of this Code.

3. The suspect, the accused or the defendant have the right to withdraw from the procedural agreement on the admission of guilt and the return of illegally acquired assets before the court is removed to the conference room to make a decision.

4. The refusal of the parties to conclude a procedural agreement on the admission of guilt and the return of illegally acquired assets does not prevent the application for its re-conclusion.

**Footnote.** Chapter 63 is supplemented by Article 617-2 in accordance with the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).

## **Article 617-3. The procedure for considering a petition for concluding a procedural agreement in the form of a plea bargain and the return of illegally acquired assets**



1. The suspect, the accused, the defendant has the right to file a petition for the conclusion of a procedural agreement in the form of a plea bargain and the return of illegally acquired assets at any time during the criminal proceedings before the court is removed to the conference room. A procedural agreement may be concluded at the initiative of the prosecutor

2. The body carrying out the investigation, having received a petition from the suspect, accused, defendant or defender for the conclusion of a procedural agreement on proceedings in the form of a plea bargain and the return of illegally acquired assets, taking into account the grounds provided for in Article 613 of this Code, within three days sends the received petition together with the materials of the criminal case to the prosecutor for a decision on concluding a procedural agreement.

The prosecutor requests the case from the body conducting the investigation, performs the actions provided for in parts three and four of this article, having seen in the case the possibility of concluding a procedural agreement, invites the defense party to discuss the issue of its conclusion or informs in writing about the refusal to satisfy the petition.

3. The prosecutor, when considering the possibility of concluding a procedural agreement, is obliged to check:

1) whether the act committed by a person falls under a procedural agreement on proceedings in the form of a plea bargain and the return of illegally acquired assets;

2) the voluntary nature of the person's application for the conclusion of a procedural agreement and awareness of the consequences of its conclusion;

3) that the person does not dispute the collected evidence and the qualification of the act;

4) the consent of the person with the nature and extent of the harm caused by him and the civil claim;

5) the absence of circumstances in the case entailing the termination of criminal prosecution.

To clarify these circumstances, the prosecutor summons the suspect, the accused, the defendant (requires the delivery of the detainee), his defender and the victim, from whom he finds out the opinion on the possibility of concluding a procedural agreement. To the person who filed the petition, the prosecutor explains the consequences of concluding a procedural agreement, the right to refuse to conclude it.

4. Obtaining the consent of the victim to conclude a procedural agreement on the admission of guilt and the return of illegally acquired assets is not required.

The decision on the petition for the conclusion of a procedural agreement on the admission of guilt and the return of illegally acquired assets is made within ten days from the date of receipt of the criminal case by the prosecutor's office.

The prosecutor's refusal to conclude a procedural agreement is not subject to appeal, but this does not prevent the conclusion of a procedural agreement in the future.

Footnote. Chapter 63 is supplemented by Article 617-3 in accordance with the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).

**Article 617-4. The procedure for drafting a procedural agreement in the form of a plea bargain and the return of illegally acquired assets**

1. The procedural agreement on the admission of guilt and the return of illegally acquired assets shall specify:

- 1) the date and place of its compilation;
- 2) an official of the prosecutor's office, concluding a procedural agreement;
- 3) surname, first name and patronymic (if any) of the suspect, accused or defendant concluding a procedural agreement, date and place of his birth, place of residence and occupation, surname, first name, patronymic (if any) of his defender;
- 4) a description of the crime indicating the time, place of its commission, as well as other circumstances to be proved in accordance with the provisions of this Code;
- 5) paragraph, part, article of the Criminal Code of the Republic of Kazakhstan, providing for liability for this crime;
- 6) the admission by the suspect, accused or defendant of his guilt in committing a crime and the obligation to voluntarily return illegally acquired assets, including those located outside the Republic of Kazakhstan;
- 7) a list and description of illegally acquired assets to be returned, their location, including assets located outside the Republic of Kazakhstan;
- 8) circumstances mitigating criminal liability, punishment, and the norms of criminal law that can be applied against a suspect, accused or defendant if they comply with the conditions and fulfill the obligations specified in the procedural agreement;
- 9) issues of release of a person from criminal liability by virtue of the provisions of the Criminal Code of the Republic of Kazakhstan, which will be requested by the prosecutor;
- 10) actions that the suspect, the accused or the defendant undertakes to commit after concluding a procedural agreement;
- 11) terms and methods of transfer (transfer) or hand over of illegally acquired assets to a Special state fund or management company established in accordance with the legislation of the Republic of Kazakhstan on the return of illegally acquired assets to the state;
- 12) the obligation of the suspect, accused or defendant to interact and cooperate with the prosecutor on the issues of criminal investigation and the return of illegally acquired assets;
- 13) the consequences of concluding a procedural agreement and the actions of the prosecutor in a criminal case after concluding a procedural agreement on the admission of guilt and the return of illegally acquired assets;
- 14) consequences of failure by the suspect, the accused or the defendant to comply with the terms of the procedural agreement on the admission of guilt and the return of illegally acquired assets;

15) other conditions and obligations agreed upon by the parties in the procedural agreement on the admission of guilt and the return of illegally acquired assets.

2. The terms of the procedural agreement should provide for the return of the amounts of excess profits received by the person for the total period of ownership of assets, in cases where the person received such excess profits in connection with favorable non-competitive business conditions, including those established in legislative and other regulatory legal acts, as well as as a result of the actual concentration of economic resources in the relevant market of goods, works or services, including through direct or indirect ownership of shares (shares in the authorized capital) of market entities, occupying and (or) having occupied a dominant or monopolistic position in the relevant commodity market.

3. A procedural agreement on the admission of guilt and the return of illegally acquired assets shall be concluded in writing and signed by the prosecutor, the suspect, the accused or the defendant, as well as his lawyer.

Prior to signing the procedural agreement, the suspect, the accused or the defendant has the right to discuss its provisions privately and confidentially with his lawyer.

**Footnote. Chapter 63 is supplemented by Article 617-4 in accordance with the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

**Article 617-5. Actions of the prosecutor, the investigator in a criminal case after the conclusion of a procedural agreement in the form of a plea bargain and the return of illegally acquired assets**

1. After signing a procedural agreement in the form of a plea bargain and the return of illegally acquired assets, the prosecutor considers the need to cancel or change the preventive measure against the suspect, the accused, the defendant. If it is necessary to carry out investigative and procedural actions in the case, the prosecutor sends the case to the pre-trial investigation body.

2. The investigator collects evidence to the extent sufficient to confirm the guilt of the suspect or the accused.

3. If, as a result of the pre-trial investigation, other circumstances of the commission of a crime are established that are not provided for in the procedural agreement, this agreement is subject to review in accordance with the procedure and terms provided for in Articles 617-3 and 617-4 of this Code, or is terminated.

4. If there is no need to conduct investigative and procedural actions after concluding a procedural agreement in the form of a plea bargain and the return of illegally acquired assets, the pre-trial investigation of the case is considered completed and the prosecutor immediately sends it to court without an indictment, notifying the victim and his representative (if any).

**Footnote. Chapter 63 is supplemented by Article 617-5 in accordance with the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

## **Article 618. Procedural agreement on cooperation**

1. The suspected, the accused, the defendant and convicted persons shall have the right to appeal to the body conducting the criminal proceedings, or to the procurator with a request to conclude a procedural agreement on cooperation in accordance with paragraph 2) of the first part of Article 612 and Article 619 of this Code.

2. A procedural agreement on cooperation with the suspect, the accused, the defendant shall be approved, respectively, by the Prosecutor General of the Republic of Kazakhstan, the regional prosecutor or an equivalent prosecutor, their deputies, and with the convicted person - by the Prosecutor General of the Republic of Kazakhstan or his/her deputy.

3. A request for the conclusion of a procedural agreement on cooperation may be claimed from the start of the pre-trial investigation and before the stage of execution of the sentence, inclusive.

**Footnote. Article 618 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

## **Article 619. The procedure for conclusion of the procedural agreement on cooperation**

1. A request for conclusion of a procedural agreement on cooperation is presented to the suspected, accused, defendants and convicted persons in writing and obligatorily sealed by the signature of the defense counsel.

2. If the defense counsel is not invited by the suspected, accused, defendant or convicted person, his (her) legal representative or others on behalf of the suspected, defendant or convicted, the participation of the defense counsel is provided by the body conducting the criminal proceedings or the institution or body executed the punishment.

3. The investigator, the interrogating officer in the production of which the criminal case is, the head of the institution or the body executing the punishment, upon receipt of a request for conclusion of a procedural agreement on cooperation shall send it, within one day, to the procurator.

4. The court shall send a request of the defendant to conclude a procedural agreement on cooperation to the procurator within three days from the date of its receipt.

5. The convicted person shall have the right through the body executing the punishment, to present his (her) request to the procurator of the region, in which territory he (she) is serving his (her) sentence, on the conclusion of the procedural agreement.

6. A procedural agreement on cooperation shall be concluded between the prosecutor and the suspect, the accused, the defendant, the convicted person with the participation of their defenders in compliance with the requirements provided for in paragraph 2) of part three of Article 615 , paragraphs 1), 2), 3), 4), 5), 6) and 7) part one, part two of Article 616, if necessary, preserving its confidentiality in accordance with the rules of Article 47 and ensuring security in accordance with Chapter 12 of this Code, and be sent for approval,

respectively, to the Prosecutor General of the Republic of Kazakhstan, the regional prosecutor or an equivalent prosecutor, their deputies, and with the convicted person - the Prosecutor General of the Republic of Kazakhstan or his/her deputy.

7. To resolve the issue of concluding a procedural agreement on cooperation, the prosecutor shall have the right to demand additional materials.

**Footnote. Article 619 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 620. The procedure for the approval of the procedural agreement on cooperation**

The Prosecutor General of the Republic of Kazakhstan, the regional prosecutor or an equivalent prosecutor, their deputies in relation to the suspect, the accused, the defendant, and in relation to the convicted person - the Prosecutor General of the Republic of Kazakhstan or his/her deputy shall, according to the procedural agreement received for approval:

1) study the criminal case and submitted (claimed) additional materials, check the legal and factual basis to conclude the procedural agreement on cooperation, as well as assess the nature of the intentions of the suspected, the accused, the defendant, the convicted person to perform actions that are the subject of the agreement;

2) find out whether the suspected, the accused, the defendant, the convicted are aware of all terms and conditions associated with the procedural agreement on cooperation, if they are not subjected to torture and other cruel, inhuman or degrading treatment or punishment, whether voluntarily concluded a procedural agreement on cooperation and whether understand its legal consequences;

3) approve a procedural agreement on cooperation or issue a decision to refuse its approval.

**Footnote. Article 620 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 621. The actions of the procurator for execution of the conditions of the procedural agreement on cooperation**

1. After approval by the Prosecutor General of the Republic of Kazakhstan, the regional prosecutor or an equivalent prosecutor, their deputies, and in relation to the convicted Prosecutor General of the Republic of Kazakhstan, his/her deputy, the procedural agreement on cooperation, the prosecutor who signed the procedural agreement on cooperation shall immediately take measures to organize the disclosure of crimes, which are the subject of the concluded agreement, and the exposure of the guilty persons, as well as consider the issue of the need to cancel or change the measure of restraint in relation to the suspect, the accused in the manner prescribed by Article 153 of this Code.

2. If the results of the investigation of crimes, related to the subject of the procedural agreement on cooperation in the promotion of the suspected, accused, defendant, convicted person it is found the perpetrators of especially serious crimes, the crimes as part of a criminal group, as well as extremist and terrorist crimes, and in respect of perpetrators the judgment of accusation is rendered, the procurator shall take measures to fulfill the conditions of the procedural agreement on cooperation.

3. In respect of the convicted person, who concluded a cooperation agreement and fulfilled its conditions, the procurator appeals to the court in accordance with Articles 476 - 478 of this Code.

**Footnote. Article 621 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Chapter 64. Consideration of the criminal cases in conciliation proceedings in court Article 622. Grounds for application of the conciliation proceedings**

The court resolves a case in conciliation proceedings, if:

1) at the stage of pre-trial proceedings, a procedural agreement on admission of guilt has been concluded with all suspects and accused;

2) a procedural agreement on the admission of guilt was concluded during the trial with all the defendants;

3) at the stage of pre-trial proceedings or during the trial, a procedural agreement was concluded on the admission of guilt and the return of illegally acquired assets with all suspects, accused, defendants.

Conciliation proceedings shall not be allowed, if prior to the removal of the court to the jury room there is expressed disagreement with the procedural agreement, as well as in the presence of restrictions provided by paragraph 2) of paragraph one of Article 614 of this Code

**Footnote. Article 622 with the change introduced by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon expiration of ten calendar days after the day of its first official publication); No. 292-VI dated 27.12.2019 (see Article 2 for the enactment procedure); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

**Article 623. The actions of the judge in the case that came with a procedural agreement on the admission of guilt, a procedural agreement on the admission of guilt and the return of illegally acquired assets concluded at the stage of pre-trial proceedings**

**Footnote. The title of Article 623 is in the wording of the Law of the Republic of Kazakhstan dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**



1. A judge, having received a criminal case with a procedural agreement on admission of guilt, a procedural agreement on admission of guilt and return of illegally acquired assets and a petition for consideration of the case in conciliation proceedings, checks the compliance of the concluded procedural agreement with the requirements of the law, after which he issues a decision on:

- 1) the appointment of the conciliation proceedings;
- 2) returning the criminal case to the procurator, if there are no grounds for the application of the conciliation proceedings;
- 3) returning the criminal case to the procurator with the possibility of drawing up a new agreement, if the court does not agree with the qualification of the offence, the size of the civil claim, the type and (or) size of the punishment.

2. After the parties conclude a new procedural agreement in accordance with the court's decision on the qualification of a crime, the size of a civil claim, the type or amount of punishment, the prosecutor sends the criminal case together with the new procedural agreement to the court for consideration in conciliation proceedings.

3. If the judge does not agree with the new procedural agreement, he shall issue a resolution on refusal to consider the case in conciliation proceedings and forward the case to the prosecutor for the implementation of proceedings on it in a general manner.

The decision of the judge rendered at the same time may be appealed, reviewed at the request of the prosecutor in the appeal procedure.

4. To make a decision on the grounds, specified in paragraphs 2) and 3) of the first part of this Article, the court holds a preliminary hearing in the manner provided in Article 321 of this Code.

**Footnote. Article 623 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated 12.07.2023 N 23 (effective after ten calendar days after the date of its first official publication).**

#### **Article 624. The persons, participating in a court session in the consideration of the case in conciliation proceedings**

The procurator, defendant, his (her) defense counsel shall participate in a court session in the conciliation proceedings. The injured person, civil claimant and their representatives are not called in a court session.

The court may, if necessary, organize their participation in the trial in the conciliation proceedings, including by using of the scientific and technological means of communication.

#### **Article 625. The order and terms of the trial in conciliation proceedings**



1. At the court session, after the resolution of challenges and petitions, the chairman announces the beginning of consideration of the procedural agreement on the admission of guilt, the procedural agreement on the admission of guilt and the return of illegally acquired assets and invites the prosecutor to state its essence.

2. After the speech of the procurator, the presiding judge asks the defendant whether he (she) understands the essence of the procedural agreement and whether he (she) agrees with it. If necessary, the presiding judge explains to the defendant the essence of the procedural agreement, after which offers him (her) to report to the court the circumstances of the agreement and finds out whether the procedural agreement is his (her) will and if he (she) supports it and wants to tell anything else to the court in the case.

3. Having clarified the defendant's position, the presiding judge invites the defender and the prosecutor to tell their opinion on the procedural agreement in the form of a plea bargain or in the form of a plea bargain and the return of illegally acquired assets, and also clarifies whether they support the procedural agreement.

4. The chairman of the court session, if necessary, may question the prosecutor, the defendant and his defender on the issue of compliance with the procedure provided for by law for concluding a procedural agreement in the form of a plea bargain or in the form of a plea bargain and the return of illegally acquired assets.

5. After the end of the consideration of the procedural agreement, the presiding judge finds out from the defendant how much time he will need for the voluntary execution of the judicial act in terms of property penalties provided for in the agreement, while clarifying his family and financial situation. Upon completion of the consideration of the procedural agreement on the admission of guilt and the return of illegally acquired assets, the chairman finds out from the defendant how long he will fulfill the procedural agreement regarding the return of illegally acquired assets and whether he confirms the method and procedure for their return.

The defendant must also be given the right to additionally inform the court. After hearing the defendant, the presiding judge retires to the conference room and informs about the time of the announcement of the court decision.

6. Consideration of the case in the conciliation proceedings should be completed within the time, stipulated by Article 382 of this Code.

**Footnote. Article 625 as amended by the Law of the Republic of Kazakhstan dated 12.07.2023 N 23 (effective after ten calendar days after the date of its first official publication).**

#### **Article 626. Court decisions in the conciliation proceedings**

1. Following the consideration of the procedural agreement in conciliation proceeding, the court shall make one of the following reasoned decisions:

1) the decision to return the criminal case to the procurator, if there are no grounds for the application of the conciliation proceedings;

2) the decision to return the criminal case to the procurator for the conclusion of a new procedural agreement, if the court does not agree with the qualification of the offence, the size of the civil claim or the type or size of the punishment, set out in the procedural agreement;

3) the decision on refusal to consider the case by way of conciliation proceedings and return the criminal case to the procurator, if the court has doubts about the guilt of the defendant;

4) the decision to discontinue the criminal proceedings, if the circumstances listed in Article 35 of this Code are found;

4-1) a resolution on the termination of proceedings in a criminal case with a procedural agreement on the admission of guilt and the return of illegally acquired assets;

5) the judgment of conviction with the appointment to the defendant of the punishment, by the decision in the civil claim, and other penalties, in accordance with the procedural agreement.

2. In the case, if the court makes a decision referred to in paragraphs 1) and 3) of the first part of this Article, the criminal case shall be returned to the procurator for investigation in a general manner.

3. Following the conclusion by the parties of a new procedural agreement in accordance with the court order for the issues of qualification of the crime, the size of the civil claim or the type or size of the punishment, the procurator shall send the criminal case with the new procedural agreement to the court for its consideration in the conciliation proceedings.

4. In case of disagreement with the new procedural agreement, the judge shall issue a decision dismissing the consideration of the case in the conciliation proceedings and send the criminal case to the procurator for the pre-trial investigation in a general manner.

The decision of the judge rendered at the same time may be appealed, reviewed at the request of the prosecutor in the appeal procedure.

**Footnote. Article 626 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

### **Article 627. The structure and content of the judgment of conviction in the case, considered in the conciliation proceedings**

1. The introductory part of the judgment, rendered in the case considered in the conciliation proceedings, shall comply with the requirements of Article 396 of this Code.

2. The descriptive and motivation part of the judgment of conviction, rendered in the conciliation proceedings, shall refer to the procedural agreement and shall include:

- 1) a description of the offence, in the commission of which the defendant is found guilty;
  - 2) the qualification of the offence;
  - 3) the reasons for sentencing;
  - 4) the reasons for the decision on a civil claim, the procedure and time of its execution;
  - 5) the fate of the material evidence and procedural costs.
3. The operative part of the judgment shall include:
- 1) the recognition of the defendant as guilty under the relevant paragraph, part and article of the Criminal Code and the Republic of Kazakhstan;
  - 2) the punishment;
  - 3) the decision on the civil claim and the issue of procedural costs;
  - 4) the deadline for compensation of damage in accordance with the conditions of the procedural agreement;
  - 5) the procedure and term for appeal.

4. Simultaneously with the decision of the sentence, the court shall resolve the issues listed in Article 401 of this Code.

A copy of the sentence within a period of not more than five days from the date of sentencing shall be given to the convicted person, his defense counsel and the prosecutor.

The sentence of the court in the case considered in the conciliation proceedings may be appealed, reviewed at the petition of the prosecutor and challenged in the manner and within the terms provided by this Code on general grounds.

**Footnote. Article 627 as amended by the Laws of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 628. Initiation of the conciliation proceedings during the main trial**

1. During the main trial in a criminal case, the public prosecutor, the defendant and his lawyer have the right to file a petition for the conclusion of a procedural agreement on the admission of guilt, a procedural agreement on the admission of guilt and the return of illegally acquired assets.

Upon receipt of a request for the conclusion of a procedural agreement in the form of a plea bargain or in the form of a plea bargain and the return of illegally acquired assets, the judge interrupts the trial and gives the parties a reasonable time to conclude it.

2. After the conclusion, a procedural agreement on the admission of guilt or a procedural agreement on the admission of guilt and the return of illegally acquired assets is provided to the judge, who checks it for compliance with the requirements of the law and makes one of the following reasoned decisions:

- 1) on continuation of the consideration of the case in conciliation proceedings;

2) on refusal to consider the case in conciliation proceedings, if the court has doubts about the guilt of the defendant, or due to the lack of grounds for the application of conciliation proceedings;

3) on providing the opportunity to draw up a new procedural agreement, if the court does not agree with the qualification of the crime, the amount of the civil claim, the type and (or) amount of punishment.

If the parties fail to reach an agreement on the terms of the procedural agreement, the consideration of the criminal case by the court continues in the general manner.

**Footnote. Article 628 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 12.07.2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Article 629. The structure and content of the procedural agreement concluded in a court**

1. The procedural agreement, concluded in a court, by its form and content shall comply with the requirements of paragraphs 1), 2), 3), 4), 5), 6), 7) and 8) of the first part of Article 616 and Article 617-4 of this Code.

2. If the defendant is accused of committing crimes in accumulation, the agreement shall state the type and size of the punishment for each crime, as well as the type and size of the final punishment.

3. If the defendant is assigned a punishment on set of decisions, the agreement shall also specify the type and size of the final punishment.

4. The agreement is considered concluded after being signed by the procurator, the defendant and his (her) defense counsel.

5. The procurator sends the signed agreement to the court and applies to the resolution of the case within the conciliation proceedings.

**Footnote. Article 629 as amended by the Law of the Republic of Kazakhstan dated 07/12/2023 No. 23-VIII (effective ten calendar days after the date of its first official publication).**

#### **Section 13-1. Order production**

**Footnote. The Code is supplemented by section 13-1 in accordance with the Law of the Republic of Kazakhstan dated 21.12.2017 № 118-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).**

#### **Chapter 64-1. Orderly production Article 629-1. Grounds of application of order production**

1. The procedure for ordered production shall be determined by the general rules of this Code taking into account the peculiarities provided for by this Chapter.

2. On criminal offenses and crimes of small gravity the case shall be considered in the order of ordered proceedings, if:

1) the collected evidence establishes the fact of a criminal offence and (or) crimes of minor gravity and the person who committed it;

2) the suspect does not dispute the available proofs of the guilt in commitment of a criminal offence, agrees with qualification of his actions (inaction), the size (amount) of the caused damage (harm);

3) the sanction of the committed criminal offense by one of the types of the main punishment provides for a fine, including a mandatory additional punishment in the form of deprivation of the right to hold a certain position or engage in certain activities, if the sanction sets the exact term for deprivation of this right;

4) The suspect has submitted a petition, and the victim, as well as the civil plaintiff and the civil defendant (in the case of their participation in the case) have expressed their consent to the consideration of the case by order of the proceedings without examining the evidence, summoning them and participating in the court proceedings.

3. Order proceedings shall not be applied in respect of:

1) a person who fell ill after committing a criminal offence with mental disorder, depriving him/her of the possibility to realize the actual nature and public danger of his/her actions (inaction) or to direct them;

2) a minor or a person who due to physical or mental deficiencies is unable to exercise his right to protection himself;

3) a person having privileges and immunity from criminal prosecution;

4) a person to whom confiscation of property, deprivation of a special, military or honorary title, class rank, diplomatic rank, qualification class and state awards, expulsion from the Republic of Kazakhstan may be applied as a mandatory additional punishment.

4. Order proceedings shall not be applied to the aggregate of criminal offences when at least one of them does not provide for the main penalty in the form of a fine, as well as to the aggregate of sentences requiring the application of the rules of Article 60 of the Criminal Code of the Republic of Kazakhstan.

5. The ordered proceedings shall not be applied if the sentence previously passed in the case has been overturned by the court on the grounds provided for by part two of Article 629-6 of this Code.

6. The person conducting pre-trial proceedings shall complete the pre-trial proceedings by issuing a resolution on the application of order proceedings within five days from the moment of establishment of the set of grounds provided for by part two of this Article.

At the same time, the person conducting pre-trial investigation has the right to carry out only those investigative and other procedural actions, the results of which record the traces of a criminal offence and other evidence of guilt of the suspect or accused.

The order to apply the ordered proceedings shall be issued by the person conducting the pre-trial proceedings after familiarization with the materials of the criminal case of the suspect, his or her counsel (with his or her participation), the victim, his or her representative, the civil plaintiff, the civil defendant and the permission of their petitions.

**Footnote. Article 629-1 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 629-2. Content of the order on application of order proceedings**

The decree on the use of order production shall specify:

- 1) time and place of its delivery;
- 2) by whom the order was issued;
- 3) The identity of the suspect;
- 4) description of the criminal offence, including the event, methods, motives, consequences and other essential circumstances;
- 5) information on the victim, nature and extent of the damage caused;
- 6) features of the criminal offence provided for by the Special Part of the Criminal Code of the Republic of Kazakhstan;
- 7) circumstances aggravating and mitigating the liability;
- 8) grounds for application of order proceedings;
- 9) **excluded by the Law of the Republic of Kazakhstan dated 19.12. 2020 No. 384-VI ( shall be enforced ten calendar days after the day of its first official publication);**
- 10) on sending the criminal case to the prosecutor to resolve the issue of approving the decision on the application of writ proceedings and sending the criminal case for consideration by the court.

The decision on the application of the order proceedings is signed by the person who drafted it.

**2. Excluded by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI ( shall be enforced ten calendar days after the day of its first official publication).**

**Footnote. Article 629-2 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 629-3. Procedure for forwarding the order on the application of order proceedings to the court**

1. In cases of criminal offenses and crimes of minor gravity, the decision on the application of writ proceedings, issued by the person conducting the pre-trial investigation, is subject to transfer to the head of the body of inquiry, who, having immediately studied the criminal case, makes one of the following decisions on it:



1) coordinate the decision on the application of writ proceedings and send the criminal case to the prosecutor;

2) refuses to approve the decision on the application of writ proceedings and terminates the criminal case on the grounds provided for in Articles 35 and 36 of this Code;

3) refuses to agree on the decision on the application of writ proceedings and returns the criminal case for the production of an inquiry or preliminary investigation.

The decision to refuse to approve the decision on the application of writ proceedings must be motivated.

**2. Excluded by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI ( shall be enforced ten calendar days after the day of its first official publication).**

3. In cases involving crimes of minor gravity, the order for the application of order proceedings issued by the investigator shall be forwarded by the head of the investigation department to the prosecutor.

4. The prosecutor, having studied the criminal case, no later than twenty-four hours from the moment the case is received, shall make one of the following decisions on it:

1) approves the decision on the application of writ proceedings and sends the criminal case for consideration to the court with the simultaneous sending to the accused, his defense counsel (with his participation), the victim, the civil plaintiff, the civil defendant a copy of the decision on the application of writ proceedings;

2) Denies approval of the order to apply the court proceedings and terminates the criminal proceedings on the grounds provided for in articles 35 and 36 of this Code;

3) In the absence of the grounds provided for by paragraph two of Article 629-1 of this Code, return the criminal case for the purpose of inquiry or preliminary investigation;

4) Terminates the criminal case against individual suspects, as ordered by the relevant decision, and refers the case to the court or terminates the pre-trial investigation in full.

The prosecutor notifies the interested persons about the decision taken, provided for in paragraphs 2), 3), 4) of the first paragraph of this part.

5. A criminal case in respect of two or more criminal offenses, including criminal offenses and crimes of minor gravity, is subject to referral to the court in the manner prescribed by part four of this article.

**Footnote. Article 629-3 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication); changes are made to the text in the Kazakh language, the text in Russian does not change, in accordance with the Law of the Republic of Kazakhstan dated December 27, 2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication).**

**Article 629-4. Procedure and duration of court proceedings in court proceedings**



1. The judge within three days from the moment of receipt of the case in court with the decision on the application of order proceedings shall consider the case on the basis of the submitted materials alone without holding a court session.

Following the results of consideration of the case in the order of order proceedings, the judge shall make one of the following reasoned decisions:

1) excluded by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI ( shall be enforced ten calendar days after the day of its first official publication);

2) a decision to return the case to the prosecutor, if there are no grounds for the application of writ proceedings, provided for in the second part of Article 629-1 of this Code;

3) The decision on the termination of proceedings in criminal proceedings, if there are bases provided by articles 35 and 36 of the present Code;

4) A guilty verdict by way of court proceedings;

5 ) excluded by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI ( shall be enforced ten calendar days after the day of its first official publication);

6) a decision to return the criminal case to the prosecutor, if the court comes to the conclusion that it is necessary to impose a criminal punishment on the defendant other than a fine.

2. The decision to return the criminal case to the prosecutor shall not be subject to appeal or review at the request of the prosecutor.

**Footnote. Article 629-4 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 629-5. Structure and content of the conviction by order of the court**

1. The introductory part of the guilty verdict shall specify:

1) that the sentence is passed in the name of the Republic of Kazakhstan;

2) time and place of the judgment;

3) the name of the court that has passed the sentence;

4) surname, name and patronymic (if any) of the defendant, year, month, day and place of birth, place of residence, place of work, occupation, education, marital status and other information about the defendant's personality relevant to the case;

5) Criminal law providing for the criminal offence of which the defendant is accused ( Article, paragraph, paragraph).

2. The narrative and motivating part of the conviction shall indicate:

1) a description of the criminal offence committed in which the defendant has been found guilty;

2) qualification of the criminal offence;

3) form of guilt, motives and consequences of the criminal offence, nature and amount of damage caused;

- 4) grounds for imposing a fine on the defendant;
  - 5) motives for the decision on the civil claim;
  - 6) fate of physical evidence, recovery of procedural costs.
3. The operative part of the guilty verdict shall specify:
- 1) surname, name and patronymic (if any) of the defendant;
  - 2) Decision on the defendant's conviction for a criminal offence;
  - 3) The criminal law (article, paragraph or paragraph) under which the defendant has been found guilty;
  - 4) the amount of the fine, including the final amount of the fine imposed on the basis of Article 58 of the Criminal Code of the Republic of Kazakhstan for each criminal offence in the case of a combination of misdemeanours and (or) crimes of minor gravity;
- 4-1) the decision to deprive the defendant of the right to hold a certain position or engage in certain activities;
- 5) Decision on the civil action brought;
  - 6) resolution of the issue of material evidence;
  - 7) decision on distribution of procedural costs;
  - 8) an indication of the procedure and time limit for bringing an application for disagreement with the verdict and appealing against the verdict.

**Footnote. Article 629-5 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 629-6. Sending a copy of the conviction by order of the court proceedings**

1. The copy of a guilty verdict in the order of order proceedings shall be sent by the court to the convicted person with the notification of delivery, to his counsel (with his participation) , to the victim and the prosecutor, as well as to other participants of the process - within the same period from the moment of receipt of the corresponding petition.

2) The condemned has the right within seven days from the date of receipt of a copy of the guilty verdict to send to the court, which has passed a verdict by order of proceedings, the petition on disagreement with the verdict, except for the amount of the fine.

If a petition is received from the convict to disagree with the verdict within the prescribed period, the judge cancels the verdict passed by him in the order of writ proceedings and returns the case to the prosecutor, about which he issues a decision.

The prosecutor, having received the criminal case, sends it to the pre-trial investigation body for further investigation.

The copy of the decision on cancellation of the decision which has been taken out in order of order manufacture, shall be handed over (directed) to the condemned, his defense counsel (with his participation), to the victim and the prosecutor on the day of his removal, and also to other participants of process - in the same term from the moment of receipt of the corresponding petition.

The decision to annul the sentence by order of the court proceedings is not subject to appeal or review at the request of the prosecutor.

**Footnote. Article 629-6 as amended by the Law of the Republic of Kazakhstan dated 19.12.2020 No. 384-VI (shall be enforced ten calendar days after the day of its first official publication).**

**Article 629-7. Appealing against the decision on termination of the criminal case and the guilty verdict by order of the court**

The decision on termination of proceedings in criminal proceedings and the guilty verdict, made by order of proceedings, within seven days from the date of receipt of a copy of these judicial acts may be brought a complaint of the victim and (or) the petition of the prosecutor, which are subject to consideration in the appeal procedure provided for in section 8 of this Code.

The civil plaintiff, civil defendant has the right to appeal against the decision to discontinue proceedings in the criminal case and the guilty verdict handed down as part of the ordered proceedings, in the part related to the civil claim, within seven days from the date of receipt of a copy of the said judicial acts.

Petitions for the revision of the decision on termination of proceedings in criminal proceedings and of the guilty verdict, made as part of the ordered proceedings, shall be considered in accordance with the procedure provided for in section 8 of the present Code.

The petition of condemned can be brought on a guilty sentence only in case of his disagreement with the size of the appointed penalty.

The decision on termination of proceedings in the criminal case and the guilty verdict, made in the order proceedings, may also be revised in the order provided by section 10 of the present Code.

**Article 629-8. Entry into force of the decision on termination of the case and the guilty verdict by order of the court**

If the convicted person, the victim, the civil plaintiff, the civil defendant or the procurator fail to submit an application within the prescribed period of time, the decision to dismiss the case and the guilty verdict handed down by order are forwarded for execution, and the convicted person, his or her counsel (with his or her participation), the victim and the procurator are informed of this.

**Section 14. Proceedings with jurors Chapter 65. General Provisions Article 630. The order of proceedings with jurors**

Criminal proceedings, considered by the court with jurors, shall be conducted in accordance with the rules of this Code with the specifications set forth in this section.

**Article 631. Jurisdiction of the court with jurors**

1. A court with the participation of jurors shall consider cases of particularly grave crimes, with the exception of cases of:

- 1) murders committed in an emergency situation and during mass riots;
- 2) crimes against the peace and security of mankind, against the foundations of the constitutional order and the security of the state;
- 3) terrorist and extremist crimes;
- 4) military crimes committed during wartime or in a combat situation;
- 5) crimes committed as part of a criminal group;
- 6) especially grave crimes against the sexual integrity of minors.

Criminal cases on crimes provided for in articles 116 (parts two and three), 125 (paragraph 1) part three), 128 (paragraph 1) part four), 132 (part five), 135 (paragraph 1) parts four), 146 (parts two and three), 160, 163, 164 (part two), 168, 249 (part two), 317 (part four), 335 (part four), 337 (parts four and six), 345 (part four), 345-1 (part four), 346 (parts five and six), 380-1 (paragraph 6) of part two) of the Criminal Code of the Republic of Kazakhstan, are also considered by a court with the participation of jurors.

2. If a person is accused of committing crimes provided for in several articles of the Criminal Code of the Republic of Kazakhstan, the accused has the right to have his case heard by a jury if such a set of crimes includes at least one crime provided for in articles 116 (parts two and three), 125 (paragraph 1) part three), 128 (paragraph 1) part four), 132 (part five), 135 (paragraph 1) part four), 146 (parts two and three), 160, 163, 164 (part two), 168, 249 (part two), 317 (part four), 335 (part four), 337 (parts four and six), 345 (part four), 345-1 (part four), 346 (parts five and six), 380-1 (paragraph 6) of part two) of the Criminal Code of the Republic of Kazakhstan, as well as classified as particularly grave crimes, with the exception of cases of:

- 1) murders committed in an emergency situation and during mass riots;
- 2) crimes against the peace and security of mankind, against the foundations of the constitutional order and the security of the state;
- 3) terrorist and extremist crimes;
- 4) military crimes committed during wartime or in a combat situation;
- 5) crimes committed as part of a criminal group;
- 6) especially grave crimes against the sexual integrity of minors.

3. If there are some accused persons in the case, its consideration by the court with jurors shall be conducted according to the rules laid down by this section in respect of all the defendants, if at least one of them makes a request for considering the criminal case with jurors.

**Footnote. Article 631 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure); dated 30.12.2020 No. 393-VI (shall be enforced ten calendar days after the day of its first official publication); dated December 27,**

2021 No. 88-VII (shall be enforced ten calendar days after the day of its first official publication); dated 29.12.2022 No. 175-VII (effective from 01.01.2024).

#### **Article 632. Composition of the court with jurors**

The court with jurors in the specialized inter-district criminal court and the specialized inter-district military criminal court shall consist of one judge and ten jurors.

#### **Article 633. Prohibition of the pressure on a juror**

The presiding judge of the case, the public prosecutor, the victim, the defendant and his/her defense lawyer, as well as other participants in the process throughout the trial shall be prohibited from contacting the jurors participating in the consideration of this case, in addition to the established procedure.

**Footnote. Article 633 as reworded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 634. The request for consideration of the case by the court with jurors**

1. The criminal proceedings in accordance with the rules, provided by this section, shall be conducted at the request of the suspected, the accused on the consideration of their case by the court with jurors.

2. While familiarization of the suspected with the case materials after the end of the investigative actions, the person conducting the pre-trial investigation, shall explain him (her) the right to appeal on consideration of the case by the court with jurors, as well as the legal consequences of satisfaction such request, including the nature of the appeal and consideration of complaints against the sentences of the court with jurors.

3. The suspected, the accused shall have the right to make a request for consideration of the case by the court with jurors at a presentation to review the entire case materials, as well as in the subsequent period, including during the preliminary hearing in the court, but until the appointment by the court of the main trial.

4. The request of the suspected, the accused on consideration of his (her) case by the court with jurors or his (her) refusal to use the right to consider his (her) case by the court with jurors shall be indicated in the protocols of the announcement to the suspected about the end of the investigative actions and clarification of the rights. The request made later shall be described by the suspected, the accused in writing and shall be immediately sent to the court which has jurisdiction over the case. The request made during the preliminary hearing of the case, may be written and oral.

5. After the appointment by the court of the main trial, the accused's request for consideration of his (her) case by the court with jurors is not accepted.

6. The accused shall have the right to refuse the request made for the consideration of his (her) case with the jurors before the preliminary hearing and during the preliminary hearing.

The refusal of the accused from the request for consideration of his (her) case by the court with jurors after its confirmation at the preliminary hearing is not accepted.

#### **Chapter 66. Features of the appointment of the court session Article 635. Preliminary hearing**

In the cases, referred to in the first part of Article 631 of this Code, a preliminary hearing is obligatory regardless of the presence or absence of a request of the suspected, the accused on the consideration of the case by the court with jurors.

#### **Article 636. Features of the preliminary hearing**

1. A preliminary hearing is conducted by a single judge with the mandatory participation of the defendants, including those who do not belong to the right to consider the case with jurors and their defense counsels.

2. At the beginning of the court session the judge announces what case is subject to consideration, presents him(herself) to the persons at the court session, reports who is the public prosecutor, the defense counsel, the secretary, discovers the identity of the defendant, resolves the declared challenges. The public prosecutor reads out the indictment. The judge finds out, whether the defendant understands the charge, if necessary, explains the nature of the charge and asks whether he (she) confirms his (her) request for consideration of his (her) case by the court with jurors. If the request for consideration of the case with jurors is not declared, the judge shall explain to the defendant that it may be stated directly at this hearing. Oral request of the defendant shall be entered into the protocol of the court session, and a written request shall be attached to the case. The refusal of the defendant of his (her) request for consideration of the case with the jurors, as well as his (her) reluctance to declare such a request shall be indicated in the protocol of the court session or in the defendant's written application, which is attached to the case.

3. If the defendant confirms his (her) request for consideration of his (her) case by the court with jurors, the judge shall decide to satisfy this request, and in this case the views of the other defendants are not taken into account, and he (she) goes to the consideration of other requests, announced by the public prosecutor, the injured person, the defendant and his (her) defense counsel.

4. If necessary, the case materials may be announced at the preliminary hearing to verify their admissibility as evidence.

5. If the defendant does not confirm his (her) request for consideration of his (her) case by the court with jurors, in the absence of other grounds, provided by the first part of Article 321 of this Code, the judge announces the preliminary hearing ended. Further proceedings in the case shall be carried out according to the rules, provided by Chapter 42 of this Code.



6. The decision of the judge on the issue of consideration of the case by the court with jurors shall be final. The decision may not be reviewed in the future due to changes in the position of the defendant.

**Article 637. Features of decisions made in the preliminary hearing in the appointment of the court session with jurors**

1. At the end of the preliminary hearing, the judge makes one of the decisions under Articles 322 - 327 of this Code.

2. If the defendant made a request for consideration of the case with jurors or confirmed the earlier request on it, the judge should specify in the decision on the appointment of a court session that the case will be considered by the court with jurors, and determines the number of jurors to be summoned in this court session, the number of which shall not be less than twenty-five.

3. As a result of the preliminary hearing, the judge in accordance with Article 112 of the Code excludes from the case materials the actual data declared inadmissible as evidence.

**Article 638. The order of a preliminary random sample of candidates for jurors to attend in the proceedings**

1. After making a decision on the appointment of a case for consideration by the court with jurors, the judge shall order the secretary of the court session on ensuring the attendance at the hearing of candidates for jurors, whose number is specified in the decision for the selection of jurors.

2. After the appointment of the main trial, by order of the presiding judge, the secretary of the court session makes a preliminary random selection of candidates for jurors from the unified list of candidates for jurors located in the court.

3. One and the same person may not participate in the court proceedings as a juror more than once a year.

4. Upon completion of the preliminary random sample of candidates for jurors to participate in criminal proceedings, a preliminary list with indication their surnames, first names and patronymics, and home addresses, shall be made and signed by the secretary of the court session.

5. The candidates for jurors included in the preliminary list, not later than seven days before the trial shall be given a notice with the date and time of arrival to the court.

6. Citizens who received a notice shall appear in court to participate in the selection of jurors.

**Footnote. Article 638 as amended by the Law of the Republic of Kazakhstan dated 14.07.2022 No. 141-VII (shall be enforced from 01.07.2023).**



## **Chapter 67. The selection of candidates for jurors to participate in the proceedings Article 639.**

### **General Provisions**

1. The selection of jurors from among candidates shall be carried out in a closed court session after meeting the requirements of Articles 350 - 363 of this Code by:

1) exemption of the candidates for jurors from participating in the proceedings by the presiding judge;

2) resolving the issues on self-disqualification;

3) resolving the issues on the challenge;

4) unmotivated disqualification of the candidates for jurors.

2. The secretary of the court session shall report to the presiding judge about the attendance at the hearing of the candidates for jurors and writes out cards for each candidate for jurors with his (her) surname.

3. The presiding judge speaks to the candidates for jurors a brief introductory speech in which he (she):

1) presents him(her)self;

2) represents the parties;

3) reports a case to be considered;

4) reports on the tasks of the jurors and the order of their participation in the consideration of the criminal case in accordance with law.

4. In order to objectively resolve the issue of dismissing a candidate for juror from participation in the trial, the presiding judge, as well as the parties, may ask candidates during the selection of jurors questions that are important for the formation of the jury. The order of posing questions shall be determined by the presiding judge.

5. A candidate for jury must truthfully answer the questions of the presiding judge and the parties asked during selection for participation in the consideration of the case, as well as submit, upon his/her request, other necessary information about himself/herself and relations with other persons participating in the case.

6. The questions, humiliating the honor and dignity of the candidates for jurors shall not be asked by the presiding judge.

The presiding judge may ask some questions to the candidates for jurors, and the candidate has the right to respond to it in compliance with the unavailability of question and answer for the other participants and the persons present in the hall.

7. All questions, relating to the exemption of the candidate for jurors from participation in the proceedings, as well as the self-disqualifications and challenges, declared to the candidates for jurors shall be resolved by the presiding judge individually without removing to the deliberation room with the entry of the judge decision in the protocol of the court session.

8. If fewer than twenty-five of the summoned candidates for juror have appeared in the court, or there are less than seventeen of them left after the release of some of them from participation in the trial or after the presiding judge has satisfied the rejections and challenges, the presiding judge shall order the secretary of the court session to replenish the list of candidates for the juror assessors with the missing number from the single list. In this case, a break shall be announced in the court session to summon alternate candidates for jurors.

**Footnote. Article 639 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

#### **Article 640. Exemption by the presiding judge of the candidates for jurors from participation in the proceedings**

1. The presiding judge explains to the candidates for jurors their duties, established by this Code, and then queries the candidates for jurors about the circumstances, preventing their participation in the proceedings as a juror.

2. The presiding judge without discussion with the participants in the process shall exempt from the duties of jurors:

- 1) the persons, suspected or accused of a criminal offence;
- 2) persons who do not speak the language in which the proceedings are conducted, persons with complete loss of speech, persons with complete hearing loss and persons with complete loss of vision;
- 3) persons with disabilities in the absence of organizational or technical capabilities to ensure their full participation in the court session.

3. The presiding judge without discussion with the participants in the process may exempt from the duties of jurors in their oral or written statements:

- 1) the persons over sixty-five years;
- 2) the women with children aged up to three years;
- 3) the persons who, because of their religious beliefs feel unable to participate in the administration of justice;
- 4) the persons whose diversion from duty may entail significant damage to public and state interests (doctors, teachers, airline pilots and others);
- 5) other persons who have valid reasons for nonparticipation in the court session.

4. The presiding judge shall ask the candidates for jurors their awareness of the circumstances of the case, consideration of which has to be in court.

5. The presiding judge shall exempt from the duties of a juror in the case any candidate for jurors, whose objectivity causes reasonable doubts due to the unlawful impact on this person, the presence of his (her) preconceived notions, knowledge of the circumstances of the case from non-procedural sources, as well as for other reasons, indicating the possible bias of the candidate for jurors with his (her) participation in the proceedings as a juror.

Footnote. Article 640 as amended by the Law of the Republic of Kazakhstan dated 27.06.2022 No. 129-VII (shall be enforced ten calendar days after the date of its first official publication).

#### **Article 641. Resolution of the issues on the self-disqualification of candidates for jurors**

The presiding judge asks about the presence of the reasons provided by law for the exemption of any of the candidates for jurors from participation in the proceedings. Each of the candidates for jurors present has the right to point to valid reasons, preventing him (her) to fulfill the duties of a juror, as well as disqualify him(her)self. After hearing the opinion of the parties, the presiding judge decides to satisfy the self-disqualification of the candidate for jurors or refuse to do so.

#### **Article 642. Resolution of questions on the withdrawal of jurors**

Each candidate for jury duty must be challenged by the prosecutor, the victim, the civil plaintiff, the civil defendant and their representatives, the defendant and his or her defence counsel, if any:

1) The candidate for jury duty is a victim, civil plaintiff or civil defendant in this case, has been summoned or may be summoned as a witness;

2) the candidate for jury duty participated in the proceedings in the given criminal case as an expert, specialist, interpreter, understood, secretary of the court session, inquirer, investigator, prosecutor, defender, legal representative of the suspect, accused, representative of the victim, civil plaintiff or civil defendant;

3) The juror candidate is a relative or relative (brother, sister, parent and child of the spouses) of the victim, civil plaintiff, civil defendant or their representatives, the accused, the defendant or his or her legal representative, prosecutor, defender, investigator or inquirer;

4) There are other circumstances that give grounds to believe that the candidate for jury duty is personally, directly or indirectly interested in the case.

Having heard the opinion of the parties, the presiding officer shall decide whether or not to withdraw the juror from the case.

Footnote. Article 642 with the change introduced by the Law of the Republic of Kazakhstan dated 12.07.2018 No. 180-VI (shall be enforced upon the expiration of ten calendar days after the day of its first official publication).

#### **Article 643. Unmotivated disqualification of the candidates for jurors**

1. If as a result of the requirements of Article 642 of this Code there are more than seventeen candidates for jurors to participate in the court session, the presiding judge shall

announce the number of remaining candidates for jurors, and then down into the urn cards with their names, mixes the cards, and extracts from it as many cards as is necessary to left seventeen in an urn.

2. After performing the requirements of the first part of this Article, the presiding judge transfers the remaining seventeen cards with the names of the candidates for jurors for making by the public prosecutor, as well as the defendant and (or) his (her) defense counsel the unmotivated disqualification, as a result of which twelve candidates for jurors shall be left

3. The public prosecutor, the defendant and his (her) defense counsel shall have the right to request the presiding judge that any of the candidates for jurors presents him(her)self.

4. If the case involved one defendant, the unmotivated disqualification of the two candidates for jurors is made by the public prosecutor, and then the three candidates for jurors – by the defendant and (or) his (her) defense counsel in the specified order.

5. If the case involved several defendants, the public prosecutor has the right to challenge not more than two candidates for jurors. In this case, challenge of the candidates for jurors is made by mutual consent of the defendants, in the absence of such agreement - by dividing the number of the challenged candidates for jurors between them equally, if possible.

6. In case of failure to comply with the requirements of the fifth part of this Article, the challenge of candidates for jurors by several defendants should be made by drawing lots with the placement in the ballot box of the cards with the names of all defendants. The drawing lot is held in an amount equal to the number of the unchallenged candidates for jurors. The defendant has the right to challenge as many candidates for jurors how many times the card with his (her) name is taken from the ballot box by the presiding judge.

7. Refusal of any of the defendants of the right to challenge the candidates for jurors shall not entail the restrictions on the rights of other defendants to challenge so many candidates for jurors to be left at least twelve.

8. The candidates for jurors may be challenged by the public prosecutor, the defendant or his (her) defense counsel without giving reasons for challenge by writing on the cards with the names of the candidates for jurors of the word “challenge”, affixed by the signature.

9. The defendant has the right to order his (her) defense counsel the right to challenge the candidates for jurors. If the defendant refuses his (her) right to challenge the candidates for jurors, the defense counsel without his (her) consent has no the right to participate in the challenge of the candidates for jurors.

10. In case of refusal of the defendant or all defendants, if the case involved several defendants, of their right to challenge the candidates for jurors, their challenge shall be made by drawing lots, when the presiding judge or secretary of the court session extracts from the urn as many cards with the names of the unchallenged candidates for jurors as they may still be challenged.

11. Cards with the names of the candidates for jurors unreasonably challenged by the parties shall be attached to the case file.

#### **Article 644. Formation of the jurors by the drawing lots**

1. The jurors, considering the case in court, are formed by the drawing lots composed of ten jurors of the basic composition (forming composition of the jurors) and two spare.

2. To form the jurors the presiding judge puts in the urn the cards with the names of the unchallenged candidates for jurors, mixes them and takes one by one twelve cards, telling each time the name of the candidate for jurors specified in the card. If there are no any violations, affecting the correct formation of the jurors, the formation of the jurors is declared valid. At the same time the first ten jurors, selected by drawing lots are considered as the jurors of the basic composition, and the last two - spare.

3. In case, when deciding the issue of challenges or in the formation of the jurors any violations that affected the accuracy of its formation are committed, as well as in case of refusal to one or more jurors in the access to state secrets, the presiding judge announces formation of jury as invalid or void, and selects candidates for jurors again in full.

4. The names of the twelve jurors chosen by drawing lot shall be entered by the secretary of the court session in the protocol of the court session in the order in which the cards are taken out of the urn. Cards with the names of the jurors, selected by the drawing lot and serial number under which they are registered, shall be attached to the case file.

#### **Article 645. General terms for participation of jurors in the proceedings**

1. Upon completion of the formation of the jurors, the presiding judge offers to the basic composition of jurors to take their allotted place on the bench of jurors in accordance with the procedure set out by drawing lots. Bench of jurors should be separated from those present in the courtroom, and is usually in front of the dock. Two spare jurors take on the bench of jurors specially designated places for them.

2. The jurors and spare jurors are always present at the proceedings in the courtroom, except as provided herein.

3. If in the course of the proceedings, but before the jurors and the judge go to the deliberation room to reach a verdict, it turns out that any of the jurors may not continue to participate in the hearing or suspended by the presiding judge from participating in the hearing, he (she) shall be replaced by a spare juror in the order in which the cards with the names of the reserve jurors are taken from the box. If it is not possible to replace the leaving jurors with the spare jurors, the presiding judge shall declare the trial invalid and return the trial to the stage of preliminary sample of jurors in accordance with Article 638 of this Code.

4. If the inability to participate in the hearing of any of the jurors is revealed after going to the deliberation room, the judge and the jurors should leave the courtroom and replace the

juror by the spare one and again go to the deliberation room. If the replacement of the leaving juror by the spare one is not possible, the presiding judge shall declare the trial as invalid and return the trial to the stage of preliminary sample of the candidates for jurors in accordance with Article 638 of this Code.

5. Any juror at any stage of the proceedings may be suspended from the further participation in the case in the event of non-compliance with the restrictions specified in the fourth part of Article 647 of this Code.

6. The removal of the juror is carried out by the presiding judge in the presence of the parties, as recorded in the protocol of the court session.

#### **Article 646. Oath-taking of the jurors**

1. After formation of the jurors, the presiding judge or the secretary of the court session offers to all present in the courtroom to stand. The presiding judge appeals to the jurors with a proposal to take the oath.

2. A person, selected in the manner provided by this Code, to participate in criminal proceedings as a juror takes the oath, saying the text to read as follows: “Getting the duties of a juror, I solemnly swear to perform my duties fairly and impartially, taking into account of all the evidence before the court, the arguments, circumstances of the case, to resolve the matter on my inner conviction and conscience as befits a free citizen and a fair man”

Juror confirms the oath by pronouncing the phrase: “I swear”.

3. The oath-taking of the jurors shall be recorded in the protocol of the court session.

#### **Chapter 68. Features of the proceedings by the court**

##### **with jurors Article 647. The rights and duties of a juror and restrictions in activities related to the proceedings**

1. The presiding judge shall explain to the jurors their rights, duties and restrictions in activities, related to the proceedings, as well as also warn of the consequences of breach of duty and violation of restrictions.

2. The juror shall have the right to:

1) participate in the study of the evidence, considered in court in order to be able in its own inner conviction to evaluate the facts of the case and answer the questions that will be put before the jurors;

2) ask questions through the presiding judge to the participants in the process;

3) participate in the examination of the material evidence, the documents, inspections of the areas and premises, and in all other actions in the court proceedings;

4) apply to the presiding judge for clarification of the norms of legislation, as well as the content of the documents, announced in the hearing and other incomprehensible for him (her) issues related to the case;

5) make written notes during the hearing.

3. The juror shall:

1) comply with the rules of the court and obey the lawful instructions of the presiding judge;

2) be in the specified time in the court to serve as a juror, as well as in the continuation of the trial if it is declared a break in the trial, or a hearing is postponed;

3) in case of failure to appear in court, inform in advance the presiding judge of the reasons for failure to appear.

4. The juror may not:

1) be absent from the courtroom during the hearing;

2) come into contact with the persons not members of the court during the hearing of the case, without the permission of the presiding judge;

3) collect information during the trial outside the court;

4) disclose information about the circumstances that became known to him (her) in connection with his (her) participation in a closed court session, as well as violate the secrecy of the deliberations room.

5. Failure of the juror to comply with the duties, as well as failure to comply with the restrictions provided for in this Article shall be punishable under the law, as well as the possibility of exclusion of the juror by the presiding judge from further participation in the proceedings.

#### **Article 648. The competence of the court with jurors**

1. The issues referred to in paragraphs 1), 2), 3), 4), 5), 6), 7), 8) and 14) of the first part of Article 390 of this Code shall be resolved in the proceedings by the court with jurors.

2. The judge shall not acquaint the jury with facts that are inadmissible as evidence. If, in the course of the trial, factual data are discovered that are inadmissible as evidence in accordance with Article 112 of this Code, the presiding judge shall be obliged, in the presence of the jury, to decide the issue of excluding them from the number of such, and in the case of examination of such evidence, recognize them as having no legal force, and their research as invalid and shall clarify to the jury that they should not take them into account when making decisions.

3. Is excluded by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

Footnote. Article 648 as amended by Law of the Republic of Kazakhstan No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).

#### **Article 649. Termination of the case in the court with jurors**



The presiding judge shall dismiss the case at any stage of the proceedings of the court with jurors, if during the trial the circumstances provided for by the first part of Article 35 of this Code are clarified, as well as the failure of the public prosecutor of the charges in accordance with the seventh part of Article 337 of this Code.

After liberation of the jurors from participation in the trial, the presiding judge shall decide the case solely by the corresponding resolution.

#### **Article 650. Features of the judicial investigation in the court with jurors**

1. The judicial investigation in the court with jurors is conducted in accordance with the procedure established by Articles 364 - 378, 381 of this Code.

2. The public prosecutor at the announcement of the operative part of the indictment shall not have a right to mention the facts of the criminal record of the defendant.

3. The jurors through the presiding judge may ask questions to the defendant, injured person, witnesses and experts after these persons will be questioned by the parties. The questions of the jurors shall be in writing and shall be submitted to the presiding judge.

4. The presiding judge shall have a right to reject questions that he (she) deems irrelevant to the case, as well as those which are suggestive or offensive, announcing the reasons for its rejection to the juror, asking the questions.

5. The parties without the jurors may request the examination of evidence, previously excluded by the judge from the proceedings without posing their essence. The judge without the jurors shall listen to the views of the participants in the proceedings in connection with such a request.

A relevant record shall be made in the protocol of the court session on the measures taken by the presiding judge.

6. Circumstances connected with the previous conviction of the defendant, on recognizing him as a person with a mental, behavioral disorder (disease) associated with the use of psychoactive substances, as well as other circumstances that can cause prejudice of jurors in relation to the defendant, are not subject to investigation with the participation of jurors.

7. In case of violation of the order, provided for in this Article, the presiding judge shall notify the relevant participant about the inadmissibility of such behavior and explain to the jurors that they should not take into account the speech of the participants in the process. In case of disobeying the orders of the presiding judge, the participant in the process may be imposed a monetary penalty in the manner provided by this Code.

**Footnote. Article 650 as amended by the Law of the Republic of Kazakhstan dated 07.07.2020 No. 361-VI (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 651. The pleadings in the court with jurors**

1. After completion of the judicial investigation, the court with jurors goes to the pleadings. The pleadings before the court with jurors consist of two parts.

2. The first part of the pleadings consists of speeches of the public prosecutor, the injured person, the defense counsel and the defendant, who set out their positions on the proof or lack of proof of guilt of the defendant, without mentioning his (her) previous conviction.

3. The parties may not mention the circumstances that are not subject to review by the court with jurors, and refer to the evidence not examined in the court session. The presiding judge shall interrupt such statements and explain to the jurors that they should not consider these circumstances in sentencing. In case of disobeying the orders of the presiding judge, the participant in the process may be imposed a monetary penalty in the manner provided by this Code.

4. The second part of the pleadings consists of speeches of the public prosecutor, as well as the injured person, civil claimant and defendant, or their representatives, the defense counsel and the defendant, who set out their positions on the qualification of actions of the defendant, the purpose of punishment, civil claim. The second part of the pleadings is held without jurors.

#### **Article 652. The replica and the last word of the defendant in the court with jurors**

1. Immediately after the speeches in every part of the pleadings, all the participants of the pleadings shall have the right to reply. The right to the last replica belongs to the defense counsel. The replica of the second part of the pleadings is pronounced in the absence of the jurors.

2. The defendant is provided the last word in accordance with Article 384 of this Code.

#### **Article 653. Formulation of the questions to be resolved by the court with jurors**

1. The jurors are removed from the courtroom on the discussion and formulation of questions.

2. The parties shall have the right to comment on the content and wording of the questions, and make suggestions on the formulation of new questions.

3. The presiding judge, taking into account the results of the judicial investigation, the pleadings formulates in writing the questions to be resolved by the judge and jurors in the deliberation room, reads them and informs the parties.

4. Taking into account the comments and proposals of the parties, the presiding judge finally formulates in the deliberation room the questions to be resolved by the court with jurors, enters them the list of questions and signs it.

5. The list of questions shall be announced in the presence of the jurors and the parties. After this, the change in the wording of questions, the exception of questions from the question list, the inclusion of new questions, shall not be allowed.

#### **Article 654. Contents of the questions to be resolved by the court with jurors**

1. For each of the actions in the commission of which the defendant is accused of, three basic questions are asked:

- 1) whether it is proved that the act took place;
- 2) whether it is proved that this act is committed by the defendant;
- 3) whether the defendant is guilty of committing the act.

2. After the main question on the guilt of the defendant, the specific questions may be asked about the circumstances that increase or decrease the degree of guilt or change its nature, entails the release of the defendant from liability. Where necessary, the questions on the degree of implementation of the criminal intent, the reasons due to which the act had not been brought to an end, the degree and nature of complicity of each of the defendants to the crime, shall be asked separately. The questions to establish the guilt of the defendant in the commission of a less serious crime may be asked, if it is not violated his (her) right to defense

3. The issues to be resolved shall be asked to each defendant separately.

#### **Article 655. Secrecy of meeting of the jurors**

1. After the end of the pleadings and the formulation of questions the judge and the main jurors go to the deliberation room for sentencing.

2. In addition to the judge and jurors, the presence of other persons in the deliberation room is not allowed. The presiding judge has the right to announce a break for the rest of jurors with going out of the deliberation room, as well as at the end of the working time to the next day. Take breaks due to weekends and holidays, is not allowed.

#### **Article 656. The order of the meeting and voting in the deliberation room**

1. The presiding judge directs the jury meeting, consistently puts up for discussion the issues to be resolved, holds a vote on answers and counts the votes.

1-1. The presiding judge cites the content of the charge; informs the content of the criminal law; outlines the positions of the public prosecutor and defense; clarifies the procedure for filling out the ballots, as well as the procedure for voting on the imposition of punishment.

2. The jurors shall have a right to obtain in the deliberation room from the presiding judge the clarification of ambiguities arisen in connection with the issues raised.

3. Voting on basic and additional issues is conducted secretly and in written form. The judge and jurors shall have no right to abstain in the voting. The votes of the judge and the jurors are equal.

4. The judge and jurors receive a blank ballot with a court stamp, each containing the following words: "By my honor, conscience and inner conviction, my conclusion ...", by the

number of defendants and by the number of questions on which they must respond. Securing the secrecy of the vote, each of them writes in the bulletin the answer to the question posed in the question sheet and to be resolved. The answer must be an affirmative "yes" or a negative "no" with an obligatory explanatory word or phrase that reveals the essence of the answer ("yes, proven", "no, not proven", "yes, guilty", "no, not guilty"). The judge and jurors put their ballots in the ballot box.

5. After the end of voting on the first of the set questions, the presiding judge opens the ballot box and counts the votes of each ballot in the presence of jurors, and immediately writes the result of the vote in front of the first of the three main questions indicated in the question list.

In the same manner the jurors and the judge vote consistently on each of the main, and then additional questions in the question list.

6. Ballots with answers of the jurors and the judge shall be sealed in an envelope, which is stored in the criminal case.

7. If the answer to the previous question eliminates the need to respond to the follow-up question, the presiding judge with the consent of the majority of jurors writes after it the words "no answer".

8. The guilty verdict is considered adopted, if the majority vote is received for the affirmative answers to each of the three questions, identified in the first part of Article 654 of this Code.

9. The acquittal is considered adopted, if there are six or more voting for the negative answer to any of the main questions posed.

10. If the issue of the defendant's guilt is resolved positively, the judge shall resolve the question of whether the act constitutes a crime and how it is provided for by the criminal law (Article, part, paragraph), as well as explains to the jurors what is the punishment for these acts.

If the judge in the affirmative answers of the jurors to the questions referred to in Article 654 of this Code, will come to the conclusion that the act does not have signs of a crime, and therefore it is not a crime, as well as establishes other circumstances provided for in Article 36 of this Code, he (she) in accordance with paragraph 1) of Article 657 of this Code shall decide to terminate the criminal proceedings.

11. Qualification of the act of the defendant under the relevant article of the Criminal Code of the Republic of Kazakhstan is determined by the judge without jurors. Then the judge and jurors shall decide, without a break, the issues specified in paragraphs 5), 6), 7), 8) and 14) of the first part of Article 390 of this Code, the decision on which is adopted by an open vote. The decision is considered adopted, if they are voted for by the majority.

The issue, stipulated in paragraphs 9), 10), 11), 12), 13), 15), 16), 17) and 18) of the first and the fifth parts of Article 390 of this Code shall be considered by the judge alone.

12. The punishment of imprisonment for a term exceeding fifteen years may be imposed, if there are eight or more voting for such a decision.

13. Life imprisonment may be imposed only if there is a unanimous decision of the judge and jurors.

14. The list of questions with the answers of the judge and jurors shall be signed by the judge and jurors, and attached to the case file.

**Footnote. Article 656 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated December 29, 2021 No. 89-VII (shall be enforced ten calendar days after the day of its first official publication).**

#### **Article 657. Types of the decisions, taken by the court with jurors**

The proceedings of the criminal case in the court with jurors ends up taking one of the following decisions:

- 1) the decision to dismiss the cases in cases, provided for in Article 327 of this Code;
- 2) the acquittal in cases where the court with jurors gave a negative answer to at least one of the three main questions, identified in the first part of Article 654 of this Code;
- 3) the conviction in accordance with the second part of Article 393 of this Code.

#### **Article 658. Sentencing**

1. The sentence is decided by the presiding judge in accordance with the procedure established by Chapter 46 of this Code, with the following features:

- 1) the introductory part of the judgment does not specify the names of the jurors;
- 2) the descriptive-motivation part of the acquittal sets out the essence of charges on which the court with jurors made acquittal, and refers to the verdict;
- 3) the descriptive-motivation part of the conviction shall contain a description of the offence, in the commission of which the defendant is found guilty, the qualification of the offence, the motives of sentencing and rationale of court decision in respect of the civil claim;
- 4) the operative part of the sentence should contain explanations on the procedure for appealing and revision at the petition of the prosecutor of the sentence.

2. The judgment shall be signed by the presiding judge in the proceedings.

**Footnote. Article 658 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 659. Termination of the criminal proceedings in connection with the establishment of the defendant's insanity**

1. If in the course of the proceedings before the court with jurors it is found the circumstances that give reason to believe that the defendant in his (her) mental state could not

be held criminally liable or sick mental illness, depriving his (her) ability to account for his (her) actions or control them, as evidenced by the relevant conclusions of the forensic psychiatric examination, the presiding judge shall decide to terminate the criminal proceedings in accordance with paragraph 1) of Article 657 of the Code, and consider solely in the manner provided by Section 11 of this Code the issue of application of compulsory medical measures to the insane.

2. The decision on termination of the criminal case due to the establishment of the insanity of the defendant and the application or non-application of compulsory medical measures to him/her may be appealed, reviewed at the petition of the prosecutor in the manner prescribed by this Code.

**Footnote. Article 659 as amended by the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 660. Specifics of the protocol of the court session**

1. The protocol of the court session is conducted in accordance with the requirements of Article 347 of this Code with the specifications, provided by this Article.

2. The protocol shall specify the composition of the potential jurors, summoned to the hearing, and the course of the formation of the jurors.

**3. Is excluded by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V ( shall be enforced from 01.01.2015).**

4. The protocol of the court session shall record the entire course of the trial so that it may be possible to verify the correctness of its conduct. In particular, the protocol of the court session should indicate the information on the removal or replacement of jurors; removal of jurors from the courtroom in cases stipulated by this Code; the measures taken by the presiding judge in relation to the participants in the process due to their failure to comply with statutory requirements on the inadmissibility to discuss the questions in the presence of the jurors; the request or lack thereof on the part of the prosecution to provide evidence and their examination; the course of formulation of the questions to be included in the list of questions; leaving the judge and the jurors of the deliberation room to replace a juror or renewal of the judicial investigation.

**Footnote. Article 660, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015).**

#### **Chapter 69. Features of the proceedings on the revision**

##### **of the not entered into force judgments, decisions**

**on cases, considered with jurors Article 661. Appeal and revision at the petition of the prosecutor of unenforceable sentences and decisions passed by the court with the participation of jurors**

The procedure for appealing, reviewing at the petition of the prosecutor of sentences and decisions of the court with the participation of jurors, not entered into legal force shall be determined by the rules provided by this Code, with the peculiarities established by this chapter.

**Footnote. Article 661 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

#### **Article 662. Features of the proceedings in the appellate instance of the cases considered by the court with jurors**

1. The court of appellate instance, when reviewing complaints, petitions of the prosecutor for sentences, court decisions with the participation of jurors, verifies the compliance with the norms of the criminal and criminal procedure law by the court that passed this sentence, the decision, and on this basis verifies the legality, validity and fairness of the sentence, the decision.

2. The grounds for cancellation or change of the court decisions by the appellate instance shall be:

1) the unjustified exclusion from the proceedings the admissible evidence which may be essential for the outcome of the case;

2) the unjustified refusal to the party in the examination of the evidence that may be essential for the outcome of the case;

3) the examination in court of the actual data, inadmissible as evidence that affected the outcome of the case;

4) the substantial violation of the criminal procedure law, provided for in this Code;

5) the violations that affected or could affect the legal sentencing, made during:

the formation of the jurors;

discussing the issues that are not negotiable in the presence of the jurors;

the formulation of questions to be resolved by the jurors;

the pleadings;

3. The appeals instance shall have the right to apply to the convicted person the criminal law on a less serious crime and reduce the penalty in accordance with the changed qualification of the offence or in connection with the incorrect application of the General and Special Parts of the Criminal Code of the Republic of Kazakhstan in sentencing. In this case, the appellate court shall not have a right to apply the criminal law on a more serious offence or increase the punishment imposed.

4. The acquittal of the court with jurors may not be canceled by the appellate instance, except in cases of violations of the criminal procedural law, which restricted the right of the



procurator, the injured person or his (her) representative, to present evidence, as well as in cases provided for in paragraph 5) of the second part of this Article, including the unjustified exceptions of admissible evidence.

5. Is excluded by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).

Footnote. Article 662, as amended by the Law of the Republic of Kazakhstan dated 07.11.2014 No. 248-V (shall be enforced from 01.01.2015); dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).

### **Article 663. Cancellation of the judgment with participation of the jurors with the direction of the case for a new trial**

1. A judgment, made with the participation of the jurors shall be canceled in full or in part with the direction of the case for a new trial to the court that made the judgment, but with a different composition of the court on the grounds specified in Article 662 of this Code.

2. In this case, the appellate court shall not have a right to prejudge the question of proof or unproven accusations, reliability or unreliability of the one or another evidence, the superiority of one evidence over the other, the application by the court of first instance of one or another criminal law and punishment, as well as to prejudge the conclusions that may be made by the court.

3. When the new consideration of the criminal case after the cancellation of the judgment, the court shall comply with the requirements under Article 447 of this Code.

### **Chapter 70. Features of the proceedings on the revision of the entered into force judgments, decisions on cases, heard with participation of jurors Article 664. The revision of the entered into force judgments and decisions of the court with jurors in the court of cassation**

Footnote. Article 664 is excluded by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016).

### **Article 665. Revision of the enforceable sentences and decisions of the court with the participation of jurors in the cassation procedure**

The revision of the sentences and decisions in the cassation procedure on cases reviewed with the participation of jurors is carried out by the collegium of the Supreme Court of the Republic of Kazakhstan on the grounds provided by paragraph 1) of part one and part two of Article 485 of this Code, or in connection with the improper application of the norms of the General and Special parts of the Criminal Code of the Republic of Kazakhstan when imposing punishment.

Footnote. Article 665 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V(shall be enforced from 01.01.2016).

**Article 666. The inadmissibility of deterioration of the situation of the convicted person during the revision in cassation procedure of the sentence that entered into force, the court decision with the participation of jurors**

Revision of the conviction, as well as the court decision in cassation procedure, in connection with the need to apply a criminal law on a more serious crime because of the softness of punishment or on other grounds entailing a deterioration of the situation of the convicted person, as well as the revision of the acquittal sentence or the court decision to terminate the criminal case are not allowed.

Footnote. Article 666 in the new wording of the Law of the Republic of Kazakhstan dated 31.10.2015№ 378-V(shall be enforced from 01.01.2016).

**Section 15. The procedure of confiscation before sentencing Chapter 71. The procedure for confiscation of the property, obtained illegally, before sentencing Article 667. Initiation of the proceedings for confiscation of the property, obtained illegally, before sentencing**

1. In cases where the suspected, the accused are in the international wanted list or criminal prosecution against them is discontinued on the grounds of paragraphs 3), 4) and 11) of the first part of Article 35 of this Code, the person, conducting the pre-trial investigation, in the presence of the information about the illegally obtained property, initiates the proceedings for confiscation of the property in the manner provided by this Chapter.

2. On the allocation of materials for the production of the confiscation, the person conducting the pre-trial investigation shall make a decision, which is attached by the copies of materials of the criminal case on the crime giving rise to the confiscation, including the confirming circumstances provided for by the third part of Article 113 of this Code.

**Article 668. Pre-trial proceedings for the confiscation**

1. Pre-trial proceedings for the confiscation shall be subject to the provisions of this Code, unless this Chapter provides otherwise.

2. In the pre-trial proceedings for the confiscation, in addition to the circumstances provided for by the first and the third parts of Article 113 of this Code, the following shall also be proved:

- 1) the property belonging to the suspected, the accused or a third party;
- 2) the relationship of the property with the offence, which is a basis for the confiscation;
- 3) the circumstances of the acquisition of the property by a third party or giving reason to believe that the property is acquired as a result of the offence.

3. In the case of establishment of the circumstances, giving evidence of the concealment by the suspected, the accused of property by its re-legalization on others, the person conducting the pre-trial investigation makes a request to the procurator for deciding whether to appeal to the court in the interests of the state or the injured persons in a criminal case with a claim for invalidation of transactions (purchase and sale, donation, transfer to rent, trust management, and others) in the civil proceedings.

4. While recognizing that the production of the confiscation has the sufficient evidence that the property is obtained illegally, the person conducting the pre-trial investigation, makes a report, which shall include:

- 1) the surname, name, patronymic (if any), the place of residence or location, and the address of the suspected, the accused, the date of birth;
- 2) the information on the offence, which is a basis for the confiscation, the qualification of crimes, the circumstances of its commission, the nature and extent of damage caused by the offence;
- 3) the description and location of the property subject to confiscation;
- 4) the evidence, confirming the circumstances envisaged by the second part of this Article ;
- 5) the conclusion about the necessity of going to court with the request for confiscation.

5. The conclusion on the production of the confiscation with the materials, immediately after the end, shall be sent to the procurator.

6. The procurator, after considering the conclusion, shall apply for the confiscation, to the court which has the jurisdiction over the criminal case on the crime, investigated by the body for criminal prosecution.

The request for confiscation shall include:

- 1) the time and place of the request;
- 2) the position, name and initials of the person who made the request;
- 3) the information on the crime, which is a basis for the confiscation, the qualification of crime, the circumstances of its commission;
- 4) the surname, name, patronymic (if any), the place of residence and address of the suspected, the accused, the date of birth;
- 5) the nature and extent of the damage caused by the crime;
- 6) the information on the seizure of property, subject to confiscation;
- 7) the description and location of the property subject to confiscation;
- 8) a list of evidence, confirming the circumstances stipulated by the second part of this Article;
- 9) the arguments, which are the basis for the appeal to the court for the confiscation;
- 10) the estimated size of the costs for confiscation.

The defense counsel (with his (her) participation), the injured person, his (her) representative shall be notified on the direction of the request.

The request shall be attached by a list of persons to be summoned to the hearing. The list shall indicate the surname, name and patronymic of the person, his (her) procedural status, place of residence.

7. In the absence of grounds for appeal to the court, the procurator returns the conclusion and the materials to the person conducting the pre-trial investigation, indicating the need to collect additional evidence or dismiss the proceeding on confiscation.

8. The procurator shall make the actions, described in the sixth and seventh parts of this Article within ten days.

#### **Article 669. Consideration of the request for confiscation by the court**

1. The judge shall decide alone the issue of application of the confiscation.

2. The proceedings shall be conducted in compliance with the provisions of this Code, taking into account the peculiarities stipulated by this Chapter.

The judge may demand the criminal case, if the additional research of materials is necessary.

3. The procurator, making the request shall participate at the hearing.

4. At the request of the defense counsel of the suspected, the accused with his (her) participation, other persons may be called at the hearing to testify in respect to this request.

#### **Article 670. The issues, to be resolved by the court in the deliberation room in the proceedings of confiscation**

1. The court upon consideration of the request for confiscation shall make a decision.

2. The following issues shall be resolved by the court in making the decision:

1) whether the property of the suspected, the accused is connected with the crime, which is a basis for confiscation, in cases provided for in Article 48 of the Criminal Code of the Republic of Kazakhstan;

2) whether the property is acquired by a third party in the manner provided for in Article 48 of the Criminal Code of the Republic of Kazakhstan;

3) whether the confiscation of the property is applied and to which part it should be applied;

4) how to deal with the seized or confiscated property for which the confiscation is not applicable;

5) what is the amount of the costs for confiscation and to whom they are assigned to.

#### **Article 671. The court decision for confiscation**

1. The court shall make a decision in the deliberation room on:

1) satisfying the request and confiscation of property;

2) dismissal of the request for confiscation.

2. A copy of the decision shall be given to the procurator and other participants in the process, or sent by mail to those participants who do not participate in the trial for the production of the confiscation.

A copy of the decision shall be given to the person, whose property is confiscated.

3. After the entry into force of the decision, the court made the decision sends a writ of execution, a copy of the inventory of the property and a copy of the decision to the relevant judicial authority for execution in the manner provided for the enforcement of sentences of confiscation.

**Footnote. Article 671, as amended made by the Law of the Republic of Kazakhstan dated 29.09.2014 No. 239-V (shall be enforced from 01.01.2015).**

#### **Article 672. Appeal, revision, at the petition of the prosecutor of the decision on confiscation**

The court's decision on confiscation may be appealed, reviewed at the petition of the prosecutor, challenged in the manner prescribed by this Code.

**Footnote. Article 672 in the new wording of the Law of the Republic of Kazakhstan dated 11.07.2017 № 91-VI (shall be enforced upon expiry of ten calendar days after the day its first official publication).**

### **Section 16. Transitional and final provisions**

#### **Chapter 72. The enforcement of the certain provisions**

#### **of this Code Article 673. The procedure for application of the certain provisions of this Code**

1. According to the statements and reports of crimes, received by the bodies of criminal prosecution before the entry into force of this Code and for which there is no decision to initiate criminal proceedings or to dismiss the criminal case, the pre-trial investigation is carried out in the manner provided by this Code.

2. Positions of article 173 of the present Code about Fund of compensation to victims are entered into force from the date of introduction of laws of the Republic of Kazakhstan "About Fund of compensation to victims" and "About modification and additions in some acts of the Republic of Kazakhstan concerning Fund of compensation to victims" and according to them.

3. The provisions of Chapter 71 of this Code on the procedure of proceedings for confiscation of property, obtained illegally, before sentencing shall enter into force from January 1, 2018.

4. Conducting the cases of operational records that on the day of entry into force of this Code are in production of the units, engaged in operational investigative activities, shall continue. In the presence of the relevant grounds, such materials of operational record shall be transferred to the bodies of the pre-trial investigation to initiate pre-trial investigation in the manner provided by this Code, taking into account the jurisdiction.

5. The criminal cases that on the day of entry into force of this Code are in the production of the bodies for criminal prosecution, shall remain in the production of these bodies before the end of the investigation, regardless of the changes in their jurisdiction in accordance with this Code.

6. Operative-search measures, investigative and procedural actions, initiated prior to the date of entry into force of this Code shall be completed in accordance with the procedure in force until its entry into force. After the entry into force of this Code, the operational-search measures, investigative and procedural actions shall be carried out according to the Law of the Republic of Kazakhstan “On operative-search activity” and the provisions of this Code.

7. Admissibility of evidence, obtained before the entry into force of this Code shall be determined in accordance with the procedure in force until its entry into force.

8. Preventive measures, seizure of property, removal from office, applied in the course of inquiry and preliminary investigation before the date of entry into force of this Code shall be in force until their changes, cancellation or termination in the manner provided by this Code.

8-1. Proceedings on a suspended criminal case, the decision on the suspension of which is made before the entry into force of this Code, shall be resumed in the manner that is in force before the entry into force of this Code.

Pre-trial investigation on them may be carried out no more than one month from the date of acceptance of the case in proceedings. Further extension of the pre-trial investigation period shall be carried out on the general grounds provided for by this Code.

9. Criminal cases that on the day of enactment of this Code are not sent to court with an indictment, a protocol of the prosecution, a protocol of simplified pre-trial proceedings, as well as for the application of compulsory medical measures of, shall be investigated and sent to the court and considered by the courts of the first, appeal and cassation instance in accordance with the provisions of this Code.

10. The criminal cases that before the day of entry into force of this Code came into court with the indictment, the prosecution protocol, the protocol of the short pre-trial proceedings, as well as for the application of compulsory medical measures shall be considered by the courts of first instance, appeal, cassation and supervisory instances in the procedure in force before the entry into force of this Code.

11. Investigation of criminal cases provided for by part nine of the present article, in case of return of such criminal cases by the court to the prosecutor for additional investigation, shall be conducted in the manner prescribed by the present Code.

12. The judicial acts adopted by the court of first instance and not entered into force on the day of entry into force of this Code, may be appealed in the appellate procedure and periods, which were in force prior to the enforcement of this Code.

13. Not appealed judicial acts that adopted by the court of first instance and not entered into force on the day of entry into force of this Code shall enter into force in accordance with the procedure in force until the entry into force of this Code.

14. The appellate and cassation complaints, the request for review of the judicial acts by the Supreme Court of the Republic of Kazakhstan on criminal cases that have been reviewed before the entry into force of this Code, or for the cases, the review of which has not been completed before the date of entry into force of this Code, shall be submitted and reviewed in procedure in force until the entry into force of this Code.

15. The requests for renewal of the criminal proceedings on newly discovered circumstances, submitted by the corresponding procurator before the date of entry into force of this Code, shall be considered and submitted by them to the court according to the procedure in force before the entry into force of this Code.

The requests for renewal of the criminal proceedings on newly discovered circumstances, submitted to the court before the day of entry into force of this Code, as well as the requests submitted by the procurators in accordance with the first subparagraph of this paragraph, after its entry into force, shall be considered by the corresponding courts in accordance with the procedure in force before the enforcement of this Code.

16. Judicial acts issued before January 1st, 2016 may be appealed, challenged in accordance with the procedure established by this Code.

Judicial acts on cases provided by Part 2 of Article 484 of this Code, issued before January 1st, 2016, may be appealed, challenged at the cassation instance of the Supreme Court of the Republic of Kazakhstan before July 1st, 2016.

**Footnote. Article 673 as amended by the Law of the Republic of Kazakhstan dated 31.10.2015 № 378-V (shall be enforced from 01.01.2016); dated 10.01.2018 № 132-VI (shall be enforced dated 01.07.2018); dated 12.07.2018 № 180-VI (shall be enforced upon the expiration if ten calendar days after the date of its first official publication); No. 292-VI dated December 27, 2019 (see Article 2 for the enactment procedure).**

### **Chapter 73. Final provisions Article 674. On the enforcement of this Code, and invalidation of the certain legislative acts**

1. This Code shall enter into force on January 1, 2015, except for the provisions in the second and third parts of Article 673, for which other terms of enforcement are established.

2. The following legislative acts shall be repealed from January 1, 2015:

1) the Criminal Procedure Code of the Republic of Kazakhstan dated December 13, 1997 (Bulletin of the Parliament of the Republic of Kazakhstan, 1997, No. 23, Art. 335; 1998, No. 23, Art. 416; 2000, No. 3-4, Art. 66; No. 6, Art. 141; 2001, No. 8, Art. 53; No. 15-16, Art. 239; No. 17-18, Art. 245; No. 21-22, Art. 281; 2002, No. 4, Art. 32, 33; No. 17, Art. 155; No. 23-24, Art. 192; 2003, No. 18, Art. 142; 2004, No. 5, Art. 22; No. 23, Art. 139; No. 24, Art. 153, 154, 156; 2005, No. 13, Art. 53; No. 21-22, Art. 87; No. 24, Art. 123; 2006, No. 2, Art. 19; No. 5-6, Art. 31; No. 12, Art. 72; 2007, No. 1, Art. 2; No. 5-6, Art. 40; No. 10, Art. 69; No. 13, Art. 99; 2008, No. 12, Art. 48; No. 15-16, Art. 62, 63; No. 23, Art. 114; 2009, No. 6-7, Art. 32; No. 15 -16, Art. 71, 73; No. 17, Art. 81, 83; No. 23, Art. 113, 115; No. 24, Art.



121, 122, 125, 127, 128, 130; 2010, No. 1-2, Art. 4; No. 11, Art. 59; No. 17-18, Art. 111; No. 20-21, Art. 119; No. 22, Art. 130; No. 24, Art. 149; 2011, No. 1, Art. 9; No. 2, Art. 19, 28; No. 19, Art. 145; No. 20, Art. 158; No. 24, Art. 196; 2012, No. 1, Art. 5; No. 3, Art. 26; No. 4, Art. 32; No. 5, Art. 35; No. 6, Art. 44; No. 10, Art. 77; No. 14, Art. 93; 2013, No. 2, Art. 10, 13; No. 7, Art. 36; No. 13, Art. 62, 64; No. 14, Art. 72, 74; No. 15, Art. 76, 78; 2014, No. 1, Art. 9; No. 2, Art. 11; No. 8, Art. 49; the Law of the Republic of Kazakhstan from June 10, 2014 “On amendments and additions to some legislative acts of the Republic of Kazakhstan concerning counteraction to legalization (laundering) of proceeds from crime and terrorist financing”, published in newspapers “Egemen Kazakhstan” and “Kazakhstanskaya Pravda” on June 14, 2014);

2) the Law of the Republic of Kazakhstan dated 13 December, 1997 “On the enforcement of the Criminal Procedure Code of the Republic of Kazakhstan” (Bulletin of the Parliament of the Republic of Kazakhstan, 1997, No. 23, Art. 336; 1998, No. 23, Art. 416; 2000, No. 6, Art. 141; 2001, No. 15-16, Art. 239).

*The President  
of the Republic of Kazakhstan*

*Nursultan Nazarbayev*