



On practice of enforcement of the legislation by courts governing criminal proceedings with participation of jurors

Unofficial translation

Normative Decree of the Supreme Court of the Republic of Kazakhstan dated August 23, 2012 No. 4.

Unofficial translation

In order to ensure the right of the accused to trial by jury and correct and unified practice in enforcement of the standards of the law governing criminal proceedings with participation of jurors, the plenary session of the Supreme Court of the Republic of Kazakhstan

hereby RESOLVED as follows:

1. Until January 1, 2023, specialized inter-district criminal courts and specialized inter-district military courts (hereinafter "courts") with the participation of jurors shall hear criminal cases involving offences for which life imprisonment is prescribed by criminal law, also in cases involving offences under Articles 125 (part three), 128 (part four), 132 (part five) and 135 (part four) of the Criminal Code of the Republic of Kazakhstan (hereinafter the CC), excluding cases of: on murders committed in the context of an emergency situation or a mass riot, on war crimes committed in time of war or in a military situation, on particularly serious crimes against the sexual inviolability of minors, and on offences under Articles 170 (part four), 175, 177, 178, 184, 255 (part four), 263 (part five), 286 (part four), 297 (part four), 298 (part four) and 299 (part four) of the Criminal Code.

Since January 1, 2023, courts with jury trial shall have jurisdiction over cases of particularly severe offences, as well as cases of offences under Articles 125 (paragraph 1) of part three), 128 (paragraph 1) of part four), 132 (part five), 135 (paragraph 1) of part four), 160, 163, 164 (part two), 168, 380-1 (part six) of the Criminal Code, excluding cases of murder committed in the context of an emergency situation and during a mass riot; on crimes against peace and security of mankind, the foundations of the constitutional order and security of the state; on terrorist and extremist crimes; on war crimes committed in wartime combat situations or crimes committed as part of a criminal group; and of particularly grave crimes against the sexual inviolability of minors.

In the case where a person is accused of committing crimes under several Articles of the Criminal Code, one of which is a crime in which the trial shall be subject to a jury trial, and if, in a criminal case, a jury trial, several persons shall be accused and at least one of them will apply for a criminal case involving jurors, in respect of them, the criminal case shall be examined according to the rules, under section 14 of the Criminal Procedure Code (hereinafter referred to as the of Criminal Procedure Code).

Footnote. Paragraph 1 – in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication); as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 10 of 22.12.2022 (shall be enacted from the date of first official publication).

2. In accordance with part 3 of Article 634 of the Criminal Procedure Code, the suspects and the accused shall have the right to submit a motion for a trial by jury when presenting all the materials of the case for examination, as well as during the subsequent period, including the preliminary hearing of the case in court, but before the court shall decide on the appointment of the main trial.

Under Article 297 of the Criminal Procedure Code, the suspects and the accused shall have the right to apply for a jury hearing, both orally and in writing.

If the suspect, the accused submits a motion for consideration of the case with the participation of jurors orally, the person conducting the pre-trial investigation shall enter its content in the record of familiarization with the case file. The receipt of a written motion shall be specified in the minutes and the application shall be admitted to the case.

The request made at the time of the submission of the criminal case to the prosecutor and the trial of the accused shall be submitted by the suspect, the accused in writing and shall be immediately submitted to the court, which shall consider the criminal case.

Footnote. Paragraph 2 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

3. Since it shall be mandatory to hold a preliminary hearing in cases of crimes referred to in part 1 Article 631 of the Criminal Procedure Code, regardless of the existence or absence of a motion by the suspect or the accused to hear a case with participation of the jurors, the judge, if so requested, asks the defendant whether he supports his motion. In the absence of such a motion, the judge shall explain to the defendant his right to submit a motion for court hearing with participation of jurors directly in the current court hearing.

If the defendant confirms his motion or if such motion is made during the preliminary hearing, the judge shall be obliged to explain to the defendant the legal consequences of the examination of the criminal case with participation of the jurors, including the peculiarities of the appeal against the court acts.

The decision to grant the motion for consideration of the criminal case with participation of jurors shall be specified by the judge in the decision rendered at the end of the preliminary hearing of the case.

A judge may not deny granting the motion for the juror's consideration.

Footnote. Paragraph 3 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

4. If the prosecutor changes the prosecution during the preliminary hearing, which leads to a change of jurisdiction, in accordance with part 6 Article 321 of the Criminal Procedure Code, the case shall be referred to the prosecutor for re-submission of the indictment and referral of the case on jurisdiction.

If the public prosecutor changes the prosecution in the course of the trial towards easing or in the case of partial rejection of the prosecution, the judge shall order the continuation of the case on the new charge, with the participation of the jury.

In the event of the prosecutor's total rejection of the prosecution at the trial, in accordance with Article 649 of the Criminal Procedure Code, the presiding judge shall release the jurors from the trial and order the termination of the criminal case alone.

Footnote. Paragraph 4 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

5. In the resolution on appointing the case to the main litigation with participation of the jurors, the judge shall indicate the total number of candidates for jurors to be called to court with the expectation that there would be at least twenty-five.

By order of the judge, in accordance to Article 638 of the Criminal Procedure Code, the registrar of the court hearing shall conduct a preliminary random selection of candidates for the jurors from the single and spare lists available in the court.

In order to ensure the timely appearance of candidates for the jurors, to apply, where necessary, measures of liability to persons, preventing candidates for jurors from performing their duties, as well as to candidates for jurors when they avoid appearing in court without good reason and deciding other matters of the organization of the litigation, the courts must comply with the requirements of part 5 Article 638 of the Criminal Procedure Code for the delivery to candidates for jurors of notices indicating the date and time of arrival in court not less than seven days before the beginning of the court hearing.

If the number of candidates appearing for jurors is less than twenty-five, their replenishment to the specified number shall be carried out by the secretary by order of the presiding officer from a unified list.

The court hearing for the selection of jurors from among the candidates shall be conducted in accordance with the requirements of Articles 350 to 363 of the Criminal Procedure Code, as well as Articles 639 to 644 of the Criminal Procedure Code.

If the identity of the candidate for jurors specified in the list drawn up by the local executive body does not match with the passport data of the person who appeared, the person shall be excluded by the presiding judge from the number of candidates for jurors and released from participation in the formation of jurorspanel.

In accordance with Article 11, paragraph 5 of Law of the Republic of Kazakhstan dated January 16, 2006 No. 121 "On jurors" (hereinafter referred to as the Law on Jurors"), a candidate for a juror for evading a court appearance may be held administratively liable under

Article 655 of the Code of Administrative Offences (hereinafter referred to as the Code of Administrative Offenses). An official who prevents jury candidates from performing their duties shall be subject to criminal liability under Article 436 of the Criminal Code.

Footnote. Paragraph 5 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

6. The preparatory part of the trial with the participation of jurors shall be held in accordance with the procedure established by Chapter 43, and taking into account the requirements of Articles 639 to 644, part one of Article 645, Article 646 of the Criminal Procedure Code, while the selection of jurors from among the candidates shall be carried out in closed court.

Prior to the selection of jurors, the presiding judge shall be obliged to explain to the parties their rights under Articles 64. 65, with 71 to 77, part 4 Article 639, Article 642, part 2 Article 643, Article 651, and part 2 Article 653 of the Criminal Procedure Code.

To draw the attention of the courts that, in accordance with part Article 639 of the Criminal Procedure Code, clarification by the presiding judge (hereinafter referred to as the judge) candidates for jurors of their duties truthfully answer questions asked to them and provide other information about themselves and about relations with other participants in criminal proceedings, as well as their examination of the existence of circumstances preventing participation as jurors in criminal proceedings, shall be a prerequisite for the formation of jurors panel and the legal composition of the court.

In addition, the judge shall be obliged to explain to the candidates for jurors that their concealment of information impeding the performance of the juror's duties, if they are included in the panel and participate in the consideration of the criminal case, there shall be the basis for the annulment of the court's sentence.

However, in interviewing candidates for jurors, the judge shall be required to take steps to ensure that: that the questions asked by the parties relating to the clarification of the circumstances that may impede the participation of a candidate for jurors in the criminal case, shall have been understandable and specific and should not entail a restriction of the rights of candidates for jury on grounds, referred to in part 2 Article 10 of the Law of the Republic of Kazakhstan “On jurors” (on grounds of origin, attitude to religion, belief, etc.).

Footnote. Paragraph 6 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

7. In the course of the examination of a candidate for jurors, if the circumstances referred to in part 3 Article 640 of the Criminal Procedure Code are established, the judge shall have the right to release the juror from his duties if there is a written or oral statement of the candidate for jurors .

In the selection of jurors from among the candidates, the presiding officer, as well as the parties, may, in accordance with part four of Article 639 of the CPC, ask the candidate questions relevant to the formation of a juror. The procedure for raising questions shall be determined by the presiding officer.

A candidate for jurors with the purpose of non-disclosure of personal information shall have the right to answer to the presiding judge confidentially.

If there are facts that may give them a biased opinion about judicial or law enforcement authorities or raise reasonable doubts about possible bias, the candidate for jurors shall be relieved of his or her duties as a juror. At the same time, the courts should take into account that the grounds for the release of a candidate for jurors from duty may be not any case of administrative liability, but only the fact of administrative arrest in court.

Footnote. Paragraph 7 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

8. In accordance with part 13 Article 4 of the Law “On Jurors” part 5 Article 645 of the Criminal Procedure Code, a judge may, at any stage of the proceedings, suspend further participation by a juror in the case of non-compliance with the restrictions imposed by part 4 Article 647 of the Criminal Procedure Code.

In accordance with part 7 Article 639 of the Criminal Procedure Code, self-withdrawal and withdrawal, the candidates for jurors and other matters relating to their release, as well as questions on the exclusion of a candidate for jurors from the case in accordance with part 6 Article 645 of the Criminal Procedure Code, shall be resolved by the judge alone without removal to the advisory room in the presence of the parties, as recorded in the minutes of the court hearing.

Footnote. Paragraph 8 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication).

8-1. The registrar of the court session shall have the right to discuss the organization of the trial with jurors outside the court session.

Footnote. Paragraph 8-1 added by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

9. The peculiarities of the judicial investigation in court with the participation of jurors shall be determined by Article 650 of the Criminal Procedure Code.

In the presence of jurors, all factual data established in the case must be examined, with the exception of the restrictions having set out in part 5 and 6 of the Article 650 of the Criminal Procedure Code.

In view of this, as well as the provisions of Article 650 of the Criminal Procedure Code, the judge must ensure that the litigation shall be conducted only within the limits of the charge brought against the defendant, as well as the fact that the parties during the court hearing cannot mention circumstances not subject to trial by jury and invoke evidence excluded from the proceedings.

In establishing these circumstances, the judge shall interrupt such statements by the parties and shall explain to the jurors that they should not take these circumstances into account in the verdict.

The judge, in the event of repeated violation by the parties, despite the judge's warning, of the procedure for examining inadmissible evidence, as well as the circumstances not subject to investigation in the presence of jurors, may bring them to administrative liability for contempt of court under Article 653 of the CAO.

Refusal of the parties to examine evidence not recognized by the court as inadmissible, as well as evidence that may be essential to the outcome of the case, should be considered as a restriction of their rights, that shall be a violation of the criminal procedure law leading to the annulment of the sentence under Article 662 of the Criminal Procedure Code.

In the event of a motion from the defendants, the accused of minor, moderate or serious crimes to conclude a procedural plea agreement, the presiding judge shall carry out the actions provided for in Article 628 of the Criminal Procedure Code. If a plea agreement is not concluded, the case shall continue in the same manner.

When a written motion for a procedural agreement on cooperation is received from the defendant, the presiding judge, in accordance with part 4 Article 619, of the Criminal Procedure Code, shall send the motion to the prosecutor to carry out the actions provided for in part 6 Article 619 of the Criminal Procedure Code. If it is not possible to continue the trial, the court, in accordance with part 1 Article 341 of the Criminal Procedure Code, shall order the adjournment of the proceedings for a certain period of time.

Footnote. Paragraph 9 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

10. The court, bearing in mind that the proceedings shall examine evidence provided only by the parties to the prosecution and the defense, and in accordance with the requirements of the law on the preservation of objectivity and impartiality by the court during the proceedings

, shall ensure that the records of the investigation, the opinions of the experts, the records of the testimony of the victims, witnesses and other documents attached to the case shall be made public by the party requesting it.

In the presence of jurors, procedural decisions - a decision on the qualification of the suspect's act - shall not be subject to investigation, The resolution of the investigating judge, issued under Article 106 of the Criminal Procedure Code, and the issues and motions shall not be subject to discussion and resolution, aimed at ensuring the conditions of trial, such as the forced transfer of victims, witnesses, challenges to parties to the proceedings, matters relating to the preventive measure and other matters of law, not within the competence of jurors and which may cause their prejudice against the defendant and other participants in the proceedings.

Applications by defendants for physical or mental influence on them during the preliminary investigation, which affected the content of the evidence obtained, shall not be subject to examination in the presence of jurors.

Footnote. Paragraph 10 with the amendment introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

11. By virtue of part 6 Article 650 of the Criminal Procedure Code, data on the identity of the defendant shall be examined with participation of the jurors only to the extent that the data shall be necessary to establish some signs of the offence of which he or she shall be accused.

The jurors shall not investigate the facts of the previous criminal case, as well as other data characterizing the defendant, which can cause their prejudice.

If the defendant finds to be insane in the course of the litigation, the judge shall, in accordance with the requirements of Article 659 of the Criminal Procedure Code, in accordance with the part 1 of Article 657 of the Criminal Procedure Code and shall consider alone, in accordance with the procedure provided for in section 11 of the Criminal Procedure Code, the application of coercive medical measures to the insane person.

Footnote. Paragraph 11 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

12. In accordance with Article 637 of the Criminal Procedure Code, one of the features of the decisions handed down at the preliminary hearing of the court shall be the exclusion from the case file of factual evidence found to be inadmissible as evidence. The judge shall decide whether to exclude inadmissible evidence on the basis of a motion by the parties or on his own initiative.

The Court shall find evidence inadmissible if it is obtained in violation of the law in establishing the circumstances referred to in Article 112 of the Criminal Procedure Code.

According to part 4 of Article 636 of the Criminal Procedure Code, if necessary, the case file may be made available at a preliminary hearing to verify its admissibility as evidence.

Part 3 of Article 362 of the Criminal Procedure Code and paragraph 5 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated April 4, 2006 N 4 “On some issues of evaluation of evidence in criminal cases” shall regulate the procedure for considering the motion to recognize the evidence as inadmissible. According to these standards, the court, having heard the opinion of the parties to the litigation must consider each motion for recognition of the evidence as inadmissible and issue a reasoned order for its satisfaction or refusal.

Footnote. Paragraph 12 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

13. In a jury case, the parties may not, without the permission of the jurors, mention to the juror the existence of evidence in the case that had been excluded by a court decision.

The judge, in accordance with Articles 648 and 650 of the Criminal Procedure Code shall be obliged to take the necessary measures to exclude the possibility of familiarizing jurors with inadmissible evidence, as well as to study issues outside their competence.

The judge should not acquaint jurors with factual evidence inadmissible as evidence. If evidence inadmissible under Article 112 of the Criminal Procedure Code is found in the proceedings, the presiding officer shall be obliged, in the presence of jurors, to decide whether to exclude them from the list of jurors; and if such evidence is examined, it has no legal force and their study was recognized as invalid and should be made clear to jurors that they did not take them into account in their decisions.

If during the court session the defendant claims to use illegal methods against him during the preliminary investigation (coercion to testify, torture), the judge, in the absence of jurors, shall examine the defendant's testimony, interrogate the persons indicated by him. If the facts about the use of illegal investigative methods have not been confirmed, the court shall notify the juror about this.

If the facts about the use of illegal methods during the preliminary investigation have been confirmed, the judge shall declare the evidence obtained in this way inadmissible.

Footnote. Paragraph 13 –in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

14. The debate of the parties in court hearing with participation of jurors in accordance with Article 651 of the Criminal Procedure Code shall consist of two parts and take into account the peculiarities of the consideration of the case in this form of proceedings.

Since the judge shall be liable for ensuring compliance with the procedure of the parties' debate, he should be guided by the requirements of the law on the conduct of the debate only within the limits of the issues to be resolved by the jurors.

In case where the parties in the first part of the debate refer to evidence in support of their position, recognized as inadmissible or not examined in court hearing, or on the circumstances, which shall be subject to be resolved in part 2 of the debate, the judge, in accordance with part 3 of Article 651 of the Code of Criminal Procedure Code, shall be obliged to suspend the speech of such a participant in the proceedings and to explain to the jurors, that they should not take these circumstances into account when making a decision in the deliberative room.

Footnote. Paragraph 14 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

15. To draw the attention of the courts to the fact those, in accordance with part 1 of Article 653 of the Criminal Procedure Code, jurors shall be removed from the courtroom during the discussion and formulation of issues.

According to part 2 of Article 653 of the Criminal Procedure Code, the parties shall have the right to comment on the content and wording of the questions, as well as to make proposals for raising new questions. If the parties submit oral comments on the content and wording of questions and proposals to new questions, these comments shall be reflected in the minutes of the trial. If comments and proposals have been submitted by the parties in writing, they shall be attached to the case file, as noted in the minutes of the court hearing.

The judge, taking into accounts the comments and suggestions of the parties, finally formulated the questions in the advisory room, shall put them on the question sheet and sign it . After returning to the courtroom, the judge announces the question sheet in the presence of the parties and the jurors.

According to Article 653 of the Criminal Procedure Code, regardless of the number of defendants in the case, one question sheet shall be drawn up.

The judge shall not be entitled to add to the question sheet matters that shall have not been the subject of discussion by the parties.

Footnote. Paragraph 15 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

16. In accordance with part 1 of Article 654 of the Criminal Procedure Code, three main questions shall be raised for each of the acts for which the defendant shall be accused:

- whether the act had been proven to have occurred;
- whether the defendant had been proven to have committed the act;
- whether the defendant was guilty of the act.

In accordance with part 10 of Article 656 of the Criminal Procedure Code may not be raised separately or in other matters requiring jurors to make legal determinations of the act.

Proceeding from it, before jurors statement of questions with use of specific legal terms, such as murder, murder with special cruelty, murder from hooligan or mercenary motives, murder in a condition of suddenly arisen tumult, murder at excess of limits of necessary defense, rape, robbery, etc. shall be inadmissible.

Questions to be resolved by jurors should be put in language that shall be understandable to them.

Footnote. Paragraph 16 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

17. If the defendant is accused of committing an unfinished crime (attempt), the judge must, in an understandable manner, bring before jurors the issues provided for in Article 654 of the Criminal Procedure Code, including the proof of the circumstances by which the act should have not been completed. At the same time, this question should contain a description of the actual reason that prevented the defendant from exercising his or her intentions (the knife blade broke during the strike, the victim managed to beat the defendant's arms out of his or her hands, the victim received timely qualified medical care, etc.), rather than just a reference to it.

When raising private questions about circumstances that reduce the degree of guilt or lead to the release of the defendant from criminal liability, it shall be unacceptable to raise questions about the guilt of other persons who shall have not been prosecuted in the question sheet.

The courts should bear in mind that when raising private questions that shall establish the defendant's guilt for a lesser crime, it is necessary to comply with the requirement provided for in part 2 of Article 654 of the Criminal Procedure Code - if this does not violate the defendant's right to a defense and his situation shall not deteriorate.

In addition, the wording of the questions should not allow the defendant to be found guilty of a more serious act in which he shall have not been charged or shall have not been supported by the public prosecutor or the victim.

In the case of a criminal charge in a group of persons, in order to ensure that the content of the questions in answering them shall not prejudice the question of the guilt of the other defendants, in accordance with part 3 of Article 654 of the Criminal Procedure Code, the issues to be resolved shall be raised separately for each defendant.

Footnote. Paragraph 17 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

18. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

19. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

20. In accordance with the requirements of Article 656 of the Criminal Procedure Code, the decision on the questions raised shall be taken in the advisory room only by the judge and the jurors. The presence of other persons in the advisory room, including spare jurors, shall be the basis for the annulment of the sentence handed down by the court with participation of the jurors.

For voting, a judge and jurors shall receive one blank ballot for each question.

At the same time, the judge, given that, in accordance with the requirements of Articles 655 and 656 of the Criminal Procedure Code, voting on both basic and additional issues shall be carried out in secret, must ensure that the law shall be respected in the conduct of secret voting.

The judge and each juror, ensuring compliance with the requirement of the law on the secrecy of voting, in conditions excluding access for other voters, shall write on the ballot his answer with the word "yes" or "no" with a mandatory explanatory word or phrase revealing the essence of the answer ("yes, proved," no, not proved, "yes, guilty," no, not guilty. "), after which he shall drop it into the box. At the end of voting on the first question, the presiding judge shall open the box and shall count the votes with the participation of jurors.

The result of the vote count shall be recorded by the presiding judge opposite the first question specified in the question sheet with the indication of the answer and a mandatory explanatory word or phrase revealing the essence of the answer ("yes, proved," no, not proved . ").

In this way, all major and additional issues shall be voted on.

In accordance with part fourteen of Article 656 of the Criminal Procedure Code, the question sheet with the answers of the judge and jurors shall be signed by each of them, after which it shall be sealed in an envelope with the inscription "question sheet" and in this form shall be attached to the case file.

Footnote. Paragraph 20 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

21. If the inability of a juror to participate in the court hearing is revealed in the advisory room, the judge and jurors must leave the advisory room and enter the courtroom in accordance with part 4 of Article 645, of the Criminal Procedure Code. At the same time, the judge shall replace this juror with a spare juror in the order in which tickets indicating the names of the spare jurors should have been removed from the box, after which they shall be removed to the advisory room.

In the event that the possibility of replacing the retired jurors with a substitute juror shall have been exhausted, the judge, in accordance with part 3 of Article 645 of the Criminal Procedure Code of shall recognize the ongoing court hearing as invalid and shall return the court hearing to the stage of preliminary random selection of candidates for jurors in accordance with Article 638 of the Criminal Procedure Code.

Footnote. Paragraph 21 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

22. According to parts ten and eleven of Article 656 of the Criminal Procedure Code, a judge, without the participation of jurors shall decide on the application of criminal law to the criminal act of the defendant and on the classification of his action under the Article of the Special Part of the Criminal Code.

Matters under the first part of Article 390, paragraphs 5), 6), 7), 8) and 14) of the Criminal Procedure Code, the judge shall allow by open vote with the participation of jurors.

If the majority of voters have voted in “yes”, the decision shall have been considered to have been taken. It should be borne in mind that a sentence of more than fifteen years ' imprisonment may be imposed if eight or more voters have voted for such a decision.

Capital punishment - the death penalty or life imprisonment - may be imposed only if there is a unanimous decision of the judge and the jurors .

Footnote. Paragraph 22 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

23. In accordance with Article 657 of the Criminal Procedure Code, the court shall, on the basis of the results of the examination of a criminal case with participation of the jurors, shall issue a conviction or acquittal, or in the cases provided for in Article 343 of the Criminal Procedure Code, order the dismissal of the case.

Under paragraph 2) of Article 657 of the Criminal Procedure Code, acquittal shall be granted in cases where a jury court shall have given a negative answer to at least one of the three main issues referred to in part 1 of Article 654 of the Criminal Procedure Code.

In the course of the main court hearing, the circumstances provided for in part 1 of Article 35 of the Criminal Procedure Code shall be established, as well as in the case of the refusal of the prosecutor to charge for the absence of an event or offence, for the failure to prove the defendant's participation in the offence (part 7 of Article 337 of the Criminal Procedure Code) , the judge, after hearing the views of the remaining parties, shall release the jurors from further participation in the court hearing and shall, in accordance with Articles 343 and 649, shall order the termination of the criminal case.

Footnote. Paragraph 23 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

24. The judge shall follow the rules set out in chapter 46 of the Criminal Procedure Code, taking into account the particularities provided for in part 1 of Article 658 of the Criminal Procedure Code, when sentencing in the court hearing with participation of jurors .The narrative of the acquittal shall set out the substance of the charge and shall refer to the jurors' judgment as a ground for acquittal.

In addition, in the descriptive and operative part of the acquittal, in addition to referring to the decision of the court hearing with participation of jurors, the judge should specify the grounds for acquittal in accordance with the responses of the jurors to the three main questions before them.

In the case of a negative answer to the first question about the proof of the event (whether the act occurred), the defendant must be acquitted for the absence of the event of the crime.

In the case of a positive answer to the first question and a negative answer to the second question on the proof of involvement in the commission of the crime, the defendant is justified for failure to prove his participation in the commission of the crime.

With a positive answer to the first two questions and a negative answer to the third question, the defendant must be acquitted for the absence of a crime in his actions.

The acquittal also shall set out the decision on the civil claim filed, the procedural costs, and the fate of the exhibits.

Footnote. Paragraph 24 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

25. In accordance with paragraph 3) of part 1 of Article 658 of the Criminal Procedure Code, the narrative part of the conviction must contain a description of the criminal act in which the jurors should find the defendant guilty, an Article of the Criminal Procedure Code under which the criminal act should be qualified, as well as the reasons for sentencing and the justification for the court's decision in other matters (civil action, the fate of exhibits, etc.).

Footnote. Paragraph 25 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

26. In accordance with the requirements of chapters 48 and 49 of the Criminal Procedure Code, a review of an unenforceable sentence handed down by a jury court, if appealed, is carried out by an appellate court of at least three judges.

The grounds for the annulment or amendment of a sentence handed down by the court hearing with participation of a jurors shall be set out in paragraphs 1 to 5, part 2 of article 662 of the Criminal Procedure Code.

Footnote. Paragraph 26 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication) dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

27. In the event of the annulment of a verdict handed down by a jury court and the case referred to a new trial from the main trial stage, the case shall be heard by jurors.

If the sentence is suspended and the case is referred to a new trial from the preliminary hearing stage, all issues provided for in Article 321 of the Criminal Procedure Code shall be resolved at this stage, including the consideration of the case with participation of jurors.

Footnote. Paragraph 27 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

28. To draw the attention of the courts to the fact that the acquittal of the court with participation of jurors cannot be suspended by the court of appeal, except in cases of violations of the criminal procedure law, which restricted the right of the prosecutor, the victim or his representative to provide evidence, as well as provided for in paragraph 5) part 2 of Article 662 of the Criminal Procedure Code, namely, those which have or may have influenced the ruling of the sentence of justice made by the judge in the formation of the jurors' panel, the discussion of matters which shall not be subject to debate in the presence of the jurors, the formulation of matters subject to resolution by the jurors, the conduct of judicial debates, including the unjustified exclusion of admissible evidence.

Footnote. Paragraph 28 with the amendments introduced by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 4 (shall be enforced from the date of its first official publication)

29. Cassation review of sentences and decisions handed down in cases with participation of jurors shall be carried out by the Criminal Court of the Supreme Court of the Republic of Kazakhstan on the grounds provided for in paragraph 1 of part 1 and part 2 of Article 485 of the Criminal Procedure Code, or in connection with the incorrect implementation of the standards of the General and Special Parts of the Criminal Code in sentencing.

A review of the conviction, as well as of the court's decision in cassation in connection with the need to enforce the criminal law on a more serious crime due to the leniency of the punishment or on other grounds leading to the deterioration of the convicted person's situation, as well as a review of the acquittal or the court's decision to terminate the criminal case, shall not be permitted.

Footnote. Paragraph 29 in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

30. Excluded by the regulatory resolution of the Supreme Court of the Republic of

Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

31. According to Article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution shall be included in the existing law, as well as shall be generally binding and shall be enforced from the date of its official publication.

*Chairman of the Supreme Court
of the Republic of Kazakhstan
Judge of the Supreme Court
of the Republic of Kazakhstan,
Secretary of the Plenary Session*

B. Beknazarov

D. Nuralin