

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

### *Unofficial translation*

Code of the Republic of Kazakhstan dated 13.12.1997 No. 206

### Unofficial translation

Note of the RCLI (Republican Centre of Legal Information). The order of entry into force of the Criminal Procedure Code of the Republic of Kazakhstan - see the Law of the Republic of Kazakhstan dated 13.12.1997 No. 207

Footnote. In the text the words "of the samples for the examination", "of the samples for expert examination", "samples for expert examination" are substituted for "of the samples" "samples" by the Law of the Republic of Kazakhstan dated 04.07.2006 No. 151;

the words "martial service" are substituted for "military service" by the Law of the Republic of Kazakhstan dated 22.05.2007 No. 255 (shall be enforced from the day of its official publication);

the words "medical institution", "special medical institution", "of the medical institution", "in the medical institution", "specialized medical institution" are substituted for the words "medical organization", "special medical organization", "of the medical organization", "in the medical organization", "specialized medical organization" respectively by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.

## **General Part**

### **Section 1. Basic Provisions**

#### **Chapter 1. Criminal Procedure Legislation of the Republic of Kazakhstan**

##### **Article 1. Legislation Defining the Procedure of Criminal Proceedings**

1. The criminal procedure on the territory of the Republic of Kazakhstan shall be 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 generally recognized principles and norms of the international law. Provisions of other laws regulating criminal procedure shall be deemed included in this Code.

2. International treaty commitments and other commitments of the Republic of Kazakhstan, as well as the regulatory resolutions of the Constitutional Council and the

Supreme Court of the Republic of Kazakhstan regulating criminal procedure shall form a constituent part of the criminal procedure law.

3. If during proceedings on a criminal case there is a need to consider the issue which must be resolved in accordance with civil or administrative law, it shall be settled in accordance with civil or administrative law, accordingly.

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

1. Constitution of the Republic of Kazakhstan shall have the highest legal effect and direct application on the entire territory of the Republic of Kazakhstan. If there is a contradiction between provisions of this Code and the Constitution of the Republic of Kazakhstan, provisions of the Constitution shall apply.

2. If there is a contradiction between provisions of this Code and a Constitutional Law of the Republic of Kazakhstan, provisions of the Constitutional Law shall apply. If there is a contradiction between provisions of this Code and other laws, 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 a law must be passed for its application.

## **Article 3. Operation of the criminal procedure law in space**

1. Criminal proceedings in the territory of the Republic of Kazakhstan regardless of the location of the crime shall be carried out in accordance with this Code.

2. The rules of an international treaty shall be applied if the international treaty ratified by the Republic of Kazakhstan has established other rules of operation of this Code in space.

## **Article 4. Application of a foreign state's law of criminal procedure in the territory of the Republic of Kazakhstan**

Application of a foreign State's law of criminal procedure on the territory of the Republic of Kazakhstan by investigation bodies and courts of a foreign State or by a body conducting criminal proceedings pursuant to their competence shall be allowed, provided that it is so stipulated by an international treaty ratified by the Republic of Kazakhstan.

## **Article 5. Operation of the criminal procedure law in time**

1. Criminal proceedings shall be conducted in accordance with the criminal procedure law which has come into force by the moment of implementation of procedural action, adoption of a procedural decision.

2. Criminal procedure law which imposes new obligations, abolishes or diminishes the

rights held by the participants of the proceeding, restricts their use with additional terms shall have no retrospective force.

3. Admissibility of evidences shall be determined in accordance with the law which was in force at the moment of their adoption.

## **Article 6. Operation of the criminal procedure law in respect of foreigners and stateless persons**

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

2. Specifics of the criminal proceedings carried out in respect of or with the participation of the persons that have diplomatic or other privileges and immunities established by international treaties of the Republic of Kazakhstan shall be determined in accordance with chapter 53 of this Code.

## **Article 7. Explanation of some terms used in this code**

Terms used in this Code, if there are no special instructions in the law, shall have the following meaning:

1) "court" is a body of judicial authority, any legally established court which is a part of the judicial system of the Republic of Kazakhstan and considers cases collegially or singly;

2) "court of first instance" is a court which considers a criminal case on its merits;

3) "appellate instance" is a court which considers a case on its merits based on appeals (protests) on sentences and resolutions of first instance court which did not come into legal force;

4) **is excluded by the Law of the Republic of Kazakhstan N 238 dated 11.07.2001;**

4-1) "cassation instance" is a court which considers a case under cassation appeals (protests) on sentences and resolutions of the court of first and appellate instance which came into legal force;

5) "supervisory instance" is a board of the Supreme Court of the Republic of Kazakhstan which considers sentences which came into legal force in exercise of its supervisory functions under a petition or a protest, and also a plenary session of the Supreme Court of the Republic of Kazakhstan considering a recommendation of the Chairperson of the Supreme Court or a protest of the Prosecutor General;

6) "judge" is a bearer of judicial power; a professional judge appointed or elected to this position in accordance with the order stipulated by law (chairperson of a court, chairperson of a judicial collegium or a judge of the corresponding court);

7) "presiding judge" is a judge who presides at the collegial consideration of a criminal case or considers the cases singly;

7-1) "juror" is a citizen of the Republic of Kazakhstan who has been called to participate

in the consideration of a criminal case by the court in the procedure stipulated by this Code and who has taken the oath;

8) "main judicial proceeding" is consideration of a criminal case on merits by the court of first instance;

9) "participants of the proceedings" are bodies and persons carrying out criminal prosecution and support of accusal in court, as well as persons defending their rights and interests or rights and interests represented by them during proceedings on a criminal case: prosecutor (public prosecutor), investigator, body of inquiry, interrogating officer, suspect, the accused, their legal representatives, defense lawyer, civil defendant, his legal representative and representative, victim, private prosecutor, civil plaintiff, their legal representatives and representatives;

10) "body conducting a criminal procedure" is a court as well as prosecutor, investigator, body of inquiry, interrogating officer in pre-trial procedures on a criminal case;

11) "parties" are bodies and persons carrying out accusal (criminal prosecution) and defense against accusal in the judicial proceeding on the basis of competitiveness and equality

12) "prosecution party" are criminal prosecution bodies as well as a victim (private prosecutor), civil plaintiff, their legal representatives and representatives;

13) "criminal prosecution (accusal)" is a procedural activity conducted by prosecution party in order to determine the deed prohibited by the criminal law and the person who has committed it, culpability of the latter in commission of a crime as well as to provide for application of a punishment or other measures of criminal law pressure to such a person;

14) "criminal prosecution bodies" is a prosecutor (public prosecutor), investigator, body of inquiry, interrogating officer;

14-1) "summary pre-trial procedure" is a procedural form of pre-trial activity of the body of inquiry, interrogating officer, investigator within the powers established by this Code;

15) "inquiry" is a procedural form of pre-trial activity of the bodies of inquiry within the powers established by this Code for detection, determination and consolidation of the aggregation of circumstances of the case and institution of criminal proceedings against persons who have committed a crime;

16) "preliminary inquest" ("preliminary investigation") is a procedural form of pre-trial activity of empowered bodies within the powers established by this Code for detection, determination and consolidation of the aggregation of circumstances of the case and institution of criminal proceedings against persons who have committed a crime;

17) "investigative jurisdiction" is an aggregation of criteria established by this Code by which the investigation of the crime pertains to the competence of he or another body of the preliminary investigation or inquiry;

18) "party of the defense" is a suspect, the accused, their legal representatives, defense lawyer, civil defendant and his representative;

19) "defense" is a procedural activity carried out by the party of the defense in order to provide for the rights and interests of the persons who are suspected of commission of a crime, rebut or mitigate an accusation, as well as rehabilitate the persons unlawfully subjected to criminal proceeding;

20) "applicant" is a person who has applied to court or criminal prosecution bodies for the defense in accordance with the order of criminal proceedings of his own (another's) actual or alleged right;

21) "representatives" are persons empowered to represent legitimate interests of a victim, civil plaintiff, civil defendant by virtue of law or agreement;

22) "legal representatives" are parents, adoptive parents, guardians, trustees of the suspect, the accused, victim, civil plaintiff as well as representatives of organizations and persons whose custody and dependence the suspect, the accused or victim is in;

23) "relatives" are persons who are in kinship having common ancestors up to great grandfather and great grandmother;

24) "immediate relatives" are parents, children, adoptive parents, adopted children, full and half brothers and sisters, grandfather, grandmother, grandchildren;

25) "other persons participating in criminal procedure" are a secretary of the judicial session, interpreter, eye-witness, witness, attesting witness, expert, specialist, bailiff;

25-1) "missing person" is a person whose location has been impossible to detect within two month from the moment of filing of an application through investigative work conducted within this term;

26) "criminal case" is a separate proceeding conducted by the criminal prosecution body and court on the subject of one or several presumptively committed crimes;

27) "proceedings on a case" is an aggregation of procedural actions and decisions carried out on specific criminal case during its initiation, pre-trial preparation, judicial proceeding and execution of a court's sentence (resolution);

28) "pre-trial procedures on a criminal case" is a proceeding on a criminal case from the moment of initiation of the criminal case before taking it to court for consideration on merits (inquiry and preliminary investigation) as well as preparation of materials on the criminal case by private prosecutor and party of the defense;

29) "materials of the case" are documents and objects which are constituent to the case or represented for attaching to it; information as well as documents and objects which may be significant for substantiation of the facts of the case;

30) "procedural actions" are actions taken during the criminal proceedings in accordance with this Code;

31) "record" is a procedural document in which a procedural action made by the body conducting criminal procedure is recorded;

32) "procedural decisions" are acts of application of the law of criminal procedure issued by the bodies conducting criminal procedure within their competence and passed in the form

determined by this Code - sentences, resolutions, opinions, proposals, sanctions;

33) "resolution" is any decision of a court except for a sentence; decision of an interrogating officer, investigator, prosecutor taken during pre-trial procedures on a criminal case as well as within the framework of summary pre-trial procedure;

34) "sentence" is a decision of a court made by the court of first instance or appellate instance with regards to culpability or non-culpability of an accused and application or non-application of punishment to him;

35) "final decision" is any decision of the body conducting the criminal proceedings that makes it impossible to begin or continue proceedings on a case, or resolves, even if not finally, the case on merits;

36) "sanction" is an act of approval by prosecutor, court of the procedural decision made by the criminal prosecution body during pre-trial procedure;

37) "explanation" is an oral or written argumentation given by the participants of the proceedings and applicants to ground their claim or claim of the represented person;

38) "complaint, protest" is an act of response of the participants of the proceedings to actions of the bodies of inquiry, preliminary investigation, prosecutor or judge submitted within their competence and in accordance with the order stipulated by this Code;

39) "petition" is a request of a party or applicant addressed to the body conducting the criminal proceedings to take a procedural action or adopt a procedural decision, whereas in a supervisory instance it is - an appeal for initiation of the supervisory proceeding and reconsideration of a judicial act that has entered into legal force;

40) "scientific and technical facilities" are instruments, special facilities, materials legally used for detection, record, confiscation and study of an evidence;

41) "special knowledge" is uncommonly known knowledge in a criminal procedure acquired by a person during professional training or practical activity used for resolving of issues of criminal proceedings;

41-1) "special scientific knowledge" is a field of special knowledge which contents consists of scientific knowledge realized in methods of judicially expert investigations;

42) "dwelling" is premises or building for temporary or permanent residence of he or several persons including: own or rented flats, house, garden house, hotel room, cabin; including verandas, terraces, galleries, balconies, cellar and attic of a residential building directly adjacent to them except for block of flats, as well as river or sea-going vessel;

43) "nighttime" is a time period from twenty two till six o'clock of local time.

**Footnote. Article 7 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 16.01.2006 No. 22 (shall be enforced from 01.01.2007); dated 03.12.2009 No.213-IV (the order of enforcement see Article 2); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 20.01.2010 No. 241-IV; dated 18.01.2011 No. 393 -IV (shall be enforced upon expiry of ten calendar days after its first official publication);**

dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 17.02.2012 № 565-IV (shall be enforced from 01.07.2012).

## **Chapter 2. Objectives and Principles of Criminal Procedure**

### **Article 8. Objectives of criminal procedure**

1. Objectives of criminal procedure shall be a speedy and complete detection of crimes, exposure and criminal prosecution of persons who committed them, fair adjudication and sensible application of the criminal law.

2. The order of criminal proceedings as established by law shall ensure protection against groundless accusal and conviction, unlawful restriction of human and civil rights and freedoms, and in case of unlawful accusal or conviction of an innocent person - an immediate and full rehabilitation, and promote law and order, prevention of crimes and a respect of law.

### **Article 9. Significance of the criminal procedure principles**

The significance of the principles of criminal procedure shall lie in the fact that their violation, depending on their nature and importance, shall entail invalidity of the conducted proceedings on a case, a reversal of the decisions made during such proceedings or a declaration that the collected materials shall not be admitted as evidences.

### **Article 10. Legality**

1. Court, prosecutor, investigator, body of inquiry and interrogating officer in the course of the criminal proceedings must accurately follow requirements of the Constitution of the Republic of Kazakhstan, this Code and other regulatory legal acts stipulated in Article 1 of this Code.

2. Courts shall not have the right to use laws and other regulatory legal acts which derogate from human and civil rights and freedoms secured by the Constitution. If a court finds that a law or another regulatory legal act to be applied derogates from the human and civil rights and freedoms secured by the Constitution, it must suspend the proceedings on a case and apply to the Constitutional Council of the Republic of Kazakhstan with a proposal to recognize that act as unconstitutional.

Decisions of courts and criminal prosecution bodies based on the law or another legal act recognized as unconstitutional shall not be enforced.

3. Violation of law by court, criminal prosecution bodies in the course of criminal proceedings shall be impermissible and shall entail liability established by law, recognition of unlawful acts as invalid and their repeal.

**Footnote. Article 10 as amended by the Law of the Republic of Kazakhstan dated**

10.07.2012 No. 32-V (shall be enforced upon expiry of ten calendar days after its first official publication).

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

1. Justice on criminal cases in the Republic of Kazakhstan shall be carried out only by court. Usurpation of court's powers by anyone shall entail liability stipulated by law.

2. No one may be declared guilty of committing a crime or subjected to a criminal punishment otherwise than pursuant to a sentence of a court and in accordance with law.

3. Competence of a court, framework of its jurisdiction, the order of implementation of court proceedings by it shall be determined by law and may not be changed arbitrarily. Establishment of extraordinary or special courts under any name to consider criminal cases shall not be allowed. Sentences and other decisions of extraordinary courts and other unlawfully established courts shall be invalid and may not be enforced.

4. A sentence and other decisions of a court which has conducted criminal proceedings on a case outside its jurisdiction, has exceeded its powers or has otherwise violated principles of criminal proceedings stipulated by this Code shall be unlawful and subject to repeal.

5. Sentence and other decisions of a court on criminal case may be reviewed and reconsidered only by corresponding courts in accordance with the order stipulated by this Code.

## **Article 12. Judicial protection of human and civil rights and freedoms**

1. Everyone shall have the right to obtain judicial protection of his own rights and freedoms.

2. Jurisdiction provided by law may not be changed for anyone without that person's consent.

3. The State shall provide the victim with access to justice and compensation for damages in cases and order stipulated by law.

## **Article 13. Respect for honor and dignity of a person**

1. During proceedings on a criminal case, decisions and actions which humiliate or belittle the honor of a person participating in the criminal proceedings shall be prohibited; it shall not be allowed to collect, use or spread information about private life, or personal information that such person considers necessary to keep private, for reasons not prescribed in this Code.

2. Moral damage caused to a person by unlawful actions of the bodies conducting the criminal proceedings shall be subject to compensation in the procedure established by law.

## **Article 14. Inviolability of a person**

1. Nobody may be detained on suspicion of commission of a crime, arrested or otherwise deprived of liberty otherwise than on the grounds and in accordance with the order established by this Code.

2. Arrest and detention in custody shall be allowed only in cases stipulated by this Code and only with the sanction of a court with granting to the arrested a right of court appeal. Without sanction of a court a person may be subjected to detention for no more than seventy two hours. Compulsory placement of the person who is not imprisoned into a medical organization to carry out forensic psychiatric expert examination shall be allowed only pursuant to a court decision. Compulsory placement of the person who is not imprisoned into medical organization to carry out forensic psychiatric expert examination shall be allowed only pursuant to the decision of the court or with the sanction of a prosecutor.

3. Each detainee shall be immediately informed of the grounds for his detention as well as of legalification of a crime in which he is suspected or prosecuted.

4. A court, criminal prosecution bodies must immediately release the unlawfully detained or arrested person or a person who was unlawfully placed into a medical organization or detained in custody longer than the time stipulated by law or sentence.

5. None of the persons participating in a criminal procedure may be exposed to violence, cruel treatment or treatment degrading human dignity.

6. Nobody may be involved in participation in the procedural actions, which constitute a hazard to life or health of a person. Procedural actions violating inviolability of a person may be carried out against will of a person or his legal representative only in cases and in accordance with procedure directly stipulated by this Code.

7. Keeping of a person with regards to which arrest is selected as a measure of restriction as well as the person detained on suspicion of a crime must be carried out in conditions excluding hazard to his life and health.

8. The damage caused to a citizen as a result of unlawful deprivation of freedom, having been kept in conditions dangerous to his life and health, or his cruel treatment shall be indemnified in accordance with the order stipulated by this Code.

**Footnote. Article 14 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

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

1. The body conducting a criminal case must protect the rights and freedoms of the citizens participating in the criminal case, create conditions for their implementation, take timely measures for satisfaction of the legal requirements of the participants of the

p r o c e e d i n g s .

2. The damage caused to a citizen as a result of violation of his rights and freedoms during proceedings on a criminal case shall be indemnified on the grounds and in accordance with the order stipulated by this Code.

3. If there are sufficient grounds for that the victim, witness or other persons participating in the criminal procedure as well as members of their families or other immediate relatives are threatened to murder, use of violence, destruction or damaging of property or other dangerous unlawful actions, the body conducting the criminal procedure within its competence must take measures stipulated by law for protection of life, health, honor, dignity and property of these persons.

### **Article 16. Inviolability of private life. Privacy of correspondence, telephone conversations, postal, telegraphic and other communication**

Private life of citizens, personal and family secret shall be under the protection of the law. Everybody shall have the right to secrecy of personal investments and savings, correspondence, telephone conversations, postal, telegraphic and other communication. Restrictions of these rights during criminal procedure shall be allowed only in cases and in the procedure immediately established by the law.

### **Article 17. Inviolability of dwelling**

Dwelling shall be inviolable. Invasion into dwelling against the will of people who occupy it, procedure of its inspection and search shall only be allowed in cases and in the procedure established by the law.

### **Article 18. Inviolability of property**

1. Ownership shall be guaranteed by the law. Nobody may be deprived of his property otherwise than pursuant to a decision of the court.

2. Imposition of arrest on investments of persons in banks and on other assets as well as seizure of those assets during procedural actions may be carried out in cases and in the procedure provided for by this Code.

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

1. Everybody shall be deemed innocent until his culpability in a commission of a crime is proven in accordance with the procedure established by this Code and as established by a court sentence which entered into legal force.

2. Nobody shall be obliged to prove his innocence.

3. Unresolvable doubts with regard to the culpability of an accused person shall be

interpreted for his benefit. Any doubts which arise when applying criminal and criminal procedure laws must be settled for the benefit of the accused.

4. Sentence of guilt may not be based on presumptions and it must be confirmed by sufficient aggregation of credible evidences.

## **Article 20. Impermissibility of a repeated conviction and criminal prosecution**

No one may be repeatedly subjected to criminal liability for one and the same crime.

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

1. Justice shall be administered on the principles of everybody's equality before the law and the court.

2. During criminal proceedings no one may be subjected to any discrimination due to his origin, social, occupational and property status, sex, race, nationality, language, religious attitude, beliefs, place of residence or due to any other circumstances.

3. Conditions of criminal proceedings in respect of persons who have immunity to criminal prosecution shall be defined by the Constitution of the Republic of Kazakhstan, this Code, laws and international treaties ratified by the Republic of Kazakhstan.

## **Article 22. Independence of judge**

1. A judge when administering justice shall be independent and subordinated only to the Constitution of the Republic of Kazakhstan and the law.

2. Any interference into operation of the court with regard to administration of justice shall not be allowed and it shall entail legal accountability. Judges shall not be accountable for specific cases.

3. Guarantees of independence of a judge are established by the Constitution of the Republic of Kazakhstan and the law.

## **Article 23. Conduct of court proceedings on the basis of competitiveness and equality of the parties**

1. Criminal proceedings shall be carried out on the basis of the principle of competitiveness and equality of the parties of prosecution and defense.

2. Criminal prosecution, defense and settlement of a case by the court shall be separated from each other and they shall be exercised by different bodies and official persons.

3. The burden of proof brought against the accused shall rest with the prosecutor.

4. The defense lawyer shall be obliged to use all the remedies and methods for the protection of the accused provided for by law.

5. The court shall not be a criminal prosecution body, it shall not act on the side of prosecution or defense and it shall not express any interests aside from interests of the law.

6. The court retaining objectivity and impartiality shall create appropriate conditions for the performance by the parties of their procedural duties and for the exercise of the rights granted to them.

7. The parties participating in criminal proceedings shall be equal, i.e. vested by the Constitution and this Code with equal opportunities to stand their ground. The court shall base its procedural decision only on those evidences where both parties were provided with equal right to participate in investigation thereof.

8. The parties in the course of criminal proceedings shall select their position, methods and facilities for proving it independently and separately from the court, other bodies and persons. The court pursuant to a petition of a party shall render its assistance in obtaining necessary materials in the procedure provided for by this Code.

9. The public prosecutor and the private prosecutor may exercise criminal prosecution of a certain person or in cases provided for by the law, abandon criminal prosecution. A suspect and an accused may freely deny their culpability or recognize themselves as guilty. A civil plaintiff shall have the right to abandon a lawsuit or to enter into an amicable agreement with a civil defendant. A civil defendant shall have the right to recognize a lawsuit or to enter into an amicable agreement with a civil plaintiff.

10. The court shall provide the parties with the right to participate in the consideration of a case with regard to the first and appeals instance; the accused and his defense lawyer shall be allowed when a case is considered in the procedure of cassation and supervision with regard to newly discovered circumstances. The prosecution party must be represented by a public prosecutor or a private prosecutor when the court is considering each criminal case. Other cases when the parties are obliged to participate in the consideration of a case by the court shall be defined in this Code.

**Footnote. Article 23 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 24. Comprehensive, Full and Objective Examination of Circumstances of a Case**

1. The court, prosecutor, investigator, interrogating officer shall be obliged to take all measures provided for by law for comprehensive, full and objective examination of circumstances which are required and sufficient for correct settlement of the case.

2. Criminal prosecution bodies shall discover factual data on the basis of which the circumstances of importance for the case shall be substantiated.

3. The court which handles a criminal case maintaining its objectivity and impartiality shall create for the parties of prosecution and defense appropriate conditions for the exercise

of their rights to comprehensive and full examination of circumstances of the case.

3-1. Court shall not be bound by the opinion of the parties with regards to necessity and sufficiency of investigation of evidences existing in case and presented at the court hearing by the parties, except for the cases provided for by part two of Article 361 of this Code.

4. Circumstances which both convict and justify the accused as well as those which mitigate or aggravate his liability and punishment shall be subject to discovery with regard to case. The body which conducts a criminal procedure must check all the statements of innocence or lesser degree of culpability as well as those concerning availability of evidences which justify the suspect, the accused or those which mitigate their liability as well as petitions of use of unlawful methods of investigation when collecting and securing the case files as evidences.

**Footnote. Article 24 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

## **Article 25. Evaluation of Evidences on the Basis of Inner Conviction**

1. The judge, the prosecutor, investigator, interrogating officer shall evaluate evidences on the bases of their inner conviction, based on the aggregation of considered evidences, relying in this respect on the law and their conscience.

A juror shall evaluate the evidences on his inner conviction based on the aggregation of considered evidences, relying in this respect on conscience.

2. No evidences shall have predetermined force.

**Footnote. Article 25 as amended by the Law of the Republic of Kazakhstan dated January 16, 2006 No. 122 (shall be enforced from January 1, 2007)**

## **Article 26. Provision of the Right to Defense to the Suspect and the accused**

1. A suspect or the accused shall have the right to defense. They may exercise this right either personally or with the assistance of a defense lawyer, legal representative in the procedure established by this Code.

2. The body which conducts a criminal procedure shall be obliged to explain to the suspect and the accused their rights and to provide them with opportunity to be defended from prosecution with all the remedies which are not prohibited by the law as well as to take measures for the protection of their personal and property rights.

3. In cases provided for by this Code, the body which conducts the criminal procedure shall be obliged to ensure the participation of a defense lawyer of the suspect and the accused in case.

4. Participation of a defense lawyer and a legal representative of the suspect or the accused in criminal proceedings shall not diminish the rights which belong to the latter.

5. The suspect or the accused must not be compelled to provide testimony, submit any

materials rendering any assistance to the criminal prosecution bodies.

6. The suspect or the accused shall retain all guarantees of the right to defense belonging to them as well as when considering a criminal case in respect of a person who is accused of commission of a crime together with them.

### **Article 27. Release from the Duty to Issue Witness Testimony**

1. Nobody shall be obliged to testify against himself, his spouse and immediate relatives, the circle of which is defined by the law.

2. Clergymen shall not be obliged to testify against those who confided in them through confession.

3. In cases provided for in the first and second parts of this Article the above persons shall have the right to refuse from witnessing and they may not be subjected to any liability.

### **Article 28. Provision of the Right to Qualified Legal Assistance**

1. Everybody shall have the right to receive qualified legal assistance in the course of criminal procedures in accordance with the provisions of this Code.

2. Legal assistance shall be rendered free of charge in cases provided for by the law.

### **Article 29. Publicity**

1. Proceeding of criminal cases in all courts and in all court instances shall be open. Restriction of publicity of a court procedure shall be allowed only when it contradicts to the interest of protecting state secrets. Therewith closed judicial proceeding shall be allowed on the basis of reasoned resolution of the court on cases of juvenile crimes, on cases of sexual crimes and other cases for the purposes of preventing disclosure of information concerning intimate side of life of persons participating in those cases as well as on the cases when it is required by the interests of safety of the victim, witness or any other participants in a case as well as their family members or immediate relatives. Complaints about acts and decisions of the body which exercises criminal prosecution considered by the court at pre-trial stage of the judicial process shall be considered by the court at a closed judicial session.

2. Proceeding of cases and complaints at a closed session shall be carried out in compliance with all the regulations as established by this Code.

3. A court sentence and resolutions adopted on a case in all events shall be announced in public.

### **Article 30. Language of Criminal Proceedings**

1. Criminal proceedings in the Republic of Kazakhstan shall be carried out in the state language and, when necessary, Russian language or any other languages shall be used equally

with the state language in the court proceedings.

2. The body which conducts the criminal procedure shall make reasoned resolution on the change of the language of proceedings if there is a need to conduct the case in Russian or other languages.

3. Persons who participate in a case and who have no command or have insufficient command of the language in which the proceedings on the case are carried out, shall be explained and given the right to make statements, provide explanations and testimonies, file petitions, file complaints, get acquainted with materials of the case, speak in the court in their native language or in any other language of which they have command; use interpreter services free of charge in the procedure established by this Code.

4. Persons who participate in criminal proceedings shall be provided free of charge with translation of case materials which they need by virtue of law, and which are worded in a different language into the language of the criminal proceedings. Persons who participate in court proceedings shall be provided with translation free of charge into the language of court proceedings of those parts of court speeches which are in a different language.

5. The bodies which conduct criminal procedure shall hand in to the participants of the proceedings the documents which in accordance with this Code must be handed to them in the language of court proceedings. In this case those persons who have no command of the language of the criminal proceedings shall be provided with a certified copy of a document in the language of proceedings selected by such persons.

**Footnote. Article 30 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 31. Freedom to Appeal Procedural Acts and Decisions**

1. Acts and decisions of a court and of a body of the criminal prosecution may be appealed in the procedure established by this Code.

2. Each convicted person shall have the right to have his sentence revised by the higher court in the procedure established by this Code as well as to plead pardon or mitigation of punishment. A person convicted by a court of a foreign state and transferred to serve his sentence in the Republic of Kazakhstan without conditions on the non-pardon shall also have the right to plead pardon or mitigation of a sentence.

3. It shall not be allowed to turn a complaint to harm the person who filed the complaint or to harm the person in whose interests it has been filed.

**Footnote. Article 31 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Chapter 3. Criminal Prosecution**

## **Article 32. Cases of Private, Private-Public and Public Prosecution and Accusal**

1. Depending on the nature and gravity of the committed crime, the criminal prosecution and accusal in the court shall be carried out in a private, private and public or public procedure .

2. Cases on the crimes stipulated in Article 33 of this Code shall be considered as cases of private accusal, they shall be instituted not otherwise than pursuant to the application of the victim and they shall be subject to termination if he is reconciled with the accused and person on trial .

3. Cases on the crimes stipulated in Article 34 of this Code shall be considered as cases of private-public accusal, they shall be instituted not otherwise than pursuant to the complaint of the victim and they shall be subject to termination when the victim is reconciled with the accused and person on trial only in cases stipulated by the Article 67 of the Criminal Code of the Republic of Kazakhstan .

4. Cases on crimes, except for those stipulated in the second and third parts of this Article shall be considered as cases of public accusal. Criminal prosecution on these cases shall be carried out irrespective of the submission of the complaint by the victim.

**Footnote. Article 32 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 33. The Crimes on which Criminal Prosecution may be carried out in a Private Procedure**

1. Criminal prosecution may be carried out in a private procedure on cases concerning the crimes provided for by Articles 111, 123, 129, 130, 136, 140, 142, 144 (part one), 145 (part one), 300 (part one) of the Criminal Code of the Republic of Kazakhstan.

2. The prosecutor shall have the right to institute proceedings on a case of private accusal event if there is no complaint from the victim, in cases when the act affects the interests of a person who is in a helpless or dependent condition or due to other reasons incapable to independently exercise the rights belonging to him.

**Footnote. Article 33 as amended by Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 09.12.2004 No. 10; dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 34. Exercise of Criminal Prosecution in a Private-Public Procedure**

1. The criminal prosecution which is exercised through the private-public procedure may not be initiated and no proceedings on a criminal case may be instituted if there is no

complaint from the victim on the cases of crimes provided for by Articles 103 (part one), 104 (part one), 117 (parts he and two), 120 (part one), 121 (part one), 135, 139, 144 (part two), 176 (parts he and two), 184 (part one), 184-1(part one), 187 (part one), 188, 200, 226 (part one), 227 (part one), 228, 229 (part one), 296 (part one), 327 (part one) of the Criminal Code of the Republic of Kazakhstan.

2. The prosecutor shall have the right to institute proceedings on a case of private-public accusal even if there is no complaint from the victim, in cases when the act affects the interests of the person who is in a helpless or dependent condition or who due to any other reasons is not capable to independently exercise the rights belonging to him or it affects significant interests of other persons, public or state.

**Footnote.** Article 34 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 22.11.2005 No. 90 (the order of enforcement see Article 2); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 35. Criminal Prosecution Pursuant to an Application from a Commercial or any Other Organization**

If an act provided for by Chapter 8 of the Criminal Code of the Republic of Kazakhstan has caused a harm to the interests of a purely commercial or any other organization which is a non-governmental enterprise and which has not caused a harm to the interests of other organizations or to the interests of citizens, public or State, the criminal prosecution shall be carried out pursuant to the application of the head of such organization or its authorized body or with their consent.

### **Article 36. General Terms of the Performance of Criminal Prosecution**

1. For the purposes of implementing the tasks of the criminal proceedings the criminal prosecution body shall be obliged within its authority in each case of identifying the indications of a crime, to take all the measures provided for by the law to establish the facts of the commission of the crime, identify the persons who are guilty of commission of the crime, their punishment and to equally take measures to rehabilitate the innocent.

2. Criminal prosecution body shall be obliged to provide the victim with access to justice and take measures to compensate for the harm caused by the crime.

3. Criminal prosecution bodies shall exercise their powers in criminal procedure irrespective of any authorities and official persons and in strict compliance with the requirements of this Code.

4. Influence in any form on the criminal prosecution body for the purposes of impeding an objective investigation with regard to a criminal case shall entail liability established by the

l a w .

5. The requirements of a criminal prosecution body which are presented in accordance with the law shall be obligatory for implementation by all state bodies, organizations, official persons and citizens and they shall be executed within no later than three days. If there is a need to make decision on initiation of a criminal case, detention, arrest of the suspect, the request of the criminal prosecution body must be executed within twenty four hours. Failure to comply with mentioned requirements without good reasons shall entail liability established b y l a w .

Footnote. Article 36 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 37. Circumstances which exclude proceeding on a case**

Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

1. A criminal case may not be instituted and if it is instituted it shall be subject to t e r m i n a t i o n :
- 1) when there is no event of crime;
  - 2) if the deed has no component elements of a crime;
  - 3) due to an act of amnesty if it eliminates the application of punishment for committed d e e d s ;
  - 4) due to expiry of limitation period;
  - 5) when there is no complaint from the victim on cases associated with the crimes provided for by part one of Article 33 and part one of Article 34 of this Code, except for the cases provided for by part two of Article 33 and part two of Article 34 of this Code;
  - 6) if private prosecutor refuses the accusal on cases associated with the crimes provided for by part one of Article 33 of this Code, except for the cases provided for by part two of the s a m e A r t i c l e ;
  - 7) in respect of a person with regards to which there is a valid sentence of a court on the same accusal or any other unrepealed court decree which has established impossibility of c r i m i n a l p r o s e c u t i o n ;
  - 8) in respect of a person on whose refusal from criminal prosecution there is unrepealed resolution on the same accusal from the criminal prosecution body;
  - 9) in respect of a person who has committed an act prohibited by the criminal law in a condition of irresponsibility, except for the cases when the institution of a criminal case is required for the application of compulsory measures of medical nature to such person;
  - 10) due to refusal of giving consent for institution of criminal proceedings by an

authorized body or an official person against a person who has privileges or immunity to  
c r i m i n a l p r o s e c u t i o n ;

11) in respect of a person who died, except for the cases when proceedings on the case are required for the rehabilitation of the deceased or investigation of the case in respect of other  
p e r s o n s ;

12) in respect of a person who is subject to release from criminal liability by virtue of the provisions of the Criminal Code of the Republic of Kazakhstan.

2. A criminal case shall be terminated on the grounds provided for by items 1 and 2 of the part one of this Article both when the lack of event of the crime is proved or when there are no component elements of the crime, as well as when it is not proven that they exist, if all the opportunities for the collection of additional evidences have been exhausted.

3. A criminal case shall be subject to termination on the ground provided for by item 2 of part one of this Article and in cases when causing of harm by the accused (the suspect) is legitimate or the deed has been committed by the accused (the suspect) under the circumstances which in accordance with the Criminal Code of the Republic of Kazakhstan exclude criminality and criminal liability.

4. Refusal from initiation of a criminal case or termination of a criminal case on the grounds indicated in items 3, 4 and 11 of part one of this Article shall not be allowed if the person who has been directly indicated by the applicant as the person committed a crime, the suspect, the accused as well as the person on trial or his legal representatives object against it. In this case the proceedings on the case shall be continued and completed if there are reasons for it by a resolution of a sentence of guilt with the release of the accused from punishment.

The consent of a person who has suffered from the commission of the crime or the victim shall not be required to make decision on refusal from initiation of a criminal case or termination of a criminal case on the grounds indicated in items 3, 4, 9, 10 and 11 of part one of this Article .

Termination of a criminal case shall simultaneously entail termination of a criminal  
p r o s e c u t i o n .

4-1. The decision on refusal from initiation of a criminal case or termination of a criminal case in respect of a person who by the moment of commission of a deed has not reached the age upon reaching of which according to the law it is possible to impose criminal liability, shall be subject to taking on the basis stipulated in item 2 of part one of this Article. The decision on refusal from initiation of a criminal case or termination of a criminal case in respect of a juvenile person who by the moment of commission of a deed has reached the age from which according to the law criminal liability comes but due to psychological retardation irrelevant to mental disease could not be completely aware of the real nature and social danger of his actions (inaction) and regulate them shall be subject to taking on the same basis.

5. The criminal prosecution body upon establishing circumstances, which exclude criminal prosecution, shall pass at any stage of pre-trial procedures a resolution on the refusal

from institution of criminal case or on termination of the criminal case. The prosecutor also shall have the right before the beginning of case consideration in the main judicial proceedings to revoke it from the court and to terminate it on the grounds provided for by this Article .

6. The public prosecutor having discovered in the court the circumstances, which exclude criminal prosecution, shall be obliged to declare refusal from accusal. The declaration of the state prosecutor to refuse accusal shall not impede the continuation of the consideration of the criminal case if the private prosecutor continues to maintain the accusal.

7. The court having established the circumstances, which exclude criminal prosecution, shall be obliged to resolve the issue on termination of the criminal case.

8. If the actions of a person have indications of an administrative or corruption offence, the criminal prosecution bodies and courts upon termination or refusal from institution of criminal case shall be obliged to send the materials within ten days to competent bodies for consideration of the issue on imposition of administrative or disciplinary sanctions.

**Footnote. Article 37 as amended by the Law of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 21.12.2002 No. 363; dated 09.12.2004 No. 10; dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 38. Circumstances which allow not to Perform Criminal Prosecution**

1. Court, prosecutor as well as investigator or body of inquiry with the consent of the prosecutor, when there are appropriate circumstances, within their competence shall have the right to refuse from institution of a criminal case or terminate the criminal case with the release of a person from criminal responsibility in cases provided for by Article 65,66 and part one of the Article 67 and Article 68, as well as by notes of the Articles 373, 375 -378, 381 of the Criminal Code of the Republic of Kazakhstan. The court in such cases shall also have the right to decree an accusative sentence with release from criminal liability.

2. The public prosecutor having discovered in the court the circumstances which allow not carrying out criminal prosecution shall have the right to file repudiation from the criminal prosecution of the accused. The repudiation filed by a public prosecutor, from criminal prosecution shall not impede the private prosecutor to continue the criminal prosecution of the accused with the use of materials of the criminal case.

3. Before termination of a criminal case the accused (the suspect) must be explained the reasons for termination of the case and the right to object against its termination on this reason .

4. The victim and his representative who have the right to appeal the resolution of the body that conducts the criminal procedure in the higher court or to higher prosecutor, shall be informed about the termination of the case.

5. Termination of a criminal case on the grounds indicated in part one of this Article shall not be allowed if the suspect, the accused or the victim protests against it. In this case the proceedings on the case shall be continued in accordance with a regular procedure.

Footnote. Article 38 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 23.11.2010 No. 354-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

#### **Chapter 4. Rehabilitation. Compensation of Harm Caused by Unlawful Acts of the Body that Conducts Criminal Procedure**

##### **Article 39. Rehabilitation by Way of Recognition of Innocence of the Person Held as the accused (the Suspect)**

1. The person who is justified through the court and equally the accused (the suspect) in respect of whom a resolution is passed by the criminal prosecution body on termination of a criminal case on the grounds provided for by items 1, 2, 5, 7, 8 of part one of Article 37 of this Code shall be recognized as innocent and may not be subjected to any restrictions of their rights and freedoms guaranteed by the Constitution of the Republic of Kazakhstan

2. The court, the criminal prosecution body must take all the measures provided for by the law for the rehabilitation of a person indicated in part one of this Article and compensation of the harm caused to him as a result of unlawful acts of the body that conducts criminal procedure.

##### **Article 40. Persons who Have the Right to Compensation of Harm Caused as a Result of Unlawful Acts of the Body that conducts Criminal Procedure**

1. The harm caused to a person as a result of unlawful detention, arrest, home arrest, temporary barring from work, placement to a special medical institution, conviction, application of compulsory measures of medical nature shall be compensated from the national budget in full amount irrespective of the guilt of the body that conducts the criminal p r o c e e d i n g s .

2. The right to compensation of harm caused as a result of unlawful acts of the body that conducts criminal procedure shall rest with:

- 1) persons indicated in the part one of Article 39 of this Code;
- 2) persons in respect of whom a criminal case shall not have been instituted and the instituted he was subject to termination on the grounds provided for by item 6 of part one of Article 37 of this Code, if in spite of lack of circumstances provided for by part two of Article

33 and part two of Article 34 of this Code the criminal case has been instituted or not terminated from the moment of discovery of the circumstances which exclude criminal prosecution ;

3) persons in respect of whom the criminal case shall have been terminated on the grounds provided for by items 3 and 4 of part one of Article 37 of this Code but has not been terminated from the moment of discovery of the circumstances which exclude criminal prosecution and the criminal prosecution has been unlawfully continued in spite of the consent of such persons to terminate the criminal case;

4) a person sentenced to be arrested, deprived of freedom, detained or imprisoned in case of alteration of qualification of the deed for an Article of the Criminal Code of the Republic of Kazakhstan which provides liability for a less grave crime, in case of suspicion or accusation of commission of which this Code does not allow to detain or imprison or with the appointment in accordance with this Article of a new more lenient punishment or exclusion from the sentence of the part of accusation and reduction in connection therewith of the punishment and equally in case of the abolition of unlawful court decision on application of compulsory measures of medical nature or compulsory measures of educational control. The actually served term of arrest or deprivation of freedom shall be deemed to have been served unlawfully in as long as much it exceeds the maximum amount of punishment in the form of arrest or deprivation of freedom provided for by the Article of the Criminal Code of the Republic of Kazakhstan in accordance with which the deed committed by the guilty person is qualified anew ;

5) a person imprisoned in excess of the due period without legitimate reason and equally a person unlawfully subjected to any other measures of procedural compulsion in the course of proceedings on a criminal case .

3. In case of the death of a citizen the right to compensation of harm in the established procedure shall be transferred to his heirs and with regard to receiving pensions and benefits the payment of which has been suspended, - to those family members who are recognized as the circle of persons to be provided for the benefit due to the loss of breadwinner.

4. Harm shall not be subject to compensation with regard to person if it is proved that he in the course of inquest, preliminary investigation and court proceedings by way of voluntary self-accusation has impeded the establishment of truth and thereby assisted the emergence of the consequences indicated in part one of this Article.

5. The rules of this Article, if there are no circumstances indicated in item 3 of part two, shall not apply to those cases when the applied measures of procedural compulsion in respect of a person or a decreed accusative sentence is abolished or altered due to the issue of amnesty acts or pardon acts, expiry of limitation periods, adoption of a law which eliminates criminal liability or mitigates the punishment.

## **Article 41. Harm which is subject to Compensation**

Persons indicated in parts two and three of Article 40 of this Code shall have the right to compensation in full amount of property harm, elimination of consequences of moral damage and restoration of labour, pension, housing and other rights. Persons who are deprived through a court sentence of an honorary, military, special or any other title, rank, diplomatic rank, qualification as well as state awards, shall be restored with the titles, ranks, diplomatic ranks, qualification and state awards.

## **Article 42. Recognition of the Right to Compensation of Harm**

Having adopted a decision on full or partial rehabilitation of a person, the body that conducts criminal procedure must recognize his rights to compensation of harm. A copy of the sentence of acquittal or resolution on termination of criminal case, on abolition or alteration of other unlawful decisions shall be handed or mailed to the interested person by post. Simultaneously a notice shall be sent to him with the explanation of the procedure of harm compensation. 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 of harm, the notice shall be directed to them not later than five days from the day of their appeal to the body that conducts criminal procedure.

**Footnote. Article 42 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

## **Article 43. Compensation of Property Harm**

1. Property harm caused to persons indicated in part two of Article 40 of this Code shall include compensation of the following:

- 1) wages, pensions, benefits, other funds and revenues of which they have been deprived;
- 2) property unlawfully confiscated or converted into benefit of the state on the basis of a sentence or any other court decision;
- 3) fines exacted for the implementation of an unlawful court sentence; court costs and other sums paid by the person due to unlawful acts;
- 4) sums paid by the person for rendering legal assistance;
- 5) other costs incurred as a result of criminal prosecution.

2. Sums expensed on the maintenance of persons indicated in part two of Article 40 of this Code under imprisonment, in places of serving the arrest or deprivation of freedom, court costs connected with criminal prosecution of these persons as well as wages for the performance by them during the imprisonment, serving the arrest or deprivation of freedom of any works may not be deducted out of the sums which are to be paid to compensate the harm caused as a result of unlawful acts of the body that conducts criminal procedure.

3. When receiving copies of documents indicated in Article 42 of this Code with a notice on the procedure of harm compensation, the persons indicated in parts two and three of Article 40 of this Code shall have the right to petition with a claim to compensate property harm to the body that passed the sentence, a resolution on termination of the case, abolition or alteration of other unlawful decisions. If a case is terminated or the sentence is altered by the higher court, the claim to compensate harm shall be directed to the court that has issued the sentence. In case of rehabilitation of a juvenile, the claim to compensate for harm may be filed by his legal representative.

4. Not later than one month since the day of receipt of an application, the body indicated in part three of this Article shall define the amount of harm having required in necessary cases the estimation from financial bodies and the bodies of social protection after which a resolution shall be passed on payments for compensation of the harm subject to inflation. If a case is terminated by the court when considering it in the appeals, cassation or supervisory procedure, the court that has considered the case in the first instance shall perform the mentioned acts.

5. Claims on compensation of property harm shall be settled by the judge in the procedure established by part two of Article 371 of this Code for the settlement of issues connected with the issue of the sentence.

6. The copy of a resolution certified by official stamp shall be handed or directed to the person for the submission to the bodies, which are obliged to make payments. The procedure of payment shall be determined by legislation.

**Footnote. Article 43 as amended by the Law of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 44. Elimination of Consequences of Moral damage**

1. The body that conducts criminal procedure and who has adopted a decision to rehabilitate a person shall be obliged to offer that person official apologies for the caused harm.

2. Law suits on compensation in money terms for the caused moral damage shall be filed in accordance with the procedure of civil court proceedings.

3. When a person has been subjected to unlawful criminal prosecution and information on the institution of a criminal case, detention, imprisonment, temporary discharge from office, compulsory placement to a medical institution, conviction and other acts undertaken with regard to him which were subsequently recognized as unlawful has been published in press media, spread through radio, television or any other mass media, than pursuant to the claim of that person and in case of his death pursuant to claim of his relatives or the body that conducts the criminal procedure, the appropriate mass media shall be obliged to provide the necessary information within a month.

4. Pursuant to the claim of the persons indicated in parts two and three of Article 40 of this Code, the body that conducts the criminal procedure shall be obliged to direct a written notice on abolition of its unlawful decisions within two weeks to the place where they work, study or reside.

#### **Article 45. Periods for Filing Claims**

1. Claims on monetary payments to compensate property harm may be filed within three years from the moment of receipt by the persons indicated in parts two and three of Article 40 of this Code of resolutions on such payments.

2. Claims on restoration of any other rights may be filed within six months from the date of receipt of the notice which explains the procedure for the restoration of rights.

3. In case of missing these deadlines due to good reason they may be restored by the body that leads criminal procedure pursuant to the application of interested persons.

#### **Article 46. Compensation of Harm to Legal Entities**

Harm caused to legal entities by unlawful acts of the body that conducts criminal procedure shall be compensated by the State in full amount and within deadlines established by this Chapter.

#### **Article 47. Restoration of Rights in a Law Suit Procedure**

If a claim on rehabilitation or compensation of harm is not satisfied or a person does not agree with the decision made, he shall have the right to petition to the court in accordance with the procedure of civil court proceedings.

### **Chapter 5. Conduct of Proceedings on a Criminal Case**

#### **Article 48. Combining of Criminal Cases**

1. Cases on accusal or suspicion of several persons of commission or participation in he or several crimes, cases on accusal or suspicion of a person in commission of several crimes as well as the cases on accusal or suspicion of not promised beforehand concealment of the same crimes or non-reporting on them may be combined in the proceeding.

2. The following must not be combined in the proceeding:

1) identical accusals against different persons;

2) accusals against persons, who are attributed to commission of a crime against each other, except when the case of private prosecution is considered;

3) cases on one of which criminal prosecution is performed in a private procedure, and in

respect of the other - in a public procedure;

4) all the other accusals, the cumulative consideration of which may interfere with objective consideration of the case.

3. Combining of cases shall be carried out on the basis of the resolution of the body which conducts the criminal procedure. The copy of resolution passed by the criminal prosecution body shall be directed to the prosecutor within twenty-four hours.

4. The period for proceeding on a case in which several cases are combined shall start from the date of the institution of the case which has been latest in time. If an arrest or house arrest is applied to one of the combined cases as a preventive measure, the investigation period shall be calculated from the day of initiation of the case to which these preventive measures are applied.

When combining several criminal cases into the proceeding, the period for conducting preliminary hearings on them shall be calculated from the day of the receipt of the latest case by the court.

5. Persons shall have the rights of participants of the proceedings only on those combined cases, which relate to them.

**Footnote. Article 48 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 49. Separation of a Criminal Case**

1. The court, the criminal prosecution body shall have the right to separate from a criminal case into separate proceeding another criminal case with regard to:

1) certain accused individuals, when a criminal case is subject to suspension on the basis provided for by Article 50 of this Code;

2) certain accused individuals when the bases for a closed judicial proceedings associated with the protection of State secrets pertain to them, but do not pertain to the rest accused individuals;

3) a juvenile the accused who criminal proceedings were instituted against together with adults;

4) unidentified certain persons, who are subject to institution of criminal proceedings.

2. In case of investigating a multi-episodic criminal case, with regard to which periods of investigation or arrest expire, the investigator having recognized that with regard to accusal part the investigation has been performed completely and comprehensively, shall have the right to separate a part of the case into a separate proceeding for submission to the court, unless this impedes investigation and consideration of the case in the remaining part.

3. If under a criminal case information is received on acts, which contain indications of a crime not connected to the present case, all the materials on them must be immediately

separated for deciding of the issue of institution of a new criminal case in the procedure provided for by this Code.

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

5. Separation of cases shall be carried out on the basis of the resolution of the body which conducts the criminal procedure. The copy of resolution passed by the criminal prosecution body shall be directed to the prosecutor within twenty-four hours. The list of materials separated as originals or copies must be attached to the resolution.

6. The period for proceedings under a separated case shall date from the day a resolution is passed on separation of the case with regard to a new crime or in respect of a new person. In other cases the period shall date from the moment of institution of the principal criminal case.

### **Article 50. Suspension of the proceedings on a criminal case**

1. Proceedings on a criminal case may be completely or in a corresponding part suspended by the resolution of the interrogating officer, investigator or the court if:

1) the person, who is subject to be held responsible as the accused, is not identified;  
2) the accused fled from investigation or court or the place of his stay is not found due to other reasons;

3) there is no real possibility for the participation of the accused in case due to the settlement of issue on deprivation of the accused of immunity from criminal prosecution or on his extradition by a foreign State;

4) the accused has temporary mental disorder or any other serious disease certified in the procedure provided for by law;

5) the accused is outside the boundaries of the Republic of Kazakhstan;

6) **excluded by the Law of the Republic of Kazakhstan dated 10.07.2012 N 32-V (enforced on expiration of ten calendar days after its first official publication);**

7) there is a force majeure which temporarily impede further proceedings on a criminal case.

8) the relevant expert examination is carried out;

9) procedural acts relating to the receipt of legal aid in the procedure provided for by Chapter 55 of this Code are carried out;

10) the missing person is not found.

1-1. The court shall suspend in full or in a corresponding part proceedings on a case if the court applies to the Constitutional Council of the Republic of Kazakhstan with a petition claiming to recognize application of a law or another legal act to a certain criminal case as unconstitutional due to derogation of rights and freedoms of a person and a citizen envisaged by the Constitution.

The court has the right to suspend in full or in the corresponding part proceedings on a case if the Constitutional Council under initiative of another court initiates proceedings on recognition of a law or another legal act to be applied to a certain criminal case as **u n c o n s t i t u t i o n a l** .

2. Proceedings on a criminal case in a court may be completely or in a corresponding part suspended by a court resolution as well as when a private prosecutor on a case of private prosecution may not exercise criminal prosecution in the court due to his serious disease, being on trip outside the boundaries of the Republic of Kazakhstan or performing civil duty.

3. Proceedings on a criminal case shall be suspended until lapse of circumstances, which served as the basis for its suspension. When the circumstances lapse, the case shall be resumed by the resolution of the interrogating officer, investigator or the court.

4. The participants of the proceedings shall be informed about suspension or resumption of proceedings on the case. The copy of resolution on suspension of a criminal case passed by the criminal prosecution body shall be directed to the prosecutor within twenty-four hours.

5. A suspended case shall be subject to termination upon expiry of limitation periods established by the criminal law, if under the case there is no information on interruption of the **l i m i t a t i o n** **p e r i o d** .

Notice. Force majeure which prevents further proceedings on a criminal case shall be understood as emergencies of natural and anthropogenic origin, emergency state or martial **s t a t e** .

**Footnote. Article 50 as amended by the Laws of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2 of the Law No. 111); dated 08.01.2007 No. 210; dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 10.07.2012 No. 32-V (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 51. Termination of a criminal case**

1. A criminal case shall be terminated by the body that conducts criminal procedure on the grounds provided for by Articles 37, 38 of this Code.

2. Before termination of a criminal case, the suspect, the accused shall be explained the bases for the termination and his right to file objections against termination on these bases.

3. If the resolution on termination of a criminal case is repealed, the proceedings on the case shall be resumed within the limitation periods of institution of criminal proceedings.

4. The suspect, the accused, the defence lawyer, as well as the victim, his representative, the civil plaintiff, the civil defendant or their representative, a individual or legal entity on whose application the case has been instituted shall be informed of termination of criminal cases, as well as on resumption of the proceedings on the case in writing. The copy of resolution on termination of a criminal case and on resumption of proceedings on a case

passed by the criminal prosecution body shall be directed to the prosecutor within twenty-four hours .

**Footnote.** Article 51 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 51-1. The order of termination of the criminal prosecution against the suspect or the accused**

1. Criminal prosecution against the suspect or the accused shall be terminated on the grounds stipulated in part one of Article 37, part one of Article 38 of this Code.

2. Termination of criminal prosecution shall be carried out by the body which conducts the criminal procedure after evaluating the evidences in compliance with the rules established by Article 128 of this Code .

3. If the criminal prosecution of the suspect or the accused is terminated, the proceedings may be continued or suspended on grounds provided for by Article 50 of this Code.

4. The decision on termination of the criminal prosecution may be taken only against the suspect or the accused. The decision on refusal from institution of a criminal case may be taken for the same criminal case against persons who are not recognized as the suspected or the accused .

**Footnote.** The Code is supplemented by Article 51-1 in accordance with the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 52. Completion of the Proceedings on a Criminal Case**

Proceedings on a criminal case shall be terminated:

1) when a resolution on full termination of proceedings on a criminal case is entered into force ;

2) when a sentence or any other final decision on a case is entered into force unless it requires the adoption of special measures for its implementation;

3) upon receiving the confirmation of implementation of a sentence or any other final decision on a case if it requires the adoption of special measures for its implementation.

### **Article 53. Confidentiality**

1. The measures provided for by this Code and other legislative acts shall be taken in the course of criminal proceedings for the protection of the received information, which constitutes State secrets and other secrets protected by law.

2. Persons who are proposed by the body that conducts criminal procedure to tell or

present information constituting State or any other secrets may not refuse from the performance of this requirement with the reference to the need of retaining the relevant secrets, but they have the right to first receive from it an explanation which confirms the need of receipt of the said information for the proceedings on a criminal case.

3. The procedure for granting access to participants of proceedings to information constituting State secrets shall be defined by legislation.

3-1. If the materials of a criminal case considered by a court together with a jury contain information constituting State secrets, the authorized state body which carries out material and technical and other support to the operation of a regional court and court equivalent to it, pursuant to written order of the presiding judge shall make out the access to the jury to State secrets in accordance with the procedure established by the legislation of the Republic of Kazakhstan.

4. Evidences containing information constituting State secrets shall be examined in a closed judicial session.

5. Evidences containing information constituting other secrets as well as those disclosing intimate sides of private life pursuant to requests of persons under the threat of disclosure of the said information may be examined in closed judicial sessions.

6. Harm caused to a person as a result of violation of inviolability of private life, disclosure of personal or family secrets shall be subject to compensation in the procedure provided for by the law.

7. The procedure for keeping the confidentiality of information of inquest and preliminary investigation shall be determined by Article 205 of this Code.

8. **Is excluded by the Law of the Republic of Kazakhstan dated 05.05.2000 No. 47.**

9. The copies of procedural documents from the case subject to handing to participants of the proceedings which contain information constituting State secrets or other secrets protected by law after consulting with them shall be stored in case and handed to the participants of the proceedings for the time of the judicial session.

**Footnote. Article 53 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 16.03.2001 No. 163; dated 16.01.2006 No. 122 (shall be enforced from 01.01.2007;) dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Chapter 6. Procedural Periods**

### **Article 54. Calculation of Periods**

1. The periods established by this Code shall be calculated in hours, days, months and years.

2. When calculating periods, the hour and the twenty-four hours with which the

calculation of a period begins shall not be taken into account. This rule shall not apply to the calculation of periods in case of detention.

3. When calculating a period it shall include non-work time as well.

4. When calculating a period in days, the period shall expire at twenty-four hours of the last day of the period. When calculating a period in months or years the period shall expire on the corresponding date of the last month, and if that month does not have the corresponding date, then the period shall expire on the last day of that month. When the expiry of a period falls on a non-work day (day off, holiday), then the last day of the period shall be considered as the first working day, which follows after it, except for the cases of calculation of the period for detention, arrest, home arrest and being in a medical or special purpose educational and training institution.

5. When a person is detained on the suspicion of commission of a crime the period shall be calculated from the moment (hour) of actual application of this measure.

## **Article 55. Compliance with the Deadline**

1. A deadline shall not be deemed missed if a complaint, petition or any other document are submitted to the post office, transferred or filed to the person who is authorised to receive them, and in case of the persons who are imprisoned or placed into a medical organization - if the complaint or any other document is submitted to the administration of the place of imprisonment or medical institution before the expiry of the period. The time of submission of a complaint or any other document to the post office shall be determined on the basis of the postal stamp, and the time of submission to the person who is authorized to receive it or to the administration of the place of imprisonment or a medical organization on the basis of the note of the office or official persons of these organisations.

2. Compliance with an established period by the official persons shall be confirmed by the appropriate indication in procedural documents. The receipt of documents which are subject to be handed to persons, who participate in criminal proceedings shall be confirmed by their signatures attached to the case.

3. Procedural periods may be extended only in cases and in accordance with the procedure established by this Code.

## **Article 56. Consequences of Missing a Period and Procedure for its Restoration**

1. Procedural acts, which are committed by the participants of the proceedings upon expiry of the period shall be deemed invalid.

2. Pursuant to a petition of an interested person the period missed due to a good reason may be restored by the resolution of the interrogating officer, investigator, prosecutor or the judge who handles the case. In this case the period shall be restored for the person who missed it but not for other persons, unless otherwise provided for by a corresponding decision

of the body that conducts the criminal procedure.

3. Pursuant to a petition of an interested person the implementation of a decision appealed with the missing of the established period may be suspended before settlement of the issue on the restoration of the missed period.

4. A refusal to restore a period may be appealed (objected) in accordance with the procedure established by this Code.

**Footnote. Article 56 is amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.**

## **Section 2. State Authorities and Persons Participating in a Criminal Procedure**

### **Chapter 7. Court**

#### **Article 57. Court**

1. The court, being a body of judicial authority, shall administer justice on criminal cases.

2. Any criminal case may be considered only by legitimate, independent, competent and impartial composition of the court, which is ensured through the compliance with the rules established by this Code as follows:

- determining jurisdiction of specific cases;
- formation of the composition of the court for consideration of specific criminal cases;
- disqualification of judges;
- separation of the case settlement function from the functions of prosecution and defense.

3. Justice in respect of criminal cases in the Republic of Kazakhstan shall be administered by :

- the Supreme Court;
- the regional courts and courts equivalent to them;
- district courts and courts equivalent to them;
- specialized inter-district courts on criminal cases, specialized inter-district military courts on criminal cases, specialized inter-district courts on juvenile cases, military court of g a r r i s o n s .

**Footnote. Article 57 as amended by the Laws of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

#### **Article 58. Composition of Court**

1. Consideration of criminal cases in courts of first instance shall be carried out by a judge alone, and in cases of gravest crimes by the panel consisting of the judge and ten jurors

pursuant to the petition of the accused, except for the cases of crimes stipulated by Articles 162 (parts two and three), 163 (part two), 165, 166, 166-1, 167, 168 (part one), 169, 171, 233 (parts three and four), 233-2 (parts one and three), 233-4 (part two), 234 (part three), 238 (part three), 239 (part three) of the Criminal Code of the Republic of Kazakhstan.

2. Consideration of criminal cases in the appellate procedure shall be carried out by a judge alone, and consideration of claims, protests to sentences and resolutions of court - with participation of jurors collegially with participation of at least three judges.

3. Consideration of cases in a cassation instance shall be carried out collegially by at least three judges chaired by the Chairman of regional and equal to it.

4. Consideration of cases in the Supreme Court of the Republic of Kazakhstan shall be conducted collegially by at least three judges.

5. The composition of a court when considering cases on newly discovered circumstances shall be determined in accordance with the rules provided for in Article 476 of this Code.

6. Consideration of issues which arise during the execution of the sentence and cases on the application of compulsory measures of medical nature to mentally incompetent shall be carried out single-handedly by a judge of the corresponding court.

**Footnote. Article 58 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 59. The Authority of a Court**

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

2. Only the court shall have the right to:

- 1) recognise a person as guilty of commission of a crime and to inflict a punishment to him;
- 2) apply compulsory measures of medical nature or compulsory measures of educative influence to a person;
- 3) abolish or amend a decision taken by a lower court;
- 4) approve the measure of restraint chosen by investigator, body of inquiry, prosecutor in the form of home arrest, arrest as well as extension of their periods;
- 5) reconsider judicial acts on newly discovered circumstances;
- 6) take decisions on compulsory placement of a not imprisoned person to the medical organization for performance of forensic psychiatric expert examination.

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

- 1) consider appeals against decisions and actions (or inactions) of the criminal prosecution body;
- 2) impose an administrative penalty;
- 3) consider appeals against prosecutor's resolution to terminate the initiated proceedings

due to absence of grounds for the resumption of proceedings on a case on newly discovered circumstances ;

4) consider issues related to the execution of the sentence.

4. If circumstances which facilitated commission of a crime, violation of rights and freedoms of citizens, as well as other violations of law committed in the course of inquiry, preliminary investigation are revealed during judicial consideration of a case, the court shall pass a private resolution, by which it attracts the attention of the relevant organizations or persons to these circumstances and facts of violations of the law which require to take necessary measures. The court shall have the right to pass a private resolution in the other cases too, if it deems this to be necessary.

5. When establishing facts of commission of the deeds which form the component elements of a crime, the court shall pass resolution to a relevant prosecutor to take measures provided by law .

**Footnote.** Article 59 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010), as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 60. The Judge**

1. The judge, who within the bounds of his competence considers a case single-handedly, performs managerial acts on preparation of a judicial session or ensuring the implementation of its sentence or any other decision, settles petitions and complaints indicated in part three of Article 59 of this Code shall have the powers of the court.

2. The judge who considers a case as a member of a collegium of judges shall have equal rights with the presiding judge and other judges when deciding all the issues arising due to the case so considered.

## **Article 61. The Presiding Judge on a Case**

1. When considering a criminal case in a collegium of judges, presides the chairman of the court, the chairman of the collegium of the court or one of the judges authorised to do it in accordance with the procedure provided for by the law shall be the presiding judge amongst the collegium of judges. A judge who considers a case single-handedly shall be deemed as the presiding judge .

2. The presiding judge shall guide the course of the judicial session and take all the measures to provide for consideration of the criminal case and compliance with other requirements of this Code, as well as for appropriate behaviour of all persons who participate in the judicial session .

3. Orders of the presiding judge at the judicial session shall be obligatory for all the participants of the proceedings and for other persons, who are present in the court room.

## **Chapter 8. State Bodies and Official Persons which Carry out the Functions of Criminal Prosecution**

### **Article 62. The Prosecutor**

1. The prosecutor is an official person, who within the bounds of his competence, exercises the supervision over legitimacy of investigative activity, summary pre-trial procedure, inquiry, investigation and court decisions, as well as criminal prosecution at all stages of the criminal procedure: the Prosecutor General of the Republic of Kazakhstan, the Chief Military Prosecutor, regional prosecutors and prosecutors equivalent to them, district, city prosecutors, military prosecutors, transport prosecutors and prosecutors equivalent to them, their deputies and assistants, prosecutors for sectors of supervision, senior prosecutors and prosecutors of administrations and departments of public prosecutor's offices. The prosecutor who participates in consideration of a criminal case by the court shall represent the interests of the State by means of supporting the prosecution and the prosecutor shall be the State prosecutor.

2. The prosecutor shall have the right to bring a suit against the accused or a person who bears property responsibility for his actions to protect the interests of:

- 1) a victim who is not capable to independently exercise the right to file and assert a suit by virtue of his helpless condition, dependence on the accused or due to other reasons;
- 2) the State;

3. The powers of the prosecutor during pre-trial procedures and consideration of the case by the court shall be defined accordingly by Articles 190, 190-4, 192 (parts six and seven), 197, 289, 317, 396 (part three), 458, 460 of this Code.

4. When exercising his procedural powers the prosecutor shall be independent and subordinated only to the law.

5. The Prosecutor General within the bounds of his competence shall adopt regulatory legal acts concerning the application of the norms of this Code which are obligatory for execution by the bodies of inquiry and investigation.

The regulatory legal acts of the bodies which carry out inquiry and investigation shall be adopted within the bounds of their competence in coordination with the Prosecutor General.

**Footnote. Article 62 as amended by the Laws of the Republic of Kazakhstan dated 09.08.2002 No. 346; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

### **Article 63. Head of the Investigation Department**

1. Head of the investigation department is the head of investigation unit of the body which carries out a preliminary investigation or a summary pre-trial procedure and his deputies who

act within the bounds of their competence.

2. The head of an investigating department shall entrust the performance of investigation or a summary pre-trial procedure to an investigator, exercise supervision over timeliness of acts of investigators on criminal cases conducted by them, compliance by investigators with the deadlines for preliminary investigation and detention, implementation of prosecutor's instructions and instructions of other investigators if so is established by this Code; issue instructions on cases; entrust performance of preliminary investigation to several investigators ; in cases provided for by the law, recuse the investigator from proceedings on a case; within the bounds of his/her competence, seize a criminal case from he investigative unit of the body subordinated to him/her and carrying out preliminary investigation and transfer it to another investigative unit of the same or another body subordinated to him/her and carrying out the preliminary investigation; send competed criminal cases to the prosecutor. The head of the investigative department shall have the right to institute criminal cases, accept criminal cases for his proceedings and personally carry out preliminary investigation or a summary pre-trial procedure, and shall have in such case the powers of an investigator.

3. Instructions made by the head of an investigation department on a criminal case may not restrict independence of an investigator or his/her rights as established by Article 64 of this Code. Instructions are to be issued in a written form and must be performed, but may be appealed to the prosecutor. An investigator's appeal of the acts of the head of the investigative department to the prosecutor shall not suspend their performance, except for instructions on qualification of a crime and volume of accusal, sending the case to prosecutor in order to bring the accused to trial or on termination of the criminal case.

**Footnote. Article 63 as amended by the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

## **Article 64. Investigator**

1. An investigator is an official person authorised to carry out preliminary investigation or a summary pre-trial procedures on a criminal case within the bounds of his competence: special prosecutor, an investigator of the bodies of internal affairs, an investigator of the bodies of national security and an investigator of the bodies of financial police.

2. An investigator shall have the right to institute a criminal case and to perform preliminary investigation in respect of it, and to perform all investigative actions provided for by this Code .

3. An investigator shall be obliged to take all measures for a comprehensive, full and objective investigation of circumstances of a case, to carry out criminal prosecution of the person in respect of whom sufficient evidences have been gathered indicating that he has committed a crime by means of bringing a person in the proceedings as accused, arraignment, or electing the measure of restraint for that person in accordance with this Code as well as

d r a w i n g                      u p                      a n                      i n d i c t m e n t .

In order to ensure implementation of the sentence in part relating to the civil claim, other property recovery or potential confiscation of property, the investigator must take measures to ascertain the property of the suspect, the accused or persons legally liable for their acts. When conducting a preliminary investigation on criminal cases on corruption crimes, crimes committed by an organized group, criminal association (criminal organization), as well as by a transnational organized group, transnational criminal association (transnational criminal organization) or a stable armed group (a gang), the investigator must take measures for establishing property obtained by criminal means, or acquired with funds obtained by criminal means, passed into the ownership of other persons.

4. With regard to cases for which preliminary investigation is obligatory, investigators shall have the right at any moment to accept a case for proceeding and to begin its investigation without expecting the bodies of inquiry to perform urgent investigative actions provided for by Article 200 of this Code.

5. All the decisions on direction of an investigation and performance of investigative actions shall be made by an investigator independently, except for the cases when the law provides for obtaining sanction from the prosecutor, court or decisions from the court, and he shall bear the entire responsibility for their legitimate and timely implementation. Unlawful interference into the activities of the investigator shall entail criminal liability.

6. In case of a disagreement of an investigator with the instructions of the prosecutor on the case under investigation, he shall have the right to appeal them to a higher prosecutor.

7. With regard to the cases that he investigates, the investigator shall have the right to peruse operational search materials of the bodies of inquiry pertaining to the case under investigation, to request their attachment to the case in accordance with the procedure established by this Code, to issue written orders and instructions obligatory for the implementation on performance of research and investigative actions to the bodies of inquiry, and to require assistance in the performance of investigative actions from them.

**Footnote.** Article 64 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 07.12.2009 No. 222-IV (the order of enforcement see Article 2); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 29.11.2011 No. 502-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 65. Body of Inquiry**

1. The following shall be entrusted to the bodies of inquiry depending on the nature of a c r i m e :

1) adoption in accordance with the competence established by the law of appropriate

criminal procedural and investigative measures for the purposes of detection the details of crimes and persons who have committed them, prevention and suppression of crimes;

2) performance of criminal procedural and investigative actions in the procedure provided for by Article 200 of this Code with regard to the cases on which the processing of preliminary investigation is obligatory;

3) inquiry on cases the performance of preliminary investigation on which is not obligatory in the procedure provided for by Chapter 37 of this Code;

4) performance of preliminary investigation in cases provided for by part three of Article 288 of this Code;

5) performance of a summary pre-trial procedure established by the Chapter 23-1 of this Code.

2. The following shall be the bodies of inquiry:

1) the bodies of internal affairs;

2) the bodies of national security;

3) is deleted by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication);

4) the bodies of financial police

5) the customs bodies on the cases of contraband and evasion of the payment of customs payments;

6) the bodies of military police on cases of all crimes committed by military servicemen who undergo military service under conscription or contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan; citizens who are reservists while they undergo military training; persons of civil personnel of military units, formations, institutions due to performance of service duties by them or in the territory of these units, formations and institutions;

The bodies of military police of the Committee of National Security also on cases of all the crimes committed by the staff of special government bodies;

7) commanders of frontier units - with regard to cases of violation of the legislation concerning the State frontier of the Republic of Kazakhstan, as well as on cases of crimes committed on the continental shelf of the Republic of Kazakhstan;

8) commanders of military units, formations, heads of military institutions and garrisons in the absence of body of military police on cases of all crimes committed by military servicemen subordinated to them who undergo military service under conscription or contract in the Armed Forces of the Republic of Kazakhstan, other troops and military formations of the Republic of Kazakhstan, as well as citizens, who are reservists while they undergo military training; on the cases of crimes committed by persons of civil personnel of military units, formations, institutions due to performance of their service duties by them or on the territory of these units, formations and institutions;

9) heads of diplomatic representations, consular institutions and plenipotentiary

representations of the Republic of Kazakhstan on the cases of crimes committed by their employees in the country of their stay;

9-1) the Security Guard of the President of the Republic of Kazakhstan on the cases of crimes committed in the area of performance of security activities and immediately directed against protected persons the list of which is established by the Law;

10) the bodies of fire service on the cases of all crimes associated with fires.

3. The rights and obligations of the body of enquiry on pre-trial procedures and performance of urgent investigative actions on cases of all crimes shall also be entrusted to captains of marine ships, which are in long voyages, heads of geological parties and other state organizations and their subdivisions which are remote from the bodies of inquiry listed in part two of this Article, during the period of absence of transport communication.

**Footnote. Article 65 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 16.03.2001 No. 163; dated 16.07.2001 No. 244 (shall be enforced from 01.01.2001); dated 29.12.2004 No. 25; dated 08.01.2007 No. 210; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 13.02.2012 No. 553-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 66. Head of a Body of Inquiry**

1. The powers of the head of a body of inquiry in the course of pre-trial procedure on the cases of crimes provided for by Articles 190-1 and 285 of this Code within the bounds of his competence shall rest with the head of the Head Office (Department), office, unit of an inquiry body and their deputies.

2. The head of an inquiry body shall manage the adoption of appropriate criminal procedural and investigative measures in order to establish the indications of crimes and persons, who committed them, prevention and suppression of crimes. In accordance with the procedure established in Article 130 of this Code pursuant to the requirement of the body conducting the criminal proceedings, or pursuant to his own initiative, he shall direct the results of operational inquiry activities which contain information on facts which are material for the accurate solution of the criminal case.

3. On cases concerning crimes subordinated to the bodies of preliminary investigation, the head of an inquiry body shall:

1) provide for the performance of urgent investigative actions;

2) organize the implementation of instructions of the prosecutor, investigator, including performance of certain investigative and other actions and application of measures for protection of victims, witnesses and other persons, who participate in criminal court proceedings;

3) organize implementation of instructions of the court;  
4. With regard to criminal cases, the pre-trial procedures on which are performed by the bodies of inquiry, the head of the body of inquiry shall supervise the timeliness and legitimacy of actions of interrogating officers and he shall have the right to:

1) examine the cases which are conducted by them;  
2) issue instructions concerning performance of certain investigative and other procedural acts, concerning bringing a person into proceedings as an accused, concerning qualification of a crime and volume of accusation, concerning the transfer of the case (materials) from the interrogating officer to another;

3) entrust interrogation to several interrogating officers;  
4) institute a criminal case and personally conduct interrogation by accepting the instant case for his processing or by performing certain procedural acts.

5. The head of a body of inquiry shall approve resolutions on institution or refusal to institute a criminal case, on performance of search and imposition of seizure on assets, concerning discharge of the accused from his post, concerning election, alteration or abolition of measures of restraint in respect of the accused (the suspect) in the form of imprisonment, concerning termination, suspension, resumption of proceedings on the case, on sending of the accused (the suspect) who is not imprisoned to a medical organization for stationary judicial medical or forensic psychiatric expert examination, concerning extension of periods of detention of the accused (the suspect), concerning sending to prison, announcing search of the accused; approve reports concerning arraignment of persons suspected of commission of crimes, minutes of summary pre-trial procedures, process of prosecution; provide for taking of measures on elimination of circumstances which contributed to commission of crimes; direct criminal cases to the prosecutor with minutes of summary pre-trial procedures, process of prosecution.

6. The instructions of the head of a body of inquiry with regard to a criminal case may not restrict the independence of the interrogating officer, his rights established by Article 67 of this Code. Instructions shall be issued in writing and they shall be obligatory for implementation, but they may be appealed to the prosecutor. The appeal to the prosecutor by an interrogating officer of acts of the head of the body of inquiry shall not suspend their implementation.

**Footnote.** Article 66 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2), dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 67. Interrogating Officer**

1. An interrogating officer is an official person authorised to perform pre-trial procedures on a criminal case within the bounds of his competence.

2. An interrogating officer shall have the right to take decision on initiation and performance of pre-trial procedures in the forms stipulated by this Code, independently take decisions and perform investigative and other procedural acts, except for the cases when the law provides for their approval by the head of the body of inquiry, when sanctions of the prosecutor, court or a court decision are envisaged.

3. In case of pre-trial procedures on criminal cases, on which the performance of preliminary investigation is not obligatory, the interrogating officer shall be guided by the rules provided for by this Code for preliminary investigation, with the exceptions provided for by Chapter 37 of this Code.

4. In case of criminal cases in respect of which the performance of the preliminary investigation is obligatory, the interrogating officer shall be authorised pursuant to instructions of the head of the interrogative body to institute a criminal case in cases which do not allow postponement, as well as to perform immediate investigative acts and operational search measures, of which he shall be obliged to inform the prosecutor and the body of the preliminary investigation not later than twenty-four hours.

5. An interrogating officer shall be obliged to comply with the instructions of the court, prosecutor, body of preliminary investigation and the body of inquiry with regard to the performance of certain investigative acts, with regard to application of measures ensuring the security of the persons who participate in the criminal procedure.

In order to ensure enforcement of the sentence on the part of the civil claim, other proprietary penalties or possible confiscation of property, the interrogating officer shall be obliged to take measures on ascertainment of the property of the suspect, the accused or persons who are financially liable for their actions.

6. The instructions of the head of the body of inquiry shall be obligatory for an interrogating officer. The instructions of the head of a body of inquiry with regard to criminal cases may be appealed to the prosecutor. The appeal of instructions shall not suspend their implementation, except for instructions concerning qualification of a crime and scope of accusal, concerning sending of a case to the prosecutor for subjecting the accused to the court or concerning termination of the criminal case.

**Footnote. Article 67 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 07.12.2009 No. 222-IV (the order of enforcement see Article 2), dated 29.11.2011 No. 502-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Chapter 9. Participants of the proceedings Who Defend Their Rights and Interests or Represented Rights and Interests**

## Article 68. Suspect

1. A suspect shall be recognised as the person, against whom on the bases and in accordance with the order established by this Code a criminal case is instituted due to suspicion of commission a crime by that person or a resolution of finding that person guilty is issued, of which he is informed by the investigator, interrogating officer, or a measure of restraint has been applied prior to the presentation of accusal.

2. In case of detention of a suspect or application of a measure of restraint to him prior to presentation of the accusal, he must be interrogated within not later than twenty-four hours from the moment of detention or application of a measure of restraint when providing the right to meet in private and in confidence with defence lawyer selected by that person or appointed prior to the first interrogation. A detained suspect shall have the right to immediately inform by telephone or in any other manner of his detention and the place where he is kept to the place of his residence or work.

2-1. In the resolution of finding as a suspect there must be specified:

1) the time and place of its drafting; who drafted a resolution, the last name, the first name and patronymic of the person who is found as the suspect, date, month, year and place of birth ;

2) the description of the crime in the commission of which the person is suspected, with indication of the time, place of its commission, as well as other circumstances, which are subject to approval in accordance with Article 117 of this Code;

3) criminal law (article, part, item) which provides responsibility for such crime.

The resolution must contain the decision on finding a person as a suspect with regard to the case under investigation. The resolution on finding a person as a suspect shall be presented to this person. The investigator shall be obliged to explain to the person against whom a resolution on finding as a suspect is passed, the rights of the suspect and hand that person a copy of this resolution.

The copy of the resolution on finding a person as a suspect shall be sent to the prosecutor within twenty-four hours after it has been passed.

3. The criminal prosecution body shall not have the right to hold as a suspect:

1) a person detained more than seventy two hours;

2) a person, to whom a measure of restraint is applied for more than ten days from the moment of announcement to the suspect of the resolution of selection of the measure of r e s t r a i n t .

4. By the moment of expiry of the periods established by part three of this Article, the criminal prosecution body shall be obliged to release a suspect from imprisonment, to abolish the measure of restraint which was selected against that person, or to pass a resolution on bringing him in the proceedings as an accused.

5. Having found a suspicion as not sufficiently substantiated, the criminal prosecution

body shall be obliged to release a suspect from detention, to abolish the measure of restraint which was selected against him, prior to the expiry of the periods established by part three of t h i s Article .

6. A person shall cease to be in the status of a suspect from the moment of termination of the criminal prosecution against that person or from the moment of imposition of the resolution on bringing him into proceedings as an accused by the body of the criminal p r o s e c u t i o n .

7. The suspect shall have the right to:

1) receive immediate explanation of the rights vested to him from the person who carries o u t t h e d e t e n t i o n ;

2) know of what he is suspected of;

3) independently or through his relatives or proxies invite a defence lawyer; if the defence lawyer is not invited by the suspect, his relatives or proxies, the investigator, the interrogating officer shall be obliged to provide his participation in accordance with the order stipulated by part three of Article 71 of this Code;

4) have a meeting with selected or appointed defence lawyer in private and in confidence before the beginning of the interrogation;

5) give explanations and evidence only in the presence of the defence lawyer, except for the cases of a waiver of the right to a lawyer by the suspect;

6) receive copies of the resolution on institution of a criminal case against him, resolution on finding him as a suspect, detention report and resolution on application of measures of r e s t r a i n t ;

7) refuse to give explanations and testimony;

8) present evidence;

9) file petitions, including those on adoption of security measures, and recusations;

10) give testimony and explanations in the native language or a language of which he has c o m m a n d ;

11) use charge free assistance of a translator;

12) participate with the permission of the investigator or the interrogating officer in the investigative actions which are carried out pursuant to his petition or petition of the defence lawyer or legal representative;

12-1) come to terms with the victim in cases provided for by law, including by way of m e d i a t i o n ;

13) get familiar with the reports of investigative actions performed with his participation, and give comments to the reports;

14) file complaints concerning actions (inaction) and decisions of the investigator, interrogating officer, prosecutor and court;

15) protect his rights and legal interests in other ways, which do not contradict the law.

8. The presence of the suspect's defence lawyer or legal representative cannot serve as a

basis for eliminating or limiting any right of the suspect.

Footnote. Article 68 as amended by the Laws of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated 07.04.2009 No. 149-IV; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010), dated 28.01.2011 No. 402-IV (shall be enforced from 05.08.2011); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 69. The accused**

1. The accused shall be a person in respect of whom a resolution is passed to bring that person in the proceedings as the accused, as well as a person in respect of whom a process of prosecution or minutes of summary pre-trial procedures is compiled and approved by the head of the body of inquiry or the minutes of summary pre-trial procedures are compiled by the investigator. An accused who is brought before the court and in respect of whom a complaint is accepted by the court for its procedure under the cases of private prosecution, shall be called a person on trial; an accused in respect of whom a judgment of guilt is passed shall be called a convict; an accused, in respect of whom a sentence of acquittal is passed shall be called an acquitted person.

2. The accused shall have the right to:

- 1) protect his rights and legitimate interests by the methods and facilities which do not contradict the law and have sufficient time and possibility for the preparation to the defence;
- 2) know what he is accused of and receive copies of resolutions on institution of a criminal case, on bringing him into the proceedings as an accused;
- 3) receive from the criminal prosecution body an immediate explanation of his rights;
- 4) be notified by the body that conducts the criminal procedure of the adoption of procedural decisions that concern his rights and legal interests;
- 5) receive a copy of resolution on the application of a measure of restraint;
- 6) provide explanations and testimonies in relation to charges brought against him;
- 7) refuse to give testimonies;
- 8) present evidence;
- 9) file petitions, including those on adoption of security measures, and recusations;
- 10) give testimonies and explanations in the native language or in a language of which he has a command;
- 11) use charge free assistance of a translator;
- 12) have a defence lawyer;
- 13) in cases and in accordance with the order provided for by this Code, have meetings with the defence lawyer in private and in confidence from the moment prior to his first interrogation;
- 14) participate with a permit from the investigator or interrogating officer in investigative

actions performed pursuant to his petition or a petition of his defence lawyer or legal representatives ;

14-1) come to terms with the victim in cases provided for by law, including by way of mediation ;

15) become familiar with the reports of investigative actions, performed pursuant to his petition or a petition of his defence lawyer or legal representative, and give comments to them ;

16) carry out actions provided for by Articles 244, 254, 354 and 355 of this Code in case of appointment, performance of expert examination, as well as presentation of expert opinion to him ;

17) become familiar with all the materials of the case and copy out any information from it in any volume at the end of the investigation;

18) receive copies of the indictment or the minutes of summary pre-trial procedures and its appendices, except for the list of accusals;

19) file complaints concerning actions (inaction) and decisions of the investigator, interrogating officer, prosecutor and court;

20) object against termination of a case on the grounds of non-rehabilitating reasons;

21) require public proceedings.

2-1. The person on trial shall have the right to:

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

2) exercise all the rights of the defence party, as well as the right to the last word.

2-2. The convict or the acquitted person shall have the right to:

1) become familiar with the record of the judicial session and file comments to it;

2) appeal the sentence, resolutions of the court, and resolutions of the judge and receive copies of the appealed decisions;

3) know about the complaints and protests which were filed with regard to the case, and file objections to them ;

4) participate in the judicial consideration of the filed complaints and protests.

3. The participation of the defence lawyer or the legal representative of the accused in case may not serve as the basis for the elimination or restriction of any rights of the accused.

**Footnote. Article 69 as amended by the Laws of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated 07.04.2009 No. 149-IV; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010), dated 28.01.2011 No. 402-IV (shall be enforced from 05.08.2011).**

## **Article 70. Defence Lawyer**

1. The defence lawyer is a person, who, in the procedure established by law, performs the defence of the rights and interests of the suspects and accused individuals, and who renders legal assistance to them.

2. Advocate shall participate as a defence lawyer. Under participation of an advocate in the criminal procedure as a defence lawyer, besides him, the defence of the suspect, the accused, the person on trial, the convict, the acquitted person may be performed by his or her spouse or an immediate relative or a guardian, trustee or representative of the organization under which custody and dependence the suspect, the accused, the person on trial, the convict, the acquitted person are in. Foreign advocates shall be allowed to participate in case as the defence lawyers if it is provided for by an international treaty of the Republic of Kazakhstan with the corresponding state on a mutual basis, in accordance with the procedure determined by legislation.

3. The defence lawyer shall be allowed to participate in a case from the moment of presentation of accusals or finding a person as a suspect in accordance with part one of Article 68 of this Code.

4. one and the same person may not be the defence lawyer of two suspects, accused individuals if the interests of one of them contradict the interests of the other.

5. An advocate shall not have the right to refuse from the protection of a suspect or an accused that he assumed.

**Footnote. Article 70 as amended by the Laws of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 71. Obligatory Participation of a Defence Lawyer**

1. Participation of a defence lawyer in the proceedings on a criminal case shall be obligatory in the following cases:

1) when the suspect, the accused, the person on trial, the convict, the acquitted person petitions for that;

2) the suspect, the accused, the person on trial, the convict, the acquitted person has not reached the age of majority;

3) the suspect, the accused, the person on trial, the convict, the acquitted person by virtue of his physical or mental handicaps may not independently exercise his right to defence;

4) the suspect, the accused, the person on trial, the convict, the acquitted person has no command of the language in which court proceedings are carried out;

5) a person is accused of commission of a crime for which deprivation of freedom may be appointed as a measure of punishment for a period of more than ten years, life-long deprivation of freedom or capital punishment;

6) detention is applied to the accused, the person on trial, the convict, the acquitted person

as a measure of restraint or he is forcibly sent for stationary forensic psychiatric examination ;

7) when there are contradictions between the interests of the suspects, the accused, the persons on trial, the convicts, the acquitted persons, one of whom has a defence lawyer;

8) a representative of the victim (private prosecutor) or a civil plaintiff participates in the proceedings on a criminal case ;

9) the prosecutor (the public prosecutor) participates in the consideration of the case in the court ;

10) the accused, the person on trial, the convict, the acquitted person is outside the boundaries of the Republic of Kazakhstan and evades appearing at the bodies of preliminary investigation .

2. In cases provided for by items 1 - 6, 10 of part one of this Article, the participation of the defence lawyer shall be provided for from the moment of finding a person as the suspect, the accused, the person on trial, the convict, the acquitted person; by item 7 - from the moment of identifying contradictions between the interests of the suspects, the accused, the persons on trial, the convicts, the acquitted persons; by items 8, 9 - from the moment when the accused is brought before the court.

3. If in the presence of circumstances provided for by part one of this Article the defence lawyer is not invited by the suspect, the accused, the person on trial, the convict, the acquitted person himself, their legal representatives as well as by other persons pursuant to their instructions, the body that conducts the criminal procedure shall be obliged to provide for the participation of the defence lawyer at the appropriate stage of the procedure, of which he shall pass a resolution, which is obligatory for the professional organisation of advocates.

**Footnote. Article 71 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 30.12.2005 No. 111 (the order of enforcement see Article 2); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 11.12.2009 No. 230-IV ( shall be enforced from 01.01.2010).**

## **Article 72. Invitation, Appointment, Substitution of a Defence Lawyer, Remuneration of his Work**

1. The defence lawyer shall be invited by the suspect, the accused, the person on trial, the convict, the acquitted person, their legal representatives as well as by other persons pursuant to the instructions or with the consent of the suspect, the accused, the person on trial, the convict, the acquitted person. The suspect, the accused, the person on trial, the convict, and the acquitted person shall have the right to invite several defence lawyers for the defence.

2. The participation of the defence lawyer shall be ensured by the body that conducts the criminal procedure pursuant to the request of the suspect, the accused, the person on trial, the convict, and the acquitted person.

3. In cases when the participation of the selected or appointed defence lawyer is impossible during a long (not less than five days) period of time, the body that conducts the criminal procedure shall have the right to propose to the suspect, the accused, the person on trial, the convict, the acquitted person to invite another defence lawyer or take measures to appoint the defence lawyer through a professional organisation of advocates or its structural subdivisions. The body that conducts the criminal procedure shall not have the right to recommend inviting a certain individual as a defence lawyer.

4. In case of detention or imprisonment, when the presence of the defence lawyer selected by the suspect, the accused, the person on trial, the convict, the acquitted person is impossible during twenty-four hours, the body that performs the criminal prosecution shall propose to the suspect, the accused, the person on trial, the convict, and the acquitted person to invite another defence lawyer and in case of the refusal, he shall take measures for appointing the defence lawyer through a professional organisation of advocates or its structural subdivisions.

5. Work remuneration of an advocate shall be carried out in accordance with current legislation. The body that conducts the criminal procedure, when there are reasons for it, shall have the right to indemnify the suspect, the accused, the person on trial, the convict, and the acquitted person fully or partially from payments for legal assistance. In this case, remuneration for the work shall be carried out at the expense of the State.

6. Expenditures associated with remuneration for the work of advocates may be at the expense of the State also in the event provided for by part three of Article 71 of this Code, when an advocate participated in the interrogation, preliminary investigation or in the court by appointment, without entering into an agreement with a client.

7. In the event, when several defence lawyers participate in a proceeding on a criminal case, a procedural act, where the participation of the defence lawyer is required, may not be recognised as unlawful due to participation of not all the defence lawyers of the relevant suspect, the accused, person on trial, convict, and acquitted person.

8. An advocate is allowed to participate in a criminal case as a defence lawyer upon presentation of the certificate of advocate and the warrant which certifies his authority to conduct a particular case. Other persons, who are specified in part two of Article 70 of this Code shall submit documents proving their right to participate in a criminal case as a defence lawyer (marriage certificate, documents, which prove blood relations with the suspect, the accused, the person on trial, the convict, and the acquitted person, decisions of bodies, which carry out functions of guardianship and trusteeship).

**Footnote. Article 72 as amended by the Laws of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 73. Refusal of a Defence Lawyer**

1. The suspect, the accused shall have the right to refuse from a defence lawyer at any moment of proceedings on a case. Such a refusal shall be allowed only pursuant to the initiative of the suspect, the accused in the presence of the defence lawyer participating in case or the defence lawyer appointed in accordance with the order established by part three of Article 71 of this Code. A refusal of defence lawyer due to the lack of funds for payment for legal assistance shall not be accepted. The refusal shall be made up in writing or it shall be noted in the record of the relevant investigative or judicial act.

2. In cases provided for by items 2)-4), 5) (in case of accusation of a person in commission of a crime for which a capital punishment or life imprisonment shall be inflicted as a measure of punishment), 6) (in case of compulsory subjection of the accused to the stationary forensic psychiatric expert examination) of part one of Article 71 of this Code, the refusal of the accused from the defence lawyer may not be accepted by the body that conducts the criminal procedure.

3. Refusal of a defence lawyer shall not deprive the accused or the suspect of the right to further petition for the access of defence lawyer to participate in case. The entry of the defence lawyer into the case shall not entail the repetition of the acts, which by that time have been performed in the course of investigation or judicial proceedings.

**Footnote. Article 73 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 16.01.2006 No. 122 (shall be enforced from 01.01.2007); dated 10.07.2009 No. 175-IV (the order of enforcement see Article 2); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 74. Powers of the Defence Lawyer**

1. The defence lawyer shall be obliged to use all legitimate facilities and methods of defence for the purposes of establishing the circumstances which refute prosecution or mitigate the liability of the suspect, the accused and to render appropriate legal assistance to them.

2. From the moment of access to the case the defence lawyer shall have the right to:

1) have meetings with the suspect or the accused in private and in confidence without restrictions of their number and length;

2) collect and present items, documents and information which are required for rendering legal assistance;

3) be present when accusation is presented, participate in the interrogation of the suspect and (or) the accused, as well as in other investigative and procedural acts, which are performed with their participation or pursuant to their petition or the petition of the defence lawyer himself;

4) file recusations;

5) become familiar with the detention report, resolution on application of a measure of

restraint, with the records of investigative acts performed with the participation of the suspect, the accused or the defence lawyer himself, with the documents which have been presented or shall have been presented to the suspect and (or) the accused, and in the end of interrogation, summary pre-trial procedure or preliminary investigation - with all materials of the case; copy out any information from it in any volume, except for the list of accusal;

6) file petitions, including those on adoption of security measures;

7) participate in preliminary hearings of the case, in judicial proceedings at the court of any instance; speak in judicial pleadings, participate in sessions of the court when a case is resumed due to newly discovered circumstances;

8) become familiar with a record of a judicial session by placing his signatures under the last line of a text on each page and at the end of the record, and when becoming familiar with a part of a record of the judicial session by placing his signatures at the end of each page and at the end of that part, and file comments to it;

9) receive copies of procedural documents;

10) protest against unlawful acts of the person who conducts the criminal procedure and other persons who participate in the criminal proceeding; require inclusion of those objections into procedural documents;

11) file complaints with regard to acts and decisions of the interrogating officer, investigator, prosecutor and court; and participate in their consideration;

12) use any other means and methods of defence which do not contradict the law.

3. The defence lawyer that participates in the performance of investigative acts shall have the right to set questions to the interrogated persons after finishing of the interrogation held by the investigator or the interrogating officer. The investigator, interrogating officer may recuse questions of the defence lawyer, but he shall be obliged to include all the set questions into the record. The defence lawyer shall have the right to make written notes in the record of investigative act with regard to the correctness and fullness of the record.

4. The defence lawyer shall not: to commit any acts against the interests of the accused and to impede the exercise of the rights belonging to him; contrary to the position of the accused to recognise his implication in a crime and culpability of its commission, to declare reconciliation of the accused with the victim; to recognise a civil lawsuit; to revoke complaints and petitions filed by the accused; to disclose information which became known to him in connection with the application for his legal assistance and its exercise.

5. The defence lawyer shall also have other rights and he shall perform other duties provided for by this Code.

**Footnote. Article 74 as amended by the Laws of the Republic of Kazakhstan dated 07.04.2009 No. 149-IV; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 75. Victim**

1. A person in respect of whom there are reasons to believe that moral, physical or property harm is caused to him directly by a crime, shall be recognised as a victim in a criminal procedure.

2. A person may be recognised as a victim also in cases when harm is caused to him by an act prohibited by the Criminal Code of the Republic of Kazakhstan, which is committed by an insane person.

3. A person shall be recognised as a victim in a criminal procedure with the issue of an appropriate resolution from the moment of institution of the criminal case. If after the recognition of a person as a victim it is established that there are no reasons for his being in this status, the body that conducts the criminal procedure by its resolution shall terminate the participation of the person as a victim in case.

4. The victim shall be provided for compensation of property damage caused by a crime, as well as costs incurred due to his participation in preliminary investigation and in court, including costs for participation of a representative in accordance with the rules established by this Code.

5. A lawsuit of the victim for compensation of moral damage to him shall be considered in the criminal procedure. If such a lawsuit is not brought in the criminal case or left without consideration, then the victim shall have the right to bring it in accordance with civil proceedings.

6. The victim shall have the right to:

- 1) know of the accusal filed against the accused;
- 2) provide testimonies in the native language or a language of which he has command;
- 3) present evidence;
- 4) file petitions including those on adoption of security measures, and recusations;
- 5) use charge free assistance of a translator;
- 6) have a representative;
- 7) receive property seized from him by the criminal prosecution body as a means of evidence or the property presented by himself, as well as the property belonging to him which was seized from the person who committed an action prohibited by the criminal law; receive original documents belonging to him;
- 8) reconcile with the suspect, the accused in cases stipulated by law, as well as in accordance with the order of mediation;
- 9) become familiar with records of investigative acts performed with his participation, and file comments to them;
- 10) participate with a permit of the investigator or the interrogating officer in investigative acts performed pursuant to his petition or petition of his representative;
- 11) become familiar with all the materials of the case upon termination of investigation, copy out any information from it and in any volume;
- 12) file petition on provision of security measures to him and members of his family;

13) receive copies of resolutions on institution of a criminal case, on his recognition as a victim or on refusal of that, on suspension of a criminal case, on termination of the case, a copy of indictment, as well as copies of the sentence of the court of the first instance and appellate instance;

14) participate in judicial proceedings of the case in the court of first and appellate instance;

15) participate in judicial pleadings;

16) support prosecution, including the case when a public prosecutor refuses from accusation;

17) become familiar with a record of a judicial session by placing his signatures under the last line of a text on each page and at the end of the record, and when becoming familiar with a part of a record of the judicial session by placing his signatures at the end of each page and at the end of that part, and file comments to it;

18) file complaints against action (inaction) of the body that conducts the criminal procedure;

19) appeal against sentence and resolutions of a court;

20) know of complaints and objections filed on the case and file objections to them;

21) participate in court consideration of the filed complaints, petitions and objections in the cassation and supervisory instances.

22) defend his rights and legal interests by other means, which do not contradict the law.

In cases provided for by part two of Article 80 of this Code, legal assistance shall be rendered free of charge to the victim.

7. A victim, and in case of his death - his legal successors, shall have the right to receive pecuniary compensation at the expense of budgetary funds for property damage caused by gravest crime if the convict for such a crime has no property sufficient for compensation of the damage caused by that crime. In this case, the issue of payment of the pecuniary compensation at the expense of budgetary funds shall be settled by the court that passed the sentence pursuant to the application of the victim or his legal successor. In specified cases, the victim shall have the right to compensation of harm in full volume, if the harm does not exceed the hundred fifty monthly calculation indices.

8. A victim shall be obliged: to arrive pursuant to summons of the body that conducts the criminal procedure, to truthfully explain all the known circumstances on the case and to answer set questions; not to disclose information on circumstances known to him with regard to the case; to comply with the established procedure when performing investigative acts and during the judicial session.

9. If a victim fails to arrive on summons without a good reason, that person may be brought to court compulsorily in accordance with the order provided for by Article 158 of this Code, and brought to administrative liability in accordance with legislation.

10. A victim shall be criminally liable in accordance with the law for refusal to provide

testimonies and for provision of deliberately false testimonies.

11. With regard to the cases of crimes, the consequence of which is death of a person, the rights of the victim provided for by this Article shall be exercised by immediate relatives of the deceased. If several persons claim to have the rights of a victim, and moral damage was caused to them by the crime due to the death of their relatives, all of them may be recognised as victims or one of them pursuant to an agreement between them.

12. A legal entity, to which moral or property harm is caused by a crime, may be recognised as a victim. In this case, the rights and obligations of a victim shall be exercised by a representative of the legal entity.

**Footnote. Article 75 as amended by the Laws of the Republic of Kazakhstan dated 09.12.2004 No. 10; dated 07.04.2009 No. 149-IV; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 28.01.2011 No. 402-IV (shall be enforced from 05.08.2011), dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 76. Private Prosecutor**

1. A person who filed a complaint to the court with regard to a case of private prosecution and who sustains accusal in the court, as well as a victim on cases of public and public-private prosecution, who independently supports accusal in the court, if the public prosecutor refuses from accusal, shall be recognised as a private prosecutor.

2. In case of juvenility or incapability of a victim, his legal representative who filed a petition, request or who filed a complaint, shall be recognised as a private prosecutor.

3. Private prosecutor shall exercise all the rights and bear all the obligations of a victim as well as have the rights provided for by parts three, four and six of Article 393 of this Code.

4. A private prosecutor shall exercise the rights belonging to him and he shall implement the duties entrusted to him personally or through a representative if it corresponds to the nature of the rights and obligations.

## **Article 77. Civil Plaintiff**

1. An individual or a legal entity, in respect of whom there are sufficient reasons to believe that a property damage was caused to him directly by a crime, who filed a claim on compensation for that damage, shall be recognised as a civil plaintiff. A civil plaintiff may file a lawsuit for property compensation of moral damage. The prosecutor, in cases provided for by law, shall have the right to recognise an individual or a legal entity as a civil plaintiff pursuant to his own initiative.

2. A decision to recognise a civil plaintiff or to terminate the participation of a person in a procedure as a civil plaintiff, in cases when there are no reasons for remaining in specified procedural status, shall be taken by the body that conducts the criminal procedure, of which it shall pass an appropriate resolution.

3. In order to protect the interests of juveniles, as well as of persons, who are recognised as incapable in accordance with the procedure established by law, civil lawsuit may be filed by their legal representatives.

4. A civil plaintiff for the purposes of supporting a lawsuit filed by him shall have the right to: know the essence of the accusal; present evidence; provide explanations on the filed lawsuit; present materials to be attached to the criminal case; file petitions and recusations; provide testimony and explanations in the native language or in a language of which he has command; use charge free assistance of a translator; have a representative; become familiar with records of investigative acts performed with his participation; participate with a permit of the investigator or interrogating officer in investigative acts, which are carried out pursuant to his petition or petition of his representative; become familiar upon termination of the investigation with the materials on the case pertaining to the civil lawsuit and to copy out any information from it and in any volume; know of the decisions which affect his interests and to receive copies of procedural decisions pertaining to the filed civil lawsuit; participate in judicial proceedings of the case in court of any instance; participate in judicial pleadings; become familiar with the minutes of a judicial session and provide comments to it; file complaints concerning acts and decisions of the body that conducts the criminal procedure; appeal against a sentence and resolutions of a court in the part of the civil lawsuit; know of complaints and objections filed with regard to the case in the part of the civil lawsuit and file objections to them; to participate in court consideration of the filed complaints and objections; in cases provided for by part seven of Article 75 of this Code, to receive compensation of harm caused by a crime at the expense of the State; to file an application on adoption of security measures.

5. A civil plaintiff shall perform the duties provided for by part eight of Article 75 of this Code.

6. A civil plaintiff shall have other rights as well and he shall perform other duties provided for by law.

**Footnote. Article 77 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No. 149-IV.**

## **Article 78. Civil defendant**

1. An individual or a legal entity, who, by virtue of law in connection with a lawsuit filed in the course of procedure of a criminal case, has property liability for harm caused by a crime or act of an insane person, which is prohibited by the Criminal Code of the Republic of Kazakhstan, shall be recognised as a civil defendant.

2. A decision to recognise as a civil defendant or to terminate participation of a person in a procedure as a civil defendant in the event when there are no reasons for remaining in specified procedural status, shall be taken by the body that conducts the criminal procedure,

of which it shall pass an appropriate resolution.

3. A civil defendant for the purposes of defending his interests in connection with the lawsuit filed against him shall have the right: to know of the essence of the accusal and a civil lawsuit; to object against the lawsuit; to provide explanations and testimony with regard to the essence of the filed lawsuit; to have a representative; to present materials for attachment to a criminal case; to file petitions and recusations; to become familiar upon expiry of investigation with the materials on the case pertaining to the civil lawsuit and to copy out any information in any volume; to know of the made decisions, which affect his interests, and to receive copies of procedural decisions pertaining to the filed civil lawsuit; to participate in judicial proceedings of the case in court of any instance; to participate in judicial pleadings, to file complaints concerning acts and decisions of the body that conducts the criminal procedure; to get familiar with the minutes of a judicial session and to provide comments to it ; to appeal against a sentence and resolutions of a court in the part of the civil lawsuit; to know of complaints and objections filed with regard to the case in the part of the civil lawsuit and to file objections to them; to participate in court consideration of the filed complaints and objections; to file an application on adoption of security measures.

4. A civil defendant shall perform the duties provided for by the eighth part of Article 75 of this Code .

5. A civil defendant shall have other rights as well and he shall perform other duties provided for by law .

**Footnote. Article 78 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No. 149-IV.**

## **Article 79. Legal Representatives of a Juvenile Accused, Suspect**

With regard to the cases of violations committed by juveniles, their legal representatives shall be involved to participate in case in the procedure provided for by this Code.

## **Article 80. Representatives of a Victim, Civil Plaintiff and Private Prosecutor**

1. Advocates and other persons, who have the right by virtue of law to represent in the course of proceedings on a criminal case legal interests of a victim, civil plaintiff and private prosecutor and those, who are allowed to participate in case by a resolution of the body that conducts the criminal procedure, may be representatives of the victim, the civil plaintiff and the private prosecutor .

2. In order to protect the rights and legal interests of victims who are juveniles or those who due to their physical or mental condition are deprived of the possibility to independently protect their rights and legal interests, their legal representatives and representatives shall be involved for obligatory participation in case.

In such cases, an advocate, who has been selected by a victim or his legal representative,

shall be a representative of the victim. If the advocate is not invited by the victim or his legal representative, advocate's participation shall be provided for by the body that conducts the criminal procedure, by issuing a resolution which is obligatory for a professional organization of advocates or its structural subdivisions. The body that conducts the criminal procedure shall not have the right to recommend inviting a certain advocate as a defence lawyer.

If the victim or his legal representative has no funds to pay work remuneration of an advocate, it shall be carried out at the expense of budgetary funds in accordance with the order established by this Code.

3. Legal representatives and representatives of a victim, civil plaintiff and private prosecutor shall have the same procedural rights as the individual and legal entities represented by them within the limits provided for by this Code.

4. A representative of a victim, civil plaintiff and private prosecutor shall not have the right to commit any acts against the interests of the presented participant of the proceedings.

5. Personal participation of a victim, civil plaintiff and private prosecutor in a case shall not deprive them of the right to have a representative in case.

**Footnote. Article 80 as amended by the Laws of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 81. Representatives of a Civil defendant**

1. Advocates and other persons who have the right by virtue of law to represent legal interests of a civil defendant in the procedure on a criminal case and who are allowed to participate in case by a resolution of the body that conducts the criminal procedure shall be recognised as representatives of a civil defendant.

2. Representatives of a civil defendant shall have the same procedural rights as the individual and the legal entities represented by them.

3. A representative of a civil defendant shall not have the right to commit any acts against the interests of the represented participant of the proceedings.

4. Personal participation of a civil defendant in a case shall not deprive him of the right to have a representative in case.

## **Chapter 10. Other Persons That Participate in a Criminal Procedure**

### **Article 82. Witness**

1. Any person who may know certain circumstances which are important for a case, may be summoned and interrogated as witness to provide testimonies.

2. The following shall not be subject to interrogation as a witness:

1) a judge, juror - with regard to circumstances of a criminal case which became known to

them due to participation in proceedings on a criminal case as well as in the course of discussions on issues which emerged in the course of passing a court decision in the retiring room ;

1-1) a referee or an arbitrator - on circumstances became known to him in connection with performance of duties of a referee or an arbitrator;

2) a defense lawyer of a suspect, the accused and equally the representative of a victim, civil plaintiff and civil defendant as well as advocate of a witness - with regard to circumstances which became known to him in connection with the performance of his duties in the criminal case ;

3) a clergyman - with regard to circumstances which became known to him through confession ;

4) a person, who due to his young age or mental or physical handicaps, is not capable to correctly perceive circumstances that are important for the case and to provide testimony on those circumstances .

5) a mediator - with regard to circumstances became known to him in connection with mediation, except for the cases provided for by law.

3. A witness shall have the right: to refuse to provide testimony that may entail for himself, his spouse and immediate relatives prosecution for the commission of a criminally punishable act or administrative violation; to provide testimonies in his native language or a language of which he has command; to use charge free assistance of a translator; to file recusation of a translator who participates in his interrogation; to write with his own hand his testimony in the record of interrogation; to file petitions on recognizing him as a suspect prior to interrogation; to file complaints against acts of an interrogating officer, investigator, prosecutor and court, file petitions concerning his rights and legal interests including those on adoption of security measures. A witness shall have the right to provide testimonies in the presence of his advocate if the latter does not participate in case in any other capacity. A failure of an advocate to arrive does not impede the conduct of interrogation at the time appointed by the investigator. The witness shall be provided reimbursement of expenses incurred due to his participation in the preliminary investigation and in court.

4. A witness shall be obliged: to arrive pursuant to the summons of an interrogating officer, investigator, prosecutor and court; to truthfully report everything he knows on the case and to answer the set questions; not to disclose information about circumstances known to him with regard to the case if he was warned about it by the interrogating officer, investigator or prosecutor; to comply with the established procedure when performing investigative acts and during judicial session.

5. A witness may not be subjected to expert examination or inspected by force, except for the cases specified in Article 241 of this Code.

6. A witness shall be criminally liable for giving deliberately false testimonies and for refusal to provide testimonies as it is provided for by the Criminal Code of the Republic of

Kazakhstan. The evasion from providing testimonies or failure to arrive without a good reason pursuant to the summons of the body that conducts criminal procedure shall entail administrative liability.

Footnote. Article 82 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 28.12.2004 No. 24; dated 16.01.2006 No. 122 (shall be enforced from 01.01.2007); dated 07.04.2009 No. 149-IV; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 28.01.2011 No. 402-IV (shall be enforced from 05.08.2011); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 83. Expert**

1. A person who is not interested in case and who has special scientific knowledge may be summoned in the capacity of an expert. Other requirements applicable to a person who may be entrusted with the performance of expert examination shall be established by part one of Article 243 of this Code.

2. Summons of an expert, assignment and performance of expert examination shall be carried out in accordance with the procedure provided for by Chapter 32 and Article 354 of this Code.

3. An expert shall have the right to:

1) become familiar with the materials of a criminal case pertaining to the subject of the expert examination;

2) file petitions on provision of additional materials to him which are required for issuing of an opinion, as well as on adoption of security measures;

3) participate in the performance of investigative acts and other procedural acts with a permit of the body that conducts the criminal proceedings and ask participants of the proceedings questions which correspond to the subject of expert examination;

4) become familiar with the record of investigative act in which he participated as well as with the minutes of the judicial session in the corresponding part and make comments which are subject to inclusion in the record with regard to the fullness and the accuracy of record of his acts and testimonies;

5) in coordination with the body that appointed the expert examination, provide within the bounds of his authority an opinion on the circumstances which have been revealed during forensic expert examination and which are important for the case and go beyond the issues of a resolution on appointment of a judicial expert examination;

6) submit an opinion and provide testimonies in his native language or a language of which he has command; to use free of charge assistance of a translator; to file recusation of a translator;

7) appeal decisions and acts of the body that conducts the criminal procedure and other

persons participating in the proceedings on the case which infringe his rights when performing expert examination;

8) receive reimbursement of expenses incurred in the course of performance of expert examination and remuneration for the performed work if the performance of the expert examination is not included into the field of his office duties.

4. An expert shall have no right to:

1) enter into negotiations with the participants of the proceedings on issues associated with performance of expert examination aside from the body that conducts criminal procedure ;

2) independently collect materials for examination;

3) perform examinations which may entail full or partial destruction of objects or change of their external appearance or principal properties unless there was a special permit from the body that appointed the expert examination.

5. An expert shall be obliged to:

1) arrive pursuant to the summons of the body that conducts the criminal procedure;

2) carry out comprehensive, complete and objective examination of the objects presented to him; pass substantiated and objective written opinion on the set questions;

3) refuse from providing an opinion and make a motivated written notification on impossibility to provide the opinion and send it to the body that conducts the criminal procedure in cases provided for by Article 252 of this Code;

4) provide testimonies on issues connected with the performed examination and that r e p o r t ;

5) ensure safety of the objects which are presented for the examination;

6) not to disclose information concerning the circumstances of a case and other information which became known to him due to performance of the expert examination;

7) present expenditures and report on expenses incurred due to performance of the expert examination to the body that appointed expert examination.

6. For willful false opinion, the experts shall be criminally liable as it is provided for by l a w .

7. An expert who is an employee of the bodies of the judicial expert examination due to the nature of his activities shall be deemed familiar with his rights and obligations and warned of the criminal liability for issuing willful false opinion.

**Footnote. Article 83 is in the wording of the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

## **Article 84. Specialist**

1. A person, who is not interested in a case and who has special knowledge which is required for rendering assistance in collection, examination and evaluation of evidence by

explaining the issues which are in his competence to the participants of the criminal procedure, as well as by using scientific-technical means, may be involved as a specialist for the participation in the proceedings on a criminal case. A teacher, who participates in the investigative and other procedural acts with the participation of a juvenile, as well as a doctor who participates in the investigative and other procedural acts, except for the cases when he is appointed as an expert, shall be also recognized as specialists.

1-1. If it is necessary to conduct an examination and obtain an opinion in course of a pre-trial procedure, an officer of an authorized unit of the bodies of internal affairs of the Republic of Kazakhstan may be involved as a specialist.

If the parties disagree with the opinion of the specialist, the body that conducts the criminal procedure shall appoint an expert examination.

2. A specialist shall have the right: to know the aim of his summons; to refuse from participation in a proceeding on a case unless he has appropriate special knowledge and skills; with a permit of the body that conducts the criminal procedure to ask questions to the participants of the investigative or judicial act; to draw their attention to circumstances connected with his acts when rendering assistance in collection, examination and evaluation of the evidence and application of scientific-technical means, examination of the materials of the case, preparation of materials for appointment of expert examination; within the framework of investigative or judicial act, apart from the cases provided for by part 1-1 of this Article, to carry out an examination which does not lead to full or partial destruction of objects or change in their appearance or main properties, except for comparative materials by reflexing its course and results in a record or in an official document to be attached to the criminal case in the procedure provided for by part eight of Article 203 of this Code; to become familiar with the record of investigate act in which he participated, as well as with the record of the judicial session in the corresponding part; and to make statements and comments , which are subject to be included into the record, with regard to the fullness and accuracy of record of the course and results of the acts which were performed with his participation; to file complaints concerning the acts of the body that conducts the criminal procedure; to file recusation of a translator, to file petitions on adoption of security measures; to receive reimbursement of expenses which were incurred by him due to participation in the performance of investigative or judicial acts and remuneration for the performed work if the participation in the proceedings on a case is not included into the field of his office duties.

3. A specialist shall be obliged: to arrive pursuant to the summons of the body that conducts the criminal procedure; to participate in the performance of investigative acts and in the court proceedings, using special knowledge, skills and scientific-technical means for rendering assistance in collection, examination and evaluation of evidence; to provide explanations on the acts he performed, and in case provided for by part 1-1 of this Article to carry out examination and provide an opinion; not to disclose information of circumstances of the case and other information which became known to him due to participation in a case; to

comply with the procedure when performing investigative acts and during judicial session.

4. A specialist shall be brought to administrative liability for refusal or evasion from performance of his duties without good reasons. A specialist shall be criminally liable in case of a willful false opinion as it is provided for by law.

Footnote. Article 84 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 21.12.2002 No. 363; dated 04.07.2006 No. 151; dated 07.04.2009 No. 149-IV; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 85. Translator**

1. A person who is not interested in a case, who has command of the language the knowledge of which is required for translation, and who is involved in the participation of investigative and judicial acts in cases when a suspect, the accused, person on trial, their defense lawyers or a victim, civil plaintiff, civil defendant or their representatives, as well as witnesses and other participants of the proceedings have no command of the language, in which proceedings on a case are carried out, as well as for the translation of written documents, shall be summoned in the capacity of a translator.

2. The body that conducts the criminal procedure shall pass a resolution on the appointment of a person as a translator.

3. A translator shall have the right: to set questions to the persons who are present during the translation in order to make an accurate translation; to become familiar with the record of investigative or any other procedural act in the performance of which he participated, as well as with the record of the judicial session in the corresponding part; and to make comments, which are subject to be entered into the record with regard to the fullness and accuracy of the translation; to refuse from participation in the proceedings on a case if he does not have knowledge, which is required for the translation; to file complaints on the acts of the body that conducts the criminal procedure; to receive reimbursement of expenses which were incurred by him due to participation in the performance of the investigative or any other procedural acts, as well as remuneration for performed work if the participation in proceedings on a case is not included into the field of his office duties.

4. A translator shall be obliged: to arrive pursuant to the summons of the body that conducts the criminal procedure; to perform precisely and fully the translation entrusted to him; to certify the accuracy of translation with his signature in the record of the investigative act that was performed with his participation, as well as in the procedural documents, which are handed to the participants of the proceedings being translated into their native language or a language of which they have command; not to disclose information on circumstances of the case or other information which became known to him due to his involvement as a translator;

to comply with the procedure when performing investigative acts and during the judicial session .

5. A translator shall be brought to administrative liability for refusal or evasion to arrive or to perform his duties without good reasons. A translator shall be criminally liable in case of a willful wrong translation .

6. The rules of this Article shall apply to a person who understands signs of a mute or deaf individual and is invited to participate in proceedings on the case.

**Footnote. Article 85 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No. 149-IV.**

## **Article 86. Identifying Witness**

1. A person who is involved by the criminal prosecution body for certifying facts of performance of an investigative act, its course and results in cases provided for by this Code shall be recognized as an identifying witness .

2. Only citizens of majority age, who are not interested in case and do not depend on the criminal prosecution bodies and who are capable to understand fully and accurately the acts which take place in their presence may be identifying witnesses .

3. Not less than two identifying witness shall participate in performance of investigative acts .

4. An identifying witness shall have the right: to participate in the performance of investigative acts; to make statements and comments with regard to investigative acts which are to be included into the record; to become familiar with the record of investigative acts in which he participated; to file complaints on the acts of the criminal prosecution body; to receive compensation of expenses which were incurred by him during the proceedings on a criminal case; to file petition on adoption of security measures .

5. An identifying witness shall be obliged: to arrive pursuant to the summons of the criminal prosecution body; to participate in performance of investigative acts; to certify with his signature the record of the investigative act, the fact of performance of the act, its course and results; not to disclose materials of the preliminary investigation without a permit of the interrogating officer, investigator, prosecutor; to comply with the procedure when performing investigative acts .

6. Identifying witness shall be brought to administrative liability for refusal or evasion to arrive or to perform his duties without good reasons .

**Footnote. Article 86 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No. 149-IV.**

## **Article 87. Secretary of Judicial Session**

1. A state employee who is not interested in a criminal case, who takes the minutes of a judicial session shall be recognized as the secretary of judicial session.

2. A secretary of a judicial session shall be obliged: to be in the court room all the time when he is required to ensure record-keeping and not to leave the session of the court without a permit of the presiding judge; to fully and accurately describe in the record the acts and decisions of the court, petitions, objections, testimonies, explanations of all persons who participate in the judicial session, as well as other circumstances which are subject to be entered into the record of the judicial session; to prepare the record of the judicial session within the deadline established by this Code; to obey legitimate ordinances of the presiding judge; not to disclose information concerning circumstances which became known due to his participation in the closed judicial session.

3. A secretary of a judicial session shall be personally liable for the fullness and accuracy of the record of the judicial session.

4. If the willfully false information or information which is not consistent with the reality is entered into the record of a judicial session, the secretary shall be held responsible as it is provided for by law.

## **Article 88. Bailiff**

1. An official person who performs the assignments, which are entrusted to him by the law with regard to ensuring the established procedure for the functioning of courts and for the implementation of court decisions, shall be recognized as a bailiff.

2. A bailiff shall ensure the supervision of the implementation of punishments which are not connected with the deprivation of freedom; render assistance to officers of justice in compulsory fulfillment of executive documents; maintain the order in the court room during court proceedings; implement the ordinances of the presiding judge and perform in courts the protection of judges, witnesses and other participants of a procedure; protect them from outside influence; assist to the performance of procedural acts by the court; bring about the persons who evade to come to court and exercise other powers entrusted to him by the law.

## **Article 88-1. Mediator**

1. An independent individual involved by the parties for mediation in accordance with the requirements of the law shall be a mediator.

2. The mediator shall have the right to:

- 1) become familiar with the information which is provided to the parties of mediation by the body conducting the criminal procedure;
- 2) become familiar with data about the participants of criminal procedure, who are parties of mediation;
- 3) meet with the participants of the criminal procedure, who are parties of the mediation,

in private and in confidence, without limiting the number and duration of meetings in accordance with the Criminal procedure law.

Footnote. The Code is supplemented by Article 88-1 in accordance with the Law of the Republic of Kazakhstan dated 28.01.2011 No. 402-IV (shall be enforced upon expiry of six months after its first official publication).

## **Chapter 11. Circumstances, which Exclude the Possibility of Participation in the Proceedings on a Criminal Case. Recusations**

### **Article 89. Recusations and Petitions on Excluding from Participation in the Proceedings on a Criminal Case. Exclusion from Participation in a Criminal Procedure**

1. When there are circumstances which exclude their participation in the proceedings on a criminal case, a judge, prosecutor, investigator, interrogating officer, defense lawyer, representative of a victim (private prosecutor), civil plaintiff, civil defendant, identifying witness, secretary of judicial session, bailiff, translator, expert, specialist must resign from the participation in proceedings on a criminal case or a recusation must be filed to them by the participants of the criminal procedure.

2. The body that conducts the criminal procedure shall have the right within the bounds of its competence to resolve the filed recusations and petitions on excluding from proceedings on a case or when discovering circumstances which exclude the participation of a person in a criminal procedure, to exclude that person from the proceedings on the case on their own initiative by passing the appropriate resolution. If a recusation is filed to other participants of the proceedings at the same time with the recusation of a person, who is authorized to resolve recusations in respect of other participants of the proceedings, the issue of the recusation of the present person shall be resolved primarily.

3. If the simultaneous participation of several persons in criminal proceedings is excluded due to their blood relations or any other relations of personal dependence, the persons, who later than others have acquired the status of participants of the proceedings, must be excluded from the proceedings on a criminal case. If the persons, who are tied by blood or any other relations of personal dependence, happened to be members of the court, a person at the choice of the presiding judge shall be subjected to exclusion from the participation in the proceedings on the criminal case.

4. A secretary of a judicial session, bailiff, translator, specialist, expert, whose participation in the proceedings on a criminal case is not excluded by any circumstances

provided for by this Code, may be released from such participation at their request by the body that conducts the criminal procedure due to existence of sufficient reasons which impede them to perform their procedural functions.

## **Article 90. Recusation of a Judge**

1. A judge may not participate in the consideration of a case if he:
  - 1) is not a judge, to whose jurisdiction the criminal case is related in accordance with this Code ;
  - 2) handled a complaint to the decisions and actions (inactions) of the prosecutor, bodies of investigation and inquiry or participated in sanctioning of procedural decision in the instant case ;
  - 3) is a victim of the instant case, a civil plaintiff, civil defendant; was summoned or may be summoned as a witness ;
  - 4) participated in proceedings on the instant criminal case as an expert, specialist, translator, bailiff, identifying witness, secretary of judicial session, interrogating officer, investigator, prosecutor, defense lawyer, legal representative of the accused, representative of a victim, civil plaintiff or civil defendant;
  - 5) is a relative of a victim, civil plaintiff, civil defendant or their representatives, a relative of an accused or his legal representative, a relative of the prosecutor, defense lawyer, investigator or interrogating officer;
  - 6) if there are other circumstances which provide grounds to believe that a judge personally, directly or indirectly is interested in the instant case.
2. The membership of the court that considers a criminal case may not include persons who are related by blood or any other relations of personal dependence.
3. The judge who took part in the consideration of a criminal case in the court of the first instance, may not participate in the consideration of that case in the court of appeals, cassation instance or in the procedure of supervision, as well as to participate in a new consideration of the case in the court of first instance, including with participation of juniors, if the sentence or decree on termination of the case passed with his participation were abolished .
4. A judge, who took part in the consideration of a case in the court of the appellate instance may not participate in the consideration of that case at its new consideration in the same instance upon cancellation of the appeals sentence, resolution adopted with his participation and when the case is considered in a cassation instance.
  - 4-1. A judge who took part in consideration of a case in a cassation instance may not participate in consideration of the same case at its new consideration in the first, appeals and cassation instances upon cancellation of the resolution adopted with his participation.
5. A judge, who took part in the consideration of a case in the preceding court instances

may not participate in the consideration of the same case in the supervision instance.

6. A recusation must be filed before the beginning of a judicial investigation, and in case of consideration of the case with jurors - before the creation of the collegium of jurors. The latest filing of a recusation shall be allowed only if the grounds for it became known to the party that filed the recusation after the commencement of a judicial investigation.

7. The issue of a recusation of a judge, as well as to the participants of the court proceedings, shall be resolved by the court in the retiring room with delivery of a resolution.

8. A recusation filed to a judge shall be resolved by the remaining judges in the absence of the recusated person, who, however, shall have the right to publicly present his explanation regarding the recusation filed to him before the judges leave to the retiring room. A recusation filed to several judges or to the panel of the court shall be resolved by the court in its full membership by the majority of votes. If the votes are equal, the judge shall be d e e m e d a s a r e c u s e d .

9. A recusation filed to the judge, who resolves petitions on application of measures of restraint or performance of investigative acts, shall be resolved by the same judge individually with delivery of a resolution. A recusation filed to the judge, who individually handles a case in accordance with part one of Article 58 of this Code, shall be resolved by the chairman of the instant court or by another judge of this court, and if they are absent - by the judge of the upper court. If the petition on a recusation is satisfied, the criminal case, complaint or petition shall be transferred to be processed by another judge in accordance with the established p r o c e d u r e .

10. A resolution on rejection or satisfaction of a recusation shall not be subject to appeal (objection). The arguments on disagreement with a resolution may be included into an appellate or supervision complaint.

**Footnote.** Article 90 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 16.01.2006 No. 122 (shall be enforced from 01.01.2007); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 91. Recusation of a Prosecutor**

1. A prosecutor may not participate in the proceedings on a criminal case if there is any one of the circumstances which are provided for by Article 90 of this Code.

2. The participation of a prosecutor in the performance of a preliminary investigation or interrogation, as well as the support of prosecution by him in the court, shall not be recognized as an impediment for his further participation in case.

3. The issue of recusation of a prosecutor during pre-trial procedures shall be resolved by the upper prosecutor, and during proceedings at a court - by the court that handles the case.

## **Article 92. Recusation of an Investigator and an Interrogating Officer**

1. An investigator and an interrogating officer may not participate in the investigation of a case if there are circumstances, which are provided for by Article 90 of this Code.

2. The participation of an investigator and an interrogating officer in their corresponding capacity in the investigation, which has been performed on the instant criminal case earlier, shall not be a circumstance that excludes their further participation in the proceedings on the instant criminal case.

3. The issue of a recusation of an investigator and an interrogating officer shall be resolved by the prosecutor or respectively by the chief of the investigative department or the chief of the body of inquiry.

**Footnote. Article 92 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 93. Recusation of an Identifying Witness**

1. An identifying witness may not participate in the proceedings on a criminal case if there is any one of the circumstances, which are provided for by Article 90 of this Code.

2. An identifying witness may not participate in the proceedings on a criminal case if he personally or due to his office depends on the body that conducts the criminal procedure.

3. The previous participation of an identifying witness in the investigative act shall not be recognized as a circumstance that excludes his participation in the performance of another investigative act on that criminal case, except for the cases when the participation of any of the identifying witnesses has a systematic nature.

4. A recusation of an identifying witness shall be resolved by the person who performs an investigative act.

## **Article 94. Recusation of the Secretary of a Judicial Session and a Bailiff**

1. The secretary of a judicial session and a bailiff may not participate in the proceedings on a criminal case:

- 1) if there is any one of the circumstances which are provided for by Article 90 of this Code;
- 2) if their incompetence has been discovered.

2. The previous participation of a person in a judicial session as a secretary of a judicial session or a bailiff shall not be a circumstance that excludes his further participation in the relevant capacity in the sessions of a court.

3. The issue of a recusation of a secretary of a judicial session and a bailiff shall be resolved by the court that handles a case.

## **Article 95. Recusation of a Translator and a Specialist**

1. A translator and a specialist may not participate in the proceedings on a criminal case:
  - 1) if there is any one of the circumstances which are provided for by Article 90 of this Code ;
  - 2) if their incompetence has been discovered.
2. The previous participation of a person as a translator or a specialist shall not be a circumstance that excludes their further participation in their relevant capacity in the proceedings on the instant criminal case.
3. The issue of a recusation of a translator and a specialist shall be resolved by the body that conducts the criminal procedure.

## **Article 96. Recusation of an Expert**

1. An expert may not participate in the proceeding on a criminal case:
  - 1) if there is any one of the circumstances which are provided for by Article 90 of this Code ;
  - 2) if he was or is in a service or any other dependence on the interrogating officer, investigator, prosecutor, judge, suspect, the accused, their defence lawyers, legal representatives, victim, civil plaintiff, civil defendant or representatives;
  - 3) if he performed a revision or other verification acts, the results of which served as bases for institution of proceedings on a criminal case or beginning of criminal prosecution;
  - 4) if his incompetence has been discovered.
  - 5) if he participated in case as a specialist, except for the cases of participation of a medical specialist in the sphere of forensic medicine in the inspection of human corps in accordance with Article 224 of this Code.
- 1-1. A doctor who delivered a medical care to a person before the appointment of expert examination may not participate in the performance of expert examination of the corresponding alive person or a corpse.
2. The previous participation of a person in the instant case as an expert shall not be a circumstance that excludes his assignment to carry out expert examination on a case, except for the cases when he is appointed repeatedly after the expert examination, which has been carried out with his participation.
3. The issue of a recusation of an expert shall be resolved by the body that conducts the criminal procedure.

**Footnote. Article 96 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 20.01.2010 No. 241-IV.**

## **Article 97. Exclusion of a Defence Lawyer, Representative of a Victim (Private Prosecutor), Civil Plaintiff or Civil defendant from Participation in the Proceedings on a Criminal Case**

**Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

1. A defense lawyer as well as a representative of a victim (private prosecutor), civil plaintiff, and civil defendant may not participate in the proceedings on a criminal case if any one of the following circumstances exists:

1) if earlier he has participated in case as a judge, a prosecutor, an investigator, an interrogating officer, a secretary of a judicial session, bailiff, witness, expert, specialist, translator or an identifying witness;

2) if he is in blood relations with the official person who took or is taking part in the investigation or court consideration of the instant case;

3) if he renders or has previously rendered a legal assistance to the person, who has the interests which are opposite to the interests of a person being defended or a trustee, as well as if he is in blood relations with such persons;

4) if he has no right to be a defense lawyer or a representative due to the law or decision of a court.

2. The issue of exclusion of a defense lawyer, representative of the victim (private prosecutor), civil plaintiff or civil defendant from participation in the proceedings on a case during the pre-trial procedures shall be resolved by the body that conducts the criminal procedure.

**Footnote. Article 97 as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Chapter 12. Ensuring Security of the Persons, Who Participate in the Criminal Procedure**

### **Article 98. Ensuring Security of Judges, Jurors, Prosecutors, Investigators, Interrogating Officers, Defense Lawyers, Experts, Specialists, Secretaries of a Judicial Session and Bailiffs**

1. A judge, a juror, a prosecutor, an investigator, an interrogating officer, a defence lawyer, an expert, a specialist, a secretary of a judicial session, a bailiff, as well as their family members and immediate relatives shall be under the protection of the state.

2. With regard to persons listed in part one of this Article, the State shall ensure the adoption of security measures from infringement of their life and other violence due to

examination of criminal cases or materials in court, performance of interrogation or preliminary investigation in the procedure provided for by law.

Footnote. Article 98 as amended by the Laws of the Republic of Kazakhstan dated 16.01.2006 No. 122 (shall be enforced from 01.01.2007); dated 07.04.2009 No. 149-IV.

## **Article 99. The Duty to Take Security Measures with Regard to Victims, Witnesses, Accused individuals and Other Persons, Who Participate in the Criminal Procedure**

Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

1. The body that conducts a criminal procedure shall be obliged to take security measures with regard to a victim, a witness, an accused, other persons who participate in the criminal procedure as well as their family members and immediate relatives, if due to proceedings on the criminal there is a real threat of commission of violence or any other act against them which is prohibited by criminal law.

2. The body that conducts a criminal procedure shall take security measures with regard to persons who are indicated in part one of this Article on the basis of their oral (written) application or pursuant to its own initiative of which it shall pass the corresponding resolution

3. Applications of persons who participate in criminal proceedings, their family members or immediate relatives on the adoption of security measures must be handled by the body that conducts the criminal procedure not later than twenty four hours from the moment of their receipt. The applicant shall be immediately notified of the decision made and the copy of the relevant resolution shall be directed to him.

4. The applicant shall have the right to appeal to the prosecutor or to the court the refusal to satisfy petition on adoption of security measures with regard to him.

5. A refusal to take security measures shall not impede another application with a petition on adoption of the said measures, if there are circumstances, which are not reflected in the application that has been filed earlier.

Footnote. Article 99 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 100. Security Measures with Regard to Victims, Witnesses, Suspects, Accused individuals and the Other Person who Participate in a Criminal Procedure**

1. The following shall be applied as procedural security measures with regard to witnesses, suspects, accused individuals and other persons participating in criminal proceedings, their family members and immediate relatives:

1) the passing of an official warning of possible criminal prosecution by the body conducting the criminal procedure to the person from whom the threat of violence or other acts prohibited by criminal law emanate;

2) restriction of access to information concerning the person being defended;

3) ensuring his personal security;

4) with regard to the accused (suspect) selection of the measure of restraint that excludes any opportunity to use (organize the use) violence or commission (organization of commission) of other criminal acts with regard to participants of the criminal procedure.

2. The warning passed by the body conducting the criminal procedure shall be announced to the person against receipt.

3. Restriction of access to information concerning the person being defended shall consist in the seizure of information concerning questionnaire information of the person from materials of the criminal case and their storage separately from the main proceeding, and in the use of pseudonym by that person. The materials separated from the principal proceeding may be accessible for the review only to the body that conducts the criminal procedure. Other participants of the proceedings may become familiar with them only with a permit of the body that conducts the criminal procedure when giving the recognizance not to disclose the said information. Procedural acts with the participation of the person being defended may be performed under conditions which exclude his identification.

4. The procedure for ensuring personal security of witnesses, suspects, accused individuals and other persons who participate in a criminal proceeding and their immediate relatives shall be defined by law.

5. Irrespective of the adoption of security measures, the criminal prosecution body shall be obliged to institute a criminal case, when there are sufficient reasons for it, due to the discovered threat of commission of an act prohibited by the criminal law with regard to a victim, witness, the accused, and any other person who participates in the criminal proceedings.

6. Security measures shall be abolished by a motivated resolution of the body that conducts the criminal procedure when the need in their application disappears. A person being defended must be immediately notified of the abolition of security measures with regard to him or disclosure of information about that person to persons who participate in the proceedings on a case. Filing a complaint on decision of the body conducting the criminal procedure on the abolition of security measures to a court or to a prosecutor by the person being defended shall suspend the execution of the appealed decision.

**Footnote. Article 100 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No. 149-IV.**

## **Article 101. Ensuring Security of Persons who Participate in Court Proceedings**

1. In order to provide security of participants of the court proceedings, the presiding judge shall perform a closed session of the court, as well as take measures provided for by parts one, two, three and four of Article 100 of this Code.

2. Pursuant to a petition of a witness, a prosecution party, as well as pursuant to its own initiative for the purposes of ensuring security of a witness and his immediate relatives the court shall have the right to pass a resolution on interrogation of a witness as follows:

- 1) without disclosing the information of his identity with the use of pseudonym;
- 2) under conditions that exclude his identification for the rest of participants by voice and appearance: accent, gender, nationality, age,, body, posture and gait;
- 3) without visual observation of him by other participants of the court proceedings.

3. The presiding judge shall have the right:

- 1) to prohibit making of video, audio taping and other techniques for recording of the i n t e r r o g a t i o n ;
- 2) to remove from the court room the person on trial, representatives of the defense party, e x c e p t f o r t h e a d v o c a t e .

4. The testimonies of a witness who was interrogated by the court in the absence of any of the participants of the proceedings or beyond their visual observation shall be announced by the presiding judge in the court in the presence of all its participants without indicating information on the instant witness.

5. If necessary, the court shall take other measures to provide security of participants of the proceedings and other persons as provided for by the law.

6. The implementation of a court decree on ensuring security of the participants of criminal proceedings shall be entrusted to the criminal prosecution bodies, as well as to a b a i l i f f .

**Footnote. Article 101 as amended by the Laws of the Republic of Kazakhstan dated 17.07.2009 No. 187-IV; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Chapter 13. Petitions, Appeal of the Acts and Decisions of the State Bodies and Official Persons which Perform Proceedings on a Criminal Case**

### **Article 102. Duty to Consider Petitions of Participants of Criminal Proceedings**

1. The participants of a criminal procedure shall have the right to apply to the interrogating officer, the investigator, the prosecutor, the court with petitions to perform procedural acts or adopt procedural decision for establishing the circumstances which are important for the case, ensuring the rights and legal interests of the person, who applied with a petition or person, who is represented by them.

2. Filing of petition shall be possible at any stage of the procedure. A person who filed a petition must indicate for the establishment of which circumstances he asks to perform an act

or take a decision. Written petitions shall be attached to the case; the oral ones shall be included into the record of investigative act or judicial session.

3. Refusal of a petition shall not impede its refileing at subsequent stages of the criminal proceedings or to another body that conducts the criminal procedure.

4. A petition shall be subject to consideration and determination directly after it is filed. In cases when immediate adoption of a decision on a petition is impossible, it must be resolved not later than three days after the day of filing.

5. A petition must be satisfied if it facilitates a comprehensive, full and objective research of the circumstances of the case, ensuring the rights and legal interests of participants of the proceedings and of other persons. In another cases, satisfaction of a petition may be denied.

6. The body that conducts criminal procedure shall pass a motivated resolution on the satisfaction of the petition or on full or partial denial of its satisfaction, which shall be communicated to the person who filed the instant petition. A decision on a petition may be appealed in accordance with the general rules for filing and handling of complaints as established by this Code.

### **Article 103. Appeal of the Decisions and Acts of the Bodies and Official Persons Which Perform Proceedings on a Criminal Case**

1. Decisions and acts of the interrogating officer, the body of inquiry, the investigator, the prosecutor, the court or the judge may be appealed in accordance with the order stipulated by this Code by the participants of the proceedings, as well as by citizens and organizations if the performed procedural acts affect their interests.

2. Complaints shall be filed to that state body or to that official person which/who is in charge of proceedings on a criminal case, which/who is authorized by law to handle complaints and adopt decisions on them.

3. Complaints may be verbal and written. Verbal complaints shall be included into the record which is signed by the applicant and the official person who received the complaint. Verbal complaints, which are set out by citizens at the appointment of the relevant official person shall be resolved on the common principles with the complaints filed in writing. Additional materials may be attached to a complaint.

4. A person who has no command of the language in which the proceedings on a criminal case are carried out shall be provided with the right to file a complaint in his native language or a language of which he has command.

5. A person who filed a complaint shall have the right to revoke it. A suspect and an accused shall have the right to revoke complaint of the defense lawyer; a civil plaintiff, victim (private prosecutor), a civil defendant shall have the right to revoke a complaint of his representative, except for a legal representative. A complaint filed in favor of a suspect or an accused may be revoked only with their consent. Revocation of a complaint shall not impede

its re-submission prior to the expiry of deadlines indicated in Article 105 of this Code, except for the cases directly provided for by this Code.

#### **Article 104. Procedure of Directing Complaints of Persons who are Detained or Imprisoned**

1. Administration of places of preliminary imprisonment shall be obliged to immediately pass to the body conducting the criminal procedure the complaints addressed to it from persons who are detained under suspicion of commission of a crime or who are imprisoned as a measure of restraint.

2. Complaints of persons who are detained or imprisoned with regard to acts or decisions of the interrogating officer, the head of the body of inquiry, the investigator must be immediately passed by the administration of places of imprisonment to the prosecutor who supervises investigation of the case, and complaints concerning acts and decisions of the prosecutor - to the upper prosecutor. Other complaints shall be passed by the administration of places of imprisonment to the person or the body that handles the case within not more than twenty four hours from the moment of their receipt.

#### **Article 105. Periods for Submission of Complaints**

Complaints concerning acts and decisions of the interrogating officer, the body of inquiry, the investigator, the prosecutor, the judge or the court may be filed within the entire term of interrogation, preliminary investigation or court proceedings. Complaints concerning decisions on refusal to institute a criminal case and concerning termination of a criminal case, concerning sentences passed by the courts of first or appellate instance shall be filed within periods established by this Code.

#### **Article 106. Suspension of the Implementation of Decisions due to Filing of a Complaint**

In cases provided for by this Code, the filing of a complaint shall suspend the implementation of the appealed decision. In other cases the filing of a complaint may entail suspension of the implementation of the appealed decision if the person who handles the complaint finds it necessary.

#### **Article 107. General Procedure for Handling of Complaints**

1. It shall be prohibited to entrust the handling of a complaint to the interrogating officer, the investigator, the prosecutor or the judge whose acts are appealed, as well as to the official person who approved the appealed decision.

2. When considering a complaint the prosecutor or the judge shall be obliged to

comprehensively review the arguments outlined in it, if necessary, to require additional materials, receive explanations concerning the appealed acts and decisions from the relevant official persons, organizations and citizens.

3. The prosecutor or the judge who handles a complaint shall be obliged within the bounds of their authority to immediately take measures to restore the violated rights and legal interests of the participants of the criminal procedure, as well as of other citizens or organizations.

4. If the appealed unlawful acts or decisions cause a moral, physical or property harm to a citizen, he must be explained of his right to compensation or elimination of damage and of the procedure for the exercise of that right, which are provided for by Chapter 4 of this Code.

### **Article 108. Procedure for Handling Complaints on Acts and Decisions of Interrogating Officer, Body of Inquiry, Investigator, Prosecutor**

1. Complaints on acts and decisions of the interrogating officer, the body of inquiry and the investigator shall be filed to the prosecutor who supervises the compliance with the laws during performance of preliminary investigation and interrogation. Complaints on acts and decisions of the prosecutor shall be submitted to the upper prosecutor. The official person who receives the complaint on his own acts or decisions shall be obliged to immediately direct the complaint with his explanations to the relevant prosecutor. If an official person finds a complaint as inconsistent, he shall terminate the appealed act or abolish the appealed decision, of which he shall report to the prosecutor.

2. The prosecutor shall be obliged to consider a complaint within seven days from the moment of its receipt. Complaints on violation of the law when performing the arrest, search, seizure, imposing the arrest on property, bringing a person into proceedings as an accused, discharging from office, as well as when using torture, violence, threats or violating the right to protection shall be subject to consideration within five days from the moment of their receipt. In exceptional cases, when for the review of a complaint it is necessary to require additional materials or to take other measures, it shall be allowed to consider a complaint within a period up to fifteen days with notification about it to the person who filed a complaint.

3. As a result of the consideration of a complaint, a decision may be adopted on full or partial satisfaction of the complaint with abolition or amendment of the appealed decision or on refusal to satisfy the complaint. In this case a decision that has been passed earlier may not be amended if it entails deterioration of the status of the person who filed the complaint or the person in whose favor it was filed.

4. A person who filed a complaint must be notified of the decision adopted with regard to the complaint and of the further procedure of the appeal. A refusal to satisfy a complaint must be motivated.

Footnote. Article 108 as amended by the Laws of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 109. Judicial Procedure of Handling Complaints on Actions (Inactions) and Decisions of Prosecutor, Bodies of Investigation and Inquiry**

1. A person, whose personal rights and freedoms are directly affected by the action (inaction) and the decision of the prosecutor, bodies of investigation and inquiry shall have the right to appeal to the court regarding refusal to accept the application on a crime, as well as regarding violation of the law when refusing the initiation of a criminal case, institution, suspension and termination of a criminal case, compulsory placement to a medical organization for forensic medical expert examination, performance of a search, and (or) seizure, imposition of arrest on property, use of bail, commission of other actions (inactions) and adoption of decisions, if the postponement of examination of lawfulness of such actions (inactions) and decisions up to the stage of the court proceedings makes it difficult or impossible to restore the infringed rights and freedoms of man and citizen. The complaint shall be filed to the court immediately after review of the relevant decision or if a similar complaint is kept unsatisfied by the prosecutor.

2. When examining a complaint on the resolution of the criminal prosecution body, the court must not prejudge the issues which in compliance with this Code may be subject to judicial examination when resolving a criminal case on merits.

3. The limits of judicial examination shall be restricted by clarification of compliance with the norms of the law when performing actions (inactions) and taking decisions which are described in part one of this Article.

4. Filing of the complaint shall not suspend the performance of the appealed action and execution of the appealed decision.

5. A complaint may be filed to a district court at the location of the body conducting the criminal procedure within fifteen days from the day of review of the decision which a person does not agree with, or within the same period after the receipt of the notice from the prosecutor on refusal to satisfy the complaint that is filed to his name, or from the day of expiry of fifteen days after the filing of a complaint to the prosecutor, if a response to it was not received.

6. A complaint shall be handled by a judge alone at a closed session within ten days from its receipt with the participation of the prosecutor, the applicant and his defense lawyer, legal representative or representative, if they participate in the criminal case, other persons whose interests are directly affected by the appealed action (inaction) and decision. Non-appearance of the indicated persons to the judicial session shall not impede consideration of the complaint if the judge does not recognize their attendance to be mandatory. The officials whose actions (

inactions) and decisions are appealed shall be obliged within three days to submit to the court the materials which were the ground for commission of such actions (inactions) and decisions

7. At the beginning of the judicial session the judge shall announce which complaint is subject to consideration, explain to the persons their rights and responsibilities to the persons who are present. Then if the applicant participates in the judicial session, he shall justify the complaint, after which other persons shall be heard.

8. With regard to the results of consideration of a complaint the judge shall pass one of the following resolutions:

- 1) on abolition of procedural decision that was recognized as unlawful;
- 2) on recognizing the action (inaction) of the corresponding official person as unlawful or unreasonable, and on his responsibility to eliminate the committed violation;
- 3) on charging a prosecutor with the duty to eliminate the committed violation of the rights and legal interests of a citizen or an organization;
- 4) on keeping a complaint unsatisfied.

9. The judge's resolution, that was passed in accordance with the rules of this article may be appealed within three days from the moment of its announcement by the persons specified in part one of this Article, as well as appealed by the prosecutor to the regional court and a court equivalent to it through the court the judge of which passed the resolution. Upon expiry of the period for appeal, the case with a complaint, a protest shall be sent to the regional court or a court equivalent to it with notification about it to the persons specified in part one of this Article, and the prosecutor. The judge of a regional court or a court equivalent to it in compliance with the rules and periods which are provided for in parts three, four and five of this Article, shall examine a complaint, a protest and make one of the following decisions: on keeping a complaint, a protest unsatisfied and on keeping the resolution of the judge of a district court or a court equivalent to it the same; on satisfaction of an appeal, a protest and on abolition of the resolution of the district court or a court equivalent to it.

10. Examination of the legality of complaints on the actions (inactions) and decisions of the prosecutor, bodies of investigation and inquiry on the criminal case which are not specified in the part one of this Article shall be carried out by the court during the next consideration of a case on merits.

11. Appeal against decision on extradition of a person who is accused of commission of a crime or convicted in the territory of a foreign country, and judicial examination of its legality and propriety shall be made in accordance with the order provided for by Article 531-1 of this Code.

**Footnote. Article 109 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 110. Appeal, Protestation of the Court Resolution on Sanctioning the Measure of Restraint in the Form of Arrest or Prolongation of the Period of Arrest, on Refusal to Issue Arrest Warrant or Refusal to Prolong the Period of Arrest of the accused, the Suspect**

1. The accused, the suspect, their defense lawyer, legal representative, the victim, his legal representative, representative shall have the right to appeal, and the prosecutor to protest against the court's resolution on sanctioning the measure of restraint in the form of arrest or prolongation of the period of arrest, on refusal to issue its arrest warrant or refusal to prolong the period of arrest within three days from the moment of its announcement to the regional court or the court equivalent to it through the court, the judge of which passed the resolution. Filing a complaint or protest shall not suspend the execution of a court resolution on sanctioning the measure of restraint in the form of arrest and shall not entail release of the person from the arrest, except for the cases provided by part six of Article 154 of this Code. Upon expiry of the established period for appeal, protestation of the resolution of the court, the case with a complaint, a protest shall be immediately sent to the regional court or the court equivalent to it with notification about it to the accused, the suspect, their defense lawyer, legal representative, the victim, his legal representative, the representative and the prosecutor.

2. The judge of a regional court or a court equivalent to it no later than three days from the moment of receipt of a criminal case to the court shall examine the legality and propriety of the court resolution on sanctioning application of arrest to the accused, the suspect as a measure of restraint or prolongation of the period of arrest, on refusal to issue arrest warrant or refusal to prolong the period of arrest of the accused, the suspect.

3. The prosecutor and the defense lawyer of the accused, the suspect shall participate in the judicial session. The accused, the suspect, the legal representative of the accused, the suspect, the victim, his legal representative and the representative may also participate in the session; their failure to appear under timely notice of the time of consideration of the complaint, the protest shall not impede their judicial examination.

4. Having heard the arguments of the parties, examined the materials of a criminal case, the court shall pass one of the following motivated resolutions:

- 1) on keeping the resolution of a district court or a court equivalent to it without a change;
- 2) on abolition of the resolution of a district court or a court equivalent to it with the abolition of the measure of restraint in the form of arrest sanctioned by it;
- 3) on abolition of the resolution of a district court or a court equivalent to it and on sanctioning the measure of restraint in the form of arrest against the accused, the suspect;
- 4) on abolition of the resolution of a district court or a court equivalent to it and refusal of a prolongation or prolongation of the period of arrest of the accused.

A copy of the court resolution shall be sent to the criminal prosecution body that filed a

petition on sanctioning the measure of restraint in the form of arrest, as well as to the prosecutor, the accused, the suspect, the defense lawyer, the legal representative and the representative of the accused, the suspect; to the victim, his legal representative and the representative; to the administration of the place of person's imprisonment; and shall be subject to immediate execution.

5. In case of keeping a complaint of persons which are specified in part one of this Article, or the prosecutor's protest unsatisfied, the same person or the prosecutor on the same case, on the same grounds, under each new prolongation of the period of arrest, shall have the right to a repeated consideration of his complaint, protest. The second petition, protest shall be considered in accordance with the order provided for by this Article.

6. A record shall be kept when a judge handles a complaint, protest in accordance with the order provided for by this Article.

**Footnote. Article 110 is in the wording of the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

### **Article 111. Judicial Appeal of Prosecutor's Sanction on Compulsory Placement of a Suspect, The accused into a Medical Organization**

1. The appeal of the prosecutor's sanction on compulsory placement of a suspect, an accused into a medical organization for the performance of forensic medical expert examination shall be carried out in accordance with the rules provided for by Article 109 of this Code with additions provided for by part two of this Article.

2. In the course of a judicial session, having heard the arguments of the parties, considered the materials of the criminal case which were required from the criminal prosecution bodies, and if necessary - a report from the medical commission, the judge shall pass one of the following motivated decisions:

- 1) on keeping the complaint unsatisfied;
- 2) on abolition of the decision to place a suspect, an accused into a medical organization or to change the compulsory measure of medical nature and to release the suspect, the accused from the medical organization.

**Footnote. Article 111 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

### **Article 112. Complaints, Protests against Court's Sentence, Resolutions**

Complaints, protests against a sentence, resolutions of the court of first instance shall be filed in accordance with rules of Chapter 46 of this Code. Complaints, protests, petitions for revision of court decisions which entered into legal force shall be filed in accordance with the

rules of Chapters 48-1 and 50 of this Code.

Footnote. Article 112 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Chapter 14. Concluding Provisions on Persons Participating in the Criminal Procedure**

### **Article 113. The Right to Require Recognition as a Participant of Procedure**

1. Persons, who are not participants of a criminal procedure, if there are reasons provided for by this Code, shall have the right to require their recognition as victims, private prosecutors, civil plaintiffs, civil defendants, their legal representatives and representatives. Applications (petitions) of the said persons must be considered by the body conducting the criminal procedure not later than three days from the moment of their receipt. The applicant shall be notified of adopted decision immediately and a copy of the relevant resolution shall be sent to him.

2. An applicant shall have the right to appeal to a prosecutor, to a court a refusal of satisfaction of his petition or postponement of its resolution within five days upon the receipt of the copy of the relevant resolution. If the copy of the resolution is not received within ten days from the moment of submission of a complaint, the applicant shall have the right to apply to the prosecutor, to the court with an application to recognize him as a participant of the proceedings.

An immediate relative, spouse of a deceased or of a person who lost his ability to consciously express his will as a result of a crime, may require the recognition of himself as a victim if he wants to become his legal successor. The said petition shall be considered by the body conducting the criminal procedure in accordance with the order provided for by part one of this Article.

### **Article 114. Duty to Explain Rights and Obligations and to Provide for the Opportunity of their Exercise to Persons, Who Participate in the Proceedings on a Criminal Case**

1. Any person who participates in criminal proceedings shall have the right to know his rights and obligations, legal consequences of the position selected by him, as well as to understand the meaning of the procedural acts which are performed with his participation and the contents of materials presented to him for review.

2. The body that conducts the criminal procedure must explain to each person who participates in the proceedings on a criminal case the right he has and the obligations entrusted to him; provide the possibility for their exercise in accordance with the procedure

provided for by this Code. Pursuant to a request of a person, the body that conducts the criminal procedure shall be obliged to explain his rights and obligations repeatedly.

3. The body that conducts a criminal procedure shall be obliged to inform the participants of the proceedings of the surnames of the persons who may be recused and of the other information required on them.

4. The rights and obligations shall be explained compulsorily to the person who acquired the status of the participant of a criminal procedure prior to the beginning of the performance of a procedural act with his participation and prior to his expression of any position as a participant of the proceedings. The court shall be obliged to explain to a participant of the proceedings, who appeared at the judicial session, his rights and obligations irrespectively of whether they were explained to him during the course of pre-trial procedures on a criminal case.

5. The body that conducts a criminal procedure shall be obliged to explain the obligations and the rights to the identifying witness, the translator, the specialist, the expert prior to the beginning of each procedural act which is performed with their participation. The obligations and the rights of a witness must be explained to him prior to his first interrogation by the body of preliminary investigation and repeatedly at the judicial session.

## **Section 3. Evidence and Averment**

### **Chapter 15. Evidence**

#### **Article 115. Definition of Evidence**

1. An evidence on a criminal case shall be the legally obtained factual data, on the basis of which in accordance with the order defined by this Code, the interrogating officer, the investigator, the prosecutor, the court establish the existence or absence of an act provided by the Criminal Code of the Republic of Kazakhstan; the commission or non-commission of that act by the accused and the culpability or non-culpability of the accused as well as other circumstances which are important for the correct disposition of the case.

2. Factual data which are important for the correct disposition of a criminal case shall be established as follows: by testimonies of the suspect, the accused, the victim, the witness; by reports of the expert; material evidence; by records of procedural acts and other documents.

**Footnote. Article 115 as amended by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 116. Factual Data that is not Admissible as Evidence**

1. Factual data must be recognized as inadmissible evidence if they are received with violations of the requirements of this Code, those which by way of deprivation or restriction of the rights of participants of the proceedings guaranteed by the law or by violation of other rules of the criminal procedure during investigation or judicial proceeding of the case affected or may have affected the reliability of the received factual data, in particular:

- 1) with the use of torture, violence, threats, deceit as well as other unlawful acts;
- 2) with the use of misguidance of the person participating in the criminal procedure regarding his rights and obligations as emerged due to a failure to explain, incomplete or incorrect explanation of those to him;
- 3) due to performance of procedural acts by a person, who has no right to perform proceedings on the instant criminal case;
- 4) due to participation in procedural acts of a person, who is subject to recusation;
- 5) with material violation of the procedure for the performance of procedural act;
- 6) from an unknown source or from a source which may not be established during the judicial session;
- 7) with the use, during averment, of methods which contradict contemporary scientific knowledge;

2. Impermissibility to use factual data as evidence, as well as the possibility of their restricted use during proceedings on a criminal case shall be established by the body which conducts the criminal procedure, upon its own initiative or pursuant to a petition of a party.

3. Testimonies of a suspect, an accused, a victim, and a witness, opinions of an expert, a specialist; material evidence, records of investigative and judicial acts and any other documents may not be used as the basis for accusal if they are not included into the list of materials of a criminal case. Testimonies, which are given by a suspect, an accused during his preliminary interrogation as a witness, may not be recognized as evidence and taken as a basis of accusal.

4. Evidences which are received with violation of the law shall be recognized as invalid and they may not be used as a basis for accusal, as well as used during averment of any circumstance indicated in Article 117 of this Code.

5. Factual data which are received with violations indicated in part one of this Article, may be used as evidences of the fact of relevant violations and the guiltiness of the persons, who committed them.

**Footnote.** Article 116 as amended by the Laws of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated December 9, 2004 No. 10; dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 117. Circumstances that are subject to Averment on a Criminal Case**

1. The following shall be subject to averment on a criminal case:
  - 1) the event and the constituent elements of a crime provided for by the criminal law (time, place, method and other circumstances of commission of a crime);
  - 2) who committed an act prohibited by the criminal law;
  - 3) culpability of a person of commission of an act prohibited by the criminal law, the form of his culpability, the motives of the committed act, the legal and actual mistakes;
  - 4) the circumstances, which affect the degree and nature of the liability of the accused;
  - 5) the circumstances, which describe the personality of the accused;
  - 6) consequences of the committed crime;
  - 7) nature and amount of harm caused by the crime;
  - 8) circumstances, which exclude the criminality of an act;
  - 9) circumstances, which entail the release from criminal responsibility and punishment.
2. Additional circumstances, which are subject to averment on cases of crimes committed by juveniles, are specified in Article 481 of this Code.
3. With regard to a criminal case, the circumstances, which facilitated the commission of a crime, shall be subject to detection.

### **Article 118. Circumstances, which are established without Evidences**

- The following circumstances shall be deemed to be established without evidences if the contrary is not proven within the appropriate legal procedure:
- 1) facts of common knowledge;
  - 2) the accuracy of the methods of research which are generally accepted in contemporary science, technology, art and crafts;
  - 3) circumstances, which are established by a court decision that entered into force;
  - 4) the knowledge of law by a person;
  - 5) the knowledge by a person of his official and professional duties;
  - 6) the lack of special training or education of a person, who failed to submit a document to prove their existence and who failed to indicate an educational institution or any other institution where he received special training or education.

### **Article 119. Testimonies of a Suspect, The accused, Victim, Witness**

1. Testimonies of a suspect, an accused, a victim, a witness shall be recognized as information given by them in writing or verbally at the interrogation, which was performed during inquiry or preliminary investigation in accordance with the order established by Chapter 26 of this Code.
2. A suspect shall have the right to provide testimonies with regard to suspicions that exist against him, as well as on other circumstances known to him, which are important for the case, and on evidences.

3. An accused shall have the right to provide testimonies on the accusal filed to him, as well as with regard to the circumstances known to him, which are important for the case, and on evidences.

4. The recognition by an accused of his guilt in the commission of a crime may be used as a basis for accusal only when his guilt is confirmed by a set of evidences available on the case.

5. A victim may be interrogated of any circumstances, which are subject to averment with regard to a case, as well as of his relations with the suspect, the accused, other victims, witnesses. Information, which is given by a victim, may not serve as evidence, if he may not indicate the source of his actual knowledge.

6. A witness may be interrogated of any circumstances pertaining to a case, in particular of the identity of the accused, the victim and of his relations with them and other witnesses. Information, which is given by a witness, may not serve as evidence, if he may not indicate the source of his actual knowledge. Reports of the persons who are not subject to interrogation as witnesses shall not be recognized as evidences.

7. Testimonies on data describing the identity of an accused may not be used as a basis for accusal and shall be used only as evidences for resolving of the issues connected with the appointment of punishment or release from punishment.

8. Testimonies of a person, who at the moment of the interrogation in accordance with the order established by this Code was recognized as incapable to accurately perceive or reproduce circumstances, which are important for the criminal case, shall not be recognized as evidences.

## **Article 120. Expert's Report**

1. An expert's opinion is a document executed in accordance with the requirements of this Code, which reflects the course and results of a forensic expert examination.

2. Verbal explanations of an expert shall be recognized as evidence only in the part of explanation of an opinion issued by him before.

3. An expert's opinion shall not be obligatory for the body that conducts the criminal procedure; however, its disagreement with the opinion must be motivated.

**Footnote. Article 120 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

## **Article 121. Material Evidences**

1. Material evidences shall be recognized as items, if there are reasons to believe that they served as tools of crime or preserved traces of a crime on them or were used as objects of criminal acts; as well as money and other valuables, items and documents that may serve as means for discovery of a crime, establishment of actual circumstances of a case, detection of

the guilty persons or refutation of accusal, or mitigation of liability.

2. Material evidences shall be attached to a given case by a resolution of the body that conducts the criminal procedure and they shall be with it until the sentence or resolution on termination of the case enters into legal force, except for the cases specified by part four of Article 223 of this Code. The procedure of examination of material evidences and their safe custody shall be defined by Article 223 of this Code.

3. The issue on material evidences must be resolved when passing a decision on refusal to institute a criminal case, on termination of proceedings on a criminal case or on passing a sentence. In this respect:

1) the tools of a crime shall be subject to confiscation or they shall be transferred to appropriate institutions to certain persons or they shall be destroyed;

2) things which are prohibited for circulation shall be subject to transfer to appropriate institutions or they shall be destroyed;

3) things which do not represent any value and which may not be used, shall be subject to destruction, and in case of petition of the interested persons or institutions, they may be handed out to them;

4) funds and other valuables earned by criminal means, as well as the items of unlawful entrepreneurship and contraband, pursuant to a court decision, shall be subject to inclusion into the revenue of the State; other things shall be handed out to their legal owners, and in case that the latter are not established, they shall become property of the State. In the event of a dispute on the ownership of those items, such dispute shall be subject to settlement in accordance with the procedure of civil court proceedings;

5) documents, which are material evidences, shall remain attached to the case for the entire period of safe custody of the latter or they shall be transferred to interested organizations or citizens in accordance with the procedure provided for by part three of Article 123 of this Code.

4. The order of withdrawal, registration, storage, transfer and destruction of material evidences, documents on criminal cases by the court, prosecution authorities; preliminary investigation, inquiry and forensic examination shall be established by the Government of the Republic of Kazakhstan.

**Footnote.** Article 121 as amended by the Laws of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 122. Records of Procedural Acts**

1. Evidences on a criminal case shall be the factual data which is contained in records compiled in accordance with the rules of this Code, on investigative acts that certify

circumstances directly perceived by the person, who conducts the criminal procedure, those established in the course of inspection, witnessing, seizure, search, detention, imposition of arrest on property, seizure of correspondence, interception of messages, eavesdropping and taping of telephone and other conversations, presentation for recognition, obtaining samples for research, exhumation of a corpse, examination of testimonies at a site, investigation experiment, research of material evidences performed by a specialist in the course of investigative act, as well as of those which are contained in the record of a judicial session reflecting the course of judicial acts and their results.

2. Factual data contained in the records compiled when adopting a verbal application on a crime, on the presented items and documents concerning acknowledgement of guilt, explanation to persons of their rights and duties entrusted to them may be used as evidence.

### **Article 123. Documents**

1. Documents shall be recognized as evidences if information described or certified in them by organizations, official persons and citizens is important for a criminal case.

2. Documents may contain information which is fixed both in writing and in any other form. In particular, the materials of pre-investigation check (explanations and other testimonies, inventory and inspection reports, certificates, tax audit reports, reports of tax authorities), as well as materials, which contain computer information, photography and filming, audio and video records which are received, required or presented in accordance with the procedure provided for by Article 125 of this Code.

3. Documents shall be attached to a case and kept in it during the entire period of its storage. In the event that the documents, which are seized and attached to a case, are required for current accounting, reporting and for any other legal purposes, they may be returned to their legal owner or given for a temporary use, if this is possible without detriment to the case or their copies are given.

4. In cases, when documents have indications stipulated in Article 121 of this Code, they shall be recognized as material evidences.

**Footnote. Article 123 as amended by the Laws of the Republic of Kazakhstan dated 08.12.2009 No. 225-IV (the order of enforcement see Article 2); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Chapter 16. Averment**

### **Article 124. Averment**

1. The averment consists in collection, examination, evaluation and use of evidences for the purposes of establishing the circumstances which are important for a legal justified and

fair disposition of a case.

2. The duty of proving of existence of reasons for criminal liability and culpability of an accused shall rest with the prosecutor.

## **Article 125. Collection of Evidence**

1. The collection of evidence shall be carried out in the course of pre-trial procedures and court proceedings by way of performing procedural acts provided for by this Code. The collection of evidence shall include their discovery, registration and seizure.

2. The body that conducts the criminal procedure pursuant to petitions of the participants of the proceedings or on its own initiative shall have the right, with regard to a criminal case handled by it, to summon, in accordance with the procedure established by this Code, any person for interrogation or for provision of an opinion as an expert; perform procedural acts provided for by this Code; to require, in compliance with the procedure established by legislative acts of the Republic of Kazakhstan for disclosure of information constituting commercial, banking and other secrecy protected by the law, from organizations, their managers, official persons, citizens, as well as from the bodies, which perform operational search activity, presentation of documents, objects which are important for the case; to require the performance of inspections and reviews by authorized bodies and official persons.

3. A defence lawyer and representative of a victim who are admitted to participate in a criminal case in accordance with the order established by this Code, shall have the right to receive information, which is necessary for protection, by:

1) requiring certificates, testimonials as to character and other documents from the organizations.

Certificates, testimonials as to character and other documents may be requested by a defense lawyer, a representative of a victim from state bodies, public associations, as well as from other organizations. The said entities shall be obliged to provide a defense lawyer, a representative of a victim with the documents requested by them or with their certified copies within ten days;

2) initiating performance of forensic examination on a contract basis in accordance with parts four - six of Article 242 of this Code;

3) attracting a specialist on a contract basis;

4) inquiring with their consent the persons, who allegedly possess information pertaining to a criminal case.

Information, which is received in the course of inquiry, may be used as evidence after interrogation of a person by the body conducting the criminal procedure performed in accordance with the order established by this Code.

If it is impossible to interrogate the person, who has been inquired earlier, the said information may be used as evidence, in this respect the authenticity of signature of the

person who has been inquired earlier, must be certified in accordance with the order provided  
f o r b y l a w .

4. A suspect, an accused, a defense lawyer, a private prosecutor, a victim, a civil plaintiff, a civil defendant and their representatives, as well as any citizens and organizations shall have the right to submit information both in verbal and in written form, as well as items and documents for attaching them as evidence on a criminal case.

Items and documents after their evaluation under the rules of Article 128 of this Code shall be attached to a criminal case, of which a record shall be compiled in accordance with the requirements of part two of Article 122 of this Code.

The receipt of items and documents from persons, who are the participants of a criminal procedure, shall be carried out on the basis of a petition in accordance with the order established by Article 102 of this Code.

5. Failure to fulfill the requirements of item 1) part three of this Article shall entail liability provided for by law.

**Footnote. Article 125 is in the wording of the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 126. Registration of Evidence**

1. Actual information may be used as evidence only after its registration in the records of  
p r o c e d u r a l a c t s .

2. Liability for record keeping in the course of interrogation and preliminary investigation shall be entrusted appropriately to an interrogating officer and an investigator, and at the court - to the chairman and the secretary of a judicial session.

3. Participants of investigative and judicial acts, as well as the parties in the court proceedings shall be provided with the right to become familiar with the records in which the course and results of these acts are fixed, to enter additions and corrections to the records, to make comments and objections to the procedure and conditions of performance of the instant action, to offer their versions of the records in the report, to draw attention of interrogating officer, investigator or the court to the circumstances which may be important for the case. A note on explanation to the participants of investigative and judicial acts of their rights shall be  
m a d e i n t h e r e c o r d .

4. Additions, corrections, comments, objections, petitions and complaints expressed verbally shall be entered into the record, while those, which are outlined in the written form, shall be attached to the record. Stipulations must be made in respect of crossed-out or inserted words or other corrections before the signatures at the end of the record.

5. The persons who became familiar with the record of an investigative act, shall put their signatures under the last line of the text on each page and at the end of the record. When becoming familiar with the part of the record of a judicial session, the signatures shall be put

at the end of each page and at the end of that part.

6. In the event of disagreement with the comments or objections, the interrogating officer, investigator or the court shall pass a resolution with regard to it.

7. In the event of refusal of one of the participants of the proceedings or other persons to sign, in cases provided for by law, the record of an investigative act, the interrogating officer or investigator shall make an appropriate note in the record, which shall be certified by his s i g n a t u r e .

8. In the event of a refusal to sign, in cases provided for by law, the notes on a judicial act made in the record of a judicial session, an appropriate note shall be made in that record, which shall be certified by the presiding judge and the secretary of the judicial session with t h e i r s i g n a t u r e s .

9. A person, who refused to sign a record, shall have the right to explain the reason for such refusal and this explanation must be entered into the record.

10. If a participant of a procedural act can not to read or sign a record due to his physical handicaps, then, with his consent the record shall be read aloud and signed by his defense lawyer, representative or another citizen, to whom that person trusts, of which a note shall be m a d e i n t h e r e c o r d .

11. In order to register evidence, audio records, video records, filming, photography, preparation of moulds, prints, plans, schemes and other methods for fixation of information may be used along with the compilation of records. A note on the use of the said methods by a participant of investigative act or court proceedings for registering evidence shall be made respectively in the record of the investigative act or judicial session with the attachment of technical parameters of the used scientific-technical facilities.

12. Sound tracks, video records, films, photographs, moulds, prints, plans, schemes and other images of the course and results of investigative or judicial act shall be attached to the record. An explanatory note must be on each appendix showing the name, place, date of investigative or judicial act, to which appendix relates. In the course of pre-trial procedures on a case, such a note shall be certified by the signatures of the interrogating officer or the investigator, and in appropriate cases, of the identifying witnesses, and at the court - of the presiding judge and the secretary of a judicial session.

## **Article 127. Examination of Evidence**

Evidence collected with regard to a case shall be subject to comprehensive and objective examination. The examination shall include analysis of the received evidence, its comparison with other evidence, collection of additional evidence, review of sources of the received evidence.

## **Article 128. Evaluation of Evidence**

1. Each piece of evidence shall be subject to evaluation from the point of view of relevance, admissibility, credibility, while all the collected evidence in their entirety - from the point of view of their sufficiency for disposition of a criminal case.

2. In accordance with Article 25 of this Code, the judge, the prosecutor, the investigator, the interrogating officer shall evaluate evidence on their inner conviction based on comprehensive, full and objective consideration of evidence in its aggregation, guided by law and their conscience.

3. Evidence shall be recognized as relevant to a case, if it represents factual data, which confirm, rebut, or cast doubt on the conclusions concerning the existence of circumstances, which are important for the case.

4. Evidence shall be recognized as admissible, if it is obtained in accordance with the procedure established by this Code.

5. Evidence shall be recognized as credible, if as a result of a review it is discovered that it is consistent with the reality.

6. The cumulative evidence shall be recognized as sufficient for the settlement of a criminal case, if admissible and reliable evidences related to a case are collected and they unquestionably establish the truth about all and each of the circumstances which are subject to averment.

## **Article 129. Scientific-Technical Facilities in the Course of Averment**

1. Scientific-technical facilities may be used in the course of averment on a criminal case by the body conducting the criminal procedure, as well as by an expert and specialist during performance of procedural obligations by them which are provided for by this Code.

2. A specialist may be called in order to render assistance in the use of scientific-technical facilities by the body conducting the criminal procedure.

3. Application of scientific-technical facilities shall be recognized as admissible, if they are:

1) directly provided for by law and do not contradict its rules and principles;

2) based on science;

3) provide for efficiency of proceedings on a criminal case;

4) safe.

4. The use of scientific-technical facilities by the body conducting the criminal procedure shall be registered in the records of the relevant procedural acts and in the record of a judicial session with the indication of data of the given scientific-technical facilities, conditions and procedure of their application, objects, which those facilities were applied to and results of their use.

**Footnote. Article 129 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

## **Article 130. Use of the Results of Operational Search Activities in Averment on Criminal Cases**

1. The results of operational search activities obtained in compliance with the requirements of the law may be used in averment on criminal cases in accordance with provisions of this Code which regulate collection, examination and evaluation of evidence in compliance with the requirements provided for by Article 53 and Chapter 21 of this Code, as well as by the Laws of the Republic of Kazakhstan "On State Protection of the Persons Who Participate in a Criminal Procedure", "On Operational Search Activity".

2. The actual evidence directly perceived during performance of operational search activities by an officer of the body performing operational search activity, may be used as evidence after interrogation of the said officer as a witness.

The actual evidence directly perceived by the person, who on confidential basis renders assistance to the bodies performing operational search activity, may be used as evidence after interrogation of the said person with his consent as a witness, a victim, a suspect (an accused).

The actual evidence directly perceived by persons planted into an organized group, criminal community (criminal organization), transnational organized group, transnational criminal community (transnational criminal organization) or stable armed group (gang), may be used as evidence for the purposes of ensuring safety of those persons after interrogation of an official person of the body performing operational search activity, as a witness.

3. If it is necessary and possible directly to perceive by the person, who conducts the criminal procedure, the circumstances of the case which have been discovered as a result of operational search activities, those circumstances of the case shall be registered in the records of the investigative or judicial act which is carried out in accordance with the rules provided for by this Code.

4. The use of items and documents, which are received in the course of operational search activity as material evidence and documents, shall be carried out in accordance with the rules provided for by Articles 121 and 123 of this Code respectively. Inclusion of materials of operational search activities as material evidence and documents shall be carried out only under existence of reliable data on their origin in compliance with the requirements of Articles 53 and 100 of this Code.

5. The head of the body of inquiry, when taking a decision on submission of materials of operational search activity pursuant to the requirement of the body that conducts the criminal procedure, or pursuant to his own initiative in accordance with the rules of Article 202 of this Code, shall pass an appropriate resolution. The following shall be specified in the resolution: the body conducting the criminal procedure at the request of which the results of the operational search activity are presented; what results, in what amount and of which operational search activity are presented; technical facilities used to receive the said results; items and documents directed for attachment to materials of a criminal case; recommended

measures on ensuring safety of persons who participate in the criminal procedure, as well as on protection of state secrets. In case of presentation of the materials of operational search activities by the head of the body of inquiry on his own initiative to the body conducting the criminal procedure, the motivation of the need to use the results of operational search activity in the averment on a criminal case shall be presented in the resolution. The materials of operational search activity must be presented in the volume and form, which allow evaluating the actual information contained in them from the point of view of their relevance to the criminal case under investigation (consideration), their admissibility and credibility.

6. The results of operational search activities, which do not meet the requirements set out in this Article, shall be returned to the body which submitted these materials, of which a reasoned resolution shall be made. The resolution shall specify the reasons for denial to attach the results of operational search activities to a criminal case.

**Footnote. Article 130 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 29.11.2011 No. 502-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 131. Prejudice**

1. A legally effective sentence, as well as any other legally effective court decision on a criminal case shall be obligatory for all State bodies, organizations and citizens with regard to both the established circumstances and their legal evaluation. This provision shall not impede a review, abolition and alteration of a sentence and other court decisions in the procedure of cassation and supervision due to newly discovered circumstances.

2. A legally effective court decision on a civil case shall be obligatory for the body conducting the criminal procedure during proceedings on a criminal case only with regard to the issue of whether the event or act themselves took place; and it must not prejudice conclusions on whether the accused is guilty or innocent.

3. A legally effective court sentence which recognizes the right to satisfy a lawsuit, shall be obligatory in that respect for the court when it considers a civil case.

4. Resolution of a criminal prosecution body shall not have binding force for the court.

**Footnote. Article 131 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Section 4. Measures of Procedural Compulsion**

### **Chapter 17. Detention of a Suspect**

#### **Article 132. Reasons for Detention**

1. Detention of a person, who is suspected of commission of a crime, is a measure of procedural compulsion, which is applied for the purposes of discovering his implication in the crime and for settlement of the issue of application to him of a measure of restraint in the form of arrest.

2. The body, which performs criminal prosecution, shall have the right to detain a person, who is suspected of the commission of a crime, for which a punishment in the form of deprivation of freedom may be sentenced when one of the following reasons exists:

1) when that person is caught in the commission of a crime or directly after its commission;

2) when the eyewitnesses, in particular the victims, directly point at the instant person as the person, who committed the crime or detain that person in accordance with the procedure provided for by Article 133 of this Code;

3) when on that person or on his clothes, in his presence or in his housing obvious traces of a crime are found;

4) when in the materials of operational search activities, which are obtained in accordance with the law, there are credible data in respect of the person on commission or on preparation by that person of a grave or especially grave crime.

3. When there are other data which give a reason to suspect a person in the commission of a crime, he may be detained only in the event if that person tried to disappear or when he has no permanent place of residence or the identity of a suspect is not established.

### **Article 133. The Right of Citizens to Detain Persons who committed a Crime**

1. A victim, as well as any other citizen shall have the right to detain a person who committed a crime in order to restrain the opportunity of commission of other offenses by that person.

2. In cases provided for by part one of this Article, physical force and other means may be applied to a detained person within the limits provided for by Article 33 of the Criminal Code of the Republic of Kazakhstan if he resists. If there are reasons to believe that the detained person has arms or any other dangerous items, or items which are important for a criminal case, the citizen who detained him shall have the right to inspect the clothes of the detained person and to seize items he has for the transfer to the law enforcement bodies or any other body of State power.

### **Article 134. Procedure for Detention of a Person who is suspected of Commission of a Crime**

1. Within a period of no longer than three hours after the actual detention, the investigator or the interrogating officer shall compile a report in which they shall indicate the reasons and motives, the place and the time of detention (with indication of hour and minutes), the results

of personal search, as well as the time of the report compilation. The report shall be read to the detainee and in this case, the rights of a suspect provided for by Article 68 of this Code, in particular, the right to invite a defense lawyer and to testify in his presence shall be explained to him, which shall be noted in the report. The detention report shall be signed by the person, who compiled it and by the detainee. The interrogating officer or the investigator shall be obliged to notify the prosecutor in writing on the performed detention within twelve hours from the moment of the compilation of the detention report.

2. A detainee must be interrogated in accordance with the rules of this Code. Before the beginning of interrogation the detainee shall be provided for a meeting with a defense lawyer in private and in confidence

**Footnote. Article 134 as amended by the Laws of the Republic of Kazakhstan dated 09.12.2004 No. 10; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

### **Article 135. Personal Search of a Detainee**

A person, who performed the detention shall have the right, in the compliance with the rules provided for by Article 233 of this Code, to immediately perform a personal search of a detainee in cases when there are reasons to believe that he has arms or tries to get rid of evidences which prove that he committed a crime or in other appropriate cases.

### **Article 136. Reasons for Releasing a Person Detained on Suspicion of Commission of a Crime**

1. A person detained on suspicion in the commission of a crime shall be subject to release pursuant to the resolution of the interrogating officer, the investigator, the prosecutor, if:

- 1) the suspicion of the commission of a crime was not confirmed;
- 2) there are no reasons to apply a measure of restraint to a detainee in the form of arrest;
- 3) the detention was performed with violation of the requirements of Article 134 of this Code.

2. A measure of restraint in the form of arrest must be selected within seventy-two hours from the moment of detention in respect of a suspect in accordance with the procedure provided for by this Code or he shall be subject to release.

3. If during seventy-two hours from the moment of detention the chief of the detention center received no resolution of the court for approval of arrest of an accused or a suspect, the chief of the detention center shall immediately release the detainee by his resolution and inform the person handling the case or the prosecutor thereof.

4. In case of a failure to implement the requirements of part three of this Article, the chief of the administration of the detention center shall be held liable as established by law.

5. In case of the release of a detainee, the latter shall be given a note, which says by whom he was detained, the reasons, the place and the time of detention, the reasons and the time of

r e l e a s e .

Footnote. Article 136 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).

### **Article 137. Procedure of Detention in Custody of the Detainees Suspected of Commission of Crimes**

The detainees under suspicion of the commission of a crime shall be held in isolation wards in temporary detention. The military servicemen and persons, who endure the punishment in the form of deprivation of freedom, detained on the suspicion of the commission of a crime, may be also held in detention rooms and institutions of the correctional system of the Ministry of Internal Affairs of the Republic of Kazakhstan that carry out the punishment in the form of deprivation of freedom. In cases provided for by part three of Article 65 of this Code, the detainees suspected of commission of a crime shall be held in the specially adapted premises determined by the head of the body of inquiry. The procedure and terms of detention in custody of persons which are detained under suspicion of the commission of a crime shall be defined by legislation.

Footnote. Article 137 is in the wording of the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 138. Notification of Relatives of Suspect of Detention**

1. The interrogating officer, the investigator shall be obliged to notify anyone of full-aged members of the family of a detained person, and if they are absent - other relatives or close persons of the detention of a suspect and the place of his location, or to provide an opportunity for such notification to the suspect or the accused himself within twelve hours.

2. When a detainee is a citizen of another State, then within the established period, the embassy, the consulate or any other representation of that State must be notified.

3. Is excluded by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

Footnote. Article 138 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Chapter 18. Measures of Restraint**

### **Article 139. Reasons for the Application of Measures of Restraint**

When there are sufficient reasons to believe that an accused will elude the interrogation, preliminary investigation or court, or will impede objective investigation and examination of the case in the court, or will continue to engage in criminal activities, as well as for ensuring the implementation of a sentence, the body conducting the criminal procedure, within the bounds of its authority shall have the right to apply to that person one of the measures of restraint provided for by Article 140 of this Code.

## **Article 140. Measures of Restraint and Additional Restrictions**

1. Measures of restraint shall be as follows:
- 1) recognizance not to leave and behave properly;
  - 2) personal surety;
  - 3) submission of a military serviceman under the supervision of the command of the military unit;
  - 4) submission of a juvenile under supervision;
  - 5) pledge;
  - 6) house arrest;
  - 7) arrest.

2. If necessary electronic tracking means may be applied to a person, to whom a measure of restraint is applicable, except for submission of a military serviceman under supervision of the command of the military unit and arrest.

A notation on the application of electronic tracking means and explanation of their purpose to an accused shall be made in the resolution on application of a measure of restraint.

The application of electronic tracking means shall be allowed in case of taking measures on their concealment from supervision by wider public; it must be carried out with account of places which are attended by the accused, and ways of his movement, as well as with an account of the age, state of health, family status and way of life.

**Footnote. Article 140 is in the wording of the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 141. Circumstances which are taken into account when selecting a Measure of Restraint and Establishing Additional Restrictions**

**Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

Gravity of the presented accusal, personality of the accused, his age, state of health, family status, of occupation, property status, availability of a permanent place of residence and other circumstances must be taken into account when deciding the issue of the need to

apply a measure of restraint and which measure exactly, aside from the circumstances specified in Article 139 of this Code, as well as the issue of the establishment of additional restrictions specified in part two of Article 140 of this Code.

**Footnote. Article 141 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 142. Application of a Measure of Restraint in respect of a Suspect**

1. In exceptional cases, when there are reasons provided for by Article 139, and taking into account the circumstances specified in Article 141 of this Code, a measure of restraint may be applied in respect of a suspect. In this case, the charge must be brought against the suspect not later than ten days, and in cases of commission at least one of the crimes provided for by Articles 163, 168, 169, 171, 233-237 and 241 of the Criminal Code of the Republic of Kazakhstan - no later than thirty days from the moment of application of the measure of restraint, and if the suspect was detained and then imprisoned - within the same period from the moment of detention. If within that period no charge is brought, the measure of restraint shall be immediately abolished.

2. When bringing a charge against a suspect, the issue of application of the arrest to him as a measure of restraint shall be considered by the court repeatedly in accordance with procedure provided for by Article 150 of this Code. If twenty-four hours prior to the expiry of the period indicated in part one of this Article, the head of the place of detention received no resolution of the court on sanctioning the arrest of a suspect, the head of the place of detention shall be obliged to inform the body or the person, who handles the criminal case, as well as the prosecutor about it. If upon expiry of the period indicated in part one of this Article, the appropriate decisions on abolishing a measure of restraint or sanctioning the arrest of a suspect by the court has not been received, the head of the place of detention shall release him by his resolution, the copy of which within twenty-four hours shall be sent to the body or the person, who handles the criminal case, and the prosecutor.

3. In case of a failure to comply with the requirements of part two of this Article, the head of the administration of the place of detention shall be held liable as established by the law.

**Footnote. Article 142 as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 143. The Procedure for Application of Measures of Restraint**

1. An accused (suspect) may not be subject to two or more measures of restraint.

2. The body conducting the criminal procedure shall pass a resolution on application of a measure of restraint, which contains an indication of the crime of which the person is

suspected or charged, and the reasons for the application of that measure of restraint. The copy of the resolution shall be handed to the person in respect of whom it is passed and at the same time he shall be explained the procedure for challenging decisions on the application of the measure of restraint as provided for by this Code.

3. If a suspect, an accused commits acts, for the prevention of which the measures provided for by Articles 144, 145, 146, 147, 148, 149 of this Code were applied, he shall be subject to a stricter measure of restraint, of which the accused, the suspect must be informed when the copy of the relevant resolution is handed to him.

### **Article 144. Recognizance not to Leave and Behave Properly**

1. The recognizance not to leave and behave properly shall consist in taking a written obligation from the suspect, the accused by the body conducting the criminal procedure not to leave his permanent or temporary place of residence (inhabited locality) without a permit from the interrogating officer, the investigator or the court, not to impede the investigation and examination of the case in the court, to arrive upon summons of the body conducting the criminal procedure at an appointed date.

2. In case of commission of a crime connected with the use of violence or threat of its use, the suspect, the accused, pursuant to the written complaint of the victim, shall be warned by the body conducting the criminal procedure in a written form about prohibition to search, pursue, attend the victim, conduct verbal, telephone conversations and to contact him by other ways.

**Footnote.** Article 144 is in the wording of the Law of the Republic of Kazakhstan dated 04.12.2009 No. 215-IV (the order of enforcement see Article 2); as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 145. Personal Surety**

1. Personal surety shall consist in the assumption of a written obligation by reliable persons that they guarantee the appropriate behavior of the suspect or the accused and their arrival on the summons of the body conducting the criminal procedure. The number of pledgers may not be less than two.

2. The selection of personal surety as a measure of restraint shall be allowed only pursuant to a written petition of the pledgers and with the consent of the person in respect of whom the pledge is issued.

3. The pledger shall give a recognizance of personal surety, in which he shall confirm that he is explained of the essence of the charge of the person in respect of whom he gives a surety, as well as of the liability of the pledger consisting in the imposition on him of a pecuniary punishment in case of commission by the suspect, the accused of acts for the prevention of

which a given measure of restraint is applied.

4. The pledger at any time of the proceedings on a criminal case shall have the right to refuse from the pledge.

5. If a suspect, an accused commits acts, for the prevention of which personal surety was used, each pledger may be subjected to pecuniary punishment by the court in the amount up to hundred monthly calculation indices in accordance with the procedure provided for by Article 160 of this Code.

#### **Article 146. Supervision of the Command of a Military Unit over a Military Serviceman**

1. The supervision of the command of a military unit over a suspect, an accused, who is a military serviceman, or a person, who is under military duty, drafted for training, shall consist in the adoption of measures provided for by the Codes of the Armed Forces and Internal Troops of the Republic of Kazakhstan and which are sufficient for ensuring appropriate behavior of that person and his arrival on the summons of the body conducting the criminal procedure.

2. The command of a military unit shall be informed of the essence of the case in respect of which a given measure of restraint was selected. The command of a military unit shall notify in writing the body that selected a given measure of restraint on the establishment of the supervision.

3. If a suspect, an accused commits acts for the prevention of which a given measure of restraint was selected, the command of the military unit shall be obliged to immediately inform the body that selected a given measure of restraint about it.

4. Persons, who are guilty of the failure to comply with the duties of supervision entrusted to them, shall be subject to disciplinary responsibility as provided for by legislation.

#### **Article 147. Submission of a Juvenile under Supervision**

1. Submission of a juvenile under the supervision of parents, guardians, trustees or any other reliable persons, as well as the administration of a special institution in which he is, shall consist in the assumption by somebody of the said persons of a written obligation to provide for appropriate behavior of a juvenile and his arrival on summons of the body conducting the criminal procedure, as well as to limit his absence from home, to prevent leaving for other areas without permission of the body conducting the criminal procedure.

2. Submission of a juvenile under the supervision of the parents and other persons shall be possible only upon their written petition.

3. When taking the recognizance on submission under supervision, the parents, the guardians, the trustees, the representatives of the administration of special institutions shall be notified of the nature of the crime of which the juvenile is suspected or charged with, and of

their liability if they violate the duties of supervision which they assumed.

4. The measures of punishment, which are provided for by part five of Article 145 and Article 160 of this Code may be applied to persons, to whom a juvenile was given for supervision, if they fail to comply with the assumed obligation.

Footnote. Article 147 as amended by the Laws of the Republic of Kazakhstan dated 29.12.2010 No. 372-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 148. Bail**

1. Bail shall consist in funds which are paid by the suspect, the accused themselves or by any other individual or legal entity as a deposit to the court to ensure the compliance by the suspect, the accused with the duties associated with the arrival to the bodies of inquiry, investigation or to the court upon their summons. With the permission of the prosecutor or the court other valuables and immovable assets may be accepted as a bail. The averment of the bail's value shall rest with the bailor. The sum of a bail shall be determined by the person who selects this measure of restraint with an account of the gravity of the charge, the personality of the suspect, the accused and the property status of the bailor. Bail shall not apply in respect of the persons who are accused of commission of especially grave crimes.

2. Bail shall be applied only with the sanction of the prosecutor or pursuant to a court decision.

3. The amount of bail may not be less than: one hundredfold amount of monthly calculation index - in case of charges of the commission of a crime of little gravity; three hundredfold amount of monthly calculation index - when charges consist in the commission of a negligent crime of medium gravity; five hundredfold amounts of monthly calculation index - in case of charges of the commission of a deliberate crime of middle gravity; one thousand-fold amount of monthly calculation index - in case of charges of the commission of a grave crime.

4. The bailor, if he is not the suspect or the accused himself, shall be explained the essence of the charge of the person, in respect of whom that measure of restraint is applied. When the bail is accepted, a record shall be compiled, in which it shall be noted that the suspect, the accused were explained of their duties provided for by part one of this Article, and the bailor is notified that in case of evasion of the suspect, the accused from arrival upon summons, the bail shall be converted into revenues of the State. The record shall be signed by the official person who selected that measure of restraint, the suspect, the accused, as well as by the bailor, if the bailor is a third person. The record and the document on the deposition of a bail to the court shall be attached to the materials of the case, and the copy of the record shall be handed to the bailor.

5. The measure of restraint shall be altered for a stricter one if a suspect, an accused evades

from arrival upon the summons of the body conducting the criminal procedure.

6. In case indicated in part five of this Article, the prosecutor shall direct to the court a proposal on the conversion of a bail into the revenue of the State. The court shall adopt an appropriate decision that may be appealed by the bailor to the upper court.

7. In the rest cases the court when passing a sentence or resolution on termination of a case shall resolve the issue of return of the bail to the bailor.

8. When a criminal case is terminated at the stage of preliminary investigation, the bail shall be returned to the bailor pursuant to the resolution of the body of inquiry or preliminary investigation.

## **Article 149. House Arrest**

1. House arrest shall apply to the suspect, the accused with the sanction of the court in accordance with the procedure provided for by Article 150 of this Code, if there are conditions which allow to select the measure of restraint in the form of arrest, but when the full isolation of the person is not caused by the need or is inexpedient with an account of the age, state of health, family status and other circumstances.

2. Specific restrictions of freedom to which the detained person shall be in accordance with the order, and the body or official person whom the performance of supervision of compliance with the established restrictions is entrusted, shall be indicated in the resolution on the selection of a given measure of restraint. The arrested person may be prohibited to communicate with certain persons; to receive and send correspondence, to conduct negotiations with the use of any communication facilities, as well as restrictions on leaving the dwelling may be established. The place of residence of the arrested person may be guarded. If necessary, supervision over his behavior may be established.

When supervising over the observance by the arrested person of the established restrictions on leaving the dwelling, the body conducting the criminal procedure shall have the right to check his presence at the place of residence at any time.

The check shall be carried out no more than twice in a day and no more than once in a night time. The stay of an official person in the dwelling of an arrested person shall be allowed with the consent of that person and persons living together with him, and shall not exceed thirty minutes.

3. The period of house arrest, the procedure for its extension and appeal shall be determined in accordance with the rules established by Articles 110, 153 and 496 - 499 of this Code.

**Footnote. Article 149 as amended by the Laws of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## Article 150. Arrest

1. Arrest as a measure of restraint shall be applied only with the sanctions of the court and only in respect of an accused, a suspect of the commission of a crime for which the law prescribes a punishment in the form of deprivation of freedom for a period of not less than five years. In exceptional cases this measure of restraint may be applied in respect of an accused suspected of the commission of a crime for which the law provides punishment in the form of deprivation of freedom for a period of less than five years, if:

- 1) he has no permanent place of residence in the territory of the Republic of Kazakhstan;
- 2) his identity is not established;
- 3) he violated a measure of restraint, which has been selected earlier;
- 4) he tried to hide away or eluded from the criminal prosecution bodies or the court.
- 5) he is accused or suspected of committing a crime with an organized group or criminal community (criminal organization);
- 6) he has a conviction for a grave or gravest crime which has been committed earlier.

2. If it is necessary to select arrest as a measure of restraint, the prosecutor, the investigator, the body of inquiry shall pass the resolution on filing a petition on sanctioning of arrest before the court. Materials of a criminal case which confirm the propriety of the petition, shall be attached to the resolution.

If the petition is filed against a suspect, an accused on the bases and in accordance with the procedure provided for by Articles 132 and 134 of this Code, the said resolution and materials must be presented to the prosecutor not later than eighteen hours prior to the expiry of the period of detention.

3. The prosecutor shall be obliged to become familiar with all the materials containing the grounds for detention, and he shall have the right to interrogate the accused, the suspect when deciding the issue on the support of the petition of the criminal prosecution body to approve the arrest of the accused, the suspect. The prosecutor having examined all the materials presented shall pass resolutions on the support of the petition of the criminal prosecution body to approve the arrest of the accused, the suspect if there are grounds stipulated by law, if it is impossible to prevent the consequences which are provided for by Article 139 of this Code, by means of selection of a more lenient measure of restraint. In case of refusal to support the petition, the prosecutor shall pass resolution on refusal to support the petition of the criminal prosecution body to approve the arrest of the accused, the suspect. In case of refusal of the prosecutor to support the petition, the accused, the suspect shall be subject to immediate release from custody.

The prosecutor's resolution on refusal to support a petition on sanctioning of the arrest and release of the accused, the suspect from custody may be appealed by the criminal prosecution body which filed the petition on sanctioning the measure of restraint in the form of arrest to a higher prosecutor or by the participants of the proceedings who protect their

rights or represented rights and interests in accordance with the procedure provided for by Article 109 of this Code.

4. The prosecutor's resolution to support the petition of the criminal prosecution body to approve the arrest, as well as the materials which confirm its propriety must be submitted by the prosecutor to the court not later than twelve hours before the expiry of the period of detention.

If necessary, the judge shall have the right to demand and obtain the criminal case.

5. The right to approve an arrest shall belong to the judges of the district court and the court equivalent to it and in cases provided for by item 3) of part four of Article 110 of this Code - to the judges of the regional court and the court equivalent to it.

6. The resolution of the criminal prosecution body to file a petition on sanctioning the measure of restraint in the form of arrest of the accused, the suspect, which is supported by the prosecutor, shall be subject to independent consideration by the judge of a district court or a court equivalent to it at the judicial session with the participation of the accused, the suspect, the prosecutor and the defense lawyer at the place of performance of the preliminary investigation or at the place of detention of the suspect within eight hours from the moment of the materials' receipt by the court. The legal representative of the accused, the suspect, the victim, his legal representative and the representative shall also have the right to participate in the judicial session. The absence of the participants of the proceedings, when they are timely notified by the court of the place and the time of the judicial session shall not impede the conduct of the judicial session.

The minutes shall be kept during the judicial session.

7. When resolving the issues related to the sanctioning of arrest, the court shall confine itself to the examination of the materials of the case relating to the circumstances which are taken into account when selecting the specified measure of restraint.

8. Consideration of a petition by the court with regards to sanctioning a measure of restraint in the form of arrest in the absence of an accused shall be allowed only if he is put on the wanted list or he is outside the boundaries of the Republic of Kazakhstan and evades from appearance to the bodies of preliminary investigation when a due notice of the time and the place of the judicial session was communicated to him.

9. At the beginning of the session the judge shall announce the petition to be considered, explain to persons who appeared at the judicial session their rights and responsibilities. Then, the prosecutor shall justify the need to select the arrest of the accused, the suspect as a measure of restraint, after which the other persons, who appeared at the judicial session, shall be heard.

10. Having considered the petition on sanctioning the measure of restraint in the form of the arrest of the accused, the suspect, the judge shall pass a resolution on sanctioning the arrest of the accused, the suspect or on refusal to approve the arrest. In case of refusal to approve the arrest of the suspect or the accused, the judge in the course of a judicial session

and pursuant to the petition of the prosecutor shall have the right during a judicial session to select the measure of restraint in respect of the suspect, the accused in the form of house arrest.

If necessary the petition on selection of a measure of restraint in respect of the suspect, the accused in the form of house arrest may be filed by the prosecutor immediately after the judge's announcement of the resolution on refusal to approve the arrest of the suspect, the accused in case, when he considers it inexpedient to protest in accordance with the procedure provided for by Article 150 of this Code. If the judge passes the resolution on refusal to approve house arrest, the prosecutor shall have the right to appeal against it in accordance with the rules established by Article 110 of this Code.

11. The resolution of the court shall be immediately forwarded to the criminal prosecution body which filed the petition on sanctioning the measure of restraint in the form of arrest, as well as to the prosecutor, the accused, the suspect, the victim; and it shall be subject to immediate implementation.

12. The refiling of the petition by the body of the criminal prosecution to the court on sanctioning the measure of restraint in the form of arrest in respect of the same person on the same criminal case after the judge has passed the resolution on refusal to approve the said measure of restraint shall be possible only when there are new circumstances justifying the need of the arrest.

13. If the issue of selection of the measure of restraint in the form of arrest against the person on trial arises in court, the decision about it shall be made by the court pursuant to the petition of a party or on its own initiative, of which it shall pass a resolution.

14. The body that conducts the criminal procedure shall be obliged to inform the relatives of the accused, the suspect of the application of arrest as a measure of restraint in accordance with the order established by Article 138 of this Code.

15. The resolution of the court on sanctioning the arrest of the accused, the suspect or on refusal to it may be appealed in accordance with the procedure provided for by Article 110 of this Code.

16. Consideration of the issue of sanctioning the arrest of the accused, the suspect by the regional court or the court equivalent to it, in case of abolition of the resolution of the judge of a district court or a court equivalent to it on refusal to approve the arrest, shall be carried out in accordance with the order established by Article 110 of this Code.

**Footnote.** Article 150 is in the wording of the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2), as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 151. Detention of Suspects and Accused individuals who Arrest is Applied to as a Measure of Restraint**

Suspects and accused individuals whom arrest is applied to as the measure of restraint shall be held in the investigative isolation ward. The procedure and terms of their holding shall be defined by legislation.

## **Article 152. The Maintenance of Suspects and Accused individuals, who arrest is applied to as a Measure of Restraint, in places where detainees are held**

In cases when delivery to the investigative isolation ward of a suspect, an accused, in respect of whom arrest was applied to as a measure of restraint, is impossible due to remoteness or lack of appropriate means of communication, such persons upon the resolution of the prosecutor, the judge as well as upon the resolution of the interrogating officer or the investigator sanctioned by the prosecutor, his deputy, may be detained up to thirty days in the temporary holding facility. In the same order the same persons may be transferred for the said period from investigative isolation wards to the temporary holding facilities for the performance of investigative acts or for the consideration of the case by the court. The procedure and conditions of detention of such persons shall be defined by legislation.

The transfer (delivery under guard) of the suspect, the accused, the person on trial in respect of whom arrest is applied as a measure of restraint, from the investigative isolation ward to another investigative isolation ward for conducting of investigative acts, shall be performed pursuant to the resolution of the prosecutor, the judge or pursuant to the resolution of the interrogating officer, the investigator sanctioned by the prosecutor.

**Footnote. Article 152 as amended by the Laws of the Republic of Kazakhstan dated 09.12.2004 No. 10; dated 26.03.2007 No. 240 (the order of enforcement see Article 2); dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

## **Article 153. Periods of Arrest and Procedure of their Extension**

1. The period of arrest in the pre-trial procedures on a case may not exceed two months, apart from exceptional cases provided for by this Code.

The period of a suspect's arrest may not exceed ten days from the moment of application of the measure of restraint to him, and if the suspect was detained and then taken into custody - from the moment of detention.

2. If it is impossible to complete an investigation within a period of two months and when there are no reasons for the alteration or abolition of the measure of restraint, this period may be extended pursuant to a motivated petition of the criminal prosecution body which is agreed with the district (municipal) prosecutor and other prosecutors equivalent to him, the judge of a district court and a court equivalent to it - up to three months, and pursuant to a motivated

petition of the criminal prosecution body agreed with the prosecutor of the region and prosecutors equivalent to him and their deputies, the judge of a district court and court equivalent to it - up to six months.

3. The extension of the arrest period in excess of six months may be carried out by a judge of a district court and a court equivalent to it only due to the special complexity of the case pursuant to a motivated petition of the head of the investigative department or the prosecutor who assumed the proceedings on the criminal case, or the head of the investigation group which is agreed with the prosecutor of the region and prosecutors equivalent to him - up to nine months.

4. Extension of arrest period in excess of nine months shall be allowed in exceptional cases in respect of the persons, who are accused of commission of grave or gravest crimes, by the judge of a district court or a court equivalent to it pursuant to the motivated petition of the head of the investigative department or the prosecutor, who assumed the proceedings on the criminal case, or the head of the investigative group, which is agreed with the prosecutor of the region and prosecutors equivalent to him - up to twelve months. The issue of extending the arrest period in excess of nine months shall be considered preliminary by the collegium of the regional prosecutor's office and the prosecutor's office equivalent to it.

5. Further extension of arrest period shall not be allowed, the arrested the accused shall be subject to immediate release.

6. The petition on extending the arrest period up to three months shall be filed for the approval to the district (municipal) prosecutor and other prosecutors equivalent to him not later than ten days before the expiry of the arrest period; and it shall be considered by the prosecutor within the period of no longer than three days from the moment of the receipt of the petition.

7. The petition on extending the arrest period in excess of three months must be submitted to the prosecutor for approval not later than fifteen days before the expiry of the arrest period, and it shall be considered by the prosecutor within the period of no longer than five days from the moment of the receipt of the petition.

8. Having considered the petition on extending the arrest period, the prosecutor shall give consent and immediately send it with materials of the criminal case which confirm the propriety of extending the arrest period to an appropriate court or he shall reasonably withhold the consent by a written resolution on the petition. If the prosecutor does not support the petition on extending the arrest period, the accused shall be subject to immediate release upon the expiry of the arrest period.

9. The petition on extending the arrest period up to three months shall be submitted to the court no later than seven days before the expiry of the arrest period, on extending the arrest period in excess of three months - not later than ten days.

10. The petition on extending the arrest period shall be considered by a judge single-handedly. The prosecutor shall participate in the judicial session. The defense lawyer, the

legal representative of the accused, the victim, his legal representative and the representative may also participate in the session; their failure to appear with timely notice of the time of consideration of the petition shall not impede the judicial examination.

11. In the beginning of the session the judge shall announce which petition is subject to consideration, explain to the appeared persons their rights and responsibilities, then, having heard the arguments of the parties pursuant to the submitted petition on the need of keeping the measure of restraint in the form of arrest, he shall pass one of the following resolutions:

- 1) on satisfaction of the petition on extending the arrest period of the accused;
- 2) on refusal to satisfy the petition on extending the arrest period of the accused and on abolition or alteration of the measure of restraint for a less strict one and on release of the accused from custody.

12. The petition on extending the arrest period shall be subject to consideration of the judge of the district court and the court equivalent to it within the period of no longer than three days from the moment of receipt of the petition.

13. The head of the administration of the place of detention shall be obliged to inform the body or the person who handles the criminal case, as well as the prosecutor not later than twenty-four hours prior to the expiry of the arrest period of the accused. If upon expiry of the arrest period established by law as a measure of restraint the corresponding decision on the release of the accused or on extending his period of arrest as a measure of restraint has not been received, the head of the administration of the place of detention shall release him by his resolution, the copy of which he shall send to the body or the person who handles the criminal case, and to the prosecutor within twenty-four hours.

14. In case of failure to comply with the requirements of part thirteen of this Article, the head of the administration of the place of detention shall be held liable as it is established by law.

15. The arrest period shall be calculated from the moment of taking the accused, the suspect into custody prior to direction of the case by the prosecutor to the court. The period of arrest shall include the time of detention of a person as a suspect, the time of his arrest and compulsory placement in a psychiatric or other medical organization by the decision of the court. The time of review of the materials of the criminal case by the accused, his defense lawyer, as well as by the prosecutor in accordance with procedure of Article 282 of this Code shall not be taken into account when calculating the period of arrest.

16. In case of re-arrest of the accused, the suspect under the same case, as well as under a criminal case connected with this case or separated from it, the period of arrest shall be calculated with the account of the time spent in custody.

17. In case of extradition of the wanted person by a foreign State to the Republic of Kazakhstan, the period of arrest shall be calculated from the day of his arrival in the territory of the Republic of Kazakhstan. In such a case the time of detention of a person in the procedure of arrest for extradition in the territory of a foreign State in the event of his

extradition shall be taken into account when assigning a sentence to the total period of d e t e n t i o n .

18. The procedure of calculation and extension of the arrest period of the accused, which is established by this Article, shall be applied also when abolishing a sentence due to proceedings in cassation or supervisory instance or with regard to the newly discovered circumstances in respect of the person, who serves custodial sentence, and when sending the case for a new investigation with the use of the measure of restraint in the form of arrest by t h e c o u r t .

19. If the court returns the case for the additional investigation, under which the absolute deadline of the arrest of the accused has not passed, and there are no reasons to alter the measure of restraint, the same court shall extend the period of arrest within the month from the day of entry of the court's decision into force.

**Footnote.** Article 153 is in the wording of the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2); as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 20.01.2010 No. 241-IV; dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 154. Abolition or Alteration of the Measure of Restraint**

1. A measure of restraint shall be abolished when it is no longer necessary, or it shall be altered for a stricter or lenient one when the grounds for selection of the measure of restraint provided for by Articles 139 and 141 of this Code are changed.

2. Abolition or alteration of the measure of restraint shall be carried out pursuant to the motivated resolution of the body conducting the criminal procedure.

3. A measure of restraint which is approved, applied by the prosecutor, selected by his order in the course of pre-trial procedures on a criminal case, may be abolished or altered only with the consent of the prosecutor.

4. Appeal, protestation of the resolution of the criminal prosecution body on alteration or abolition of the measure of restraint shall be carried out in accordance with the order provided for by Articles 103 - 109 of this Code.

5. Abolition or alteration of the measure of restraint in the form of arrest, house arrest of the accused, the suspect which has been applied by sanction of the court, shall be carried out with the sanction of the court on the basis of the motivated resolution of the criminal prosecution body supported by the prosecutor, except for the cases provided for by part six of this Article. The resolution on abolition or alteration of the measure of restraint shall be subject to consideration by the judge single-headedly at the judicial session with the

participation of the prosecutor within six hours from the moment of receipt of the materials of the criminal case to the court. If necessary, the judge shall ensure the participation of the accused, the suspect, their defense lawyer, the legal representative, the victim, his legal representative, the representative in the judicial session.

6. When terminating the criminal prosecution at the stage of pre-trial procedures against the accused, the suspect due to rehabilitating grounds, the abolition of the measure of restraint in the form of arrest or house arrest shall be carried out immediately by the criminal prosecution body with the consent of the prosecutor.

7. Appeal, protestation of the resolution of the court on abolition or on refusal to abolish the sanction to use the measure of restraint in the form of arrest or house arrest shall be carried out in the procedure provided for by Article 110 of this Code.

**Footnote. Article 154 is in the wording of the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2); as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 155. Right to Guardianship and Care of Property**

1. Juveniles, as well as persons unable to work, who have been left unattended, without care or funds for living as a result of arrest of their parent or breadwinner, as well as of any other acts of the body conducting the criminal procedure, shall have the right to guardianship that must be ensured by the said body at the expense of funds of the republican budget. The instructions of the body conducting the criminal procedure to organize attendance, care and temporary placement of persons unable to work with state bodies for social protection or a medical organization shall be obligatory for the tutorship and guardianship body, as well as for the heads of the said organizations. The body conducting the criminal procedure shall also have the right to entrust the guardianship of juveniles and persons unable to work with their relatives with the consent of the latter.

2. A person, whose property has been left unattended as a result of his arrest as well as other acts of the body conducting the criminal procedure, shall have the right to the care of his property and animals belonging to him, which must be ensured by the said body in respect of that person pursuant to his request and at his expense. Instructions of the body conducting the criminal procedure to organize attendance of the person's property and animals belonging to him shall be obligatory for the relevant state bodies and organizations.

3. The body conducting the criminal procedure shall immediately notify the person, to whom arrest is applied as a measure of restraint, or any other interested person of the measures adopted in accordance with this Article.

## **Chapter 19. Other Measures of Procedural Compulsion**

## **Article 156. Reasons for Application of Other Measures of Procedural Compulsion**

1. For the purposes of ensuring the procedure of investigation and pre-trial procedures on criminal cases provided for by this Code, the appropriate implementation of sentences, the body conducting the criminal procedure shall have the right to apply to a suspect, an accused instead of the measures of restraint provided for by Chapter 18 of this Code or along with them, other measures of procedural compulsion: commitment to appear, compulsion to appear, temporal discharge from office, imposition of arrest on property.

2. In cases provided for by this Code, the body conducting the criminal procedure shall have the right to apply to a victim, a witness and other persons, who participate in case, the following measures of procedural compulsion: commitment to appear, compulsion to appear, pecuniary punishment.

## **Article 157. Commitment to Appear before Interrogating Officer, Investigator, Court**

When there are sufficient reasons to believe that a suspect, an accused to whom no measure of restraint is applied, a witness or a victim may evade participation in investigative acts or in judicial proceedings, or in case of their actual failure to appear upon summons without a good reason, those persons may be obliged to take a written commitment to arrive timely upon summons of the interrogating officer, investigator or the court, and to immediately notify in case of changing the place of residence.

## **Article 158. Compulsion to appear**

1. In case of a failure to appear upon summons without a good reason, the suspect, the accused or the witness and the victim may be compelled to appear (forcibly conveyed) pursuant to the motivated resolution of the interrogating officer, the investigator or the court.

2. Good reasons for failing to appear by a person notified of the summons shall include: an illness that deprives a person of ability to arrive, death of immediate relatives, natural calamities or other reasons depriving the person of the opportunity to arrive by appointed deadline. The suspect, the accused, the witness or the victim shall be obliged to inform the body which summoned them about the existence of good reasons which impede their arrival in the required time.

3. The resolution to compel to appear shall be announced to the suspect, the accused or to the witness or the victim before its implementation, which they shall confirm by signing on the resolution.

4. Being made to forcibly appear may not be performed at night.

5. Juveniles at the age under fourteen, individuals under eighteen years old without notice to their legal representative, pregnant women and ill individuals who may or must not leave

their place due to state of health, to be confirmed by a doctor, may not be compelled to appear

6. The resolution of the court to compel to appear shall be implemented by the bailiff or the body of internal affairs; while the resolution of the interrogating officer, the investigator on compulsion to appear shall be carried out by the body conducting interrogation, preliminary investigation or by the body of internal affairs.

**Footnote. Article 158 as amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.**

### **Article 159. Temporary Removal from Office**

1. The body conducting the criminal procedure with the sanction of the prosecutor shall have the right to remove an accused from his office if there are sufficient reasons to believe that remaining in that capacity he shall impede the investigation and examination of the case in the court, compensation of the harm caused by the crime or to continue criminal activity connected with being in that office.

2. The resolution on temporary removal of the accused from his office shall be directed to the place where he works to the head of the organization, who within three days after its receipt shall be obliged to implement the resolution and to inform the person or the body which adopted the decision on removal from office about it.

3. The accused who has been removed from his office shall have the right to monthly state benefit in the amount of not less than he minimum amount of work remuneration if he could not work in a different position or take another job due to circumstances which are beyond his control.

4. Temporary removal from office shall be abolished by resolution of the judge or the prosecutor, as well as by resolution of the investigator or the interrogating officer when this measure is no longer necessary.

**Footnote. Article 159 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 160. Pecuniary Punishment**

For failure to comply with the procedural duties provided for by Articles 75, 82, 84, 85, 86, 145, 147 of this Code, and violation of the order during the judicial session, the victim, the witness, the specialist, the translator and other persons may be subject to a pecuniary punishment. The matter of imposing pecuniary punishment shall be decided in accordance with the legislation on administrative violations.

**Footnote. Article 160 is amended by the Law of the Republic of Kazakhstan dated December 21, 2002 No. 363**

## **Article 161. Imposition of Arrest on Property**

1. For the purposes of ensuring the implementation of a sentence in respect of a civil lawsuit, any other property punishments or potential confiscation of property, the interrogating officer, the investigator with the sanction of the prosecutor or the court shall have the right to impose arrest on the property of the suspect, the accused or any other persons who are financially liable for their acts in accordance with the law. In cases stipulated by part three of Article 232 of this Code, the imposition of arrest on property may be made without sanction of the prosecutor, but with further delivery of the report to him on the performed arrest of property within twenty-four hours.

It shall not be allowed to take measures for ensuring implementation of the sentence in respect of a civil lawsuit on imposition of arrest on the property of the suspect, the accused or persons, who are financially liable for their acts in accordance with the law, and who are creditors of financial institutions, whose duties are subject to restructuring in cases provided for by the laws of the Republic of Kazakhstan which regulate the activities of financial institutions.

2. Imposition of arrest on the property shall consist in announcement to the owner or holder of a prohibition to dispose, and if necessary, to use those assets or in the seizure of assets and their transfer to safe custody.

3. The cost of property which arrest is imposed on to secure a civil lawsuit filed by a civil plaintiff or a prosecutor may not exceed the value of the lawsuit.

4. When determining a share of the property which is subject to arrest, in respect of each of several accused individuals or persons who are responsible for their acts, the degree of participation in the commission of crime as attributed to a given the accused shall be taken into account, however, the arrest to secure a civil lawsuit may be imposed also on assets of one of the appropriate individuals in full amount.

5. The arrest may not be imposed on assets, which are articles of prime necessity the list of which is defined by legislation.

6. A motivated resolution shall be passed for imposition of arrest on property. The resolution on imposition of arrest on property must indicate the assets which are subject to arrest as it is established in the course of proceedings on the criminal case, as well as the cost of the assets the imposition of arrest on which is sufficient to secure a civil lawsuit.

7. The interrogating officer, the investigator shall hand a resolution on imposition of arrest on a property to the owner or holder of the assets against receipt and he shall require the surrender of the assets. In case of refusal to perform this requirement voluntarily, the arrest of the property shall be imposed by force. If necessary, when there are reasons to believe that the assets are hidden by its owner or holder, the body of the criminal prosecution may perform a search or withdrawal in accordance with the procedure provided for by Article 232 of this

C o d e .

8. Imposition of arrest on property pursuant to the decision of the court, which assumed proceedings in case, shall be carried by the officer of justice.

9. A specialist, who appraises the value of the property, may participate in the imposition of arrest on property.

10. The owner or the holder of the assets shall have the right to propose on which items the arrest shall be imposed primarily.

11. The interrogating officer, the investigator shall compile a report on the performed arrest of the assets, while the officer of justice shall prepare the inventory of the property.

12. The assets which arrest is imposed on, may be withdrawn or transferred pursuant to the discretion of the person who performed the arrest, for safe custody to a representative of the local administration, housing management organization, the owner of those assets or to any other person, who must be warned of the responsibility for the safety of assets, of which their recognizance shall be taken.

13. When imposing arrest on funds or any other valuables which are kept in accounts and deposits in banks and lending institutions, the expenditure transactions on a given account shall be terminated within the limits of funds, on which the arrest is imposed.

14. The imposition of arrest on assets shall be abolished by a resolution of the person or the body, which handles the case, when this measure is no longer necessary. The resolution of the investigator, interrogating officer on abolition of the arrest on the assets shall be passed with the consent of the prosecutor.

Footnote. Article 161 as amended by the Laws of the Republic of Kazakhstan dated 09.12.2004 No. 10; dated 11.07.2009 No. 185 (shall be enforced from 30.08.2009); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Section 5. Property Issues in the Criminal Procedure**

### **Chapter 20. Civil Lawsuit in the Criminal Procedure**

#### **Article 162. Civil Lawsuits Considered in the Criminal Procedure**

1. Civil lawsuits of individual and legal entities on restoration of property and moral damage caused directly by a crime or socially-dangerous act of an insane person, as well as those concerning compensation of expenses on burial, medical treatment of the victim, sums which are paid to him as insurance indemnification, benefits or pensions as well as expenses incurred due to participation in the performance of interrogation, preliminary investigation and in the court, including expenses for representation, shall be considered within the

c r i m i n a l p r o c e d u r e .

2. A civil lawsuit shall be filed against an accused or persons who bear material responsibility for the acts of the accused and it shall be considered in conjunction with the c r i m i n a l c a s e .

3. The plaintiff when filing a civil lawsuit in the criminal procedure shall be exempted from the payment of state duty.

4. The jurisdiction of a civil lawsuit ensuing from a criminal case shall be determined by the jurisdiction of the criminal case within which it is filed.

5. The averment in respect of a civil lawsuit filed within a criminal case shall be carried out in accordance with the rules as established by this Code.

6. If the procedural relations, which arise in connection with a civil lawsuit, are not regulated by this Code, then, the rules of the civil procedural legislation shall be applied in that part, where they do not contradict this Code.

**Footnote. Article 162 is amended by the Law of the Republic of Kazakhstan dated December 9, 2004 No. 10.**

### **Article 163. Filing a Civil Lawsuit**

1. A person who sustained a damage as a result of a crime or an act of an insane person as provided for by the Criminal Code of the Republic of Kazakhstan, or his representative shall have the right to file a civil lawsuit at any time from the moment of the institution of the criminal case but prior to the completion of the judicial investigation.

2. A civil lawsuit shall be filed in writing. In the statement of claim it shall be indicated under what criminal case, who, against whom, on what grounds and in what amount the civil lawsuit is filed, as well as the request shall be stated to exact a specific monetary sum or assets for the compensation of a loss.

3. If it is necessary to specify the grounds for the civil lawsuit and the amount of the plaintiff's claim, the person shall have the right to file an additional civil lawsuit.

4. A failure to ascertain the person who is subject to be held responsible as an accused, shall not impede filing of a civil lawsuit under a criminal case.

5. A person, who failed to file a civil lawsuit in the criminal procedure as well as a person, whose lawsuit is left by the court without consideration, shall have the right to file it in the procedure of civil court proceedings.

6. A civil lawsuit may be filed against person who is not subject to be held as an accused because he has immunity from criminal prosecution, in the procedure of civil court proceedings .

7. In cases provided for by part two of Article 62 of this Code, a civil lawsuit in a criminal case may be filed by the prosecutor.

**Footnote. Article 163 as amended by the Law of the Republic of Kazakhstan dated**



When handling a civil lawsuit filed under a criminal case, the grounds, conditions, amount and method of compensation of damage shall be determined in accordance with the rules of the Civil, Labour and other legislation. International legal rules and legislation of foreign states shall be applied in cases provided for by international treaties ratified by the Republic of Kazakhstan.

### **Article 168. Renunciation of Civil Lawsuit**

1. A civil plaintiff shall have the right to refuse a civil lawsuit filed by him.
2. An application of a civil plaintiff on renunciation of suit at the stage of pre-trial procedures on a criminal case shall be filed in writing and it shall be attached to the criminal case. If the renunciation of the suit by a civil plaintiff is expressed during a judicial session, then it shall be entered into the record of the judicial session.
3. The renunciation of the suit shall be accepted by the interrogating officer, the investigator or the prosecutor at any moment during the performance of investigation on a criminal case, of which a resolution shall be passed. The renunciation of the suit may be accepted by the court with passing a resolution at any moment of the court proceedings, but prior to the court's retreat to the retiring room for issuing of a sentence.
4. The acceptance of renunciation of suit shall entail termination of proceedings on it.
5. Prior to the acceptance of renunciation of the suit, the body conducting the criminal procedure shall be obliged to explain to the civil plaintiff the consequences of the renunciation, as established by part four of this Article.
6. The body that conducts the criminal procedure shall not accept the renunciation of the civil plaintiff when those acts contradict the law or violate somebody's rights and interests protected by law, of which it shall pass a motivated resolution.

### **Article 169. Decision on a Civil Lawsuit**

1. When issuing a sentence of guilt or when passing a resolution on application of a compulsory measure of medical nature, the court shall satisfy a civil lawsuit fully or partially, or it shall refuse to satisfy it.
2. In cases of satisfaction of a civil lawsuit fully or partially, the court shall establish and specify in the sentence a period for voluntary implementation of the sentence with regard to the civil lawsuit. Compulsory implementation shall be carried out in accordance with the procedure established by legislation on enforcement proceedings.
3. When it is impossible to perform a detailed assessment in respect of a civil lawsuit without postponing the proceedings on a criminal case, the court may recognize the civil plaintiff's right to satisfy the lawsuit and to pass the issue of its value to the court's consideration through the procedure of civil court proceedings.
4. When issuing a sentence of acquittal, as well as when passing a resolution on

termination of a case on application of a compulsory measure of medical nature, the court shall:

1) refuse satisfaction of a civil lawsuit, unless the event of crime or act prohibited by the Criminal Code of the Republic of Kazakhstan is established, or unless the participation of the person on trial or person in respect of whom the issue on application of compulsory measures of medical nature has been decided, in the commission of the crime or an act prohibited by the Criminal Code of the Republic of Kazakhstan is proved;

2) leave the lawsuit without consideration if the person on trial is exculpated due to the lack of constituent elements of a crime or if the case is terminated due to lack of grounds for application of compulsory measure of medical nature to the person, who by nature of the act committed by him and his condition does not represent any danger for the society and needs no compulsory medical treatment.

5. When a case is terminated on the grounds indicated in items 3 - 5, 7, 8 of the part one of Article 37 and Article 38 of this Code, the court shall leave the civil lawsuit without consideration.

6. If a criminal case is terminated at the stage of pre-trial procedures on the grounds provided for in item 2 of parts four and five of this Article, the citizen or the legal entity or their representatives shall have the right to file a lawsuit in the procedure of civil court proceedings.

7. Amicable agreement with regard to a civil lawsuit between a person on trial and a victim is allowed in the procedure established by law.

**Footnote. Article 169 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 170. Securing of a Civil Lawsuit**

If there is evidence of infliction of moral or property damage as a result a crime, the criminal prosecution body shall be obliged to take measures to secure a civil lawsuit. If such measures are not taken, the court shall have the right to take measures to secure the lawsuit prior to the entry of the sentence into legal force.

## **Article 171. Implementation of a Sentence and Court's Resolution with regard to a Civil Lawsuit**

When a court satisfies a civil lawsuit, the sentence, as well as the resolution on application of compulsory measures of medical nature with regard to the civil lawsuit shall be implemented in accordance with the procedure provided for by legislation on enforcement proceedings.

## **Chapter 21. Work Remuneration and Compensation of Expenses Incurred in the Course of Proceedings on a Criminal Case**

### **Article 172. Payment of Legal Assistance**

**Footnote.** The title is in the wording of the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).

1. Payment for legal assistance of a defense lawyer and a representative of a victim shall be carried out in accordance with the legislation of the Republic of Kazakhstan.

2. The body conducting criminal procedure, when there are sufficient grounds, shall have the right to release a suspect, an accused, a victim fully or partially from payment for legal assistance. In this case payment of work remuneration of an advocate shall be carried out at the expense of budgetary funds.

3. Expenses on work remuneration of advocates may be carried out at the expense of budgetary funds in cases, which are provided for by part three of Article 71 and part two of Article 80 of this Code, when an advocate participated in the performance of interrogation, preliminary investigation or in the court pursuant to an appointment without entering into agreement with the client.

**Footnote.** Article 172 as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).

### **Article 173. Receipt of Remuneration by Translator, Specialist, Expert for the Work They Performed**

1. A translator, a specialist, an expert who perform the appropriate functions in the course of proceedings on a criminal case shall receive the following:

1) work remuneration at the place of their employment, if they performed the work in the procedure of a service assignment;

2) a fee at the expense of the republic budget within the limits of rates as established by the Government of the Republic of Kazakhstan if the performed work is not the part of their service duties or was performed at their time-off;

3) remuneration in the amount defined by the agreement with the party, if they performed the work under an agreement with that party.

2. In case provided for by item 2 of part one of this Article, remuneration shall be paid on the basis of the resolution of the body conducting the criminal procedure, which is passed after the submission of an account by the translator, the specialist, the expert.

## **Article 174. Compensation of Expenses Incurred by Persons Participating in the Criminal Proceedings**

1. The following expenses of a victim, a civil plaintiff, a civil defendant, their legal representative, advocates who render legal assistance as a defense lawyer or a representative of a victim (private prosecutor), an identifying witness, a translator, a specialist, an expert, and a witness shall be subject to compensation at the expense of budgetary funds in accordance with the order of criminal proceedings pursuant to the appointment of the body conducting the criminal procedure in cases provided for by part three of Article 71 and part two of Article 80 of this Code:

- 1) expenses for arrival upon summons of the body conducting the criminal procedure:
  - cost of travel by railway, water, automobile (except for taxi) transport and others of transport existing in a given area and with the consent of the body conducting the criminal procedure - the cost of travel by air transport;
  - cost of leasing residential premises at the rates adopted for the payment of service business trips, if those expenses are not compensated by the organization, the employer;
- 2) per diems, when persons are required to reside pursuant to the request of the body conducting the criminal procedure outside the place of their permanent residence, if the per diems are not reimbursed by the organization, the employer;
- 3) average work remuneration for the entire time spent pursuant to the request of the body conducting the criminal procedure for the participation in the criminal proceedings, except for the cases when average work remuneration is reserved by the organization, the employer;
- 4) expenses for restoration or purchase of assets which lost their properties or which were destroyed as the result of the person's participation in the performance of investigative or any other procedural act pursuant to the request of the body conducting the criminal procedure.

2. The state bodies and organizations shall be obliged to reserve for the victim, his legal representative, the identifying witness, the translator, the specialist, the expert, the witness, the potential juror, who is summoned to appear before the court but is not selected into the membership of the jury, their average work remuneration for the entire time spent by them on participation in the criminal proceedings pursuant to the request of the body conducting the criminal procedure.

3. A specialist and an expert shall be also reimbursed the cost of chemicals and other consumable materials belonging to them, which were expended by them when performing the work entrusted to them, as well as the payment which they incurred to perform the work, for using equipment, utility services and computer time.

4. Expenses which are incurred during proceedings on a criminal case shall be subject to reimbursement pursuant to application of the persons listed in part one of this Article on the basis of the resolution of the body conducting the criminal procedure, in the amount established by legislation. The procedure of payment of the said expenses shall be determined

by the Government of the Republic of Kazakhstan. The said expenses may be also reimbursed at the expense of the party who invited the persons listed in the part ne of this Article to participate in investigative act, or in other cases as provided for by this Code. The expenses provided by items 1, 2 and 4 of part one of this Article may be reimbursed in accordance with legislation by the body conducting the criminal procedure on its own initiative.

**Footnote. Article 174 as amended by the Laws of the Republic of Kazakhstan dated 08.01.2007 No. 210; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Chapter 22. Procedural Costs**

### **Article 175. Procedural Costs**

Procedural costs shall comprise the following:

1) sums paid to witnesses, victims and their representatives, experts, specialists, translators, identifying witnesses in accordance with the procedure of Article 173, 174 of this C o d e ;

2) sums paid to witnesses, victims and their representatives, identifying witnesses, who have no steady income, for distraction from their usual occupation;

3) sums paid to witnesses, victims and their legal representatives, identifying witnesses whose, who are employed and have steady income, to compensate for the wages they have not received for the entire period of time spent by them in connection with the summons to the body conducting the criminal procedure;

4) remuneration paid to experts, translators, specialists for the performance of their duties by them in the course of interrogation and preliminary investigation or at the court, except for the cases when those duties were performed within the procedure of service duties;

5) sums paid for the rendering of legal assistance by a defense lawyer, in case when a suspect, an accused or a person on trial are exempted from its payment or when an advocate participates in the course of interrogation, preliminary investigation or at the court by appointment, without entering into an agreement with the client;

5-1) sums paid for rendering of legal assistance by the representative of a victim (private prosecutor) if he is exempted from its payment;

6) sums expended for storage and sending of material evidences;

7) sums expended for performance of expert examination by the bodies of forensic e x a m i n a t i o n ;

8) sums expended in connection with the search for the accused, who hid from i n v e s t i g a t i o n o r c o u r t ;

9) sums expended in connection with the compulsion to appear of an accused to the investigator or the court in case if he failed to arrive without a good reason, as well as in

connection with a postponement of judicial proceedings because of the accused's failure to arrive without a good reason or his arrival to the court in a state of alcohol intoxication;

10) other expenses incurred in the course of proceedings on a criminal case.

**Footnote. Article 175 as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 176. Exaction of Procedural Costs**

1. Procedural costs may be imposed by the court on a convict or may be incurred at the expense of the State.

2. The court shall have the right to exact procedural costs from the convict, except for the sums paid to the translator. Procedural costs may be imposed also on the convict who is released from punishment.

3. Procedural costs associated with participation of a translator in case shall be incurred at the expense of the State. If a translator performed his functions in the procedure of a service duty, his work remuneration shall be reimbursed by the State through the organization, in which the translator worked.

4. Procedural costs associated with participation of an advocate in case who rendered legal assistance for free as a defense lawyer of a suspect, an accused, a person on trial or a representative of a victim (private prosecutor) shall be incurred at the expense of budgetary funds in cases provided for by part three of Article 80 of this Code.

5. In the event that an accused is exculpated or a case is terminated in accordance with items 1, 2 of part one of Article 37 and part two of Article 269 of this Code, the procedural costs shall be incurred at the expense of the State. If a convict is exculpated only partially, the court shall oblige him to pay procedural costs associated with the accusal on which he is pleaded guilty.

6. Procedural costs shall be incurred at the expense of the State in case of property insolvency of the person from whom they must be exacted. The court shall have the right to fully or partially release a convict from the payment of procedural costs if their payment may materially affect the financial status of the persons who are dependent on the convict.

7. When the court pleads guilty several persons on trial it shall determine in what amount the procedural costs must be collected from each of them. The court shall take into account in this case the nature of their guilt, degree of responsibility for the crime and property status of the convict.

8. With regard to the cases on crimes committed by juveniles the court may impose the payment of procedural costs on the parents of a juvenile or persons, who substitute them.

9. When a person on trial is exculpated under a private prosecution case, the court shall have the right to exact procedural costs fully or partially from the person, pursuant to whose complaint the proceedings were initiated. In case of termination of a case due to reconciliation

of the parties, procedural costs shall be exacted from he or both parties.

10. In case of death of the accused's heirs shall not be liable for the obligations associated with the procedural costs.

11. The right to exact procedural costs shall be terminated by virtue of time limitation upon expiry of three years from the day of entry of the relevant court decision into legal force.

12. If there is data on procedural costs, the criminal prosecution body shall be obliged to take measures on securing the exaction of procedural costs, except for the case, which is specified in part 6 of this Article.

**Footnote.** Article 176 as amended by the Laws of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Special Part**

### **Section 6. Pre-trial procedures on Criminal Case**

#### **Chapter 23. Institution of a Criminal Case**

##### **Article 177. Reasons and Grounds for the Institution of a Criminal Case**

1. The following shall be recognized as reasons for the institution of a criminal case:

- 1) statements of citizens;
- 2) surrender;
- 3) report of an official person of the state body or person who performs managerial functions in an organization;
- 4) report in mass media;
- 5) direct discovery of evidence of crime by official persons and bodies authorized to institute a criminal case.

2. The following shall be recognized as grounds for the institution of a criminal case:

- 1) existence of sufficient data indicating the elements of a crime, if there are no circumstances, which exclude proceedings on a criminal case;
- 2) disappearance of a person, if it is impossible to detect the location of the person within two months from the date of filing an application through operational-search activities undertaken within this period.

3. If the data, which indicate the elements of the commission of a crime against missing person, are established with regard to a criminal case initiated in the procedure provided for by item 2) of the part two of this Article, the act shall be qualified under the relevant Article of the Criminal Code of the Republic of Kazakhstan.

Footnote. Article 177 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 178. Statements of Citizens**

1. Statements of citizens on a crime may be verbal or written. A written application must be signed by the person who submits it.

2. A verbal statement on crime made in the course of performance of investigative act or in the course of court proceedings, shall be entered respectively into the report of the investigative act or judicial session. In other cases a separate report shall be compiled. A report must contain information on the informer, the place of his residence or work, as well as documents certifying his identity. The report shall be signed by the informer and the official person who accepted the statement.

3. An informer shall be warned of the criminal liability for willful misinterpretation in accordance with Article 351 of the Criminal Code of the Republic of Kazakhstan, of which a note shall be made in the report and it shall be certified by the signature of the informer.

4. Anonymous statement on a crime may not serve as a reason for the institution of a criminal case.

Footnote. Article 178 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 179. Surrender**

1. Surrender shall be a voluntary statement of a person on the crime he committed when in respect of that person no suspicion is proposed and no charge is brought in respect of the commission of a given crime.

2. The said statement may be made either in writing or in a verbal form and it must be submitted by the informer to the body conducting the criminal procedure. A verbal statement shall be entered into the report in which the statement so made shall be described in detail. The report shall be signed by the person who surrendered and by the official person, who accepted the statement.

3. If participants in the crime were indicated in the statement during the surrender, the informer shall be warned of the criminal liability for willful misinterpretation.

## **Article 180. Reports of Official Person of State Body or Person Who Performs Managerial Functions in an Organization**

The reports on crime by an official person of a state body or a person who performs managerial functions in an organization must be made in writing. The documents and other materials which confirm the issued report on a crime must be attached to such a report.

### **Article 181. Report in Mass Media**

1. A report a mass media may serve as a reason for the institution of a criminal case when such a report is published in a newspaper or a magazine or it is broadcasted through radio, television or a telecommunications network.

2. Persons who perform managerial functions in the mass media which published or broadcasted a report on a crime, pursuant to the request of the person who has the right to institute a criminal case, shall be obliged to hand the documents and other materials available to them, which confirm the report made, as well as to name the person, who presented that information to them, except for the cases when that person presented it on the condition of keeping the secret of the source of information.

**Footnote. Article 181 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 182. Direct Discovery of Information on a Crime by Official Persons or Bodies Authorized to Institute Criminal Case**

Discovery of information on a crime shall serve as a reason for the institution of a criminal case in cases when:

1) during performance of their official duties an employee of the body of inquiry, an investigator, a prosecutor become witnesses of a crime or discover traces or consequences of the crime directly after it has been committed;

2) the body of inquiry or the interrogating officer receive information on a crime during performance of their functions or during performance of interrogation concerning another criminal case;

3) an investigator receives information on a crime during the performance of an investigation on another criminal case;

4) a prosecutor receives information on a crime during performance of supervision of compliance with laws.

### **Article 183. Duty to accept and consider Statements and Reports on a Crime**

1. The criminal prosecution body shall be obliged to accept, register and consider a statement or a report on any crime which has been committed or which is being prepared. An informer shall be given a document on registration of accepted statement or report on a crime

with indication of the person who accepted the application or the report, time of its registration and the time when the decision on the application or the report must be made.

2. Unreasonable refusal to accept a statement or a report on a crime may be appealed to the prosecutor or at the court in accordance with the procedure established by this Code.

3. A statement or a report on a crime received by the court, except for the cases of instituting cases of private prosecution, shall be sent to the prosecutor, of which the informer shall be notified.

4. The court upon establishing the elements of a crime, when handling a criminal, civil or administrative case, shall be obliged to communicate this information to the prosecutor by its private resolution.

### **Article 184. Periods for Considering Statements and Reports on Crimes**

A decision pursuant to a statement or report on a crime must be accepted not later than three days from the date of its receipt. If it is necessary to receive additional information, obtain documents or other materials, perform inspection, seizure of items or documents which are important for the case, expert evaluation, this period may be extended by the head of the body of inquiry, the head of the investigative department up to ten days and in exceptional cases - up to two months, of which the prosecutor must be notified within three days.

**Footnote.** Article 184 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 08.01.2007 No. 210; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).

### **Article 185. Decisions Adopted as a Result of Consideration of Statement or Report on Crime**

1. In each case of receipt of a statement or a report on a crime or on the direct discovery of a crime, the interrogating officer, the body of inquiry, the head of the investigation department, the investigator or the prosecutor shall take one of the following decisions:

- 1) institution of a criminal case;
- 2) refusal of institution of a criminal case;
- 3) transfer of the statement, the report in accordance with its investigative jurisdiction, and in cases of private prosecution - in accordance with their judicial jurisdiction.
- 4) implementation of summoned pre-trial procedures in accordance with the order provided for by Chapter 23-1 of this Code.

2. The informer shall be informed of the adopted decision and at the same time his right to appeal the decision shall be explained to him.

3. In the event that a statement or a report is sent in accordance with its investigative jurisdiction or judicial jurisdiction, the body of inquiry, the head of the investigation department, the investigator or the prosecutor shall be obliged to take measures for prevention

or elimination of the crime as well as for registration of the traces of the crime.

**Footnote. Article 185 as amended by the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

## **Article 186. Procedure of Institution of a Criminal Case**

1. If there are reasons and grounds indicated in Article 177 of this Code, the interrogating officer, the body of inquiry, the head of the investigation department, the investigator and the prosecutor shall pass a resolution on institution of a criminal case except for the cases established by Chapter 23-1 of this Code.

2. The following shall be indicated in the resolution: time and place of its passing, who compiled it, the reasons and grounds for the institution of the case, in respect of whom or what fact it is instituted, the Article of the criminal law on the elements of which it is instituted, as well as the further direction of the case. The copy of the resolution on the institution of a criminal case shall be directed to the prosecutor within twenty-four hours. The adopted decision shall be communicated to the applicant and to the person in respect of whom the criminal case is instituted, with an explanation of his rights and obligations due to the beginning of the criminal prosecution.

The Article of the Criminal Code of the Republic of Kazakhstan shall not be specified in the resolution on the institution of a criminal case initiated in accordance with item 2) of part two of Article 177 of this Code.

3. If the person who suffered from the commission of crime is known, he shall be recognized as a victim simultaneously with the institution of the criminal case, and if a civil lawsuit is filed together with the report on a crime, the person shall also be recognized as a civil plaintiff.

**Footnote. Article 186 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 187. Refusal of Institution of a Criminal Case**

1. When there are no reasons to institute a criminal case, the criminal prosecution body shall pass a resolution on refusal of institution of a criminal case.

2. The copy of the resolution of refusal of institution of a criminal case shall be directed to the prosecutor or the applicant within twenty-four hours. In this respect the rights and the procedure for appealing the resolution must be explained to the applicant.

3. The resolution of the investigator, the interrogating officer on refusal of institution of a criminal case may be appealed respectively to the head of the investigative department, the head of the body of inquiry, as well as to the prosecutor or to the court in accordance with the

procedure established by this Code. A court resolution on refusal to accept the application for private prosecution may be appealed to the upper court.

4. If in the received application (report) there are visible violations of political, labor, housing, family or any other rights of citizens, as well as violation of legal interests of organizations which are protected in accordance with the procedure of civil court proceedings, then, simultaneously with the refusal on institution of a criminal case, the rights and the procedure of judicial recourse must be explained to the interested persons for the restoration of the violated rights and interests in accordance with the procedure of civil court proceedings.

### **Article 188. Transfer of Application or Report on Crime in accordance with its Investigative Jurisdiction or Judicial Jurisdiction**

1. An official person or a body who/which is authorized to institute a criminal case shall have the right to transfer an application or a report on a crime in accordance with the investigative jurisdiction without instituting a criminal case only in the following cases:

1) when a crime is committed outside the boundaries of a given district and reviewing acts are required to be performed at the place of commission of the crime for resolving the issue of institution of the criminal case;

2) when the resolution of the issue on the institution of a criminal case requires reviewing acts which may be performed only by the body to which investigative jurisdiction that case is related.

2. The prosecutor must be notified of the transfer of applications and reports on investigative jurisdiction without institution of a criminal case within twenty four hours.

3. Only complaints of victims of the crimes prosecuted in accordance with the procedure of private prosecution shall be subject to transfer under the investigative jurisdiction without institution of a criminal case.

4. When transferring a report or an application on crime under the investigative jurisdiction or judicial jurisdiction, the items and documents discovered during the examination of the place of accident, surroundings or premises or those, which are presented by organizations, officials or citizens shall be transferred in accordance with the procedure stipulated by part five of Article 223 of this Code.

**Footnote. Article 188 is amended by the Law of the Republic of Kazakhstan dated December 9, 2004 No. 10.**

### **Article 189. Acts of Criminal Prosecution Body after the Institution of a Criminal Case**

1. After institution of a criminal case:

1) the prosecutor shall send the case to the investigator or the body of inquiry for the

performance of preliminary investigation or inquest;

2) the investigator shall initiate the performance of preliminary investigation;

3) the body of inquiry with regard to the cases, in which the performance of the preliminary investigation is obligatory, after the performance of urgent investigative acts shall direct the case for the performance of preliminary investigation; and with regard to the cases on crimes indicated in Article 285 of this Code he shall perform the inquest.

2. In summary pre-trial procedures, the acts of the criminal prosecution body shall be regulated by Chapter 23-1 of this Code.

**Footnote. Article 189 as amended by the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

## **Article 190. Supervision by Prosecutor over Legality of Institution of a Criminal Case**

When performing the supervision over legality of institution of a criminal case, the prosecutor shall have the following rights:

1) to abolish the resolution of the interrogating officer, body of inquiry, or investigator on the institution of a criminal case and to refuse from the institution of the criminal case or to direct the materials for the performance of additional examination;

2) to abolish the resolution of the interrogating officer, the body of inquiry, or the investigator on the refusal of the institution of a criminal case and to institute a criminal case;

3) to abolish the resolution of the interrogating officer, the body of inquiry, or the investigator on the institution of a criminal case and to terminate the criminal case, if the investigative acts in respect of that case have been performed already.

**Footnote. Article 190 is amended by the Law of the Republic of Kazakhstan dated August 9, 2002 No. 346.**

## **Chapter 23-1. Summary pre-trial procedures**

**Footnote. The Code is supplemented with Chapter 23-1 in accordance with the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

### **Article 190-1. Grounds of Summary pre-trial procedures**

1. Summary pre-trial procedures in cases of little and average gravity, as well as grave crimes shall be carried out in cases when the collected evidence establishes the fact of the crime and the person who committed it and who acknowledges his guilt, does not recuse the evidence, the nature and the amount of the damage caused according to the general rules of this Code, with the exceptions established by the Articles of this Chapter.

2. Summary procedure of pre-trial procedures shall not be applied: in respect of an aggregate of crimes, when at least one of them is gravest; in respect of juveniles and persons, who due to physical or mental disabilities cannot exercise their right of defense themselves; in respect of persons, who do not have command of the language of the proceedings; in respect of persons, who have the privileges and immunity from criminal prosecution; if at least one of the participants does not acknowledge his guilt; if it is impossible to ensure a comprehensive and full investigation of all the circumstances of the case within the periods established by part one of Article 190-2 of this Code; if it is necessary to detain a suspect on the basis of Article 132 of this Code or to apply a measure of restraint.

3. Preliminary investigation or inquest shall be carried out if there are circumstances specified in part two of this Article.

**Footnote. Article 190-1 as amended by the Laws of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 190-2. Procedure of Summary pre-trial procedures**

1. Summary pre-trial procedures shall be completed within the period of ten days after the moment of registration of a statement or report on a crime before the case is transferred to the p r o s e c u t o r .

Materials may be combined in the proceeding with regard to aggregation of crimes.

2. The interrogating officer or the investigator shall establish the circumstances of the committed crime and the facts approving the guilt with regard to the cases on crimes for which a summary procedure of pre-trial procedures is provided.

3. To establish the circumstances, which are described in part two of this Article, inspection, seizure, expert examination, inquiries of the informer, the witnesses and the person who committed the crime may be carried out; documents or other materials may be requested; acts of inspections, audits, expert examinations, audit opinions, a certificate of conviction, description, transcript, audio materials, videos may be attached.

4. The informer shall have the right to invite a defense lawyer for provision of legal assistance from the moment of addressing to the criminal prosecution bodies, while the witnesses and the person who committed the crime - from the moment of being summoned to the investigator, the interrogating officer or to the body of inquiry.

The informer, the witnesses and the person who committed the crime shall be interviewed on the known circumstances of the crime. Respondents shall be explained the right not to give explanations against themselves, their spouses, and immediate relatives. Audio and video recording may be used during an interview.

During the interview the person, who committed the crime shall be explained: the

possibility to perform the proceedings on a case in the summary pre-trial procedure and its legal implications.

During the interview the person who committed a crime, the informer and the witnesses shall be explained their commitment to appear upon summons to the interrogating officer, the investigator and the court. If necessary, the commitment to appear before the interrogating officer, the investigator and the court shall be taken from the said persons in accordance with the procedure of Article 157 of this Code.

### **Article 190-3. Compilation of the Record of the Summary pre-trial procedures and Transfer of a Criminal Case to the Prosecutor**

1. Summary pre-trial procedures shall be completed with the compilation of the record. The following shall be specified in the record: time and place of its compilation; who compiled the record; data on the person who committed the crime; circumstances of the commission of the crime; evidences which prove culpability of the person;ification of the crime according to the Criminal Code of the Republic of Kazakhstan (Article, part, item); person's acknowledgement of his culpability and consent with the nature and amount of the damage caused by the crime.

All the materials, as well as the list of persons who are subject to be summoned to court, shall be attached to the record.

2. Compilation of the record of pre-trial procedures by an investigator or its approval by the head of the body of inquiry shall designate the institution of a criminal case and the recognition of the person who committed a crime, as an accused.

3. The accused, as well as in case of engagement - his defense lawyer, shall become familiar with the materials of the case of summary pre-trial procedures. Their applications and petitions shall be entered into the record. The copy of the record shall be handed to the accused and sent to the applicant.

### **Article 190-4. Acts of the Prosecutor with Regard to a Criminal Case Received in Accordance With the Procedure of Summary pre-trial procedures**

Having received a criminal case of summary pre-trial procedures, the prosecutor shall perform one of the following acts with regard to it not later than three days:

- 1) agree with the record of summary pre-trial procedures and bring the accused to trial;
- 2) direct for the preliminary investigation or inquest;
- 3) pass the resolution on termination of the criminal case or criminal prosecution against certain accused individuals or re-classify the actions of the accused or delete certain clauses of the accusation on the grounds specified by this Code.

## **Chapter 24. General Provisions of the Performance of Preliminary Investigation**

### **Article 191. Obligatory Nature of Preliminary Investigation**

1. Preliminary investigation shall be obligatory for all criminal cases, except for the cases on crimes indicated in part one of Article 33, Articles 190-1, 285 of this Code.

2. Performance of the preliminary investigation shall be obligatory for all criminal cases on crimes committed by juveniles or by persons who due to their physical or mental handicaps may not exercise their right to defense themselves, as well as in all criminal cases instituted in accordance with the order provided for by item 2) of part two of Article 177 of this Code.

3. Preliminary investigation of criminal cases shall be carried out by the investigators of the Committee on National Security, bodies of internal affairs and financial police, and by the prosecutors in cases provided for by this Code.

4. Transfer of criminal cases with regard to their investigative jurisdiction from the body to another shall be carried out in accordance with this Code.

**Footnote. Article 191 as amended by the Laws of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated 17.07.2009 No. 187-I; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 192. Investigative Jurisdiction**

1. With regard to criminal cases of crimes provided for by Articles 156 - 163, 165 - 173, 233, 233-1, 233-2, 233-3, 233-4, 236, 238 - 240, 243, 244, 247 - 249, 255 (parts two, three and four with regard to theft or extortion of mass destruction weapons, as well as of the materials or equipment, which may be used in the creation of mass destruction weapons), 306, 317-1, 317-2, 318, 330 (part two), 331 (part two), 367 (parts three, 3-1 and five), 368 (parts three and four), 369 (parts three and four), 372 (parts two and three), 373 (parts three and four), 374 (parts three and four), 375, 376, 381 (part three), 382 (part two), 383-386 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation shall be carried out by the investigators of the Committee on National Security. With regard to crimes provided for by other Articles of the Criminal Code of the Republic of Kazakhstan preliminary investigation may be carried out by the body of national security if their investigation is directly connected with the performance of preliminary investigation in cases of crimes referred to the investigative jurisdiction of national security, and a criminal case may not be singled out into a separate proceeding.

2. With regard to criminal cases on crimes provided for by Articles 96 - 103, 107 (part two), 112, 113, 114, 116 (parts three and four), 117 (parts three and four), 120 - 122, 124, 125

, 126 (parts two and three), 127, 128 (parts two three and four), 131, 132 (parts two and three), 132-1, 133, 138, 141 (part two), 142 (part two), 143, 145 (part three), 143, 145 (part three), 146-153, 155, 174, 175 (parts two, three and four), 178 (parts two, three and four), 179, 181 (parts two, three and four), 183 (parts two and three), 183-1, 185 (parts two, three and four), 186 (part two), 187 (parts two and three), 227-1, 229, 230 (part two), 234, 237, 241, 242, 245, 245-1, 246, 246-1, 251 (parts two and three), 252 (parts two and three), 254 (part two), 255 (parts one, three and four), 257 (parts two and three), 259 (parts 1-1, two, 2-1, three and four), 260, 261 (parts two, three and four), 263 (parts three and four), 264, 267 - 269, 271 (part two), 273-1, 275 (part two), 275-1 (part two), 277 - 286, 287 (parts two and three), 288 (parts two and three), 289, 292 (part two), 294, 295, 298 (parts three and four), 299 (parts two and three), 300 (parts two and three), 301, 302 (part two), 303 -305, 319, 319-1, 320 (part two), 321-322, 327 (part three), 330-2 (part two), 335 - 338, 340, 358 (part two), 360 (parts two and three), 361, 367 (part four), 368 (part two), 369 (part two), 370 (part three), 373 (part two), 374 (part two), 377 (part two), 381 (part two), 382 (part one), 390 (parts two and three), 391 (parts two and three), 392, 393 of the Criminal Code of the Republic of Kazakhstan, as well as with regard to criminal cases instituted in accordance with the order provided for by item 2) of part two of Article 177 of this Code, the preliminary investigation shall be carried out by investigators of the bodies of internal affairs.

3. With regard to criminal cases provided for by Articles 176 (item d) of part three), 177 (item d) of part three), 190 (part two), 191, 192, 192-1, 193 - 196, 199-205-1, 206, 207, 209 (parts two and three), 213, 214 (part two), 215-220, 221 (part two), 222 (parts two and three), 222-1, 224, 226 (part two), 226-1, 231, 232, 269-1, 307, 308, 310-315 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation shall be carried out by investigators of the bodies of the financial police. With regard to the cases on crimes provided for by Articles 183 (parts two and three), 229 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation may be carried out by investigators of the bodies of the financial police, if their investigation is directly connected with the investigation of the crimes which are the jurisdiction of the investigators of the bodies of the financial police and a criminal case may not be singled out into separate proceedings.

4. With regard to cases on crimes provided for by Articles, 176 (part two, item b) of part three, part four), 177 (parts two, three and four), 180, 182 (parts he and four), 184, 184-1, 228, 309, 316, 339 (parts two and three), 341, 343-357, 363-365 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation shall be carried out by the body of internal affairs or financial police that has instituted the criminal case. With regard to criminal cases on crimes provided for by Article 141-1, 363-1 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation shall be carried out by the bodies of internal affairs or financial police, which have initiated a criminal case against a person, who is not an employee of this body.

4-1. With regard to criminal cases on crimes specified by Articles 164, 250 (parts two,

three and four), 337-1 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation shall be carried out by the body of internal affairs or national security that instituted the criminal case.

4-2. Is excluded by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (enforced upon expiry of ten calendar days after its first official publication).

4-3. With regard to criminal cases on crimes provided for by Articles 227, 235, 235-1, 235-2, 235-3, 235-4, 380, 380-1, 380-2 of the Criminal Code of the Republic of Kazakhstan, the preliminary investigation shall be carried out by the bodies of internal affairs, national security or financial police, which instituted the criminal case.

5. (is excluded - N 27 dated 31.12.2004)

6. Having established that a given case is not in his jurisdiction, the investigator shall be obliged to perform urgent investigative acts within five days from the moment of the institution of the criminal case, after which, to transfer the case to the prosecutor for directing it in accordance with the jurisdiction.

7. In cases on the accusal of him or several persons of commission of crimes which are in the jurisdiction of different bodies of preliminary investigation, the jurisdiction shall be determined by the prosecutor.

Footnote. Article 192 as amended by the Laws of the Republic of Kazakhstan dated 9.12.98 No. 307; dated 5 May 2000 No. 47; dated 16 March 2001 No. 163; dated 19 February 2002 No. 295; dated 21 December 2002 No. 363; dated 25 September 2003 No. 484; dated 9 December 2004 No. 10; dated 31 December 2004 No. 27; dated 8 July 2005 No. 67 (the order of enforcement see Article 2); dated 22 November 2005 No. 90 (the order of enforcement see Article 2 of the Law); dated 2 March 2006 No. 131; dated 8 January 2007 No. 210; dated 27.06.2008 No. 50-IV (the order of enforcement see Article 2); dated 10.12.2008 No. 101-IV (shall be enforced from 01.01.2009); dated 10.07.2009 No. 175-IV (the order of enforcement see Article 2); dated 10.07.2009 No. 177-IV (the order of enforcement see Article 2); dated 07.12.2009 No. 222-IV (the order of enforcement see Article 2); dated 08.12.2009 No. 225-IV (the order of enforcement see Article 2); dated 10.12.2009 No. 228-IV (the order of enforcement see Article 2); dated 14.06.2010 No. 290-IV (the order of enforcement see Article 2); dated 06.10.2010 No. 343-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 23.11.2010 No. 354-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 11.01.2011 No. 385-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 29.11.2011 No. 502-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 28.12.2011 No. 524-IV (shall be enforced upon expiry of ten calendar days after its first official

publication); dated 06.01.2012 No. 529-IV (shall be enforced upon expiry of 21 calendar days after its first official publication).

### **Article 193. Place of Performance of Preliminary Investigation**

1. The preliminary investigation shall be carried out in that district (region) where the crime was committed.
2. For the purposes of quickness and fullness, the preliminary investigation may be performed at the place of discovery of the crime, as well as at the place of location of the suspect, the accused, or the majority of witnesses.
3. If it is necessary to perform investigative acts in a different district (region), the investigator shall have the right to perform them personally or to entrust the performance of those acts to an investigator or a body of inquiry of that district (region). The investigator may entrust the performance of search acts or operational search activities in the body of inquiry at the place of preliminary investigation or at the place of their performance. Instructions of the investigator shall be subject to execution within a period of no longer than ten days.

### **Article 194. Initiation of Performance of Preliminary Investigation**

1. Preliminary investigation shall be carried out only after the resolution on the institution of a criminal case is passed.
2. The investigator shall be obliged immediately to begin the investigation on the case he instituted or on the case that was transferred to him. The investigator shall pass a resolution on the acceptance of the case to be handled by him. If a criminal case is instituted by an investigator and accepted by him for his performance, then a single resolution shall be compiled on the institution of a criminal case and on its acceptance to be handled by him. The copies of the above mentioned resolutions shall be directed by the investigator to the prosecutor not later than twenty four hours.

### **Article 195. Completion of Preliminary Investigation**

A preliminary investigation shall be completed by the compilation of an indictment report or resolution on directing the criminal case to the court for the application of compulsory measures of medical nature, or resolution on termination of the criminal case.

### **Article 196. Period of Preliminary Investigation**

1. The preliminary investigation of criminal cases must be completed within the period of not later than two months from the date of the institution of the criminal case, and in cases provided for by item 2) of Article 190-4, by Article 303-1 of this Code - from the date of compilation of the record of the summary pre-trial procedures.

2. The period of preliminary investigation shall comprise the time from the day of the institution of the case and until the day of directing the case to the prosecutor with an indictment report or resolution on the transfer of the case to the court for consideration of the issue on application of compulsory measures of medical nature or until the day when the resolution on the termination of proceedings on the case is passed.

3. The period of preliminary investigation shall not include the time during which the preliminary investigation was suspended on the grounds provided for by this Code, the time of review of the materials of the criminal case by the accused and his defense lawyer, as well as the time of criminal case, which was requested pursuant to the complaint of the accused, being at the court or prosecutor's office.

4. The period of preliminary investigation established by part one of this Article may be extended pursuant to a motivated resolution of the investigator due to:  
complexity of the case, by the district prosecutor or prosecutor equivalent to him - up to t h r e e m o n t h s ;  
specific complexity of the case - by the prosecutor of the region and the prosecutor equivalent to him and by their deputies - up to six months.

5. Further extension of the period of preliminary investigation shall be allowed only in exceptional cases, with an account of the complexity of the case and it may be carried out by the Prosecutor General of the Republic of Kazakhstan, his deputies, the Chief Military P r o s e c u t o r .

6. The resolution on the extension of the period of preliminary investigation must be presented by the investigator to the prosecutor of the district, the region and the prosecutors equivalent to him not later than five days, while to the Prosecutor General, his deputies, and to the Chief Military Prosecutor - not later than ten days prior to the expiry of the period of i n v e s t i g a t i o n .

7. When a case is returned for the performance of additional investigation, as well as when a suspended or terminated case is resumed, an additional investigation may be carried out within a period of no longer than one month from the moment of receipt of the case to the investigator. Further extension of the period shall be carried out in general terms in accordance with the procedure provided for by this Article.

8. Periods of proceedings on the case, with regard to which the person who committed the act prohibited by the criminal law is not established, shall be restricted by the periods of limitation of holding criminally liable.

**Footnote. Article 196 as amended by the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

## **Article 197. Powers of Prosecutor in Course of Preliminary Investigation**

1. When performing criminal prosecution and supervision over legality when investigating criminal cases, the prosecutor shall:
  - 1) have the right to participate in the inspection of the place of the event, appoint expert examinations, as well as to perform other acts, which are required for resolving the issue on the institution of a criminal case;
  - 2) institute a criminal case or refuse from its institution, issue written instructions on the performance of investigative acts, as well as on the attachment of the materials of operational search activities to the criminal case;
  - 3) transfer the criminal cases instituted by him for the performance of preliminary investigation;
  - 4) in cases provided for by the law, sanction acts of the officials, who perform preliminary investigation;
  - 5) participate in the performance of certain investigative acts;
  - 6) submit proposal to receive approval for holding of the person, who has immunity from criminal prosecution, criminally liable;
  - 7) transfer an accused to the court, directing the criminal case, which has been received from the bodies of preliminary investigation, to the court for examination of the case on its merits;
  - 8) receive criminal cases, documents, materials and other information on the committed crimes, the course of the operational search activities, inquest and investigation of the criminal prosecution bodies for review;
  - 9) review the compliance with the law when accepting, registering, resolving statements and reports on the crimes which are committed or being prepared;
  - 10) abolish unlawful resolutions of the interrogating officer and investigator, as well as of the heads of the body of inquiry and investigation department;
  - 11) in cases of the incompleteness of the investigation and inquest, as well as of establishment of violations of legality which took place in the course of the investigation or inquest, return the criminal case for additional investigation or terminate it in its full volume or in respect of specific persons;
  - 12) withdraw a criminal case from the body of inquiry and transfer it to the body of preliminary investigation; in exceptional cases for the purposes of ensuring the fullness and the objectiveness of the investigation, pursuant to a written petition of the body of preliminary investigation or pursuant to his own initiative, transfer a case from the body of preliminary investigation to another, or assume it to his performance and investigate it irrespective of the jurisdiction established by this Code;
  - 13) consider complaints on the acts and decisions of the interrogating officer and the investigator, the heads of the bodies of inquiry and investigation;
  - 14) dismiss the investigator, the interrogating officer from the further investigation of the criminal case, when discovering a violation of law during the performance of the preliminary

investigation, inquest;  
15) extend periods of preliminary investigation in cases and in accordance with the procedure established by this Code;  
16) review the compliance with the procedure established by legislation, as well as conditions for the detention of persons in respect of whom arrest is selected as a measure of restraint;  
17) exercise other powers provided for by law.

2. The prosecutor's instructions to the investigator, the head of the investigative department, the body of inquiry, the head of the body of inquiry and the interrogating officer, which are issued in accordance with the procedure provided for by this Code, shall be obligatory, but they may be appealed to the upper prosecutor. The appeal of the received instructions to the upper prosecutor shall not suspend their implementation.

**Footnote. Article 197 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2); dated 17.07.2009 No. 187-IV.**

## **Article 198. Performance of Preliminary Investigation by a Group of Investigators**

1. The preliminary investigation of a criminal case in case of its complexity or if its big volume, may be entrusted to a group of investigators (investigation group), which shall be indicated in the resolution on the institution of a criminal case or a separate resolution shall be passed. The decision on this may be adopted by the head of the investigative department. The resolution must list all the investigators, to whom the performance of an investigation is entrusted, in particular the investigator who is the head of the group. A suspect, an accused, a victim, a civil plaintiff, a civil defendant, and their representatives must be familiarized with the resolution on investigation of the case by a group of investigators, and they shall be explained the right to recuse the head of the investigation group, as well as any investigator from the members of the group.

2. The investigative group may comprise of investigators of several bodies that perform a preliminary investigation. The decision to form such a group may be adopted either pursuant to the instructions of the prosecutor or pursuant to the initiative of the heads of the investigating departments of those agencies. A decision shall be finalized by the joint resolution of the heads of the investigating departments, which is passed in compliance with the requirements indicated in part one of this Article.

3. The Prosecutor General of the Republic of Kazakhstan in exceptional cases when establishing the facts of incompleteness and non-objectivity of the investigation, complexity and significance of the case may create a group of investigators from among the investigators of he or several bodies, which carry out preliminary investigation, by appointing a prosecutor to be the head of that group and by finalizing that decision with his resolution.

Footnote. Article 198 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 199. Powers of the Head of Investigation Group**

1. The head of an investigation group shall accept a criminal case to his performance; organize the work of the investigation group, and guide the acts of other investigators.

2. The decisions on combining and separating the cases, terminating a criminal case as a whole or in its part, on suspending or reopening of the proceedings in case, as well as on instituting petitions on the extension of the period of investigation, application of arrest, home arrest as measures of restraint and on their extension shall only be made by the head of the investigating group.

3. The indictment or the resolution on sending a case to the court for the consideration of the issue on application of compulsory measures of medical nature shall be compiled and signed by the head of the investigation group.

4. The head of the investigation group shall have the right to participate in investigative acts performed by other investigators and to personally perform investigative acts.

5. The prosecutor, who is appointed by the head of the investigation group, shall enjoy all the powers of an investigator stipulated by this Code.

Footnote. Article 199 as amended by the Law of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 200. Activities of Bodies of Inquiry on Cases Where Performance of Preliminary Investigation Is Mandatory**

1. When there are elements of a crime, for which the performance of the preliminary investigation is mandatory, the body of inquiry shall have the right to institute a criminal case and to perform urgent investigative acts on establishing and fixing the traces of the crime: inspection, search, seizure, witnessing, detention and interrogation of suspects, interrogation of victims and witnesses. The body of inquiry shall immediately notify the prosecutor of the discovered crime and institution of a criminal case.

2. When performing urgent investigative acts, but not later than five days after the date of institution of a criminal case, the body of inquiry shall be obliged to transfer the case to an investigator, having notified the prosecutor thereof in writing within twenty four hours.

3. After the transfer of a case to the investigator, the body of inquiry may perform the investigative acts and operational search activities in respect of it only pursuant to the instruction of the investigator. In case of the transfer of a case for which it was impossible to

identify the person who committed the crime to an investigator, the body of inquiry shall be obliged to undertake search measures to identify the person who committed the crime, with notification of the investigator on the results.

## **Article 201. General Rules for Performance of Investigative Acts**

1. When involving persons to participate in investigative acts as provided for by the law, the investigator shall ascertain their identity, explain their rights and obligations to them, as well as the procedure of performance of an investigative act.

2. The performance of an investigative act at night time shall not be allowed, except for the cases which may not be postponed.

3. When performing investigative acts, it shall be allowed to apply technical facilities and to use scientifically substantiated methods of identification, fixation and withdrawal of traces of crime or material evidences.

4. When performing investigative acts, it shall not be allowed to apply violence, threats, or any other unlawful measures, as well as to create danger for the life and health of persons who participate in them.

5. The investigator shall have the right to engage an employee of the body of inquiry to investigative acts.

6. When conducting investigative acts which are provided for by parts twelve and thirteen of Article 222, by Articles 230, 233, except for the cases provided for by item 2) of part three of Article 233 of this Code, the involvement of identifying witnesses shall be obligatory.

The remaining investigative acts shall be conducted without the participation of identifying witnesses, but with mandatory use of technical means which fix the process and results.

The procedure of application of technical means which fix the process and results shall be determined by the Prosecutor General of the Republic of Kazakhstan in coordination with the relevant state bodies.

**Footnote. Article 201 as amended by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 202. Resolutions Passed in Course of Preliminary Investigation**

In the course of preliminary investigation when making a procedural decision in accordance with this Code, the investigator shall pass a resolution, which shall indicate the place and the time of its compilation, the surname and the position of the investigator, the essence and the reasons for the decision taken, Articles of this Code on the basis of which the resolution is passed. The resolution shall be signed by the investigator.

## **Article 203. The Record of Investigative Act**

1. The record of investigative act shall be compiled during the performance of investigative act or immediately after its termination.

2. The record may be written by hand, or on a computer. Stenography, filming, audio and video taping may be used in order to provide for the fullness of the record. Stenograph, materials of audio and video taping shall be attached to the case.

3. The following shall be indicated in the record: the place and the date of the performance of the investigative act; the time of its beginning and ending to the exact minute; the position and the surname of the investigator; surname, name, patronymic of each person who participated in the investigative act, and if necessary, his addresses. In the record he shall describe procedural acts in that procedure, in which they took place, circumstances, which are significant in case, discovered during performance of the procedural acts, as well as applications of the persons, who participated in the performance of the investigative act.

4. If during the performance of an investigative act photography, filming, audio and video taping were used, or molds and reprints of traces were made, drawings, schemes, plans were compiled, then in the record he must indicate technical facilities which were used in the performance of the investigative act, the conditions and the procedure of their use, items, which those facilities were used for, as well as the results obtained. Aside from that, in the record he must note, that before the application of scientific and technological facilities, the persons, who participated in the performance of the investigative act, were informed about it.

5. The record shall be presented for review to all the persons who participate in the performance of an investigative act. They shall also be explained the right to make comments which to be entered into the record. All the comments, additions, corrections, which are entered into the record must be pre-conditioned and certified by signatures of those persons.

6. The record shall be signed by the investigator, the interrogated person, the translator, the specialist, the identifying witnesses, and any other persons, who participated in the performance of an investigative act. In case of refusal to sign or when it is impossible to sign the record of the investigative act, the certification of a given fact shall be carried out in accordance with parts eight and ten of Article 126 of this Code.

7. Photographic negatives and prints, films, slides, phonograms, video cassettes, drawings, plans, schemes, molds, and reprints of traces performed in the course of performance of the investigative act shall be attached to the record.

8. If in the course of performing an investigative act pursuant to the results of the specialist's investigation, he compiled an official document, that document shall be attached to the record, of which an appropriate note shall be made in the record.

9. If there are reasons to believe that it is necessary to ensure the safety of a victim, his representative, a witness, and their relatives, the investigator shall have the right not to disclose information on their identity in the record of an investigative act in which the said

persons participate. In this case, the investigator shall be obliged to pass a resolution, in which the reasons for the made decision on keeping in secrecy the information on the identity of persons shall be described, their pseudonyms shall be indicated and a specimen of signature shall be given, which shall be used by him in the records of investigative acts with his participation. The resolution shall be placed in a sealed envelope, which further shall be kept by the body that investigated the criminal case, and with the contents of which only the prosecutor and the court may familiarize, except for the investigator.

**Footnote. Article 203 is amended by the Law of the Republic of Kazakhstan dated March 16, 2001 No. 163.**

#### **Article 204. Proposal on Elimination of Circumstances which facilitated Commission of a Crime and Other Violations of Law**

1. Having established the circumstances, which facilitated the commission of a crime, in the course of pre-investigation check or during proceedings on a criminal case, the criminal prosecution body shall have the right to submit to the relevant state bodies, organizations, or persons who perform managerial functions there, his proposal on the adoption of measures on elimination of those circumstances or other violations of the law.

2. The proposals shall be subject to consideration with obligatory notification on measures adopted within the month.

**Footnote. Article 204 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

#### **Article 205. Impermissibility of Disclosure of Data on Preliminary Investigation and Inquest**

1. The data of preliminary investigation shall not be subject to disclosure. They may be disclosed only with a permit of the investigator, the interrogating officer, the prosecutor in that volume which they recognize possible, unless this contradicts the interests of investigation and violates the rights and legal interests of the other persons.

2. The investigator shall warn the defense lawyer, the witnesses, the victim, the civil plaintiff, the civil defendant or their representatives, the expert, the specialist, the translator, the identifying witnesses, and other persons, who are present in the performance of investigative acts on the impermissibility to disclose the information which is available in case without his permission, of which personal recognizance shall be taken from the said persons with the notification on responsibility.

### **Chapter 25. Bringing a person into proceedings as an accused**

## **Article 206. Bringing a person into proceedings as an accused**

1. If there is sufficient evidence giving grounds for charges of committing a crime, the investigator shall pass a motivated resolution to bring a person into proceedings as an accused

2. The investigator shall notify the accused of the day of the arraignment and at the same time explain to the accused the right to a defense lawyer or to petition to the investigator to ensure participation of a defense lawyer.

3. In cases where, under the rules of this Code, the participation of a defense lawyer at the arraignment is required, the investigator shall take measures to ensure presence of a defense lawyer, provided that the defense lawyer is not invited by the accused or by his/her legal representative or any other individuals on the accused's instruction or with his/her consent.

## **Article 207. Resolution on bringing a person into proceedings as an accused**

1. The following must be indicated in the resolution to bring a person into proceedings as an accused:

1) time and place of its compilation; by whom the resolution is compiled; surname, name and patronymic of the person who is being brought in the proceedings as an accused, date, month, year and place of birth;

2) description of the crime incriminated to the accused with indication of the time, place of its commission and other circumstances subject to averment in accordance with Article 117 of this Code;

3) relevant provision of criminal law (Article, part, item) which prescribes liability for that crime.

2. In case of charges of several crimes, the resolution on bringing a person into proceedings as an accused must indicate precisely which acts are charged to the accused and respective Articles (part, item) of the criminal law in relation to each.

3. The resolution must contain the decision on bringing a person in the proceedings as an accused in the case which is being investigated.

4. A copy of the resolution to declare a person as an accused shall be sent to the prosecutor within twenty-four hours after it has been passed.

## **Article 208. Obligation of the accused to attend**

1. The accused, who is at liberty, shall be summoned to interrogation by a written notice of subpoena. The notice may be also communicated by telephone or telegram.

2. The subpoena must specify who is being summoned as the accused, where and to whom, day and hour of the arrival as well as the consequences of failure to arrive.

3. The subpoena shall be handed to the accused against receipt, and in case of his

temporary absence for the transfer it shall be handed to an adult family member or passed to the housing management organization or administration at the place of residence or to the administration at the place of work, which shall be obliged to pass the subpoena to the accused, who is being summoned for interrogation. The accused may be summoned by the use of other communication facilities either. In cases when the accused is outside the boundaries of the Republic of Kazakhstan and evades appearing at the bodies of investigation, the body of preliminary investigation shall have the right to publish a notice in the Republic's mass media, as well as in the public telecommunication networks, and in case, when his location is known - in mass media at the place of location of the accused.

4. The accused who is at large shall be obliged to arrive upon the summons of the investigator within established period.

5. The following shall be recognized as good reasons for failure of the accused to arrive upon the summons of the investigator:

- 1) illness which deprives the accused of the ability to appear;
- 2) death of immediate relatives;
- 3) natural calamities;
- 4) not receiving the subpoena (notice);

5) other circumstances which deprive the accused of the opportunity to appear within established period;

6. The accused shall be obliged to notify the investigator of the reasons for the failure to be present.

7. In case of absence without good reasons, the accused may be brought in forcibly.

8. The accused in custody shall be summoned through the administration of the place of confinement.

**Footnote. Article 208 is amended by the Law of the Republic of Kazakhstan dated March 16, 2001 No. 163.**

## **Article 209. Arraignment**

1. Arraignment shall be made in the presence of the defense lawyer if the participation of the defense lawyer is obligatory in accordance with the law or if the accused person has petitioned to that effect, and not later than three days from the time of passing the resolution on declaring that person an accused. In case of absence of the accused or his defense lawyer, the charge may be brought upon expiry of three days.

2. In respect of an accused compelled to appear, arraignment shall be made on the day of such compulsion. In that case, the investigator must take measures to ensure participation of the defense lawyer when arraignment is made, provided that defense lawyer's participation is required by the law.

3. Having ascertained the identity of the accused and appointed the defense lawyer, the

investigator shall announce to the accused and the accused's defense lawyer the resolution to declare him/her an accused.

4. The investigator shall be obliged to explain to the accused the essence of the charges against him/her.

5. The performance of the acts indicated in parts three and four of this Article shall be certified by the signatures of the accused, the defense lawyer and the investigator on the resolution to declare him/her an accused, and an indication shall be made of the date and the hour of the arraignment.

6. In case of refusal of the accused to sign, the investigator and the defense lawyer, if he participated in the arraignment, shall certify on the resolution on hold as an accused that the text of the resolution was announced to the accused.

7. The accused shall be given a copy of the resolution on bringing him into proceedings as an accused.

8. If the accused is not on the territory of the Republic of Kazakhstan and evades appearing at the bodies of preliminary investigation, the investigator (and in case the defense lawyer appears before the preliminary investigation body, also the defense lawyer) shall confirm on the resolution on bringing a person into proceedings as an accused that the charges may not be announced to the accused due to the fact of his/her being situated outside the boundaries of the Republic of Kazakhstan and evading appearing at the bodies of preliminary investigation.

If the location of the accused is known to the body of preliminary investigation, a copy of the resolution on bringing him/her in as an accused shall be sent to him/her by means of communication, including by mail. If necessary, the body of preliminary investigation shall have the right to organize publication of the notice on bringing a person into proceedings as an accused in the Republic-wide mass media, in the local mass media at the place of location of the accused and in telecommunication networks available to general public.

**Footnote. Article 209 is amended by the Law of the Republic of Kazakhstan dated March 16, 2001 No. 163.**

## **Article 210. Alteration and Addition of Charges. Termination of Criminal Prosecution with regard to a Charge**

1. If in the course of preliminary investigation the reasons arise for alteration of the brought charge or its addition, the investigator shall be obliged in compliance with the requirements of Article 207 of this Code to compile a new resolution on bringing a person into proceedings as an accused and to bring it to the accused in accordance with the procedure established by Articles 208-209 of this Code.

2. If in the course of the preliminary investigation, the brought charge has not been confirmed in a certain part, the investigator by his resolution shall terminate the criminal

prosecution with regard to that part, of which he shall notify the accused and other participants of the proceedings and hand to them the copies of the made decision.

## **Chapter 26. Interrogation and Confrontation**

### **Article 211. Procedure of Summoning for Interrogation**

1. The witness, the victim, as well as the suspect, who is at liberty, the accused shall be summoned for the interrogation with a subpoena which shall be handed to them against receipt, and in case of their absence - to any one of the adult family members, neighbors, representatives of the local executive body or through the administration of their place of work or study. The interrogated person may be summoned by the use of other communication facilities as well.

2. It shall be indicated in the subpoena, who and in what capacity is being summoned, to whom and at what address, time of appearance at the interrogation (day, hour), as well as the consequence of failure to arrive without good reasons.

3. The summoning of the person, who has not reached the age of majority, shall be carried out through his parents or other legal representatives.

4. A suspect and an accused who are held in custody shall be summoned for interrogation through the administration of the place of detention.

### **Article 212. Place and Time of Interrogation**

1. Interrogation shall be carried out at the place of preliminary investigation. The investigator shall have the right, if he recognizes it to be necessary, to carry out interrogation at the location of the interrogated person.

2. Interrogation shall be carried out in the day time, except for the cases which are urgent.

3. Interrogation may not be carried out continuously for more than four hours. Continuation of interrogation shall be allowed after a break for not less than one hour for taking rest and meal, at that the total length of interrogation during a day must not exceed eight hours. In case of medical indications the length of interrogation shall be established on the basis of a written conclusion of the doctor.

### **Article 213. General Rules for the Performance of Interrogation**

1. Prior to interrogation the investigator must ascertain the identity of the interrogates. If there are doubts whether the interrogate has command of the language in which the proceedings in case are carried out, it shall be clarified what language he wishes to provide the testimony in.

2. The person, who has been summoned for interrogation, shall be informed of what

capacity and under what criminal case he will be interrogated, his rights and obligations shall be explained as provided for by this Code, of which a note shall be made in the record.

3. Interrogation shall begin with the offer to tell about the circumstances of the case, which are known to the interrogate. If the interrogate tells of the circumstances, which obviously do not pertain to the case, he must be notified of that.

4. Upon completion of the free discourse, the interrogate may be asked questions, which are aimed at specifying and completing the evidence. It shall be prohibited to ask leading questions.

5. If the testimonies are connected with digital information or other information which is difficult to bear in mind, the interrogate shall have the right to use documents and records, which pursuant to his petition or with the consent of the interrogated person may be attached to the record.

6. In the course of interrogation the investigator may present to the interrogate the material evidences and documents, and upon completion of the free discourse, to read off the testimonies, which are available in the materials of the criminal case, play sound and video records or materials of filming.

7. Interrogation of a mute or deaf witness, victim, suspect or the accused shall be carried out with participation of a person who understands that individual's signs and can communicate with that individual in a sign language. Participation of that person in the interrogation shall be reflected in the record.

8. If the interrogate has a mental or another serious disease, his interrogation shall be carried out with a permit of the physician and in his presence.

9. In cases when there is a need to specify or complete the testimonies which have been obtained previously, the repeated (additional) interrogations may be carried out with regard to the circumstances of the case under investigation.

## **Article 214. Interrogation of Witness and Victim**

1. The witnesses, the victims who are summoned with regard to the same case shall be interrogated separately from other witnesses and victims. The investigator shall take measures so that the witnesses, the victims who have been summoned on the same case could not communicate to each other prior to the beginning of the interrogation.

2. Before the interrogation the investigator shall clarify the attitude of the witness, the victim to the accused or the suspect, explain to them their procedural rights and obligations, warn them of the criminal liability for refusal to provide testimonies. At the same time, the investigator shall be obliged to explain that the witness, the victim shall have the right to refuse to provide testimonies which accuse him, his spouse, immediate relatives, while a priest - against those who confided to him (them) during a confession. A witness, a victim who has not used this right, shall be warned of the criminal liability for giving willfully false

t e s t i m o n i e s .

3. In other respects, interrogation of the witness and the victim shall be carried out in accordance with the rules of Article 213 of this Code.

### **Article 215. Special Considerations in Interrogating Juvenile Witnesses or Victims**

1. A teacher shall be summoned for the participation in the interrogation of a witness or a victim under the age of fourteen years, and at the discretion of the investigator, also for participation in the interrogation of a witness or a victim aged from fourteen to eighteen years . When a juvenile witness or victim is interrogated, his legal representatives shall have the r i g h t t o b e p r e s e n t .

2. Witnesses and victims under the age of sixteen years shall not be warned of the liability for refusal to provide testimonials and for giving deliberately false testimonies. When the procedural rights and obligations are explained to such witnesses and victims, it shall be pointed out to them that it is necessary to tell the truth only. The right to refuse to provide testimonies which accuse himself or his immediate relatives shall be explained to a juvenile w i t n e s s a n d v i c t i m .

3. The right to make comments which are subject to be entered into the record, on violation of rights and legal interests of the interrogates, as well as to ask questions to the interrogate shall be explained to the persons indicated in part one of this Article, who are present at the interrogation. The investigator shall have the right to except a question, but he must enter it into the record and to indicate the reason for the rejection.

### **Article 216. Interrogation of a Suspect**

1. Interrogation of a suspect shall be carried out within twenty-four hours from the moment of his detention in accordance with the procedure of Article 134 of this Code or from the announcement to him of the resolution on application of a measure of restraint.

2. If a suspect was detained or imprisoned, then he shall have the right to give his testimonies with the participation of the defense lawyer. If it is impossible to provide for the participation of the defense lawyer immediately, the investigator shall be obliged to provide for his participation not later than within twenty-four hours after the detention of the suspect o r h i s i m p r i s o n m e n t .

3. Prior to the beginning of the interrogation the investigator shall communicate to the suspect the essence of suspicion, as well as explain to him the rights, including the right to r e f u s e t o p r o v i d e t e s t i m o n i e s .

4. Interrogation shall begin with the suggestion to the suspect to provide testimonies concerning suspicion and all other circumstances, which in his opinion, may be important for t h e c a s e .

4-1. Participation of the defense lawyer shall be obligatory in cases provided for by

Article 71 of this Code, with account to the provisions of part two of Article 73 of this Code.

5. In other respects, the interrogation of a suspect shall be carried out in accordance with the rules specified by this Code for interrogation of the accused.

**Footnote. Article 216 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 217. Interrogation of an accused**

1. Interrogation of an accused must be carried out by the investigator not later than twenty four hours after the arraignment, and in the event that the accused evades from attendance or his search is announced - immediately after his bringing or detention.

2. Before the beginning of interrogation, the investigator shall explain to the accused his right to refuse from providing testimonies and shall inform that everything what the accused says may be used against him. In case of refusal of the accused to provide testimonies, an appropriate note shall be made in the record of his interrogation.

3. The accused, who have been summoned under the same case, shall be interrogated separately; in this case the investigator shall take measures to prevent them from communicating with each other.

4. The participation of the defense lawyer shall be obligatory in cases provided for by Article 71 of this Code with an account of the provisions of part two of Article 73 of this Code.

5. At the beginning of the interrogation the investigator, having explained to the accused the essence of the charge brought against him, shall ascertain whether he confesses his guilt fully or partially, or he denies his guilt in the charge brought against him. If the accused does not give the answer, it shall be deemed that he pleaded not guilty.

6. Having ascertained the attitude of the accused towards the charges brought against him, the investigator shall offer him to provide testimonies with regard to the charges brought and other circumstances which may be significant to the case.

7. In other respects, the interrogation of an accused shall be carried out in accordance with the rules of Article 213 of this Code.

**Footnote. Article 217 as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

## **Article 218. Record of Interrogation**

1. The course and results of interrogation shall be reflected in the record, which shall be compiled in compliance with the requirements of Article 203 of this Code. Testimonies shall be recorded from the first person and as literally as possible. Questions and answers to them shall be recorded in the same sequence that took place during the interrogation. The record must also reflect those questions of the persons participating in the interrogation, which were

refused by the investigator or which the interrogate refused to answer, with indication of the motives of the accusal or refusal.

2. The record of the first interrogation shall contain data on the identity of the interrogate, in particular: surname, name, patronymic, time and place of birth, citizenship, ethnic origin, education; marital status, place of work, of occupation or position, place of residence, as well as other information, which may seem necessary under the circumstances of the case. In the record of the suspect, the accused, it shall be indicated whether he has a criminal record. In the records of subsequent interrogations, the data on the identity of the interrogators, unless they change, may be limited to the indication of his surname, name and patronymic.

3. Presentation of material evidences and documents, announcement of records and playback of audio and video records, filming of investigative acts, as well as the testimonies provided by the interrogator in that connection, shall be subject to obligatory reflection in the record.

4. The interrogate, in the course of an investigative act, may prepare charts, drawings, pictures, diagrams, which shall be attached to the record, of which a note shall be made in it.

5. After the free discourse the interrogate shall have the right to write down his testimonies with his own hand. After the holographic presentation of the testimonies and their signing by the interrogate, the investigator may set questions, which add or specify something

6. Upon completion of the interrogation, the record shall be presented for perusal to the interrogate, or it shall be read out at his request. The demands of the interrogate to introduce additions or amendments to the record shall be subject to obligatory implementation.

7. The fact of review of the testimonies and the accuracy of their record shall be certified by the interrogate with his signature at the end of the record. The interrogate shall also sign each page of the record. In case of refusal of the interrogate to sign the record, the investigator shall ascertain the reasons for the refusal and enter them into the record and certify the record with his signature.

8. If the interrogate, due to physical handicap or other reasons, is deprived of the opportunity to sign the record personally, then at his request the record shall be signed by the defense lawyer, the representative or another person to whom the interrogate trusts, of which a note shall be made in the record.

9. If a translator participated in an interrogation, then he shall also sign each page and the record as a whole. He shall also sign the translation of holographic testimonies of the interrogate.

10. All the persons, who participated in the interrogation, shall be indicated in the record. Each of them must sign the record.

## **Article 219. The Use of Sound and Video Record during Interrogation**

1. Pursuant to the decision of the investigator, as well as at the request of the accused, the suspect, the witness or the victim, audio and video recording may be used during i n t e r r o g a t i o n .

2. The investigator shall take the decision on audio and video recording and he shall inform the interrogate about it prior to the beginning of the interrogation.

3. Audio and video records must reflect the entire course of the interrogation and contain the entire testimony of the interrogated persons. The audio and video record of a part of interrogation, as well as repetition especially for the record of the testimonials provided in the course of the same interrogation shall not be allowed.

4. Upon completion of the interrogation, the audio and video recordings shall be played to the interrogates in full. Additions to audio and video record of testimonies made by the interrogate shall be also entered into the audio and video record. Audio and video recording shall be ended with the statement of the interrogate which confirms its accuracy.

5. The testimonies obtained in the course of interrogation with the use of audio and video record shall be entered into the record of interrogation. The record of interrogation must also contain the following: note on the use of the audio and video record and notification of the interrogate about it; information on technical facilities, conditions of the audio and video recording and facts of its suspension, reason and length of the suspension; a statement of the interrogate on the use of the audio and video record; note on playback of the audio and video record to the interrogate; confirmation of the accuracy of the record and audio and video record by the interrogate and the investigator. The audio and the video record shall be kept with the case, and upon completion of the preliminary investigation they shall be sealed.

6. If the audio and video records of the testimonies are played during performance of another investigative act, the investigator shall be obliged to indicate that in the record of the relevant investigative act.

## **Article 220. The Confrontation**

1. The investigator shall carry out confrontation between two previously interrogated persons, if there are significant contradictions in their testimonies, in order to identify the reasons for those contradictions.

2. The defense lawyer, the teacher, the doctor, the translator and the legal representative of the interrogate may be present at the confrontation in cases specified by this Code.

3. At the beginning of the confrontation it shall be established whether the persons, among whom the confrontation is carried out, know each other, and in which relations they are between each other. The witness and the victim shall be warned of the criminal liability for refusal to provide testimonies, evasion from providing testimonies and provision of willfully false testimonies, as well as the right not to provide testimony against themselves, their spouses and their immediate relatives, and in case of priests - against those who confided to

them during a confession, shall be explained to them.

4. The persons invited to confrontation shall be given in turn the opportunity to provide testimonials on those circumstances of the case, for the clarification of which the confrontation is carried out. After that the investigator shall set questions. The persons, who have been invited to the confrontation with the investigator's permission, may set questions to each other.

5. When conducting confrontation the investigator shall have the right to present the material evidences and documents attached to the case.

6. The announcement of testimonies, which were given by the participants of the confrontation at previous interrogations, shall be allowed after the testimonies are given by them at the confrontation and they are entered into the record.

7. The course and results of confrontation shall be recorded in the record, which shall be compiled in accordance with the rules specified by Article 203 of this Code.

8. The investigator shall introduce the participants of the confrontation to the contents of the record. The persons, who have been interrogated, shall have the right to require the introduction of amendments and additions to the record. The record of confrontation shall be signed by the investigator and the interrogated persons. Each interrogated person shall sign his testimonies and each page of the record.

## **Chapter 27. Inspection, Exhumation and Examination**

### **Article 221. Inspection**

1. For the purpose of establishing traces of a crime, other material objects, as well as establishing the circumstances, which are important for the case, the investigator, and in his absence, the interrogating officer or the senior of the workers of the body of inquiry, that received the application or message on a crime, shall carry out an inspection of the area, premises, items, documents, live persons, corpses, animals. The instructions of the person, who carries out the inspection, shall be obligatory for all the participants of that investigative action.

2. In cases, when a decision to institute a criminal case is impossible without performing inspection, it may be carried out prior to the institution of the criminal case.

### **Article 222. General Rules for the Performance of Inspection**

1. As a rule, inspection shall be carried out immediately, when there is a need in it.

2. The investigator, having received a statement or report on a committed crime, the investigation of which requires inspection, shall be obliged immediately to arrive at the scene of the event and to carry out inspections.

3. If it is impossible for the investigator to arrive on time, the inspection must be carried out by the interrogating officer or the most senior of the workers of the body of inquiry that received the application or the report.

4. Workers of the body of inquiry shall be obliged to render assistance when performing inspection, and pursuant to the instructions of the investigator, to carry out appropriate measures on protection of the scene of action, identification of eyewitnesses, detection and detention of the persons who committed the crime, evacuation of the victims, transportation of the deceased, suppression of the on-going and prevention of the reported crimes and liquidation of other consequences of the event.

5. Inspection shall be carried out with the use of technical facilities of fixation of its course and results, while in case provided for by parts twelve and thirteen of this Article - with the participation of identifying witnesses.

6. If necessary, inspection shall be carried out with the participation of the suspect, the accused, the victim, the witness, as well as by the specialist.

7. Inspection of the detected traces and other material objects shall be carried out at the place of performance of an investigative act. If a long time is required for the inspection or inspection at the place of detection is considerably impeded, the objects must be seized, packed, sealed and delivered without any damage to a different place, which is convenient for the inspection.

8. All that was discovered and seized in the course of the inspection must be presented to identify witnesses, other participants of the inspection, of which a note shall be made in the record.

9. Only those objects, which may have relevance to the case, shall be subject to seizure. The seized objects shall be packed, sealed and certified by the signatures of the investigator and identifying witnesses when they are involved.

10. The persons, who participate in inspections, shall have the right to draw attention of the investigator to anything, which in their opinion, may assist the establishment of the circumstances of the case.

11. In appropriate cases, during the inspection, measurements shall be made; plans and schemes of the inspected objects shall be compiled, as well as photographing and others of registration shall be performed, of which a note shall be made in the record, to which the said materials shall be attached.

12. Inspection of housing shall be carried out only with the consent of the adult persons, who reside in it, or with the sanction of the prosecutor. If the persons, who reside in it, are juveniles or deliberately suffer from mental or other serious diseases or object to the inspection, the investigator shall pass a resolution on compulsory inspection, which must be sanctioned by the prosecutor. If the prosecutor refuses to give sanction, the inspection shall not be carried out.

13. If housing is the scene of action and its inspection is urgent, then the inspection of

such housing may be carried out pursuant to the resolution of the investigator, but with subsequent notification of the prosecutor of the performed inspection within a day period for reviewing its legitimacy. Upon receipt of the said notice, the prosecutor shall examine the legitimacy of the performed inspection and he shall pass a resolution on its legitimacy or illegitimacy. If the decision on the illegitimacy of the performed inspection is taken, that act may not be taken as an evidence for the case.

14. When housing is inspected, the presence of an adult person residing in it must be ensured. In the event that his presence is impossible, representatives of the local executive body shall be invited.

15. Inspection of premises and in the territory of organizations shall be carried out in the presence of representatives of their administration.

16. Inspection in the premises held by diplomatic representations, as well as in the premises, in which members of diplomatic representatives and their family members reside may be carried out only pursuant to the request or with the consent of the head of the diplomatic representation or the person, who substitutes him, and in his presence. The consent of the diplomatic representative shall be asked through the Ministry of Foreign Affairs of the Republic of Kazakhstan. When performing an inspection, the presence of the prosecutor and representatives of the Ministry of Foreign Affairs of the Republic of Kazakhstan shall be obligatory.

17. If due to certain reasons in the course of the first inspection details of the object were not examined, their additional inspection may be carried out.

18. The repeated inspection of the same object may be carried out:

- 1) when the conditions of the first inspection were unfavorable for the efficient perception of the object;
- 2) when after the initial inspection, new evidence may be obtained;
- 3) if the initial inspection has been carried out poorly.

**Footnote. Article 222 as amended by the Laws of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 223. Inspection and Storage of Material Evidences**

1. The items, which are found in the course of an inspection of the scene of action, area or premises seized in the course of search, seizure, investigative experiment or other investigative acts or those, which are presented by organizations and citizens pursuant to the requirement of the investigator, shall be subject to inspection in accordance with the rules of Article 222 of this Code. After the inspection the said items may be recognized as material evidences in accordance with the rules of Article 121 of this Code.

2. The investigator shall pass a resolution on recognition of an item as a material evidence and its attachment to the case. In the same resolution the issue of leaving material evidence attached to the case or its return to the owner for custody or to other persons or organizations must be resolved.

3. If items due to their large dimensions or other reasons may not be kept with the criminal case, they must be recorded with the use of photography or videotaping facilities, where it is possible they must be sealed and kept in the place specified by the investigator. A sample of material evidence may be attached to the case. The case must have an appropriate certificate of location of the material evidence.

Monetary funds in national and foreign currency, which are withdrawn by the bodies of investigation and inquiry, shall be paid in the deposit accounts of the body conducting the criminal procedure.

4. Material evidences which are rapidly perishable shall be surrendered to the appropriate organizations, which are specified by the local executive body, for the use in accordance with their designation or for the sale with deposition of the received sums to the deposit of the body that conducts the criminal procedure, if they may not be returned to the owner. The material evidences, the storage of which requires substantial material costs, if they may not be returned to the owner, with his consent shall be sold in accordance with the procedure established by legislation, with deposition of the received sums to the deposit of the body conducting the criminal procedure. If there are reasons, the used or sold material evidences shall be compensated to the owner with items of the same and quality or their price shall be repaid to the latter at the expense of the state budget.

Narcotic drugs, psychotropic substances in the amount that exceeds the established limit for referring them to an especially large scale with regard to each item (type), after the performance of forensic examination on the basis of the resolution of the criminal prosecution body with the consent of the prosecutor, must be destroyed in accordance with the order established by the Government, except for the samples recognized as material evidences, which are attached to the case.

To attach them to the criminal case, the body of inquiry, the investigator, on the basis of the relevant resolution agreed with the prosecutor, with the obligatory participation of a specialist and the use of video record, must take samples from the total mass of the seized narcotic drugs, psychotropic substances in the amount equal to the volume of especially large scale established by law for a relevant narcotic drug and psychotropic substance with regard to each item (type).

5. When a case is transferred by the body of inquiry to the investigator or from the body of inquiry to another body of inquiry, or from the investigator to another, as well as when sending a case to the prosecutor and to the court, the material evidences shall be sent in accordance with the established procedure, except for the cases specified by parts three and four of this Article. Material evidences shall be passed in a packed and sealed condition with

attachment to them of the list containing description of the features individualizing them.

6. When a criminal case is terminated at the stage of investigation, the issue of material evidences shall be resolved in accordance with the rules of part three of Article 121 of this Code.

Footnote. Article 223 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 11.07.2001 No. 238; dated 08.01.2007 No. 210; dated 27.06.2008 No. 50-IV (the order of enforcement see Article 2); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 224. Inspection of a Human Corpse**

1. External inspection of a human corpse at the place of its discovery shall be carried out in compliance with the general rules for inspection and with obligatory participation of the physician specializing in the area of forensic medicine, and if his participation is impossible - another physician. Other specialists may be engaged for the inspection of the corpse as well.

2. In case of additional or repeated inspection of a corpse, the participation of a physician specializing in the area of forensic medicine shall be obligatory.

3. An unidentified human corpse shall be subject to obligatory photography and fingerprinting.

4. External inspection of a human corpse shall neither substitute nor exclude subsequent performance of forensic medical examination.

5. Statements of citizens on identification of a diseased, which have been made in the course of inspection of a human corpse, shall be entered into the record of that investigative act with subsequent interrogation of the applicant as a witness, which does not exclude further presentation of the corpse for identification to other persons.

## **Article 225. Exhumation**

1. Digging out of a human corpse from the place of its burial (exhumation) shall be carried out if is required:

- 1) to perform inspection of the corpse, including additional or repeated inspection;
- 2) to present for identification;
- 3) to perform expert examination.

2. Exhumation shall be carried out on the basis of a motivated resolution of the investigator sanctioned by the prosecutor.

3. A resolution on exhumation shall be obligatory for the administration of the place of burial and relatives of the deceased.

4. Exhumation shall be carried out with obligatory participation of a specialist in the field

o f f o r e n s i c m e d i c i n e .

5. Identification and inspection of a corpse, obtaining of samples may be carried out at the place of exhumation. In that case the data received from the performance of investigative acts and their sequence shall be entered into the general report on exhumation of the corpse.

6. If the investigative acts indicated in part five of this Article were carried out in a different place, a separate record shall be compiled to that effect.

7. After exhumation, the corpse may be delivered to a medical organization for the performance of other examinations.

8. Burial of the corpse after its exhumation and subsequent procedural acts shall be carried out by the administration of the place of burial in the presence of the person or the body on whose resolution the human corpse was exhumed.

9. The bodies of inquiry shall be obliged to render assistance to the investigator in the performance of exhumation.

### **Article 226. Examination**

1. Examination of a suspect, an accused, a victim and a witness, as well as before the institution of a criminal case - of the applicant and the person, at whom the applicant points as at the person, who committed the crime, may be carried out in order to discover special details, traces of crime, and signs of causing harm to health; to establish the condition of intoxication or other properties and indicators, which are material for the case, if no expert examination is required.

2. The investigator shall pass a resolution on the performance of examination, which is obligatory for the suspect, the accused. Compulsory examination of the victim, the witness, the informer, as well as of the person, at whom the applicant points as at the person who committed the crime, shall be carried out with the sanction of the prosecutor.

3. Examination shall be carried out by the investigator with the participation of a physician or another specialist.

4. The investigator shall not be present during the examination of a person of the opposite gender, if the examination is accompanied with denudation of the human body. In this case the examination shall be carried out by a specialist in the field of forensic medicine or a physician.

**Footnote.** Article 226 as amended by the Laws of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 227. Protocol of Inspection, Examination and Exhumation**

1. The investigator shall compile a protocol on the performance of inspection, examination, exhumation, in compliance with the requirements of Article 203 of this Code.

2. The protocol shall describe all the acts of the investigator, as well as all that was discovered during inspection, examination, exhumation in that sequence, in which the said investigative acts were carried out, and in that form, in which the discovered items were observed at the time of inspection, examination, exhumation. The protocol shall list and describe all the items seized in the course of inspection, examination, exhumation.

3. Apart from it, the protocol must also specify: at what time, under what weather and illumination the inspection, examination, exhumation was carried out; what technical facilities were used and what results were obtained; who was engaged in the performance of the said investigative acts and in what that participation resulted in; what items were sealed and with what seal; where the corpse or other items, which are material for the case, were directed after the inspection.

## **Chapter 28. Identification**

### **Article 228. Submission for Identification**

1. For the purpose of establishing identity or difference with the previously seen person or object, the investigator may submit a person or an object for identification to a witness, a victim, a suspect or an accused. A human corpse may also be submitted for identification.

2. The identifying persons shall be preliminarily interrogated of the circumstances, under which they observed a relevant person or item, of the identifying details and peculiarities, by which they may perform identification.

### **Article 229. Procedure of Submission for Identification**

1. A person, who is subject to identification, shall be presented to an identifying person together with other persons of the same gender, who have no drastic differences in the appearance and clothes. The total number of the persons presented for identification must be not less than three. This rule shall not apply to identification of a human corpse.

2. Participation in an investigative act of other persons, among which the person to be identified is present, is possible only in case of their voluntary consent and on the condition that the identifying person is not acquainted to them.

3. As a rule, a human corpse shall be presented in the singular number. With regard to cases of accidents and other cases with large number of victims, the submission of a corpse for identification may be carried out among the total number of the deceased. The mortuary make-up (toilette) of a human corpse shall be carried out by a specialist, in appropriate cases, pursuant to the instruction of the investigator, prior to the presentation of the corpse to the

identifying person. The instruction of the investigator to ensure the safety of the corpse in the place of its location shall be obligatory for implementation during the period of time which is needed for the conduct of presentation for identification.

4. If a witness or a victim is an identifying person, he prior to the identification shall be warned of the criminal liability for refusal to give testimonies, for giving of willfully false testimonies, he shall be explained the right not to testify against himself, his spouse, immediate relatives, while the priest also shall be explained the right not to testify against those, who confided in him during confession.

5. Prior to the beginning the identification, the investigator shall offer the person to be identified any place between other persons, which shall be noted in the record.

6. If it is impossible to present a person, the identification may be carried out on the basis of his photograph to be presented together with photographs of other persons, as similar as possible in their appearance with the person to be identified, in the amount of not less than three, and also on the basis of audio and video records.

7. An object shall be presented in a group of similar objects in the amount of not less than three. When identifying an object, for which it is impossible or difficult to find similar objects, the identification shall be carried out on the basis of the single presented piece.

8. The identifying person shall be offered to indicate the person or the object on which he testified. Leading questions shall not be allowed.

9. If the identifying person pointed at one of the persons or objects presented to him, he shall be offered to explain by what features or peculiarities he identified the given person or object.

10. Submission for identification shall be carried out with the use of technical facilities of fixation of the process and results.

11. For the purposes of ensuring security of the identifying person, as well as in case of identification on the peculiarities of the voice, speech, walk, the presentation of the person for identification may be carried out under the circumstances, which exclude visual observation of the identifying person by the person, who is being identified. The identifying person must be provided for the opportunity of sufficient visual observation of the persons presented for identification.

12. A repeated identification of a person by the same individual based on the same features may not be carried out.

13. A record on submission for identification shall be compiled in compliance with the requirements of Article 203 of this Code. In the record, he shall specify the conditions, course, and results of identification, and describe explanations of the identifying person as literally as possible. If the submission of a person for identification was carried out under conditions, which exclude visual observation of the identifying person by the person, who was being identified, this shall be also noted in the record.

**Footnote. Article 229 as amended by the Law of the Republic of Kazakhstan dated**

18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Chapter 29. Search and Seizure**

### **Article 230. Search**

1. Search shall be carried out for the purpose of finding and confiscating items or documents, which are material for the case.

2. The existence of sufficient data to believe that the said items or documents may be located in certain premises or another place or with a specific person shall be the basis for the performance of search.

3. Search may be carried out also for finding wanted persons or human corpses.

### **Article 231. Seizure**

1. Seizure shall be carried out for the purpose of confiscating certain items and documents, which are material for the case, and if it is known precisely, where and who keeps them.

2. In cases, when it is impossible to adopt the decision on institution of a criminal case without conducting a seizure, it may be carried out before the institution of a criminal case in compliance with the requirements of Article 232 of this Code.

**Footnote. Article 231 as amended by the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

### **Article 232. Procedure for the Performance of Search and Seizure**

1. Search and seizure shall be carried out by the investigator on the basis of a motivated resolution. The resolution on performance of search, as well as on seizure of documents which contain state or other secrets protected by law, must be sanctioned by the prosecutor or his deputy.

2. Seizure in housing against the will of the persons, who reside in it, shall be carried out in accordance with the rules of the parts twelve and thirteen of Article 222 of this Code.

3. In exceptional cases when there is a real risk that the wanted person and the object to be seized may be lost, damaged or used for criminal purposes because of the delay in its finding, or the wanted person may escape, the search may be carried out without sanctions of the prosecutor, but with subsequent direction of the notice of the performed search to him within twenty-four hours. Upon the receipt of the said notice, the prosecutor shall examine the legitimacy of the performed search and pass a resolution on its legitimacy or illegitimacy. If the decision on illegitimacy of the performed search is taken, that act may not be admitted as evidence in case.

4. Search shall be carried out with the participation of identifying witnesses, and in appropriate cases - with the participation of a specialist and a translator.

Seizure shall be carried out with the obligatory use of technical facilities of fixation of the process and results; if necessary, a specialist and a translator may be involved.

5. Search and seizure in housing, premises of organizations shall be carried out in the presence of the persons indicated in parts fourteen and fifteen of Article 222 of this Code.

6. Search and seizure in the premises occupied by diplomatic representations, as well as in the premises where members of diplomatic representations and their families reside, shall be carried out in compliance with the requirements established by part sixteen of Article 222 of this Code.

7. Prior to the beginning of search or seizure, the investigator shall be obliged to present the resolution on their performance.

8. When proceeding to search, the investigator shall propose to hand out voluntarily the items and documents subjected to seizure, which may be material for the case. If they are handed out voluntarily and there are no grounds to be afraid that the items and documents, which are subject to seizure, may be hidden, the investigator shall have the right not to carry out further search.

9. Closed premises and storages may be opened during performance of search, if the owner refuses to open them voluntarily. In this case it shall not be allowed to cause unnecessary damage to latches of doors and other objects.

10. When performing seizure, the investigator shall offer to hand out items and documents subjected to withdrawal, and in case of refusal of it, he shall carry out the seizure by force.

11. The investigator shall be obliged to take measures on non-disclosure of the circumstances of the private life of the person, who occupies the instant premises, or of the other persons, who were discovered during the search and seizure.

12. The investigator shall have the right to prohibit the persons, who are in the premises or in the place where the search or seizure are carried out, and to the persons, who are coming to those premises or that place, from leaving it, as well as to prohibit them from communicating to each other or other persons until the end of the search or seizure.

13. When performing search and seizure, the investigator must keep to seizure of items and documents that may have relevance to the case. The items and the documents, which are prohibited for circulation, shall be subject to seizure irrespectively of their relevance to the case.

14. During a search, the items and the documents to be seized shall be presented to the identifying witnesses and other persons, who are present; they shall be packed, sealed at the place of the search or seizure, and they shall be certified with the signatures of identifying witnesses and other persons, who are present in the course of that.

14-1. During a seizure, the items and documents to be seized shall be presented to the persons, who are present; they shall be packed, sealed at the place of seizure and they shall be

certified with the signatures of the persons, who are present in the course of that.

15. In appropriate cases, photographing, filming and video recording shall be carried out when performing a search.

**Footnote. Article 232 as amended by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 233. Personal Search**

1. When there are reasons specified by Article 230 and in compliance with the requirements of Article 232 of this Code, the investigator shall have the right to carry out personal search in order to find and seize the items and documents, which are on the body of the person under search, in his clothes and in items which are on him.

2. The personal search shall be carried out only by the person, who is of the same gender with the person so searched and with the participation of identifying witnesses and specialists of the same gender.

3. Personal search may be carried out without passing a special resolution and without sanctions of the prosecutor, if:

1) there are enough reasons to believe that the person, who is in the premises or in another place where the search is being carried out, hides with him the documents or items which may have significance for the case;

2) it is carried out during the detention of a person or when he is taken into custody. In that case, the personal search may be carried out without presence of identifying witnesses.

### **Article 234. Record of Search or Seizure**

1. The person, who performs search or seizure, shall compile the record in compliance with the requirements provided for by Article 203 of this Code.

2. It must be specified in the record in what place and under what circumstances the items or documents were found, whether they were handed out voluntarily or seized by force. All the items to be seized must be listed in the record with precise indication of quantity, measure, weight, individual features and where possible their value.

3. If during the performance of search or seizure attempts were made to destroy or hide the items or documents to be seized, this must be reflected in the record with indication of the taken measures.

4. The copy of the record of search or seizure shall be handed against receipt to the person, in respect of whom they were carried out, or to an adult member of his family, and in case of their absence - to a representative of the housing management organization or local executive body. If the search or seizure were carried out in an organization, then the copy of the record shall be handed to its representatives against receipt.

## **Chapter 30. Imposition of Arrest on Postal Telegraph Dispatches. Interception of Messages. Eavesdropping and Recording of Conversations**

Footnote. The title of the Chapter 30 is in the wording of the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 235. Imposition of Arrest on Postal Telegraph Dispatches, Its Inspection and Seizure**

1. If there are sufficient reasons to believe that letters, telegrams, radiograms, wrappers, parcels and other postal telegraph dispatches may contain information, documents and items, which are material for the case, arrest may be imposed on them.

2. The investigator shall pass a resolution on arrest of postal telegraph dispatches, which shall be sanctioned by the prosecutor. The following shall be indicated in the resolution: the name of the institution of communications, which is entrusted with the duty to detain postal telegraph dispatches, surname, name, patronymic of the persons, whose postal telegraph dispatches are subject to detention, their address, of postal telegraph dispatches, which are subject to arrest, the period, for which it is imposed.

3. The resolution on imposition of arrest on postal telegraph correspondence shall be directed to the manager of the relevant institution of communications, who shall be obliged to detain the postal telegraph dispatches and immediately notify the investigator of that.

4. Inspection, seizure and copying of the detained postal telegraph dispatches shall be carried out by the investigator in the institution of communications with the use of technical facilities of fixation of the process and results. In appropriate cases for the participation in the performance of inspection and seizure of postal telegraph dispatches, the investigator shall have the right to summon an appropriate specialist, as well as a translator. In each case of inspection of postal telegraph dispatches, a record shall be compiled, in which it shall be indicated by whom and what postal telegraph dispatches were subjected to inspection, copied and sent to the addressee or detained for a period defined by the investigator.

5. The arrest of postal telegraph dispatches shall be abolished by the investigator or by the prosecutor when that measure is no longer necessary, but in any case not later than completion of the investigation.

Footnote. Article 235 as amended by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 236. Interception of Messages**

1. Interception of messages, which are communicated through technical, in particular computer channels of communications and collection of information pertaining to the criminal case under investigation, from computer systems, shall be carried out on the basis of the resolution of the investigator sanctioned by the prosecutor.

2. A resolution of the investigator sanctioned by the prosecutor shall be directed for the implementation to the body, which performs operational search activities.

3. The messages and computer information received as a result of interception shall be fixed by the specialist on an appropriate carrier and it shall be passed to the investigator.

## **Article 237. Eavesdropping and Recording of Conversations**

**Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 07.12.2009 No. 221-IV (the order of enforcement see Article 2).**

1. With regard to criminal cases on crimes of average gravity specified in Articles 120 (part one); 122, 128 (part one); 131 (part one), 143 (part three); 157 (parts he and two); 164 (part one); 170 (part one); 175 (parts he and two); 177 (parts he and two); 178 (part one); 181 (part one); 185 (parts he and two); 192 (part one); 193 (parts he and two); 209 (parts he and two); 233-1 (part one); 233-3 (part one); 241 (part three); 242; 251 (part one); 252 (part one); 270 (part one); 307 (part two); 308 (parts he and two); 311 (part one); 312 (parts he and two); 339 (part three); 346 (part two); 347-1 (part one); 358 (part one); 361 (part two) of the Criminal Code of the Republic of Kazakhstan, as well as on grave and gravest crimes, the secret eavesdropping and recording of conversations, which are carried out by telephone and by other intercommunication systems of the suspect, the accused or a third person, if there is information that the suspect, the accused uses a phone or other communication device of a third person, or if there is evidence of that a third person obtains information for the suspect, the accused or from the suspect, the accused in order to transfer it to other persons, shall be carried out on the basis of the resolution of the investigator (the interrogating officer) sanctioned by the prosecutor, if there are sufficient reasons to believe that the information which is material for the case will be received in consequence of eavesdropping.

Secret eavesdropping and recording of conversations with the use of video and audio equipment or other special technical facilities with regard to the said list of crimes may be carried out only with the sanction of the prosecutor in respect of the suspect, the accused.

2. If there is a threat of commission of violation, extortion and other criminal acts in respect of a victim, a witness or their family members, the secret eavesdropping and recording of conversations with the use of video, audio equipment or other special technical facilities as well as eavesdropping and recording of the conversations conducted through their phones and other communication devices may be carried out with their approval pursuant to the resolution of the investigator sanctioned by the prosecutor.

3. Having recognized the necessity of eavesdropping of conversations, talks and their

recording, the investigator shall pass a motivated resolution, in which the following shall be indicated: the criminal case and the reasons, for which a given investigative act must be carried out, as well as surname, name, patronymic of the persons, whose conversations are subject to eavesdropping and recording and for what time; the body, which is entrusted with the technical performance of eavesdropping and recording of conversations, talks. The said resolution shall be presented to the prosecutor, and in the event that he gives a sanction, it shall be passed by the investigator to the relevant body for the implementation.

4. In urgent cases, the eavesdropping and recording of conversations, talks shall be carried out pursuant to the resolution of the investigator without sanction of the prosecutor with subsequent sending of the report on eavesdropping, recording of conversations, talks to him within twenty-four hours. Upon the receipt of the said notice, the prosecutor shall examine the legality of that investigative act and pass a resolution on its legality or unlawfully. If the decision on illegitimacy of the performed eavesdropping, recording of conversations, talks is taken, that act may not be admitted as evidence in case.

5. Eavesdropping and recording of conversations, talks may be established for a period of no longer than six months. They shall be abolished by the resolution of the investigator, when those measures are no longer necessary, but in any case not later than upon the completion of the investigation.

6. The investigator during the entire period established by him in the resolution shall have the right to request an audio track from the body, which performs technical eavesdropping, for its inspection and hearing. The audio track shall be passed to the investigator in a sealed form with a covering letter, which must specify the reasons for eavesdropping, the time of beginning and ending of the record of the conversations, talks, the needed technical parameters of the used facilities and quality of the record.

7. Inspection and hearing of an audio track shall be carried out by the investigator with the participation of a specialist if it is necessary, of which a record shall be compiled, in which the part of the audio track of conversations, talks pertaining to the case must be played back literally and the characteristics of the quality of sounding of the speakers' speech shall be given. The audio track shall be attached to the record, in this respect the part of it, which has no relevance to the case, shall be destroyed after the entry of the sentence into legal force or termination of the criminal case.

**Footnote.** Article 237 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 17.07.2009 No. 187-IV; dated 07.12.2009 No. 221-IV (the order of enforcement see Article 2); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Chapter 31. Examination and Clarification of Testimonies at the Scene. Investigative Experiment**

## **Article 238. Examination and Clarification of Testimonies on the Scene**

1. The examination and clarification of testimonies of the victim, the witness, the suspect, the accused at the scene related to the investigated incident shall be carried out in order to:

- establish the credibility of the testimonies by comparing them with the situation of the h a p p e n e d i n c i d e n t ;
- specify the route and the place where the acts to be examined were committed;
- establish new actual information.

2. Examination and clarification of the testimonies at the scene shall consist in that the person who has been previously interrogated shall reproduce on the spot the situation and circumstances of the incident under investigation; he shall find and indicate the items, documents, traces material for the case; demonstrate certain acts; show what role those or other items played in the incident under investigation; draw attention to changes in the situation of the scene of the incident; specify and clarify his previous testimonies. Any outside interference into those acts and leading questions shall not be allowed.

3. Examination and clarification of testimonies at the scene shall be carried out with the use of technical facilities of fixation of the process and results, and in appropriate cases with the participation of a specialist.

4. It shall not be allowed to examine and clarify the testimonies of several persons at the same time on the spot.

5. Examination and clarification of the testimonies shall begin with the offer to the interrogatee to show voluntarily the route and place where his testimonies will be examined. After the presentation of the testimonies and demonstration of the acts, the person, whose testimonies are being examined, may be asked questions. That person as well as other participants of the process shall have the right to request their additional interrogation in connection with the investigative act which is carried out.

6. The items and documents, which have been found in the course of examination and clarification of the testimonies at the scene, which may have evidential value for the case, shall be seized, packed and sealed; the fact of their seizure shall be reflected in the record.

7. In appropriate cases, during the examination and clarification of the testimonies at the scene, the measurements, photographing, audio and video recording, filming shall be carried out, as well as plans and charts shall be compiled. The use of audio and video recording facilities during the examination and clarification of the testimonies at the scene shall be carried out in accordance with the rules described in Article 219 of this Code.

8. The record on the performance of examination and clarification of testimonies at the scene shall be compiled in compliance with the requirements of Article 203 of this Code. The conditions, course and results of the examination and clarification of testimonies at the scene shall be reflected in the record in detail.

**Footnote. Article 238 as amended by the Law of the Republic of Kazakhstan dated**

18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 239. Investigative Experiment**

1. An investigative experiment shall be carried out for the purpose of examination and clarification of the information, which is material for the case, by way of reproducing certain acts, situation, and circumstances of the incident under investigation and performance of tests. When conducting an experiment, in particular, the possibility of perception of certain facts, commission of certain acts, occurrence of certain events may be checked, as well as the subsequence of the occurred incident and the mechanism of formation of traces may be r e v e a l e d .

2. An investigative experiment shall be carried out with obligatory use of technical facilities of fixation of the process and results. If necessary, the suspect, the accused, the victim, the witness, the specialist, the expert and the persons, who carry out experimental acts , may be engaged in the investigative experiment with their consent. The participants of an experiment shall be explained its purposes and procedure of the conduct.

3. The performance of an investigative experiment shall be allowed if danger for lives and health of the persons participating in it are excluded, their honor and dignity are not humiliated, no material damage is caused to them.

4. An investigative experiment shall be carried out under the conditions which are most similar to those under which the events or acts to be reproduced took place.

5. In appropriate cases when performing an investigative experiment, photographing, audio and video recording, filming shall be carried out; other scientific-technical facilities shall be used; plans, charts, drawings shall be compiled.

6. A record on the performance of an investigative experiment shall be compiled in compliance with the requirements of Article 203 of this Code. The record shall describe in detail the conditions, course and results of the investigative experiment and specify the following: for what purpose, when, where and under what conditions the experiment was carried out; in what specifically the reproduction of the situation and circumstances of the incident resulted; what acts, in what sequence, by whom and how many times were carried out; what results were obtained.

Footnote. Article 239 as amended by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Chapter 32. Forensic Examination**

## **Article 240. Calling of Expert Examination**

Expert examination shall be called in cases when the circumstances, which are material for the case, may be obtained as a result of examination of the materials of the case, which is carried out by an expert on the basis of specialized scientific knowledge. If other persons, who participate in the criminal procedure, obtain such knowledge, it shall not release the person, who conducts the criminal procedure, from the need to call an expert examination in appropriate cases.

## **Article 241. Obligatory Calling of an Expert Examination**

1. The calling and performance of expert examination shall be obligatory, if the following must be established under the case:

- 1) causes of death, nature and degree of gravity of the damage caused to health;
- 2) age of the suspect, the accused, victim, when it is material for the case, and the documents concerning the age are not available or cause doubts;
- 3) mental or physical condition of the suspect, the accused, when doubts arise with regard to their imputability or capacity to protect independently their rights and legal interests in the criminal procedure;
- 4) mental or physical condition of the victim, witness in cases when doubts arise with regard to their capacity to accurately perceive the circumstances, which are material for the case, and to provide testimonies on them;
- 5) other circumstances of the case which may be credibly established by other evidences.

2. The calling and performance of forensic psychiatric expert examination shall be obligatory, if there are doubts about mental state of the accused in the commission of a crime, for which the Criminal Code of the Republic of Kazakhstan provides punishment in the form of a capital punishment or life imprisonment.

Note. The outpatient forensic psychiatric examination shall be appointed and conducted in respect of the suspect, the accused, the victim, the witness on the grounds listed in items 3 and 4 of part one of this Article. If an expert states that it is impossible to provide an opinion without conducting hospital forensic psychiatric examination and placement of an examined person for hospital examination, the hospital forensic psychiatric examination shall be called with regard to a criminal case in accordance with the procedure of Article 247 of this Code.

**Footnote. Article 241 is in the wording of the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 242. Procedure of Calling of Expert Examination**

1. Having recognized the necessity of calling of expert examination, the body that conducts the criminal procedure shall pass resolution to that effect, in which the following must be specified: the name of the body which called the expert examination, time, place of the calling of expert examination; of expert examination; the reasons for the calling of expert examination; objects directed for the expert examination, and the information of their origin, as well as a permission for a probably full or partial destruction of the said objects, changing their appearance or basic properties in the course of the examination; the name of the body of forensic examination and (or) the surname, name, patronymic of the person, who is entrusted with the performance of forensic examination. The resolution of the body conducting the criminal procedure on the calling of expert examination shall be obligatory for execution by the bodies or persons, to whom it is addressed, and it shall be within their competence.

2. In cases, when the adoption of a decision on the institution of a criminal case is impossible without performing expert examination, it may be called prior to the institution of the criminal case. In this case, the objects of forensic expert examinations shall be the materials which are:

1) attached to the applications or reports on crimes submitted in accordance with Articles 178, 179, 180, and 181 of this Code;

2) directly discovered by the officials and bodies empowered to institute a criminal case in accordance with Article 182 of this Code;

3) obtained as a result of procedural acts allowed by this Code during the preliminary examination;

4) requested or submitted in the procedure provided for by Article 125 of this Code.

3. If in case there are acts of audits, reviews, reports of departmental inspections, as well as official documents compiled on the basis of the results of investigations, which are carried out by specialists in the course of procedural acts, it shall not exclude the possibility of appointment of forensic expert examination on the same issues.

4. An expert examination may be called upon initiative of the participants of the proceedings, who defend their rights and interests or the rights and interests or those whom they represent. A participant of the proceedings, who defends his own or represented rights and interests, shall set a question to the body conducting the criminal procedure in writing, on which in his opinion a conclusion of the expert must be provided; he shall specify the objects of examination, as well as the name a person (persons), who may be invited as an expert. In this case the body conducting the criminal procedure shall not have the right to refuse to call an expert examination, except for the cases when the issues presented for its settlement do not pertain to the criminal case or to the object of forensic examination.

5. The participant of the proceedings, upon whose initiative the expert examination is called, may present items, documents as objects for the expert examination. The body conducting the criminal procedure shall have the right to exclude them from among such objects by a motivated resolution.

6. Having considered the presented questions, the body conducting the criminal procedure shall decline those of them, which do not pertain to the criminal case or object of the forensic examination; he shall clarify whether there are bases for recusation of an expert, after which he shall pass a resolution on the calling of an expert examination in compliance with the requirements specified in part one of this Article.

7. Compensation of expenses connected with the performance of an expert examination, as well as work remuneration of the expert shall be carried out in accordance with the rules of Chapter 21 of this Code.

8. The body conducting the criminal procedure shall provide for the bringing of the suspect, the accused, the victim, the witness to the expert, if their presence during the performance of expert examination is deemed to be necessary.

**Footnote. Article 242 is in the wording of the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

### **Article 243. Persons who may be entrusted with Performance of Forensic Examination**

1. The performance of forensic examination may be entrusted to:

- 1) workers of the bodies of forensic examination;
- 2) persons, who carry out forensic expert activity on the basis of a licence;
- 3) other persons, on one-time basis in accordance with the requirements of the law.

2. The performance of expert examination may be entrusted to a person from among those, who are suggested by the participants of the proceedings.

3. The requirement of the investigator to summon the person, who is entrusted with the performance of expert examination, shall be obligatory for the head of the organization where the said person works.

**Footnote. Article 243 is amended by the Laws of the Republic of Kazakhstan dated May 5, 2000 No. 47; dated November 6, 2001 No. 251.**

### **Article 244. Rights of Suspect, The accused, Victim, Defence Lawyer and Representative of Victim When Calling and Performing Expert Examination**

**Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

1. When calling and performing an expert examination, the victim, the suspect, the accused, the defence lawyer and the representative of the victim shall have the following rights:

- 1) prior to the performance of expert examination, to become familiar with the resolution on its calling and to receive explanation of the rights they have, of which a record shall be compiled;

2) to file a recusation of an expert or a petition to remove the body of forensic examination from the performance of expert examination;

3) to petition on appointment of the persons indicated by him or workers of specific bodies of forensic examination as experts, as well as on the performance of the expert examination by advisory board;

4) to petition on setting additional questions to the expert or on clarification of those which were set;

5) with a permit of the body conducting the criminal procedure, to be present during performance of the expert examination in accordance with the procedure provided for by Article 246-1 of this Code;

6) to become familiar with the opinion of the expert or with the report on the impossibility to provide the opinion in accordance with the procedure provided for by Article 254 of this Code.

2. The listed rights shall also belong to the witness subjected to an expert examination and the person, in whose respect the proceedings on application of compulsory measures of medical nature are carried out, if his mental condition allows that. At the stage of institution of a criminal case the listed rights shall belong to the person, who suffered from commission of a crime, as well as to the person, in respect of whom the issue of institution of a criminal case is being resolved.

3. If the expert examination was carried out prior to recognition of a person as a suspect or bringing a person into proceedings as an accused, the body conducting the criminal procedure shall be obliged to introduce him with the resolution on the appointment of expert examination, with the conclusion of the expert and to explain to him his right provided for by Article 254 of this Code.

4. The expert examination of victims and witnesses, as well as of the person, who suffered from commission of a crime, and the person, in respect of whom the issue of institution a criminal case is being resolved, shall be carried out only with their written consent. If those persons have not reached the age of majority or they have been recognized by the court as incapable, a written consent for the performance of expert examination shall be given by their legal representatives. The said rule shall not apply to the performance of expert examination in cases provided for by Article 241 of this Code.

5. In case of satisfaction of the petition filed by the persons indicated in the parts he and two of this Article, the body conducting the criminal procedure shall respectively alter or supplement his resolution on the appointment of expert examination. In case of refusal of satisfaction of the petitions, he shall pass a motivated resolution that shall be announced against receipt to the person, who filed the petition.

**Footnote. Article 244 as amended by the Laws of the Republic of Kazakhstan dated 04.07.2006 No. 151; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 20.01.2010 No. 241-IV.**

## **Article 244-1. Guarantees of Rights and Legal Interests of the Persons, in respect of whom Forensic Examination is carried out**

1. When performing forensic examination of living persons the following shall be prohibited:

1) deprivation or violation of their rights guaranteed by law (including by means of deception, application of violence, threats or other unlawful measures) in order to obtain information from them;

2) the use of the said persons as subjects of clinical examination of medical technology, pharmaceutical and medicinal products;

3) the application of methods of examination, which involve surgery.

2. The person, in respect of whom the forensic examination is carried out, must be informed in a form accessible for him by the body, which appointed the forensic examination, of the forensic expert examination methods, including the alternative ones, of the possible pain or side effects. The said information shall be provided to a legal representative of the person, in respect of whom the forensic examination is carried out, pursuant to his petition.

3. Medical assistance to a person, in respect of whom the forensic examination is carried out, may be provided only on the grounds and in accordance with the procedure stipulated by law.

4. The person, who is placed to a medical organization, shall be given the opportunity to file complaints and petitions. The complaints and petitions, which are filed in accordance with the procedure provided for by this Code, shall be sent by the administration of the medical organization to the addressee within twenty-four hours, and they shall not be subject to censorship.

5. The forensic examination, which is carried out in respect of a person with his consent, may be terminated at any stage upon the initiative of the said person.

**Footnote. The Law is supplemented with Article 244-1 in accordance with the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

## **Article 245. Performance of Expert Examination by the Body of Forensic Examination. Rights and Obligations of the Head of Body of Forensic Examination**

1. When the expert examination is entrusted to the body of forensic examination, the body conducting the criminal procedure shall direct the resolution on appointment of the expert examination and appropriate materials to its head. Expert examination shall be carried out by the employee of the body of forensic examination, who is indicated in the resolution. If no specific expert is indicated in the resolution, selection of the expert shall be carried out by the head of the body of forensic examination, of which he shall inform the person, who called the expert examination.

2. The head of the body of forensic examination shall have the following rights:

1) having specified the reasons to return to the body, which called the expert examination, the resolution on appointment of forensic examination and the objects presented for examination without their implementation in the following cases: a given body of forensic examination has no expert, who has appropriate special scientific knowledge; material and technical resources and conditions of the given body of forensic examination do not allow to resolve specific expert tasks; questions posed to a forensic expert are out of his competence; materials for the performance of expert examination are submitted with violation of the requirements of this Code;

2) to file a petition to the body, which called the expert examination, on inclusion of the persons, who do not work in the given body of forensic examination, in the commission of forensic examination, if their special scientific knowledge is necessary for giving an opinion.

The head of the body of forensic examination shall also have other rights provided for by law.

3. The head of the body of forensic examination shall not have the right:

1) to independently reclaim the objects, which are necessary for the performance of expert examination;

2) without the consent of the body, which called the expert examination, to involve for its performance the persons, who are not the workers of the given body of forensic examination;

3) to give to an expert the instructions, which predetermine the content of the conclusions on a specific expert examination.

4. The head of the body of forensic examination shall be obliged:

1) upon the receipt of the resolution on the calling of forensic examination and objects of examination, to entrust the performance of forensic examination to a specific expert or advisory board of the given body of forensic examination with account of the requirements of part one of Article 242 of this Code;

2) without violating the principle of independence of the forensic expert, to ensure the supervision over compliance with the period of the performance of forensic examination, comprehensiveness, completeness and objectiveness of the examinations being performed, preservation of objects of forensic examination;

3) not to disclose information, which became known to him in connection with the organization of the performance of expert examination;

4) to provide the conditions, which are necessary for the performance of examinations.

**Footnote. Article 245 is in the wording of the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

## **Article 246. Performance of Expert Examination outside the Body of Forensic Examination**

1. If the performance of expert examination is supposed to be entrusted to a person, who is not an employee of the body of forensic examination, the body conducting the criminal procedure prior to the passing of the resolution on his appointment must ascertain the identity of the person to whom he intends to entrust the expert examination, and to check whether there are reasons for the recusation of the expert, which are provided for by Article 96 of this Code.

2. The body conducting the criminal procedure shall pass a resolution on calling of expert examination; he shall hand it to the expert, explain to him the rights and obligations provided for by Article 83 of this Code, and warn of the criminal liability for providing willfully false opinion. The body conducting the criminal procedure shall make a note on the performance of those acts in the resolution on the appointment of expert examination, which shall be certified with the signature of the expert. The statements made by the expert and his petitions shall be registered in the same procedure. The person, who called the expert examination, shall pass a motivated resolution on the refusal of the petition of the expert.

**Footnote. Article 246 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

### **Article 246-1. Presence of Participants of the proceedings during Performance of Forensic Examination**

1. The body conducting the criminal procedure shall have the right to be present during the performance of expert examination, receive explanations of the expert on the acts performed by him. The fact of the presence of the body conducting the criminal procedure during the performance of expert examination shall be reflected in the opinion of the expert.

2. The participants of the proceedings, who protect their own or represented rights and interests, may be present during the performance of expert examination with the permission of the body conducting the criminal procedure. In this case the participation of the body conducting the criminal procedure shall be obligatory.

3. If the body conducting the criminal procedure satisfies a relevant petition, the person, who filed it, shall be notified of the time and place of the performance of expert examination. Non-appearance of the notified person shall not impede the performance of expert examination.

4. Participants of the proceedings, who are present during the forensic examination, shall not have the right to interfere with the course of examination, but they may give explanations regarding the subject of the forensic examination.

5. If the participant of the proceedings, who is present during the performance of forensic examination, interferes with the activity of the forensic expert, the latter shall have the right to suspend the examination and file petition to the body conducting the criminal procedure on the abolition of the permission to the said participant to be present during the performance of

f o r e n s i c e x a m i n a t i o n .

6. The presence of the participants of the proceedings shall not be allowed during the compilation of the opinion by the forensic expert, as well as at the stage of meeting of the forensic experts and making conclusions, if the forensic examination is performed by the committee of forensic experts.

7. Performance of forensic psychiatric and forensic psychological and psychiatric examination shall be carried out under conditions of confidentiality.

8. When conducting forensic expert examinations in respect of a person, which include his denudation, the persons of the same gender only may be present. This restriction shall not apply to doctors and other medical workers, who are involved in the conduct of the said examinations.

**Footnote. The Law is supplemented by Article 246-1 in accordance with the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

### **Article 247. Placement into Medical Organization for Performance of Expert Examination**

1. If the performance of forensic examination in respect of a person implies the performance of forensic expert examinations in hospital, then the suspect, the accused, the victim, the witness may be placed in a medical organization on the basis of the resolution on calling of expert examination.

The placement into a medical organization of the victim, the witness shall be allowed only with his written consent, except for the cases provided for by Article 241 of this Code.

If the said person has not reached the age of majority or he is recognized by the court as incapable, the said written consent shall be given by the legal representative. In case of objection or absence of the legal representative, the written consent shall be given by the tutorship and guardianship authority.

2. The transfer of the suspect, the accused, who are not held in custody, as well as of the victim, the witness to a medical organization for the performance of forensic psychiatric expert examination shall be carried out in accordance with the procedure provided for by part two of Article 14 of this Code.

3. The rules of keeping persons, in respect of whom the expert examination is carried out, in a medical organization, shall be established by the legislation of the Republic of Kazakhstan on healthcare.

4. When placing a suspect into a medical organization for the performance of hospital forensic psychiatric examination, the period, during which a charge must be brought against him, shall be suspended until the receipt of the opinion of the committee of experts on the mental state of the suspect.

5. The total period of being in the medical organization of the person, in respect of whom

a forensic medical or forensic psychiatric examination is carried out, shall be thirty days. If it is impossible to complete the forensic expert examinations, the said period may be extended for thirty days pursuant to a motivated petition of an expert (committee of experts) in accordance with the requirements of part two of Article 14 of this Code.

The petition must be submitted to the prosecutor or to the court no later than three days prior to the expiration of the period of the performance of expert examination and resolved within three days from the date of the receipt. In case of refusal of the prosecutor, court to extend the period, the person must be discharged from the medical organization. The head of the medical organization shall notify of the filed petition and results of its consideration by the prosecutor and court, the person, in respect of whom the expert examination is carried out, his defense lawyer, legal representative, a representative, as well as the body conducting the criminal procedure.

6. The person, in respect of whom the forensic examination is carried out in a medical organization, his defense lawyer, legal representative, representative shall have the right to appeal the resolution on the extension of the period of its performance in the procedure provided for by this Code.

**Footnote. Article 247 is in the wording of the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

## **Article 248. Objects of Expert Examination**

1. Material evidence, documents, body and mental state of a human, corpses, animals, samples, as well as information pertaining to the subject of expert examination, which is contained in the materials of the criminal case, shall be the objects of expert examination.

2. The credibility and admissibility of the objects of expert examination shall be guaranteed by the body that appointed the expert examination.

3. The objects of expert examination, if their dimensions and properties allow, shall be transferred to the expert in a packed and sealed form. In the other cases, the person, who appointed the expert examination, must provide for the bringing of the expert to the location of the objects of examination, free access to them and conditions which are necessary for the performance of examination.

4. The procedure of handling with the objects of forensic examination shall be established by the legislation of the Republic of Kazakhstan.

5. When performing an expert examination, its objects with the approval of the body, which called the expert examination, may be damaged or used only to the extent that it is necessary for the performance of the examinations and giving the opinion.

The said approval must be contained in the resolution on the appointment of forensic examination or in the motivated resolution on satisfaction of the petition of the forensic expert or on partial refusal of its satisfaction.

Footnote. Article 248 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV

### **Article 249. Individual and Commission Expert Examination**

1. The performance of expert examination shall be carried out by an expert single-handedly or by a committee of experts.

2. The commission expert examination shall be appointed in cases of the need to perform complex expert examinations and it shall be carried out by not less than two experts of specialty.

3. In order to carry out forensic psychiatric expert examination on the issue of imputability, not less than three experts shall be appointed.

4. When performing the commission forensic examination, each of the forensic experts shall conduct the forensic expert examination to the full extent independently and single-handedly. The members of an expert commission shall jointly analyze the obtained results, and upon coming to a consensus, they shall sign the opinion or the statement that it is impossible to provide the opinion. In case of disagreements between experts, each of them or part of the experts shall provide a separate report or an expert, whose opinion differs from the conclusions of the other members of the commission, shall formulate it separately in the report.

5. The resolution of the body conducting the criminal procedure on the performance of a commission expert examination shall be obligatory for the head of the body of forensic examination. The head of the body of forensic examination shall have the right to take independently the decision on conducting a commission expert examination on the presented materials, and to organize its performance.

Footnote. Article 249 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.

### **Article 250. Comprehensive Expert Examination**

1. The comprehensive expert examination shall be called when for the establishment of a circumstance, which is material for the case, examination is required on the basis of various areas of knowledge, and it shall be carried out by experts of various specialties within the bounds of their competence.

2. The report of comprehensive expert examination must specify what examinations were carried out, in what amount each expert has carried them out and to which conclusions he has come. Each expert shall sign that part of the report, in which those examinations are contained.

3. On the basis of the results of the examinations performed by each of the experts, they shall formulate a general conclusion (conclusions) on the circumstance, for the establishment

of which the expert examination was called. The general conclusion (conclusions) shall be formulated and signed only by the experts, who are authorized to evaluate the obtained results . If the facts, which have been established by one of the experts (individual experts), are the basis for the final conclusion of the commission or its part, then this must be indicated in the o p i n i o n .

4. In case of disagreements between the experts, the results of examinations shall be executed in accordance with part for of Article 249 of this Code.

5. The organization of the performance of a comprehensive expert examination entrusted to the body of forensic examination shall rest with the head of that body. The head of the body of forensic examination shall also have the right to take independently the decision on the performance of comprehensive expert examination on the materials presented in accordance with the resolution of the investigator, and to organize its performance.

### **Article 251. Content of Expert's Opinion**

1. After the performance of appropriate examinations, with account of its results, the expert (experts) in his/their own name shall compile a written opinion, certify it with his/their signature(s) and personal seal(s), and direct it to the body that called the expert examination. In case of conducting an expert examination by the body of forensic examination, the signature of the expert (experts) shall be authenticated with the seal of the said body.

2. In the opinion of an expert the following must be indicated: the date of its compilation, the periods and the place of the performance of expert examination; reasons for the performance of forensic examination; information about the body, which appointed the expert examination; information about the body of forensic examination and (or) about an expert (experts), who ordered the performance of expert examination (surname, name, patronymic, education, expert specialty, employment experience in the same occupation, academic degree and academic title, occupied position); a note certified by the signature of an expert (experts) that he is warned about the criminal liability for giving willfully false opinion; questions set to a forensic expert (experts); information about the participants of the proceedings who participated during the performance of expert examination, and about the explanations given by them; objects of examination; the content and results of examinations with indication of the used methods; evaluation of the results of the conducted examinations; justification and formulation of the conclusions on the questions set to the expert (experts).

3. The opinion must contain the justification of impossibility to answer all or certain of the set questions, if the circumstances indicated in Article 252 of this Code were established in the course of the examination.

4. The materials illustrating the opinion of an expert (photo tables, charts, diagrams, tables , and other materials), which are certified in accordance with the procedure provided for by part one of this Article, shall be attached to the report and they shall be its constituent part.

The objects, which remained after the examination, as well as the samples, must be also attached to the report.

Footnote. Article 251 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.

### **Article 252. Report on Impossibility to provide an Opinion**

If prior to the performance of examination the expert ascertains that the questions set to him are beyond the bounds of his professional knowledge, or the materials presented to him are not suitable or insufficient for providing an opinion and they may not be replenished, or the state of the science and expert practice do not allow to answer the set questions, he shall compile a motivated report on impossibility to provide an opinion and send it to the body, which called the expert examination.

Footnote. Article 252 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.

### **Article 253. Interrogation of an Expert**

1. If the opinion of the expert is not sufficiently clear, if there are gaps, for the filling of which no performance of additional examinations is required, or if it is necessary to specify the methods and terms used by the expert, the body conducting the criminal procedure shall have the right to interrogate the expert with regard to the said circumstances. The expert may describe his answers with his own hand. The record of the interrogation of an expert shall be compiled in compliance with the rules outlined in Article 203 of this Code.

2. The interrogation of an expert prior to the submission of his opinion shall not be allowed.

3. The expert may not be interrogated with regard to the circumstances not related to his opinion, which became known to him due to performance of the forensic psychiatric and forensic medical examination in respect of the living persons.

Footnote. Article 253 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV

### **Article 254. Presentation of Expert's Opinion to Suspect, The accused, Victim**

Footnote. The title is in the wording of the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.

1. The expert's opinion or his report on impossibility to provide an opinion, as well as the record of the interrogation of the expert prior to the end of the preliminary investigation shall be presented to the suspect, the accused, the victim or to other persons specified in parts he and two of Article 244 of this Code, who have the right to submit their comments, to raise

objections with regards to conclusions of the expert, to file petitions on interrogation of the expert, on appointment of an additional or a repeated examination, as well as of the new examinations. In case of satisfaction or refusal of such petition, the body conducting the criminal procedure shall pass a relevant resolution, which shall be announced against receipt to the person, who filed the petition.

2. A record shall be made of the review the expert's opinion by the persons indicated in part one of this Article and the record of his interrogation, in which the statements and objections made by them shall be presented.

3. The rules of this Article shall be applied also to the cases when an expert examination was carried out before holding a person as an accused, or recognizing him as a suspect or a victim.

**Footnote. Article 254 as amended by the Law of the Republic of Kazakhstan dated 20.01.2010 No. 241-IV.**

### **Article 255. Additional and Repeated Expert Examination**

1. An additional expert examination shall be called in case of insufficient clarity or fullness of the opinion, as well as when there is a need to resolve additional issues associated with the previous examination.

2. The performance of additional expert examination may be entrusted to the same or another expert.

3. A repeated expert examination shall be called for examining the same objects and resolving the same issues in cases when the previous opinion of the expert is insufficiently substantiated or his conclusions cause doubts, or procedural rules for appointment and performance of expert examination were substantially violated.

4. The resolution on calling of a repeated expert examination must present the motives of disagreement with the results of the previous expert examination.

5. The performance of a repeated expert examination shall be entrusted to the committee of experts. The experts, who conducted the previous expert examination, may be present during the performance of the repeated expert examination and provide explanations to the commission; however they shall not participate in the expert examination and compilation of the opinion.

6. The opinions of the previous expert examinations must be presented to the expert (experts), when they are entrusted with the performance of an additional and a repeated expert examination.

7. An additional and a repeated expert examination shall be appointed and conducted in compliance with the requirements of Articles 240, 242-252 of this Code.

8. If the second or subsequent expert examination is called under several reasons, some of which relate to the additional expert examination, and the others - to the repeated one, such

expert examination shall be performed according to the rules of the repeated expert examination .

Footnote. Article 255 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 20.01.2010 No. 241-IV.

## **Chapter 33. Obtaining Samples**

### **Article 256. Grounds for Obtaining Samples**

1. The investigator shall have the right to obtain samples which reflect properties of a live human, a corpse, an animal, a substance, an item, if their investigation is material for the case.

2. In particular, the following may be obtained as samples:

- 1) blood, sperm, hair, cuts of nails, microscopic scrapes of external coverings of the body;
- 2) saliva, sweat and other excretions;
- 3) prints of the skin pattern, moulds of teeth;
- 4) penscript, wares, other materials which present the skills of a person;
- 5) sound records of the voice;
- 6) samples of materials, substances, raw materials, finished products;
- 7) sample of shells, bullets, traces of tools and devices.

3. A motivated resolution on obtaining samples shall be passed, in which the following must be indicated: the person, who is to receive the samples; the person (organization), from whom the samples shall be received; what samples exactly and in what quantity must be obtained; when and to whom the person must come to obtain samples from him; when and to whom the samples must be presented after they have been obtained.

4. In cases, when the adoption of the decision on institution of a criminal case is impossible without examination of the samples, they may be obtained prior to the institution of the criminal case .

Footnote. Article 256 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 257. Persons and the Bodies, which have the right to obtain Samples**

1. The investigator personally, and where appropriate with the participation of a physician , another specialist, shall have the right to obtain samples, if this is not associated with denudation of a person of the opposite gender, from whom the samples are being obtained, and it does not require special professional skills. In other cases, the samples may be obtained

by a physician or a specialist pursuant to the instructions of the investigator.

2. In cases, when obtaining of samples is a part of the expert examination, it may be carried out by an expert.

### **Article 258. Persons who it is allowed to obtain Samples from**

1. Samples may be obtained from a suspect, an accused, a victim, as well as from a person, in respect of whom the proceedings on application of compulsory measures of medical nature are carried out.

2. If there is sufficient information that the traces at the scene of action or on material evidences may have been left by another person, the samples may be obtained from that person, but not otherwise than after his interrogation as a witness (victim) on the circumstances, under which the said traces may have formed.

### **Article 259. Procedure from Obtaining Samples by Investigator**

1. The investigator shall invite a person or he shall arrive at the place of the person's location, introduce him against receipt with the resolution on obtaining samples, explain to him and other persons, who participate in the said investigative act, their rights and obligations.

2. The investigator shall personally or with the participation of the specialist carry out appropriate acts, obtain samples, pack and seal them.

3. In appropriate cases the withdrawal of samples shall be carried out by performing the seizure, search, exhumation or simultaneously with their performance.

### **Article 260. Obtaining of Samples by Physician or another Specialist**

1. The investigator shall direct to the physician or another specialist the person, from whom the samples must be taken, as well as the resolution with appropriate instruction. In the resolution there must be indicated the rights and obligations of all the participants of the given investigative act. The issue of recusations to a physician, another specialist shall be resolved by the investigator, who passed the resolution.

2. The physician or another specialist pursuant to the instructions of the investigator shall carry out appropriate acts and obtain samples. The samples shall be packed and sealed, after which together with the official document compiled by the physician or another specialist, shall be sent to the investigator.

### **Article 261. Obtaining of Samples by Expert**

1. In the course of examination the expert may prepare experimental samples, of which he shall report in the opinion.

2. The investigator shall have the right to be present during the preparation of such samples, which shall be reflected in the record compiled by him.

3. After conducting the examination the expert shall attach the samples to his report in a packed and sealed condition.

### **Article 262. Protection of Rights of Person when obtaining Samples**

The methods and scientific technical facilities for obtaining samples must be safe for the life and health of a person. Application of complex medical procedures or methods, which cause strong painful sensations, shall be allowed only with the written consent of the person who the samples must be obtained from, and if that person has not reached the age of majority or suffers from a mental illness, then with the approval of his legal representatives as well.

### **Article 263. Obligation to Execute Resolution on Obtaining Samples**

1. The samples may be obtained from a suspect, an accused compulsorily.

2. The samples may be obtained from a victim and a witness only with their consent, except for the cases when the suspect, the accused insists on that action for reviewing the testimonies, which expose his crime, as well as when it is necessary to obtain samples for diagnostics of venereal and other contagious diseases, when such diagnostics is material for t h e c a s e .

3. Compulsory obtaining of samples from a victim, a witness in cases indicated in part two of this Article, as well as from an applicant and a person, at whom the applicant points as at the person who committed the crime, shall be allowed only with the sanctions of the prosecutor or upon a court decision.

**Footnote. Article 263 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 264. Record of Obtaining Samples**

1. Having obtained the samples, the investigator shall compile a record, in which he shall describe all the acts undertaken for obtaining the samples, in accordance with the sequence in which they were carried out, the scientific research and other methods and procedures used at that, as well as the samples themselves.

2. If the samples have been obtained by a physician or another specialist pursuant to the instructions of the investigator, then he shall compile the official document to that effect, which shall be signed by all the participants of the said act and it shall be passed to the

investigator for the attachment to the criminal case in accordance with the procedure established by part eight of Article 203 of this Code.

3. The obtained samples shall be attached to the record in a packed and sealed condition.

## **Chapter 34. Suspension and Resumption of Preliminary Investigation**

### **Article 265. Procedure of Suspension of Preliminary Investigation**

1. The investigator shall have the right to suspend the preliminary investigation on the grounds indicated in part one of Article 50 of this Code.

2. The investigator shall pass a motivated resolution on suspension of the preliminary investigation, the copy of which shall be sent to the prosecutor within twenty-four hours.

3. Prior to the suspension of the preliminary investigation the investigator shall be obliged to carry out all the investigative acts, the performance of which is possible in the absence of the accused, to take all the measures for finding him, as well as for establishing the person, who committed the crime.

### **Article 266. Acts of Investigator after Suspension of Preliminary Investigation**

1. Having suspended the preliminary investigation, the investigator shall be obliged to notify of that in writing the victim, his representative, the civil plaintiff, the civil defendant or their representatives and simultaneously explain to them that the resolution on suspension of the preliminary investigation may be appealed to the prosecutor. In case of suspension of the preliminary investigation on the grounds provided for by items 4) and 7) of part one of Article 50 of this Code, the accused and his defense lawyer shall be notified of that as well.

2. After suspending the preliminary investigation the investigator shall:

1) take measures for establishing the person, who is subjected to be held as an accused, both directly and through the bodies of inquiry in case specified by item 1 of part one of Article 50 of this Code;

2) establish the location of the accused, and if he disappeared, take measures for initiating search for him in case provided for by item 2 of part one of Article 50 of this Code.

3. The performance of investigative acts under the case, which was suspended, shall not be allowed.

**Footnote. Article 266 as amended by the Law of the Republic of Kazakhstan dated 10.07.2012 No. 32-V (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 267. Search for the accused**

1. If the location of the accused is unknown, the investigator shall have the right to entrust the performance of the search to the bodies of inquiry. This instruction shall be presented in the resolution on suspension of the preliminary investigation, or a separate resolution shall be passed.

2. The search for the accused may be announced either during the performance of the preliminary investigation, or simultaneously with its suspension.

3. If there are reasons indicated in Article 139 of this Code in respect of the accused, who is in the search, a measure of restraint may be selected when he is found. In cases provided for by Article 150 of this Code, the measure of restraint in the form of arrest may be used with the sanctions of the court.

**Footnote. Article 267 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

### **Article 267-1. Announcement of International Search**

1. If there are reasons for announcing an international search, the criminal prosecution body shall pass a separate resolution on announcement of international search for an accused sanctioned by the prosecutor.

2. The right to give sanction for the announcement of international search for a person, who committed a crime in the territory of the Republic of Kazakhstan and who hides from investigation, shall rest with the Prosecutor General and his deputies, prosecutors of the regions and the prosecutors equivalent to them.

**Footnote. The Law is supplemented by Article 267-1 by the Law of the Republic of Kazakhstan dated September 25, 2003 No. 484. Amended by the Law of the Republic of Kazakhstan dated January 8, 2007 No. 210.**

### **Article 268. Resumption of Suspended Preliminary Investigation**

1. The suspended preliminary investigation shall be resumed by a motivated resolution of the criminal prosecution body after the following:

1) the reasons for the suspension are eliminated;  
2) the need arises for the performance of investigative acts, which may be carried out without participation of the accused.

2. The preliminary investigation shall also be resumed by a motivated resolution of the criminal prosecution body in connection with the abolition by the prosecutor or judge of the resolution on the suspension of the case.

3. The accused and the defense lawyer, as well as the victim, his representative, civil plaintiff, civil defendant, their representatives shall be informed of the resumption of the

Footnote. Article 268 is amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.

## **Chapter 35. Termination of Case in Course of Preliminary Investigation**

### **Article 269. Reasons and Procedure for Termination of Case in course of Preliminary Investigation**

1. The investigator, the prosecutor shall have the right to terminate a criminal case on the grounds and in accordance with the procedure provided for by Article 38 of this Code, as well as on the grounds and in accordance with the procedure established by parts one, two and three of Article 37 of this Code.

2. When the participation of the suspect or the accused in the commission of the crime is not proved, if all the possibilities for the collection of additional evidences are exhausted, the criminal case shall be terminated on the basis of items 1 or 2 of part one of Article 37 of this Code. In this case the investigator, the prosecutor must take all the measures provided for by law in order to rehabilitate the person and compensate for the material damage caused to him as a result of unlawful detention or arrest.

3. If several suspects, accused individuals are held under the case, and the reason for the termination pertains not to all the suspects, accused individuals, then the criminal prosecution shall be terminated with regard to certain suspects, accused individuals in accordance with the procedure provided for by Article 51-1 of this Code.

4. A motivated resolution shall be passed on the termination of the criminal case.

5. The time and the place of compilation, surname and position of the investigator shall be indicated in the introductory clause of the resolution.

6. The circumstances, which served as the cause and the reason for the institution of the case, and the results of its investigation with indication of information with regards to the persons, who are suspected or accused of commission of a crime under the case, its essence, criminal and legal qualification and the measures of restraint, which were used, shall be outlined in the descriptive motivation part of the resolution.

7. The decision on termination of the case with the reference to the Article (part, item) of this Code, which served as the reason for the termination of the case, as well as the instruction on abolition of the measure of restraint, on abolition of the arrest on property, on abolition of temporary removal from office, arrest of correspondence, eavesdropping and recording of conversations, on destiny of material evidences, shall be outlined in the operative part of the resolution.

8. The consent of the accused or the victim must be indicated in the resolution in cases when in accordance with the law the termination of the case is allowed only with such

c o n s e n t .

9. When a case is terminated on the grounds provided for by items 1, 2 of the parts he and three of Article 37 of this Code, it shall not be allowed to include in the resolution any formulations, which cast doubts on the innocence of the person, in respect of whom the case has been terminated.

10. The copy of the resolution on termination of a criminal case shall be directed to the prosecutor.

**Footnote. Article 269 as amended by the Law of the Republic of Kazakhstan dated 28.01.2011 No. 402-IV (shall be enforced from 05.08.2011).**

### **Article 270. Acts of Investigator after Termination of a Criminal Case**

1. The investigator shall notify in writing the suspect, the accused, their defense lawyers, the victim and his representative, the civil plaintiff, the civil defendant and their representatives, as well as the person or organization, pursuant to which applications the case was instituted, of the termination and reasons for the termination of the case.

2. The persons indicated in part one of this Article shall be explained the right of review of the materials of the case and the procedure for challenging the resolution on its termination. The copy of the resolution on the termination of the case shall be handed to those persons pursuant to the request received from them.

3. Review of the materials of the case shall be carried out in compliance with the requirements of Article 275 of this Code.

### **Article 271. Appeal of Resolution on Termination of a Criminal Case**

1. The resolution of the investigator on termination of the criminal case may be appealed by the suspect, the accused, their defense lawyers, the victim and his representative, the civil plaintiff, the civil defendant or their representatives, as well as by the person or the representative of the state body or the organization, pursuant to which applications the case was instituted, to the prosecutor, who supervises the investigation.

2. In cases when the termination of the case has been carried out with the consent of the prosecutor, the resolution shall be appealed to the upper prosecutor.

3. The refusal of the prosecutor to satisfy the complaint filed in connection with the termination of the criminal case may be appealed to the court in accordance with the rules of Article 109 of this Code.

### **Article 272. Resumption of a Terminated Criminal Case**

1. The proceedings on the terminated criminal case shall be resumed in the following cases:

- 1) abolition of investigator's resolution on termination of the criminal case;
- 2) satisfaction by the court of the complaint on insufficient termination of the criminal case in accordance with the procedure of Article 109 of this Code.
2. Resumption of proceedings on the terminated case may take place only in the event that the limitation periods for holding a person criminally liable have not expired.
3. The suspect, the accused, their defense lawyers, the victim and his representative, the civil defendant or their representatives, as well as the person or the organization pursuant to which application the case was instituted, shall be notified in writing of the resumption of the proceedings on the case.

### **Article 272-1. Restoration of the Lost Criminal Case or its Materials**

1. The restoration of the lost criminal case or its materials shall be carried out pursuant to the resolution of the prosecutor, the investigator, the body of inquiry, and in case of loss of the criminal case or its materials in the course of court proceedings - pursuant to the decision of the court to be directed to the prosecutor for execution.
2. The restoration of a criminal case shall be carried out on the basis of the remained copies of the materials of the criminal case, which may be recognized as evidences in accordance with the procedure established by this Code, or through the performance of procedural acts by the body conducting the criminal procedure.
3. When restoring a criminal case the periods of inquest, preliminary investigation and arrest shall be calculated in accordance with the procedure established by Articles 153, 196 a n d 2 8 5 o f t h i s C o d e .
4. If the maximum period of detention under the lost criminal case has expired, the accused shall be released immediately.

## **Chapter 36. Compilation of Indictment and Direction of a Criminal Case to the Court**

### **Article 273. Announcement of Completion of Investigative Acts on a Case Directed to Prosecutor with an Indictment**

1. Having recognized that all the investigative acts on the case have been performed, and the collected evidences are sufficient for the compilation of an indictment, the investigator shall be obliged to notify the accused of that, explain to him the right to become familiar with all the materials of the case either personally or with the assistance of the defense lawyer, as well as to file petitions on addition to the preliminary investigation or adoption of other decisions on the case. The record on the announcement to the accused about the completion of investigative acts and explanation of their rights shall be compiled in compliance with the requirements of Article 203 of this Code. In case of refusal of the accused to become familiar

with the materials of the criminal case, the appropriate note shall be made in the record with indication of the motives. If the accused is beyond the boundaries of the Republic of Kazakhstan and evades visiting the bodies of preliminary investigation, but the location of the accused is known to the body of the preliminary investigation, a written notice on termination of the investigation with explanation of his rights shall be directed to the accused by mail, of which the investigator shall make a note in the record on announcement to the accused about the completion of investigative acts and explanation of the rights.

2. The investigator shall be obliged to notify the defense lawyer of the accused, if he participates in case, as well as the victim and his representative, the civil plaintiff, the civil defendant and their representatives of the completion of the investigation and of the right to become familiar with the materials of the case and to file petitions.

3. If the defense lawyer of the accused or the representative of the victim, the civil plaintiff, the civil defendant cannot appear to become familiar with the case at the appointed time due to sufficient reasons, the investigator shall postpone the review for a period of not more than five days. In case of absence of the defense lawyer or the representative within that period, the investigator shall take measures for the presence of another defense lawyer or representative.

**Footnote. Article 273 is amended by the Law of the Republic of Kazakhstan dated March 16, 2001 No. 163.**

#### **Article 274. Review of Materials of the Case by Victim, Civil Plaintiff, Civil defendant and their Representatives**

1. In case of a verbal or written petition of the victim or his representative, the investigator shall introduce those persons with the materials of the case or their part, with which they wish to become familiar. The civil plaintiff, the civil defendant or their representatives, if they have filed a petition, shall become familiar with that part of the materials of the case, which pertains to the civil claim.

2. The review shall be carried out in accordance with the procedure provided for by Article 275 of this Code.

#### **Article 275. Review of all materials of the Case by The accused and his Defense Lawyer**

1. Having performed the requirements of Article 274 of this Code, the investigator shall announce to the accused and his defiance lawyer all the materials of the case, except for the indictment, which must be filed, numbered, entered into the list of case file sheets, tied together and sealed by the investigative body. Material evidences and audio records, video tapes, films, slides, if they are attached to the records of investigative acts, shall be presented and played back pursuant to the request of the accused or his defiance lawyer. Pursuant to the

request of the accused or his defense lawyer, they may become familiar with the materials of the case together or separately.

2. The accused and the defense lawyer in the course of review of the materials of the case, if it consists of several volumes, shall have the right to address to any of them repeatedly, as well as to write out any information and in any volume, copy the documents, in particular with the use of technical facilities. Extracts and copies of the documents from the case, which contain information constituting state secrets or another secret protected by law, shall be kept in case and handed to the accused and his defense lawyer for the period of judicial session.

3. The accused and the defense lawyer may not be restricted in time which is needed to them for the review of all the materials of the case. However, if the accused and the defense lawyer obviously delay the review of the materials of the case, then the investigator shall have the right by his motivated resolution, to be approved by the prosecutor, to establish a certain period, which is sufficient for the review of the materials of the case.

4. Upon the completion of the review of the materials of the case by the accused and his defense lawyer, the investigator shall be obliged to ascertain whether they file petitions and on what exactly, what other statements they wish to make. In this case, it must be also ascertained from the accused and his defense lawyer, whom of the interrogated witnesses, as well as of those experts, specialists and identifying witnesses, who participate in case, they wish to summon to the judicial session for interrogation and confirmation of the stand-point of the defense.

**Footnote. Article 275 as amended by the Laws of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 276. Filing and Settlement of Petitions**

1. The petitions of the accused and his defense lawyer, as well as of the victim, the civil plaintiff, the civil defendant and their representatives, which have been filed verbally after the review of the materials of the case, shall be entered into the record on review of the materials of the criminal case.

2. In cases when the participant of the proceedings files the intent to outline a petition in writing, an appropriate time may be given for its preparation, of which a note shall be made in the record, and the written petition shall be then attached to the case.

3. In accordance with Article 102 of this Code the investigator shall not have the right to refuse to satisfy the petition on establishment of the circumstances, which are material for the case. In such cases the investigator shall be obliged to supplement the preliminary investigation, in this respect the continuation of the review of the materials of the criminal case by other participants of the proceedings shall not impede the settlement of the petitions and, if they are satisfied, it shall not impede the performance of investigative acts.

4. After the performance of additional investigative acts the investigator shall be obliged again to notify the participants of the proceedings of the completion of the preliminary investigation, provide them with the opportunity to become familiar with the additional materials of the case, and upon their request, with all the materials of the case as well.

5. In case of a full or partial refusal to satisfy the filed petitions, the investigator shall pass a resolution on that, the copy of which shall be handed or forwarded to the applicant.

6. The refusal of the investigator to satisfy a petition under the criminal case may be appealed to the prosecutor within three days from the moment of receipt by the applicant of the copy of the resolution on refusal to satisfy the petition.

7. The criminal case shall not be subject to submission to the court, until the complaint is settled by the prosecutor. The dismissal of the complaint by the prosecutor on refusal to satisfy a petition under the criminal case, which has been directed to the court, shall not impede the resumption of the same petition before the court.

### **Article 277. Record on Review of Materials of the Criminal Case**

1. The records on review of the materials of the criminal case by the accused and his defense lawyer, as well as by the victim and his representative, the civil plaintiff and the civil defendant or their representatives shall be compiled in compliance with the requirements of Article 203 of this Code. The records shall indicate what materials were presented for the review, what petitions were filed and what other applications were made, as well as the persons from among witnesses, who were interrogated under the case, the experts, who participated in case, the specialists and the identifying witnesses, the need to summon whom to the judicial session has been stated by the accused and the defense lawyer, or their list has been attached.

2. Appropriate single records shall be compiled if the review of the materials of the case by the accused and his defense lawyer or the victim and his representative was carried out jointly.

### **Article 278. Indictment**

1. The indictment of the investigator shall consist of the introductory, descriptive motivation and the operative parts.

2. In the introductory part the investigator shall indicate the surname, the name, the patronymic of the accused (accused individuals) in respect of whom the indictment is being compiled, the criminal law (Article, part, item) in accordance with which his acts are qualified.

3. In the descriptive motivation part the following shall be outlined: the essence of the accusal, the place and the time of the commission of the crime, its methods, motives, consequences and other material circumstances, information on the victim, the evidences,

which confirm the guilt of the accused; the circumstances, which mitigate or aggravate his liability; arguments, which are brought by the accused for his defense, and results of examination of those arguments. The indictment must contain references to the volumes and pages of the case.

4. Information concerning the personality of the accused shall be presented in the operative part, as well as the formulation of the brought charges shall be outlined with the specification of the criminal law (Article, part, item), which provides liability for a given crime.

5. The indictment shall be signed by the investigator with indication of the place and date of its compilation.

### **Article 279. Appendices to Indictment**

1. The list of victims, witnesses, experts subjected to be summoned to the judicial session shall be attached to the indictment. The list must consist of two parts - the list of the persons named by the accused and the defense lawyer (the list of the defense), and the list compiled by the investigator (the list of the prosecution).

2. The place of residence or place of location and pages of the case, on which their testimonies or statements are presented, shall be indicated in the list of the persons subjected to be summoned to the judicial session. In cases specified by Article 100 of this Code, this list shall contain only the aliases of the persons, who are subject to be summoned to the judicial session, without indicating their place of residence.

3. Reference documents with indication of the relevant pages of the case on the periods of investigation, on the selected measures of restraint with indication of the time of arrest and house arrest, on material evidences, on civil claims, on the measures adopted for securing the civil claim and potential confiscation of property, on procedural expenses, shall be attached to the indictment.

### **Article 280. Direction of Criminal Case to the Prosecutor**

1. After the indictment is signed by the investigator, the case shall be immediately directed to the prosecutor, who supervises the given case.

2. The documents, which confirm the identity of the accused, must be attached to the criminal case, except for the cases when the accused is outside the boundaries of the Republic and evades visiting the bodies of the preliminary investigation.

If the accused - a citizen of the Republic of Kazakhstan has no identity document, he must be documented by the authorized body pursuant to the application of the body conducting the criminal procedure before the completion of the investigation on the case.

If the accused - a foreign person has no identity document, another document in exceptional cases may be attached to the criminal case.

Note. The following shall be recognized as identity documents in this Article:

- 1) passport of a citizen;
- 2) identity card;
- 3) registration certificate of a foreigner in the Republic of Kazakhstan;
- 4) certificate of a stateless person;
- 5) driver's license;
- 6) military card;
- 7) birth certificate (for a person under sixteen years of age);
- 8) act record of birth of a citizen.

Footnote. Article 280 is in the wording of the Law of the Republic of Kazakhstan dated January 8, 2007 No. 210.

### **Article 281. Issues to be settled by Prosecutor with regard to a Case Received with an Indictment**

The prosecutor shall be obliged to examine the criminal case, which came with an indictment, and to review the following:

- 1) whether the act incriminated to the accused took place, and whether that act contains the elements of the crime;
- 2) whether there are circumstances, which entail its termination;
- 3) whether the presented charge is substantiated, whether it is confirmed by the evidences, which exist in case;
- 4) whether the charge has been brought with regard to all the criminal acts of the accused, which have been established and proven under the case;
- 5) whether all the persons, in respect of whom the evidences on the commission of crimes by them were obtained, have been brought into proceedings as accused;
- 6) whether the qualification of the acts of the accused is correct;
- 7) whether the measure of restraint was selected accurately and whether there are no grounds in case to change or abolish it;
- 8) whether the measures for ensuring the civil claim and potential confiscation of property have been taken;
- 9) whether the indictment has been compiled in accordance with the requirements of this Code;
- 10) whether material violations of the criminal procedure law have been made in the course of performance of the preliminary investigation.
- 11) whether the criminal prosecution body adopted measures on establishment of the sums of procedural expenses to ensure their collection by court.

Footnote. Article 281 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 282. Acts of Prosecutor on a Case Which has been received with an indictment**

The prosecutor shall consider the case, which has been received from the investigator with an indictment, and within the period of not more than ten days, he shall carry out one of the following acts in respect of it:

- 1) express by his resolution the consent with the indictment and bring the accused to trial;
- 2) exclude by his resolution the certain items of the charge or re-qualify the acts of the accused with the application of the law on a less grave crime;
- 3) terminate the criminal case in full volume or with regard to certain accused individuals;
- 4) return the case to the investigator with his written instructions for the performance of an additional investigation or recompilation of the indictment, of which he shall pass a motivated resolution;
- 5) compile a new indictment;
- 6) supplement or shorten the list of the persons, who are subject to be summoned to the court, except for the list of the defence witnesses.

Footnote. Article 282 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 283. Decision of Prosecutor on Measure of Restraint with regard to a Case**

1. With regard to the case, which has been received with an indictment the prosecutor shall have the right by a motivated resolution to abolish or change the measure of restraint, which has been selected earlier for the accused, or to select a measure of restraint, if such measure has not been applied, except for the arrest or house arrest. In cases when the prosecutor sees the need to abolish, change or select a measure of restraint in the form of arrest or house arrest, he shall be guided by Articles 149, 150 and 154 of this Code.

2. In cases when the prosecutor sees the need to abolish, change, or select a measure of restraint in the form of arrest or house arrest, he shall pass a motivated resolution to that effect, which he shall direct to the court for approval.

The materials of the criminal case, which confirm the propriety of the arrest, shall be attached to the resolution.

Footnote. Article 283 is in the wording of the Law of the Republic of Kazakhstan dated

05.07.2008 No. 65-IV (the order of enforcement see Article 2); as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 284. Bringing the accused to Trial**

1. The prosecutor shall pass a resolution on bringing the accused to trial, after which the criminal case with the indictment and identity document, which is indicated in the note to Article 280 of this Code, shall be immediately directed by him to the court, to which jurisdiction it is subject.

2. The accused, the defense lawyer, the victim and his representatives, the civil plaintiff, the civil defendant or their representatives shall be notified of the direction of the case to the court. The prosecutor shall provide for the handing of the copy of indictment and its appendices to the accused, in this respect in the list of persons, who are subject to be summoned to the court, except for the list of the defence witnesses, the place of residence of those persons shall not be indicated. In cases when the accused is outside the boundaries of the Republic of Kazakhstan and evades appearing at the bodies of the prosecutor's office, the prosecutor shall direct the criminal case to the court without handing the copy of the indictment to the accused. If the location of the accused is known, the copy of the indictment shall be directed to him by mail. If necessary, the prosecutor shall have the right to organize publication of the notice on bringing the accused to trial and directing the criminal case to the court in the Republic's mass media, in the mass media at the place of location of the accused, as well as in the public telecommunication networks. The copy of the indictment shall be handed to the defense lawyer, the victim and his representative as well. The accused and the victim, who have no command of the language in which the indictment has been compiled, must be given the copy translated into the language of which they have command.

3. After directing the case to the court, the petitions and complaints on the case shall be sent directly to the court.

Footnote. Article 284 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Chapter 37. Inquest on Cases for which performance of preliminary investigation is not obligatory**

### **Article 285. Procedure and Periods of Inquest on Cases for Which Performance of Preliminary Investigation Is Not Obligatory**

1. The performance of the preliminary investigation shall not be obligatory for the cases of crimes indicated in the parts two, three, five, 5-1, seven, 7-1, eight, 8-1, 8-2, 8-3, 8-4, and nine of this Article, and the materials of the inquest shall be the basis for the consideration of the case by the court.

2. The bodies of internal affairs shall carry out inquest on the cases of the crimes specified by Articles 104, 107 (part one), 108, 109, 110, 115, 116 (parts he and two), 117 (parts he and two), 118, 119, 123, 126 (part one), 128 (part one), 132 (part one), 134 -137, 139, 140, 141 (part one), 142 (part one), 144, 145 (parts he and two), 175 (part one), 178 (part one), 181 (part one), 183 (part one), 185 (part one), 186 (part one), 187 (part one), 230 (part one), 251 (parts he and four), 252 (parts he and four), 253, 254 (part one), 257 (part one), 258, 261 (part one), 262, 263 (parts he and two), 265, 266, 270, 271 (part one), 272-274, 275 (part one), 275 -1 (part one), 276, 287 (part one), 288 (part one), 290, 291, 292 (part one), 293, 296, 297, 298 (parts he and two), 299 (part one), 300 (part one), 302 (part one), 317, 320 (part one), 323, 324, 326, 327 (parts he and two), 328, 329, 330-1, 330-2, 330-3, 332 -334, 339 (part one), 342, 358 (part one), 359, 360 (part one), 362 of the Criminal Code of the Republic of Kazakhstan.

The Safeguard Service of the President of the Republic of Kazakhstan may carry out inquest on the cases of crimes provided for by Articles 142 (part one), 145 (parts he and two), 175 (part one), 187 (part one), 230 (part one), 251 (parts he and four), 257 (part one), 288 (part one), 296, 298 (parts he and two), 299 (part one), 300 (part one), 302 (part one), 333 (part two) of the Criminal Code of the Republic of Kazakhstan, if they are committed in the area, where the security measures are performed, and directly aimed against protected persons, the list of which is established by Law.

3. The bodies of the financial police shall carry out inquest on the cases of crimes specified by Articles 190 (part one), 198, 208, 221 (part one), 222 (part one), 226 (part one), 307-1 of the Criminal Code of the Republic of Kazakhstan. The bodies of the financial police may carry out inquest on the cases of crimes provided for by Article 183 (part one) of the Criminal Code of the Republic of Kazakhstan, if it is directly associated with the performance of inquest on the cases, which are under jurisdiction of the bodies of financial police, and the criminal case may not be singled out for the separate proceedings.

4. Deleted by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

5. The bodies of the military police shall carry out the inquest on the cases on crimes provided for by Articles 367 (parts he and two), 368 (part one), 369 (part one), 370 (parts he and two), 371, 372 (part one), 373 (part one), 374 (part one), 377 (part one), 378 (parts he and two), 379, 381 (part one), 387 (parts he and two), 388, 389, 390 (part one), 391 (part one) of the Criminal Code of the Republic of Kazakhstan, as well as on the cases of crimes indicated in this Article, which have been committed by military servicemen, who do the military service under conscription or contract at the Armed Forces of the Republic of Kazakhstan,

other troops and military formations of the Republic of Kazakhstan; by citizens, who are in the reserve during their undergoing military training; by persons of the civilian personnel of military units, formations, institutions due to their performance of service duties or in the territory of those units, formations and institutions.

5-1. The bodies of the military police of the National Security Committee shall carry out inquest on the cases of crimes provided for by the part five of this Article, as well as on all the other crimes committed by workers of special government bodies, for which preliminary investigation is not obligatory.

6. Deleted by the Law of the Republic of Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

7. The bodies of the frontier service shall carry out inquest on the cases of crimes provided for by Article 331 (part one) of the Criminal Code of the Republic of Kazakhstan.

7-1. The inquest on cases of crimes provided for by part one of Article 330 of the Criminal Code of the Republic of Kazakhstan shall be carried out by the body of the frontier service or by the body of internal affairs, which instituted the criminal case.

8. The bodies of the state fire-fighting service shall carry out the inquest on the cases of crimes provided for by Article 256 of the Criminal Code of the Republic of Kazakhstan.

8-1. The inquest on the cases on crimes provided for by Articles 176 (part one), 177 (part one), 182 (part one) of the Criminal Code of the Republic of Kazakhstan shall be carried out by the body of internal affairs or the financial police, which instituted the criminal case.

8-2. The inquest on the cases on crimes provided for by part one of Article 209, part one of Article 214 of the Criminal Code of the Republic of Kazakhstan, shall be carried out by the body of the financial police or custom authority, which instituted the criminal case.

8-3. The inquest on the cases on crimes provided for by Article 188 of the Criminal Code of the Republic of Kazakhstan shall be carried out by the body of internal affairs or by bodies of the state fire-fighting service, which instituted the criminal case.

8-4. The inquest on the cases on crimes provided for by Article 325 of the Criminal Code of the Republic of Kazakhstan, shall be carried out by the body of internal affairs, financial police or by the Safeguard Service of the President of the Republic of Kazakhstan, if they are committed in the area, where the security measures are performed, and directly aimed against protected persons, the list of which is established by Law.

9. The inquest on the cases of crimes provided for by part one of Article 250 of the Criminal Code of the Republic of Kazakhstan shall be carried out by the body of internal affairs, financial police or customs body, which instituted the criminal case.

10. The inquest on the cases of crimes indicated in this Article shall be carried out when the person, who is suspected of the commission of a crime, is known.

11. The inquest shall be carried out in accordance with the rules established by this Code for the preliminary investigation, with the exceptions provided for by Articles of this Chapter.

12. The person, who is suspected of commission of a crime, in respect of whom the

pre-trial procedures are carried out in the form of inquest, may be detained by the body of inquiry in accordance with the rules established by Articles 132 -138 of this Code. The said person may be subjected to the measure of restraint in accordance with Article 139 of this Code.

13. The inquest shall be carried out within the period of thirty days from the date of the institution of the criminal case until the case is passed to the prosecutor for its directing to the court.

In cases provided for by item 2) of Article 190-4, Article 303-1 of this Code, that period shall be calculated from the date of approval of the record of simplified pre-trial procedures by the head of the body of inquiry.

**Footnote.** Article 285 as amended by the Laws of the Republic of Kazakhstan dated 09.12.98 No. 307; dated 05.05.2000 No. 47; dated 16.03.2001 No. 163; dated 16.07.2001 No. 244 (shall be enforced from 01.01.2001); dated 22.02.2002 No. 296; dated 21.12.2002 No. 363; dated 09.12.2004 No. 10; dated 31.12.2004 No. 27; dated 02.03.2006 No. 131; dated 10.07.2009 No. 177-IV (the order of enforcement see Article 2); dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2); dated 10.12.2009 No. 228-IV (the order of enforcement see Article 2); dated 23.11.2010 No. 354-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 13.02.2012 No. 553-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 21.06.2012 No. 19-V (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 286. Circumstances which are subject to averment in course of inquest**

1. In the course of inquest in accordance with Article 117 of this Code the following shall be subject to averment: the event of the crime, the person, who committed the act prohibited by the criminal law, culpability of the person, the nature and amount of damage, as well as other circumstances, which are material for the case.

2. In order to establish the circumstances indicated in part one of this Article, the investigative acts may be carried out, with the exceptions provided for by the part six of this Article; documents confirming whether the person suspected of commission of a crime has a criminal record, characteristics from the place of his work or training, other materials, which are significant for the case may be reclaimed; interrogation of the victim, the witness may be carried out.

3. The victim (witness) may be questioned in the verbal form. The results of the questioning shall be formulated as a document, which specifies the following: surname, name

, patronymic, place of residence or work of the victim (witness), degree and nature of his awareness. In the course of questioning in accordance with the procedure provided for by Article 219 of this Code, audio, video recording and filming may be used. In the course of the questioning, the opinion of the victim (witness) shall be ascertained on the expedience of application of security measures in respect of him during the criminal procedure, which are provided for by Article 100 of this Code.

4. The interrogating officer shall explain to the victim (witness) his rights provided for by Articles 75 and 82 of this Code, and the duty to arrive upon summons of the interrogating officer or court for interrogation, and he shall be warned against receipt of the liability for refusal or evasion to give testimonies.

5. The document on questioning of the victim (witness) shall be attached to the materials of the case and it shall serve as grounds for his interrogation during the performance of the inquest, preliminary investigation or in the course of the judicial proceedings.

6. As a rule, the interrogation of the person as a victim (witness) shall be carried out in cases when there are reasons to believe that due to the forthcoming departure from a given area, change of place of residence, due to the health condition or due to other reasons he will not be able to participate in the court proceeding on the criminal case. The victim, who is a private prosecutor, shall be subject to interrogation in all cases.

7. The person, in respect of whom a criminal case is initiated, shall be interrogated as a s u s p e c t .

**Footnote. Article 286 is amended by the Law of the Republic of Kazakhstan dated December 21, 2002 No. 363.**

## **Article 287. Compilation of Record of Prosecution and Submission of the Case to Prosecutor for its Direction to the Court**

1. The interrogating officer upon the end of the inquest shall compile the record of prosecution, in which the following shall be indicated: the time and the place of its compilation; who compiled the record; the circumstances of the commission of the crime; information on the person, who is accused of its commission; other circumstances, which are material for the case, as well as the qualification of the crime in accordance with the Criminal Code of the Republic of Kazakhstan (Article, part, item). All the materials obtained in the course of inquest, as well as the list of the persons, who are subject to be summoned to the court, shall be attached to the record.

2. The person, in respect of whom the record of prosecution has been compiled in accordance with the procedure established by this Article, shall be recognized as an accused.

3. Having examined the record of prosecution and the materials attached to it, the head of the body of inquiry shall take one of the following decisions:

1) on approval of the record and submission of the materials to the prosecutor for their

direction to the court;

2) on refusal to approve the record.

4. After the approval of the record of prosecution all the materials of the case in accordance with the procedure provided for by Article 275 of this Code shall be submitted for the review to the accused and his defense lawyer, and if there is an appropriate petition - to the victim and his representative as well. Appropriate notes shall be made on the review of the materials of the case by the said persons, as well as on the petitions filed by them and results of their consideration, in the record of prosecution.

5. The record of prosecution approved by the head of the body of inquiry together with the materials of the case shall be passed to the prosecutor for their submission to the court. The copy of the record of prosecution shall be handed to the accused by the body of inquiry.

6. If the case was instituted pursuant to the statement or communication of citizens, official persons or organizations, they shall be notified on termination of the inquest and submission of the case to the prosecutor for its submission to the court.

7. When the case is directed to the court, a measure of restraint or another measure of procedural compulsion may be selected in respect of the accused in accordance with the rules of Chapters 18 and 19 of this Code.

### **Article 288. The Performance of the Preliminary Investigation**

1. Performance of the preliminary investigation shall be obligatory for the cases of crimes provided for parts two, three, five, seven, 7-1, eight, 8-3, 8-4 and nine of Article 285 of this Code, if the person suspected of their commission is not known, or if they are committed by juveniles or persons, who by virtue of their physical or mental handicaps may not exercise their right to defense themselves.

2. The head of the body of inquiry shall have the right to set the performance of preliminary investigation also in cases, when within the period established by part thirteen of Article 285 of this Code it is impossible to provide for comprehensiveness and fullness of the investigation of the circumstances of the case.

3. The preliminary investigation in cases provided for by the parts he and two of this Article shall be carried out by the bodies of inquiry in accordance with their competence established by item 4 of part one of Article 65 of this Code.

4. The period of the preliminary investigation established by Article 196 of this Code in cases provided for by parts he and two of this Article shall be calculated from the moment of institution of the criminal case.

**Footnote. Article 288 as amended by the Laws of the Republic of Kazakhstan dated 22.02.2002 No. 296; dated 13.02.2012 No. 553-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 289. Powers of Prosecutor with regard to Supervision over Inquest**

When carrying out the supervision over the compliance with the laws during the performance of inquest on the cases for which the performance of the preliminary investigation is not obligatory, the prosecutor shall have the powers established by this Code, aside from that he shall have the following rights:

- 1) to bring the accused to the court and direct the criminal case to the court;
- 1-1) to return the case to the interrogating officer for the performance of an additional inquest or investigation, or for the recompilation of the record of prosecution or indictment, of which he shall pass a motivated resolution;
- 2) to direct the criminal case, on which the inquest is carried out, for the performance of the preliminary investigation;
- 3) to abolish the record of prosecution approved by the head of the body of inquiry and to terminate the inquest on the bases provided for by this Code.

**Footnote. Article 289 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Section 7. Proceedings in Court of First Instance**

### **Chapter 38. Jurisdiction of criminal cases**

#### **Article 290. Criminal cases subject to jurisdiction of the district and a court equivalent to it**

1. District and equivalent courts shall act as a court of first instance.. District and equivalent courts shall have jurisdiction over all criminal cases, except for criminal cases referred to the jurisdiction of specialized courts.

3. At the pre-trial stage of the criminal process the district and equivalent courts shall consider complaints to the decisions and actions (inaction) of the investigator, the body of inquiry, the interrogating officer conducting the criminal proceedings, the prosecutor exercising supervision over legality of the investigative and operative activity, inquiry and investigation, approve the measure of restraint selected by the investigator, the body of inquiry with regards to the suspect, the accused in the form of house arrest, extend its terms.

4. At the stage of execution of the sentence, district and equivalent courts shall review the matters set out in Articles 452 and 453 of this Code if referred to their jurisdiction.

5. In cases provided by this Code, district and equivalent courts shall review the complaints referred to their jurisdiction to resolutions of the prosecutor on termination of

instituted proceeding due to the absence of grounds for the resumption of the proceedings with newly discovered circumstances and shall consider the case with regards to the newly discovered circumstances.

Footnote: Article 290 is in wording of the Law of the Republic of Kazakhstan dated December 10, 2009 No. 227-IV (shall be enforced from January 1, 2010).

### **Article 290-1. Criminal cases subject to the jurisdiction of specialized inter-district juvenile court**

Specialized inter-district juvenile court shall have jurisdiction over the following criminal cases :

1) on crimes committed by juveniles, except for the cases referred to the jurisdiction of a specialized inter-district criminal court, a specialized inter-district military court for criminal cases and the garrison military court;

2) on crimes referred to in Articles 103 (paragraph l) of part two), 104 (item h) part two), 122, 124, 131, 132, 132-1, 133 (parts he - three), 134, 135, 136 (part one), 137, 138, 139 of the Criminal Code of the Republic of Kazakhstan.

Note. If in the territory of the administrative-territorial unit a specialized inter-district juvenile court is not established, a district (city) court shall have the right to consider the cases within its jurisdiction.

Footnote. Chapter 38 is supplemented by Article 290-1 in accordance with the Law of the Republic of Kazakhstan dated 05.07.2008 No. 64-IV (the order of enforcement see the Article 3); as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV ( shall be enforced from 01.01.2010); dated 23.11.2010 No. 354-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 290-2. The criminal case under the jurisdiction of the specialized inter-district criminal court**

1. Specialized inter-district criminal courts shall act as a court of first instance.

2. Specialized inter-district criminal courts shall have jurisdiction over the gravest criminal cases, except in cases attributed to the jurisdiction of specialized inter-district military courts for criminal cases.

3. At the stage of execution of a sentence, specialized inter-district criminal courts shall consider the matters provided for by Articles 452 and 453 of this Code if they fall into their jurisdiction .

4. In cases provided for by this Code, specialized inter-district criminal courts shall consider the complaints to resolutions of the prosecutor on termination of the instituted criminal case due to the absence of grounds for resumption of proceedings on the case due to the newly discovered circumstances and shall consider the case with regards to the newly

discovered

circumstances.

**Footnote.** The Code is supplemented by Article 290-2 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 290-3. Jurisdiction over criminal cases of specialized inter-district military courts for criminal cases and military courts of garrisons**

1. Specialized inter-district military courts for criminal cases and military courts of garrisons act as the courts of first instance.

2. Specialized inter-district military courts for criminal cases shall have jurisdiction over the following criminal cases:

1) gravest military crimes under Chapter 16 of the Criminal Code of the Republic of Kazakhstan;

2) other gravest crimes committed by servicemen that pass military service by conscription or contract in the Armed Forces, other troops and military formations, citizens in reserve, during military training; by civilian personnel of military units, formations and institutions in connection with the performance of their official duties or in disposition of these units, assemblies and institutions.

3. The military courts of garrisons, except for the cases under the jurisdiction of specialized inter-district military court for criminal cases, shall have jurisdiction over the following criminal cases:

1) with regard to military crimes under Chapter 16 of the Criminal Code of the Republic of Kazakhstan;

2) with regard to other crimes committed by military servicemen undergoing a military service by conscription or under a contract in the Armed Forces, other troops and soldiers formations and citizens in reserve, during military training; by civilian personnel of military units, formations, institutions due to the performance of their official duties or in disposition of these units, assemblies and institutions.

4. At the stage of execution of a sentence, specialized inter-district military courts for criminal cases and military courts of garrisons shall consider the matters under their jurisdiction as set forth in Articles 452 and 453 of this Code.

5. In cases provided for by this Code, specialized inter-district military courts for criminal cases and military courts of garrisons shall consider the cases under their jurisdiction with regards to the complaints to resolution of the prosecutor on termination of instituted proceedings due to the absence of grounds for resumption of the case due to newly discovered circumstances and consider the cases with regards to such newly discovered circumstances.

**Footnote.** The Code is supplemented by Article 290-3 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 291. Criminal cases under jurisdiction of regional courts and courts equivalent to them**

1. Regional court and a court equivalent to it shall proceed as a court of appeal and cassation instance.

2. In accordance with the appeal procedure a regional court and a court equivalent to it shall consider the cases on appellate (private) complaints, protests with regards to the sentences which did not come into legal force and resolutions of district courts and courts equivalent to them, specialized inter-district juvenile courts, as well as inter-regional specialized courts for criminal cases.

3. In accordance with cassation procedure a regional court and a court equivalent to it shall consider the cases on cassation (private) complaints, protests with regards to sentences and resolutions issued by the courts of first and appeal instances and which came into legal force.

4. At the pre-trial stage of the criminal process, regional courts and courts equivalent to them shall consider in accordance with appeal procedure private complaints, protests with regards to the resolutions of district courts and courts equivalent to them which were issued after the consideration of complaints to the acts and resolutions of the body of criminal prosecution when considering the matters on sanctioning the measure of restraint in a form of house arrest and detention, extension of their terms made by the body of inquiry, the investigator, the prosecutor with regards to the suspect, the accused.

5. At the stage of execution of a sentence regional courts and courts equivalent to them shall consider in accordance with appeal procedure private complaints, protests to resolutions of the courts of first instance issued after consideration of the matters set forth in Articles 452 and 453 of the present Code.

6. In cases provided for by this Code, regional courts and courts equivalent to them shall consider the complaints to resolutions of the prosecutor on termination of the instituted proceeding due to the absence of grounds for the resumption of the proceeding on a case with newly discovered circumstances and shall consider the case based on such newly discovered circumstances.

**Footnote.** Article 291 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 291-1. Consideration of Cases on Application of Compulsory Measures of Medical Nature**

The cases on application of compulsory measures of medical nature to persons, who committed an act prohibited by the criminal law due to their insanity or to those who became

insane after its commission shall be considered by the court of first instance in accordance with jurisdiction established by Articles 290, 290-1, 290-2, 290-3 of the present Code.

**Footnote.** The Code is supplemented by Article 291-1 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No.227-IV (shall be enforced from 01.01.2010).

## **Article 292. Criminal cases under jurisdiction of the Supreme Court**

1. The Supreme Court acts as the highest court and collegially considers the cases on petitions of the parties and the prosecutor with regards to:

- 1) sentences and resolutions of the courts of first and appeal instances only when they are considered by the cassation instance;
- 2) resolutions of the court of cassation instance.

2. Plenary Session of the Supreme Court on the grounds mentioned in part three of Article 458 of this Code shall consider the cases on a submission from the Chairman of the Supreme Court and with regards to a protest of the Prosecutor General against resolutions of a collegium of the Supreme Court.

3. In cases provided for by this Code, the Supreme Court shall consider the complaints to resolutions of the prosecutor on termination of instituted proceedings due to the absence of grounds for resumption of proceedings on a case due to newly discovered circumstances and shall consider the case based on the newly discovered circumstances

**Footnote.** Article 292 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 293. Jurisdiction of military court**

1. Military court shall act as a court of appeal and cassation instances.

2. In accordance with the appeal procedure the military court shall consider the cases on appellate (private) complaints, protests with regards to sentences and resolutions of military courts of garrisons, specialized inter-district military courts on criminal cases.

3. In accordance with the cassation procedure, the military court shall examine the cases on cassation (private) complaints, protests with regards to sentences and resolutions which have come into legal force, issued by courts of garrisons, specialized inter-district military courts on criminal cases and the appeal instance of the military court.

4. In cases provided for by this Code, the military court shall consider within its jurisdiction the cases on complaints to resolutions of the prosecutor on termination of instituted proceedings due to the absence of grounds for the resumption of proceedings on a case due to newly discovered circumstances and shall consider the case based on the newly discovered circumstances.

**Footnote.** Article 293 is in the wording of the Law dated 10.12.2009 No. 227-IV (shall be

enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

#### **Article 294. Territorial jurisdiction of criminal cases**

1. The criminal case shall be reviewed in court at the place of commission of the crime.
2. If the crime started at the place of the court activity and was completed at the place of another court activity, the case shall fall into the jurisdiction of the court at the place of termination of the investigation.
3. If the crime was committed outside the territory of the Republic of Kazakhstan or it is impossible to determine the location of the crime, or if the crimes were committed in different places, the case shall be considered by the court at the place of termination of the investigation.

#### **Article 295. Determining jurisdiction when combining criminal cases**

In case of accusation of the person or a group of persons of committing several crimes, at least one of which belongs to the category of gravest crimes, the case shall be considered by a specialized inter-district criminal court, and the cases on crimes provided for by Article 290-3 of this Code shall be considered by a specialized inter-district military court for criminal cases .

In case of a criminal complicity when the case does not fall into the category of gravest crimes, and if found impossible to single the case out into a separate proceeding, the cases shall be considered :  
by a specialized inter-district juvenile court - for cases in which at least one of the participants is a juvenile, if there are no military servicemen among the participants;  
by military court of a garrison - for cases in which at least one of the participants is a military serviceman or another person referred to in item 2) of part three of Article 290-3 of this Code .

**Footnote. Article 295 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

#### **Article 296. Transfer of criminal case to another jurisdiction by the court which initiated proceedings on a case**

1. The court shall transfer the case to another jurisdiction if it is determined that the case received is not under its jurisdiction.
2. If violation of territorial jurisdiction of the case provided for by Article 294 of this Code is discovered at the main judicial proceeding, then to the consent of all the parties the court has the right to keep the case as its proceeding.

3. In all cases, the case shall be sent to another jurisdiction, if it is discovered that it is within the jurisdiction of a specialized inter-district criminal court, a specialized inter-district military court for criminal cases or a specialized inter-district juvenile court or a military court of a garrison.

**Footnote. Article 296 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No.227-IV (shall be enforced from 01.01.2010).**

### **Article 297. Transfer of a criminal case from the court which has jurisdiction over it to another court**

1. In some cases, for the most rapid, full and fair consideration of the case, at the request or with the consent of the parties, it may be submitted for consideration from the court to another of the same level. Therewith transfer of the case is allowed only prior to its consideration at a judicial session.

2. At the request of the party, recommendation of the judge or chairman of the court, the case may be transferred for consideration from the court to another of the same level, if the court is incapable to consider the case because of the circumstances which prevent all the judges of such court to participate in the proceedings, as well as to ensure full and fair consideration of the case or when the transfer to another court is carried out due to the real threat to the personal safety of the participants of the judicial proceeding.

3. The issue of the transfer of the case on the grounds specified in parts one and two of this Article from the court to another shall be resolved by a higher court, of which a resolution shall be issued.

**Footnote. Article 267 as amended by the Law of the Republic Kazakhstan dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 298. Resolution of disputes concerning jurisdiction of a case**

1. Disputes concerning jurisdiction of a case arising between courts shall be resolved by a higher court, and resolution of the latter shall be final and shall not be subject to appeal.

2. Statements of the parties concerning lack of jurisdiction over the case of a particular court shall be resolved by such court. Resolution of the court on dismissing the statements of the party (parties) concerning lack of jurisdiction over the case may be appealed to a higher court, and resolution of the latter shall be final and shall not be subject to appeal.

## **Chapter 39. Resolution of the Matter Concerning Appointment of the Main Judicial Proceeding and Preparatory Measures to a Judicial Session**

## **Article 299. Actions of the court on the submitted criminal case**

1. When a criminal case is received by a court, the chairman of such court or another judge under the chairman's instruction shall resolve the matter of accepting the case for proceeding by the court.

2. The judge shall adopt one of the following decisions with regards to the case received:

1) appointment of the main judicial proceeding;

2) holding preliminary hearing on the case;

3. The judge shall make decision on a case in a form of a resolution which shall include the following information:

1) time and place of resolution;

2) position and surname of the judge who adopted the resolution;

3) grounds and essence of resolutions adopted.

4. Decision shall be adopted within five days upon receipt of the case by the court.

5. Simultaneously with adopting a resolution, the judge shall consider the matter concerning the relevancy of application or non-application of a measure of restraint to the accused and relevance or non-relevance of its form, if a measure of restraint was selected.

**Footnote. Article 299 as amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47, dated December 30, 2005 No. 111 (the order of enforcement see Article 2 of Law No. 111).**

## **Article 300. Matters to be clarified on a case received by the court**

When resolving the matter of possibility to appoint a judicial session, the judge shall clarify the following information with each of the persons on trial:

1) if the court has jurisdiction over this case;

2) whether there are any of the circumstances which entail termination or suspension of the proceedings;

3) if there were any violations of the criminal procedure law committed in the course of the summary pre-trial procedure, the inquiry and the preliminary investigation, which impede the appointment of a judicial session;

4) **(excluded - N 238 dated July 11, 2001);**

5) whether copies of the indictment, the record of prosecution or the record of summary pre-trial procedure were handed;

6) whether the measure of restraint selected in respect of the accused is subject to change;

7) whether the measures which ensure compensation for damage caused by the crime and possible confiscation of property were adopted;

8) whether petitions and statements are to be satisfied.

Footnote. Article 300 as amended by the Law of the Republic of Kazakhstan dated 11.07.2001 No. 238, dated 03.12.2009 No.213-IV (the order of enforcement see Article 2).

### **Article 301. Preliminary Hearing**

1. The judge shall conduct a preliminary hearing with participation of the parties on the cases of gravest crimes, and on other cases to make decision on return of the case for further investigation, suspension of proceedings on the case, direction to the jurisdiction, termination of the case, combination of criminal cases, and to consider the petitions of the parties and making a decision on holding of judicial proceeding in a short form.

2. A preliminary hearing is held by a judge single-headedly in a closed hearing. The parties shall be notified of the time and the place of the preliminary hearing. A record shall be kept during the preliminary hearing.

3. Participation of the accused, his defense lawyer and state prosecutor are obligatory for a judicial proceeding. In case of the accused's absence, the preliminary hearing is carried out when he petitions about that. In case of the absence of the defense lawyer without a good reason, as well as when his participation in the preliminary hearing is not possible, the judge shall take measures to ensure participation of the newly appointed defence lawyer in the judicial proceeding. Failure to appear at the judicial proceeding by the victim and his representative, the civil plaintiff, the civil defendant or their representatives shall not prevent the preliminary hearing.

3-1. During the preliminary hearing, the judge shall find out from the accused who is accused of commission of the gravest crime, except for the crimes provided for by Articles 162 (parts two and three), 163 (part two), 165, 166, 166-1, 167, 168 (part one), 169, 171, 233 (parts three and four), 233-2 (parts he and three), 233-4 (part two), 234 (part three), 238 (part three), 239 (part three) of the Criminal Code of the Republic of Kazakhstan if he has a petition to consider the case by jury.

4. The judge shall make a resolution on the results of the preliminary hearing and therein he shall set out his decision with regards to the questions considered. If there are no reasons to suspend proceedings on a case, terminate it or return the case for further investigation, the court shall issue a resolution on holding of the main judicial proceeding.

5. If, during the preliminary hearing, the prosecutor changes the assusal, the judge shall set it out in the resolution. If the change of the accusal by the prosecutor entails the change of jurisdiction, the judge shall return the case to the prosecutor for the suspension of the indictment, prosecution record and case direction with regards to its jurisdiction.

Footnote. Article 301 is in the wording of the Law of the Republic of Kazakhstan dated 11.07.2001 No. 238, as amended by the Law of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2), dated 10.12.2009 No. 227-IV (shall be

enforced from 01.01.2010), dated 14.06.2010 No. 290-IV (the order of enforcement see Article 2), dated 29.11.2011 No. 502-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 302. Holding of main judicial proceeding**

1. When the judge comes to the conclusion that in the process of inquiry or preliminary investigation all the requirements of this Code were observed with regards to ensuring the rights of the participants of the process and that there are no other grounds which impede consideration of the case in a court, he shall make a decision to hold the main judicial proceeding.

2. Resolution to hold the main judicial proceeding shall include the following:

- 1) indication of a person who is the accused;
- 2) a clear indication of the criminal law the violation of which is incriminated to the accused;
- 3) resolution to keep, cancel, change or select the measure of restraint and measures to secure the damage caused;
- 4) resolutions on recusation, petitions and other statements of the participants of the proceeding;
- 5) resolution to admit as an advocate the person who is the accused or appointment of the advocate for the latter;
- 6) a list of persons to be summoned to the main judicial proceeding;
- 7) resolution on hearing of the case in the absence of the accused in case where the law allows consideration of the case in his absentia;
- 8) information on the location and the time of the judicial proceeding;
- 9) resolution on consideration of a case in a closed judicial proceeding in cases provided for by the present Code;
- 11) resolution on a reserve judge.

3. If a preliminary hearing was held on the case, the resolution on holding the main judicial proceeding shall reflect resolutions on the matters which were put up for discussion.

4. The main judicial proceedings shall be started not earlier than three days from the date of notification of the parties of the place and the time of the judicial proceeding and not later than fifteen days from the date a resolution on its holding was issued. In exceptional cases, this period may be extended by resolution of the judge, but not more than thirty days.

5. The main judicial proceeding shall be completed within a month, in exceptional cases this period may be extended by a reasoned resolution of the judge.

**Footnote. Article 302 as amended by the Law of the Republic of Kazakhstan dated**

05.05.2000 No. 47, dated 16.03.2001 No. 163, dated 30.12.2005 No. 111 (the order of enforcement see Article 2 of Law No. 111), dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 303. Return of a criminal case for further investigation**

1. A judge has the right to direct a case for further investigation under a petition of a party in the following cases:

1) if there are grounds in case for bringing another charge against the accused if it is related to the considered case or if there are grounds for bringing a criminal charge against other persons if their acts are related to the considered case and separate consideration of the case with regards to the new persons is impossible;

2) when there is a necessity to change the accusal set forth in the indictment with a graver one or him which is significantly different from the accusal presented originally.

2. According to the results of the preliminary hearing on the case, the judge without calling the main judicial proceeding on the petition of the party and on his own initiative may direct the case for further investigation in the event of incorrect combination or separation of the case or if other significant violations of the criminal procedure law are discovered, which impede the call of the main judicial proceeding.

3. The case shall be directed for further investigation through the prosecutor. Therewith the judge shall state in the resolution on what grounds the case is returned, as well as address the issue of the measure of restraint of the accused.

**Footnote.** Article 303 is in the wording of the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.

### **Article 303-1. Transfer of a criminal case under summary pre-trial procedure to prosecutor**

When the court established the circumstances provided for by parts one and two of Article 303 of this Code, the case under summary pre-trial procedure shall be transferred to a prosecutor for a preliminary investigation of inquiry.

**Footnote.** The Code is supplemented by Article 303-1 in accordance with the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).

### **Article 304. Suspension of proceedings on a criminal case**

1. Resolution on suspension of proceedings on a case may be made by a judge on the grounds provided for by parts one, 1-1 and two of Article 50 of the present Code.

2. Proceedings on a case may be suspended with regards to him or several persons on trial

provided that it does not infringe his rights to defense or the rights of other persons on trial to defense. If the persons on trial, in respect of which proceedings are not suspended, are in custody and the judge does not find it possible to change their measure of restraint, proceedings shall be suspended for the period not exceeding thirty days. If the circumstances for suspension of proceedings in respect of any of the persons on trial do not cease, then proceedings in respect of other persons on trial shall be resumed and the date of judicial proceeding shall be appointed.

3. When proceedings on a case are suspended on the grounds provided for by item 2 part he Article 50 of this Code, the case shall be returned to a prosecutor, except for the cases provided for by part two of Article 315 and part two of Article 321 of this Code.

**Footnote. Article 304 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 10.07.2012 No. 32-V (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 305. Measures securing a civil suit and confiscation of property**

If measures securing compensation for damage caused by the crime and possible confiscation of property are not arranged by the interrogating officer, the judge shall oblige the criminal prosecution bodies to adopt such securing measures.

### **Article 306. Transfer of a criminal case to another jurisdiction**

If the judge determines that the case does not fall into his jurisdiction, he shall issue a resolution to transfer the case to another jurisdiction providing legal grounds for such resolution and the court the case is transferred to, notifying the participants about it.

### **Article 307. Termination of a criminal case**

The judge shall issue a resolution on termination of the case on the grounds provided for by items 1-12 of part one of Article 37 and part one of Article 38 of this Code, and in cases when the public prosecutor refuses from accusal. Having adopted a resolution on termination of the case, the judge shall cancel the measure of restraint, measures securing a civil suit and confiscation of property and shall resolve the matter of material evidences. A copy of such resolution of the judge on termination of the case shall be sent to the prosecutor, and handed to the person subjected to criminal prosecution, and the victim.

### **Article 308. Enabling parties to familiarize themselves with materials on a case**

After appointment of the main judicial proceeding, the judge shall provide the parties with an opportunity to familiarize themselves with all materials on a case which they were not familiarized with at the stage of pre-trial procedure, and excerpt any information out of them.

### **Article 309. Handing of copies of documents**

If when resolving the matter on appointment of the main judicial session a measure of restraint was changed or the list of persons to be summoned to the court was changed, or when the prosecutor changes the accusation, the accused, his defense lawyer, the victim and his representative shall be handed a copy of judge's resolution.

**Footnote. Article 309 as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010)**

### **Article 310. Summon to a judicial session**

The judge shall issue an instruction on summon to a judicial session of persons indicated in his resolution and shall arrange measures for preparation of a judicial session.

## **Chapter 40. General terms and conditions of judicial proceeding**

### **Article 311. Directness and oral nature of judicial proceeding**

1. All evidences on the case shall be subject to direct examination at a judicial proceeding. The court shall hear the testimony of a person on trial, a victim, witnesses, read out opinions of experts, examine material evidences, read out records and other documents, carry out other acts for the investigation of evidences, except for the cases provided for by this Code.

2. The testimonies given during a preliminary investigation may be read out only in exceptional cases provided for by this Code.

3. A sentence of the court may be based only on those evidences which were examined at a judicial session, and in case of a summary judicial investigation - on those evidences which were received during inquiry and not challenged by the parties in court.

### **Article 312. Immutability of the composition of the court when considering a case**

1. The case shall be considered by the same judge.

2. When the judge cannot continue to participate in a judicial proceeding, he shall be replaced by another judge, and consideration of the case shall commence from the beginning, except for the cases provided for by Article 313 of this Code.

**Footnote. Article 312 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

### **Article 313. A substitute judge**

1. When a case which requires long time for consideration is considered, a substitute judge may be appointed.

2. A substitute judge shall be present at the main judicial proceeding from the opening of a judicial session or from the moment the court makes a decision on his participation, and, if the judge quits, he shall replace such judge. Therewith consideration of a case shall continue. A substitute judge shall have the rights of the judge from the moment the previous judge quits. A substitute judge who took the place of the judge, who quitted, may require resumption of any judicial acts.

**Footnote. Article 313 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

### **Article 314. Competences of the presiding judge at the main judicial proceeding**

1. The judge who is charged with consideration of the case shall preside at the main judicial proceeding.

2. **Excluded by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

3. The presiding judge shall conduct the judicial session, in the interest of justice arrange all measures ensuring equality of parties, maintain objectiveness and disaffection, create conditions for comprehensive and full examination of circumstances of the case. The presiding judge shall also provide for the order of the judicial session, explain rights and obligations and procedures for their exercise and enforcement to all participants of the judicial proceeding. If either person participating in the judicial proceeding protests against the acts of the presiding judge, such protests shall be entered into the record of a judicial session.

**Footnote. Article 314 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

### **Article 315. Participation of a person on trial in the main judicial proceeding**

1. The main judicial proceeding shall be conducted with obligatory participation of the person on trial, except as provided for by part two of this Article. If the person on trial does not appear, the case shall be postponed. The court may apply forced bringing or a measure of restraint to the person on trial who does not appear with no good reasons. If the person on trial who is in custody refuses to appear at the judicial session, the court shall have the right to consider the case in his absence with obligatory participation of the defense lawyer.

2. Consideration of the case in the absence of the person on trial may be permitted only when :

1) the person on trial accused of the commission of a crime of a little gravity petitions of

consideration of the case in his absence;

2) the person on trial is outside the boundaries of the Republic of Kazakhstan and refuses to appear in court.

### **Article 316. Participation of a defense lawyer in the main judicial proceeding**

1. The defense lawyer of the person on trial shall present objects, documents and information required for the provision of legal aid, collected in accordance with the procedure provided for by part three of Article 125 of this Code, participate in examination of other evidences, air his opinion to the court on the merits of prosecution and its proof, of the circumstances which mitigate the responsibility of the person on trial or discharging him, of the measure of punishment and of other matters which arise in the course of a judicial proceeding .

2. If the defense lawyer does not appear and if it is not possible to replace him in this judicial session, such judicial proceeding shall be postponed. Replacement of the defense lawyer who does not appear at the judicial session shall be permitted only with the consent of the person on trial. If participation of the defense lawyer invited by the person on trial is impossible within a long period of time, the court postponing the main judicial proceeding shall propose to the accused to select another defense lawyer, and if the accused refuses to do so, the court shall appoint a new defense lawyer.

3. The defense lawyer who rejoins the case shall be provided with the time required for preparation to participate in the judicial proceeding. He shall have the right to repeat any act carried out in the course of a judicial proceeding before he rejoined the case.

**Footnote. Article 316 as amended by the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010)**

### **Article 317. Participation of a state prosecutor in the main judicial proceeding**

1. Participation of a prosecutor in the main judicial proceeding shall be obligatory, except for the cases of private prosecution.

2. With regards to complicated and multi-episode cases, several prosecutors may support state prosecution .

3. If during a judicial proceeding it is found out that the prosecutor may not continue to participate, he may be replaced. Joining of a new prosecutor of a case shall not entail repetition of the acts which have already been carried out in court by that moment, but subject to a petition of the prosecutor, the court may provide the latter with the time for review of materials of the case .

4. The prosecutor shall present evidences and participate in their examination, set forward his opinion on the merits of the prosecution, as well as on other matters which arise in the course of a judicial proceeding, provide his recommendations to the court on application of a

criminal law and assignment of a punishment to the person on trial.

5. The prosecutor shall submit and support the civil suit presented on the case, if it is required to secure the rights of persons, state and public interests.

6. Supporting his prosecution, the prosecutor shall be guided with the requirements of law and his moral certainty based on the results of consideration of all circumstances of the case. The prosecutor may change the prosecution, if it does not worsen the situation of the person on trial and does not violate his right to defense. The prosecutor shall withdraw prosecution (in full or in any part) if he comes to the conclusion that it was not proved during the judicial proceeding. Withdrawal of prosecution by the state prosecutor shall be permitted in course of a judicial investigation or judicial pleadings.

7. If the prosecutor withdraws the prosecution in full, if the victim withdraws the accusal too, the court shall terminate the case with its resolution. If the victim insists on accusal, the court shall continue consideration and shall resolve the case in a general manner. In this case the prosecutor shall be exempted from further participation in the proceeding, and prosecution shall be supported by the victim single-headedly or through his representative. Based on the petition of the victim, the court shall provide him with the time for invitation of a representative. If the prosecutor and the private prosecutor withdraw prosecution in a part, the court shall terminate the case in such part of the prosecution, which the prosecution party withdrew, and the case shall be considered in a general manner with regards to the remaining part. If the prosecutor changes the accusal and the victim does not insist on the previous accusal, the court shall consider the case based on the new accusal.

8. If there are circumstances set forth in part four of Article 67 of the Criminal Code of the Republic of Kazakhstan, the prosecutor shall state to the court his consent with reconciliation with the person on trial in a part of the damage caused to the interests of the public and the state protected by law. Statement of the prosecutor on the consent with reconciliation with the person on trial shall not mean his refusal from criminal prosecution.

**Footnote. Article 317 as amended by the Law of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 318. Participation of a victim in the main judicial proceeding**

1. The main judicial proceeding shall be held with participation of the victim or his representative.

2. If the victim does not appear, the court shall resolve whether the case shall be considered or postponed depending on whether it is possible to clarify all circumstances of the case and defend his rights and legitimate interests in his absence.

3. Based on the petition of the victim, the court may exempt he from appearing at the judicial session, taking an obligation from him to appear at a certain time for giving

t e s t i m o n i e s .

4. On the cases of private prosecution, failure of the victim to appear at the judicial session with no good reasons shall entail termination of the case; however based on the petition of the person on trial the case may be considered on merits in the absence of the victim.

### **Article 319. Participation of civil plaintiff or civil defendant in the main judicial proceeding**

1. The civil plaintiff, the civil defendant or their representatives shall participate in the  
j u d i c i a l p r o c e e d i n g .

2. If the civil plaintiff or his representative does not appear in court, the civil suit may be left without consideration. The civil plaintiff shall have the right to submit the suit in accordance with procedures of civil proceedings.

3. Based on the petition of a civil plaintiff or his representative the court may consider the civil suit in the absence of the civil plaintiff.

4. The court shall consider the civil suit irrespective of whether the civil plaintiff or his representative appeared in court if the court finds it unnecessary or if the suit is supported by  
t h e p r o s e c u t o r .

5. Failure of the civil defendant or his representative to appear shall not suspend consideration of a civil suit.

### **Article 320. Limits of the main judicial proceeding**

1. The main judicial proceeding shall be conducted only with regards to the person on trial and within the limits of the accusal based on which him was brought before the court.

2. Change of accusal shall be permitted only if it does not worsen the situation of the person on trial and does not violate his right to defense.

3. If in the course of the main judicial proceeding due to unjustified change of the original accusal at the stage of the preliminary hearing there is a need to change the accusal to a graver one, then for the consideration of the case within the limits of the accusal charged, the court based on the petition of the prosecution party, and considering the opinions of other participants of the proceeding, may postpone the judicial proceeding for the period of time not exceeding seven days and hold a new preliminary hearing of the case.

### **Article 321. Postponement of the main judicial proceeding and suspension of a criminal case**

1. If it is not possible to consider the case due to the failure of any of the summoned persons to appear at a judicial session, or if it is necessary to call for new evidences, the court

shall make a resolution on postponement of case consideration. Simultaneously the court shall arrange measures to summon those persons who did not appear or to call for the new evidences. The court shall set a period which consideration of the case is postponed for.

2. If there are grounds provided for by parts one, 1-1 and two of Article 50 of this Code, the court shall suspend proceedings on a case in respect of he or several persons on trial until such circumstances eliminate and shall continue judicial proceeding in respect of the remaining persons on trial.

3. Search of the person on trial who hides, shall be announced by resolution of the court.

**Footnote. Article 321 as amended by the Law of the Republic of Kazakhstan dated 10.07.2012 No. 32-V (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 322. Resolution of the matter concerning the measure of restraint**

1. In the course of the main judicial proceeding the court may select, change or cancel the measure of restraint in respect of the person on trial.

2. The period of arrest of the person on trial as a measure of restraint from the moment the case is received by the court and until the sentence is issued, shall not exceed six months.

3. In respect of grave crimes, after expiration of the term provided for in part two of this Article, the court with its resolution may extend the period of arrest up to twelve months.

4. Upon expiration of the periods of arrest provided for by parts two and three of this Article the court shall change the measure of restraint of the person on trial to house arrest or a written undertaking not to leave the place.

5. Restrictions provided for by parts two and four of this Article shall not cover gravest crimes.

### **Article 323. Transfer of a case for further investigation**

1. The court shall transfer the case for further investigation considering the requirements provided for by Article 303 of this Code.

2. When the case is received by the court after the termination of further investigation, the issue of the appointment of a judicial session shall be resolved in a general manner.

### **Article 324. Termination of a case in course of the main judicial proceeding**

The case shall be terminated in course of the main judicial proceeding, if circumstances provided for by items 3-12 of part one of Article 37 of this Code are discovered, and if the prosecutor withdraws the accusation in accordance with the rules provided for by part six of Article 317 of this Code. The case may be terminated in the course of the main judicial proceeding on the grounds provided for by part one of Article 38 of this Code.

Footnote. Article 324 as amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.

### **Article 325. Procedure for making resolutions at the main judicial proceeding**

1. On all matters settled by the court during the main judicial proceeding the court shall make resolutions which shall be read out at the judicial session.

2. Resolutions on transfer of the case for further investigation, on termination of the case, on suspension of proceedings on a case, on selection, change or cancellation of the restraint measure, on recusation, on appointment of an expert examination and private resolutions shall be made in a consultation room and shall be made in a form of separate documents.

3. Other resolutions shall be made in accordance with the procedure provided for by part two of this Article, or locally - in the judicial session room, at the discretion of the court, with inclusion of such resolution in the record of the judicial session.

### **Article 326. Order of the main judicial proceeding**

1. The main judicial proceeding shall be carried out in the conditions which provide normal work of the court and safety of the participants of the process.

2. Before the court enters the judicial session room, the bailiff, or, in his absence, the secretary of the judicial session shall announce: "Court is now in session", and all those present at the judicial session shall rise and after that, upon the proposal of the presiding judge, they shall take their seats.

3. All the participants of the court proceeding shall apply to the court, give testimonies or make statements rising up.

4. All the participants of the judicial proceeding, as well as all those citizens present in the judicial session room must obey the orders of the presiding judge on the maintenance of order of the judicial session.

5. Persons under sixteen years old, unless they are a party or a witness, shall not be permitted to be present at a judicial session. If required, the bailiff may require the citizen to present a document which confirms his age. Persons in a drunken state shall also not be permitted to be present in the room.

6. Taking photos, audio, video recording and filming shall be permitted in the judicial session room only with a permit of the presiding judge.

7. In order to provide for the safety of the participants of the judicial proceeding, the court shall adopt measures and hold the judicial proceeding in accordance with procedures provided for by Article 101 of this Code.

8. Prior to the commencement of the judicial proceeding, the presiding judge shall explain to all the participants of the judicial proceeding their right to apply to the court for the adoption of safety measures.

9. Upon petition of either party or a participant of the judicial session on adoption of safety measures, the court may make a resolution with regards to such issue.

Footnote. Article 326 as amended by the Law of the Republic of Kazakhstan dated 17.07.2009 No. 187-IV.

### **Article 327. Measures adopted to provide for order at the main judicial proceeding**

1. In case of disorder at the main judicial session, disobedience of resolutions of the presiding judge, as well as commitment of other acts (failure to act) which evidently show contempt of court, the presiding judge may expel such person from the judicial session room or announce of the establishment of a fact of contempt of court and inflict an administrative punishment on the offender in accordance with the procedure provided for by legislation on administrative offences. Such expel may be carried out with respect to any participant of the proceeding or another person, except for the prosecutor and the defense lawyer. Administrative punishment may not be inflicted upon the person in trial.

2. If the person on trial was expelled from the judicial session room, the sentence must be announced in his presence or announced against his receipt immediately after the announcement.

3. The court shall make a resolution on expel of a participant of the proceeding from the court room or infliction of an administrative punishment.

4. Those persons who are present in the judicial session room but are not participants of the proceeding shall be expelled from the judicial session room at the direction of the presiding judge if they violate the order. Besides that, the court may inflict administrative punishment upon such persons.

5. If there are signs of another administrative offence in the acts of the disorganizer at the judicial session, the court shall direct the materials to the prosecutor for institution of a criminal or administrative case in accordance with the relevant procedures.

6. (excluded by the Law of the Republic of Kazakhstan dated 29 June 2007 N 270 (introduced upon expiration of 10 days upon its official publication)).

Footnote. Article 327 as amended by the Law of the Republic of Kazakhstan dated June 29, 2007 No. 270 (shall be enforced on expiry of 10 calendar days after its first official publication).

### **Article 328. Record of the main judicial proceeding**

1. The secretary of the judicial session shall keep a record in the course of the main judicial proceeding.

2. The record shall be made using computer, electronic (including digital audio and video recording), written or handwritten means.

Additional materials for the recording of the judicial session shall also be enclosed to the

record of the judicial session and kept together with the materials of the case.

3. The record shall indicate the following: date of the main judicial proceeding, time of its commencement and time of its termination; what case is being considered; name and composition of the court, the secretary, the translator, the prosecutor, the defense lawyer, the person on trial, as well as the victim, the civil plaintiff, the civil defendant and their representatives, other persons summoned by the court; information on personality of the person on trial and measure of restraint; acts of the court in the sequence they were carried out; statements, objections and petitions of the persons participating in case; resolutions of the court issued without recessing to the consultation room, indication of resolutions made in the consultation room; explanation of rights and obligations of the persons participating in case; thorough content of testimonies; questions of persons participating in the interrogation which were recused by the court or which the interrogate refused to answer; questions asked to the expert and his answers; results of examinations and other acts carried out at the judicial session for examination of evidences; indication to the facts which the persons participating in case asked to include into the record; main content of the speeches of the parties in the course of judicial pleadings and last words of the person on trial; indication to the announcement of the sentence and explanation of the procedure and the term to appeal it. Testimonies shall be recorded from the first person and as literally as possible, questions and answers to such questions shall be recorded in such sequence which took place during the interrogation. Besides that the record shall also indicate the facts of contempt of court, if such took place, and the identity of the offender and measures of influence adopted by the court in respect of t h e o f f e n d e r .

4. The record shall be prepared and signed by the presiding judge and the secretary within five days upon completion of the judicial session. The record may be prepared in parts in the course of a judicial session, and such parts, as the record as a whole, shall be signed by the presiding judge and the secretary of the judicial session.

5. If there is any disagreement in respect of the correctness of the record between the presiding judge and the secretary of the judicial session, the latter shall have the right to enclose his written objections to the record together with the notes made in the course of the j u d i c i a l s e s s i o n .

6. Filming, audio and video recording may be carried out during the main judicial proceeding, and the materials so obtained shall be enclosed to the record of the judicial session, sealed and kept together with the case. A note on application of such technical means shall be made in the record.

7. The presiding judge shall inform the parties of keeping the record of the main judicial proceeding and provide them with an opportunity to familiarize themselves with audio and v i d e o r e c o r d i n g m a t e r i a l s .

8. The person interrogated at the main judicial proceeding shall have the right to petition to get familiarized with the note in the record and materials of audio and video recording in

respect of his testimonies. Such an opportunity shall be provided not later than the next day upon submission of such petition.

9. Upon a petition of the parties or the persons provided for in part eight of this Article, the court shall provide the record in a form of an electronic document certified by electronic digital signature of the presiding judge and the secretary of the judicial session.

**Footnote.** Article 328 as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 15.07.2010 No. 337-IV (the order of enforcement see Article 2); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 329. Comments to the record of the main judicial proceeding**

The parties, as well as other persons provided for by part eight of Article 328 of this Code shall have the right to submit their comments to the record in writing or in a form of an electronic document certified by an electronic digital signature within five days upon signing of the record of the main judicial proceeding. The set term may be extended to ten days by the presiding judge on the case upon a petition of the parties.

**Footnote.** Article 329 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 15.07.2010 No. 337-IV (the order of enforcement see Article 2).

### **Article 330. Consideration of comments to the record of the main judicial proceeding**

1. Comments to the record of the main judicial proceeding shall be considered by the presiding judge, and if he is absent for a long period of time, by another judge of the same court who may summon the persons who submitted such comments to clarify them.

2. Based on the results of comments consideration the judge shall make a reasoned resolution on their correctness or on their rejection. Comments to the record and resolution of the judge shall be enclosed to the record of the main judicial proceeding.

**Footnote.** Article 330 is amended by the Law of the Republic of Kazakhstan dated 5 May 2000 No. 47.

## **Chapter 41. Preparatory part of the main judicial proceeding**

### **Article 331. Opening of the main judicial proceeding**

At the time appointed for the main judicial proceeding the presiding judge shall open the judicial session and announce which criminal case will be considered, and shall announce whether the case is considered in an open or closed judicial session.

When audio, video recording and filming are used at the judicial session, the presiding judge shall announce it.

Footnote. Article 331 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 332. Check of appearance of the persons summoned to the main judicial proceeding**

The secretary of the judicial session shall report to the court of the appearance of the persons who are to participate in the judicial proceeding, and shall report the reasons of non-appearance of those absent.

### **Article 333. Explanation of rights and obligations of the translator**

1. The presiding judge shall inform who participates as a translator and explain the rights and the obligations provided for by Article 85 of this Code to him.
2. The translator shall be notified by the presiding judge of the criminal liability for willful mistranslation, and a signed testimony shall be given by the translator which shall be enclosed to the record of the judicial session. The translator shall also be notified of the fact that if him deviates from the performance of his obligations, administrative punishment may be inflicted upon the translator in accordance with the procedure established by legislation.

### **Article 334. Resolution of the matter regarding recusation of the translator**

The presiding judge shall explain to the parties, the witnesses, the expert, the specialist appeared their right to recuse the translator and shall explain the grounds provided for by the law which entail recusation of the translator. The court shall resolve the submitted recusation in accordance with the rules established by Article 89 of this Code. If recusation of the translator was satisfied, the court shall invite another translator.

### **Article 335. Removal of witnesses from the judicial session room**

The witnesses appeared shall be removed from the judicial session room prior to the commencement of their interrogation. The presiding judge shall arrange measures so that the witnesses not interrogated by the court do not communicate with interrogated witnesses and other persons who are in the judicial session room.

### **Article 336. Establishment of identity of the person on trial and timely handing of the copy of indictment to him**

The presiding judge shall establish the identity of the person on trial asking his surname, name, patronymic, year, month and date of birth, command of the language the judicial proceeding is conducted in, place of residence, occupation, education, family status and other

information which is related to his personality. Then the presiding judge shall find out if the person on trial had received the copy of the record of summary pre-trial procedure, the indictment, the resolution on the change of the indictment or the prosecution record and when exactly. Therewith the judicial proceeding may not be commenced within three days from the moment the record of the summary pre-trial procedure, the indictment, the resolution on the change of the indictment or the prosecution record is handed, unless the person on trial petitions thereof, except for the case provided for by part two of Article 393 of this Code.

**Footnote. Article 336 as amended by the Law of the Republic of Kazakhstan dated 03.12.2009 No. 213-IV (the order of enforcement see Article 2).**

### **Article 337. Announcement of composition of the court and other participants of the proceeding**

The presiding judge shall announce the composition of the court and shall announce who is the prosecutor, the defense lawyer, the victim, the civil plaintiff, the civil defendant or their representatives, as well as the secretary of the judicial session, the bailiff, the expert, the specialist.

### **Article 338. Procedure for resolution of recusations**

1. The presiding judge shall explain to the parties their rights to recuse the composition of the court and persons provided for by Article 337 of this Code due to the grounds provided for by Articles 90, 91, 94, 95, 96, 97 of this Code. These rules shall be applied to the substitute judge too.

2. The recusations proposed shall be resolved by the court in accordance with the rules established by Articles 89, 90 of this Code.

**Footnote. Article 338 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 339. Explanation of rights to the person on trial**

The presiding judge shall explain to the person on trial his rights at the main judicial proceeding as provided for by Article 69 of this Code.

### **Article 340. Explanation of rights to the victim, the private prosecutor, the civil plaintiff and the civil defendant**

The presiding judge shall explain to the victim, the private prosecutor, the civil plaintiff, the civil defendant and their representatives their rights at the main judicial proceeding as provided for by Articles 75, 76, 77, 78, 80, 81 of this Code. The victim under the cases of private prosecution as well as under the cases on crimes of small and medium gravity which

were committed for the first time shall be explained his right to reconcile himself with the person on trial.

#### **Article 341. Explanation of rights and obligations to the expert**

The presiding judge shall explain to the expert his rights and obligations provided for by Article 83 of this Code and shall notify one of criminal liability for the willfully false opinion, and a signed testimony shall be given by the expert which shall be enclosed to the record of the main judicial proceeding.

#### **Article 342. Explanation of rights and obligations to the specialist**

The presiding judge shall explain to the specialist his rights and obligations provided for by Article 84 of this Code and shall notify one of criminal liability provided for by this Article for his refusal or deviation from the performance of his obligations.

#### **Article 343. Submission and resolution of petitions**

1. The chairman shall ask the parties if they have any petitions for summon of new witnesses, experts and specialists and for reclamation of material evidences and documents, including for holding of mediation procedure. The person who submitted a petition shall indicate for the establishment of what circumstances such additional evidences are required.

2. The chairman shall also find out from the parties if they have any petitions on exemption of the materials which are inadmissible as evidences from the proceeding.

3. Having heard the opinions of other participants of the judicial proceeding the court shall consider each submitted petition, including those on holding of a mediation procedure, and satisfy it or issue a reasoned resolution on rejection to satisfy such petition.

4. The court may not reject to satisfy the petitions for interrogation of persons at a judicial session as specialists or witnesses who appeared at the court on the initiative of the parties.

5. The person whose petition was rejected by the court may submit it hereafter.

**Footnote. Article 343 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

#### **Article 344. Resolution of the matter concerning possible hearing of the case in the absence of any of the persons participating in case**

If any of the participants of the judicial proceeding as well as the witness, the expert, the specialist does not appear, the court shall hear the opinions of the parties on possible proceeding of the case and shall make a resolution on postponement of the proceeding or its continuation and on summon of persons who did not appear to the following judicial session.

## **Chapter 42. Judicial investigation**

### **Article 345. Beginning of a judicial investigation**

1. Judicial investigation starts with prosecutor's recitation of the matter of brought accusal against the person on trial; on the cases of individual accusal it starts with recitation of the claim by the person who brought the claim or by his/her representative, or in their absence by the secretary of the judicial session.

2. In cases when the accusal is changed to a less grave he or in cases of refusal in the part of accusal, the prosecutor shall present to the court new a motivated formulation of the accusal in a written form.

**Footnote. Article 345 as amended by the Law of Republic of Kazakhstan dated July 11, 2001 No. 238.**

### **Article 346. Clarification of the position of the person on trial**

1. The presiding judge questions the person on trial about his understanding of the claim, recites to him the matter of the accusal and asks whether the person on trial is willing to inform the court of his position to the brought claim against him.

2. The person on trial shall be explained that he is not bound by his confession or denial of guilt made at the summary pre-trial procedure, preliminary investigation or inquest, he has no obligation to answer such questions if he admits his guilt or not, and the refusal of the person on trial to answer any question cannot be interpreted in prejudice of him. The person on trial has a right to motivate his answers. Silence of the person on trial is interpreted as a non-admission of his guilt.

3. The presiding judge asks the person on trial if he/she admits (completely or partially) the civil suit brought against him. Is the person on trial answers this question, he/she has a right to motivate his answer. Silence of the person on trial shall be interpreted as a non-admission of the civil suit.

4. The parties have a right to ask the person on trial the questions to clarify his position.

**Footnote. Article 346 as amended by the Law of Republic of Kazakhstan dated 03.12.2009 No. 213- IV (the order of enforcement see Article 2)**

### **Article 347. Order of presentation and examination of the evidences**

1. In a judicial investigation the evidences presented by both prosecution and defense parties shall be examined.

2. The prosecution party shall present their evidences first. The order of presentation of evidences is defined by the court by agreement of both parties. The court passes a resolution

concerning the issues the establishment of or change to the order of examination of evidences.

**Footnote. Article 347 as amended by the Law of Republic of Kazakhstan dated December 21, 2002 No. 363.**

### **Article 348. Interrogation of the person on trial**

1. Before the interrogation of the person on trial the presiding judge shall explain him his right to give or not to give a testimony concerning the brought accusal and other circumstances on the case, and also the presiding judge shall explain to the accused that everything said in the court by the person on trial may be used against him.

2. In case of agreement of the person on trial to give testimony, the defense lawyer and all participants of the proceeding acting on the part of the defense shall question him first, after that the public prosecutor and participants of the case acting on the part of prosecution shall question the person on trial. The presiding judge removes all leading questions and questions which are not connected to the present case.

3. The court shall ask the person on trial after he/she has been examined by both parties, but clarifying questions may be asked at any time during the interrogation.

4. Interrogation of the person on trial in the absence of the other person on trial is allowed by the petition of the parties or by initiative of the court and a corresponding resolution shall be passed thereof. In this case when the person on trial returns to the court room, all testimonies made in his absence and put into the record of the judicial session shall be read to him and he shall be given an opportunity to ask the other person on trial interrogated in his absence.

### **Article 349. Announcement of testimonies of the person on trial**

1. Announcement of the testimonies of the person on trial given during pre-trial preparation on the case, and also playback of audio records and filming records enclosed to the record of interrogation or his video recorded testimonies are allowed in cases if:

- 1) the person on trial refuses to give testimony in court;
- 2) the case is considered in the absence of the person on trial;
- 3) there is essential contradiction between the testimony given by the person on trial during the pre-trial investigation and the testimony given during the judicial session.

2. Playback of the sound records, video records and film records of the testimony is not allowed without preliminary announcement of the testimony of the person on trial included in the corresponding record of interrogation or the record of a judicial session.

### **Article 350. Interrogation of the victim**

1. The victim is interrogated according to the rules of interrogation of the witnesses, provided in parts two, three, four, five, six and seven of Article 351 of the present Code.

2. The victim with the consent of the presiding judge has a right to give testimonies at any time during the judicial investigation.

### **Article 351. Interrogation of the witnesses**

1. The witnesses shall be interrogated separately and in the absence of not interrogated witnesses.

2. Before the interrogation the presiding judge shall establish the identity of the witness, identifies his relationship to the person on trial and other participants of the case, explains the civic duty and obligation to give truthful testimony on the case, and also explains the responsibility for refusal to give testimony and giving willfully false testimony. The witness is also explained that he/she has a right to refuse to give testimonies against himself/herself, his/her spouse and close relatives, and the priests have a right to refuse to give testimony against those who confessed to them. The persons who are released by the law from giving the testimony, but wish to do so shall also be explained their responsibility for giving willfully false testimony. The witness is also explained his/her other rights and obligations provided for in Article 82 of the present Code. The witness shall take an oath of the following content: "I swear to the court to tell everything I know concerning the present case, to tell the truth, whole truth and nothing except the truth." The witness gives a signed testimony that he/she was explained his/her rights and obligations. This signed testimony is put to the record of the judicial session.

3. The witness is interrogated by the prosecutor, the victim, the civil plaintiff, the civil defendant and their representatives, the person on trial and his defense lawyer. The witness shall be examined first by the party by petition of which the witness was called to the judicial session. The presiding judge interrogates the witness after he/she was interrogated by both parties.

4. The witness has a right to use written notes which shall be presented to court by its request.

5. The witness has a right to read the documents which he/she has related to his testimony. These documents shall be presented to court and may be put into the case on the basis of resolution.

6. Interrogated witnesses stay in the court room and cannot leave it until the end of the judicial investigation with a consent of the judge and consent of the parties.

7. In cases provided for by Article 101 of the present Code, in order to ensure security to witnesses and their relatives, the court without announcing real facts about the identity of the witness has a right to examine him/her in conditions which do not require his/her viewing by other participants of the case which shall be confirmed by a resolution.

Footnote. Article 351 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 29.06.2007 No. 270 (shall be enforced on expiry of 10 days after its first official publication); dated 10.12.2009 No.227-IV (shall be enforced from 01.01.2010).

### **Article 352. Peculiarities of interrogation of minor victim, witness**

1. Interrogation of a minor victim, witness of the age up to fourteen, and at court's discretion interrogation of these persons at age from fourteen to eighteen shall be carried out in the presence of a teacher. If necessary, parents and other legal representatives of the minor person are also called. Stated persons may with the consent of the presiding judge ask the victim and the witness questions.

2. Before interrogation of the victim, the witness who has not reached the age of sixteen, the presiding judge shall explain to him/her the importance of truthful and complete testimony. Stated persons shall be notified of their responsibility for refusal to give testimony and for giving a willfully false testimony and a signed testimony shall not be taken from them.

3. By the petition of the parties or by initiative of the court interrogation of a minor victim and witness may take place in absence of the person on trial, which shall be provided for in a resolution. After return of the person on trial to the court room, he/she shall be informed of the testimony of the minor victim and witness and he shall be given a chance to ask the minor victim and witness questions and give his/her testimony related to their testimonies.

4. The victim, the witness who has not reached the age of eighteen may be moved away from the court room after they are interrogated, except for the cases when the court decides that their further presence is necessary.

### **Article 353. Announcement of testimony of the victim and the witness**

1. Announcement of the testimonies of the victim and the witness during the judicial investigation given by them during the pre-trial procedures on the case or during the previous judicial proceeding, and also video records and filming records of their interrogation are allowed:

1) if there is an essential contradiction between these testimonies and the testimonies given in court;

2) if the victim or the witnesses are absent from the judicial session by the reasons excluding their ability to be present at the judicial proceeding.

2. Playback of audio records of the testimony of the victim and the witness, video records and filming records of their interrogation may take place in accordance with the rules provided for by part two of Article 349 of the present Code.

Footnote. Article 353 as amended by the Law of Republic of Kazakhstan dated July 11, 2001 No. 238.

## **Article 354. Expert examination in court proceeding**

1. By the petition of the parties or by own initiative the court has a right to appoint an expert examination.

2. Expert examination is carried out by an expert (experts) who gave his opinion during the pre-trial procedures or other expert appointed by the court.

When another expert is appointed, the presiding judge has to notify who is responsible for the proceedings of the expert examination, after that if there are no petitions for recusation and self-recusation of the stated person, the court passes a resolution on appointing him as an expert for the case without leaving to the consultation room. Further the expert shall be explained his procedural rights, he/she shall be notified of the criminal responsibility for giving willfully false opinion letter and gives a subscription.

3. The proceeding of expert examination in court is made according to the rules stated in Chapter 32 of the present Code, with consideration of rules of the present Article.

4. During the judicial session the expert with the consent of the presiding judge has a right to participate in the examination of circumstances related to the object of expert examination: to ask questions to interrogated persons, to acquaint with the materials of the criminal case, to participate in all court actions related to the object of the expert examination.

5. After clarification of all circumstances which matter to the case the judge asks the party to ask the expert questions in a written form. All the questions shall be announced and all opinions of participants concerning the questions shall be heard.

6. The parties have a right to present objects, documents as objects of expert examination investigation. The court shall pass a motivation resolution excluding them from the list of such.

7. After considering the questions and hearing all opinions of the parties regarding them, the court by passing the resolution shall move away those which are not related to the case or competence of the expert, raise new questions.

8. A person who is appointed as an expert is provided with a copy of resolution of the court on the appointment of the expert examination and is explained his rights and responsibilities provided for in Article 83 of the present Code. After hearing all opinions the court has a right to postpone the court hearing for the term necessary to make an investigation.

9. The expert gives an opinion in a written form and announces it at a judicial session, after that interrogation of him may be carried out in accordance with the rules provided for in Article 355 of the present Code. The opinion of the expert is enclosed to the case.

10. After the expert examination in a judicial proceeding, in cases provided for in Article 255 of the present Code, the court has a right to appoint additional or repeated expert examination.

11. In cases when the expert who gave his opinion in the course of pre-trial procedure on the case, is summoned to the court, the court after announcing the opinion, if there are no objections of the parties, shall have a right not to appoint the expert examination and confine with interrogation of the expert.

**Footnote. Article 354 as amended by the Law of Republic of Kazakhstan dated 20.01.2010 No. 241 - IV.**

### **Article 355. Interrogation of an expert**

1. Interrogation of an expert may be carried out only after announcing the opinion for its clarification, specification and complementation considering the rules of part 3 of Article 253 of the present Code.

2. First the expert is interrogated by the party by petition of which the expert examination was appointed.

3. If the expert examination was carried out by agreement of both parties, or by the initiative of the body that is charge of the criminal procedure, the expert is interrogated by the prosecution party first, then by the party of defense.

4. The court has a right to ask the expert questions at any time during the interrogation.

**Footnote. Article 355 as amended by the Law of Republic of Kazakhstan dated 20.01.2010 No. 241 - IV.**

### **Article 356. Examination of material evidences**

1. Newly presented material evidences and those which were enclosed to the case during the investigation shall be examined by the court during the judicial investigation and presented to the parties. Examination of material evidences shall be carried out at any time during the judicial investigation based on the petition of the parties or by initiative of the court. Material evidences may be presented for inspection to witnesses, expert and specialist. Persons who the material evidences are presented may bring the court's attention to circumstances which matter to the case and which were found during the examination of material evidences.

2. Examination of material evidences may be carried out by the court at the place of their location with observance of rules set forth in part one of the present Article.

### **Article 357. Announcement of records of investigative activities and documents**

The records of investigative activities certifying the circumstances and facts, found during the inspection, examination, seizure, search, arrest on property, detention, submission for

identification, investigatory experiments, wiretapping and also all documents enclosed to the case or presented during the judicial session if they contain facts which matter to the case shall be announced completely or partially.

### **Article 358. Procedure of announcement of testimonies of the person on trial, the witness, as well as records and documents**

In cases provided for in Articles 349, 353, 357 of this Code, the testimonies of the person on trial, the victim, the witness and also the records of investigative actions and documents shall be announced by the party which brought the petition about their announcement or by the court.

### **Article 359. Inspection of areas and premises**

1. Inspection of areas and premises shall be carried out by the court with participation of the parties, and if necessary with participation of witnesses, expert and specialist.
2. After arriving to the place of inspection, the presiding judge announces continuation of the judicial session and the court starts the inspection. The victim, the expert and the specialist may be asked questions concerning the inspection.

### **Article 360. Submission for identification, examination, check and clarification of testimonies on-site, proceeding of experiments, sampling**

1. Submission for identification, examination, check and clarification of testimonies on-site, proceeding of experiments and sampling shall be carried out during the judicial proceeding by resolution of the court with observance of rules provided for in Articles 229, 226, 238, 239 and Chapter 33 of the present Code with participation of the parties.
2. If it is required due to the circumstances of the case, submission for identification, examination, experiment, sampling may take place in a closed judicial session.
3. Examination which includes denudation of the examined person shall take place in a separate room by a doctor or another specialist who prepares and signs an act of examination. After that stated persons return to the court room where they in presence of the parties and the examined person shall announce to the court the marks and signs on the body of the examined person, if there are any, and answer the questions of the parties and the judges. The act of examination shall be enclosed to the case.

### **Article 361. Limitation in examination of evidences**

1. The public prosecutor has a right to bring a petition to limit examination of evidences of accusal by evidences considered up to the moment of institution of the said petition. Having heard the opinions of the parties the court may satisfy such petition.

2. The party of defense has a right to refuse examination of the evidences presented and enclosed to the case by a petition of the person on trial, the defense lawyer, and legal representative of the person on trial, the civil defendant and his representative. Such refusal is necessary for the court.

### **Article 362. Termination of Judicial Investigation**

1. At the end of the examination of evidences the presiding judge shall:
  - 1) explains to the parties that they are in judicial pleadings, and the court when awarding a sentence has a right to refer only to the evidences considered during the judicial investigation;
  - 2) ask the parties if they wish to complement the judicial investigation and what exactly w i t h .
2. In cases when there are petitions from the parties for complementation of the judicial investigation, the court shall consider and resolve them.
3. After resolving the petitions and performing all necessary judicial actions and in cases when there are no petitions on complementation of the judicial session or when they have been reasonably rejected by the court the presiding judge announces the judicial session completed.

### **Article 363. Summary judicial investigation of the case**

1. The summary procedure of judicial investigation shall be employed in cases of crimes of small, medium gravity and grave crimes where:
  - 1) the person on trial acknowledges his guilt in full volume, including the suit claims filed a g a i n s t h i m ;
  - 2) in the course of the pre-trial procedures no violation of the rules established by this Code which violate the rights of the proceeding participants were made;
  - 3) participants of the proceeding do not litigate relevance and admissibility of evidences collected on the case and do not insist on their examination at the judicial session.

2. (excluded - No. 363 dated 21.12.2002)

3. The summary procedure of the judicial investigation of a case shall consist of interrogations of the accused and the victim. The judicial pleadings and the completion of consideration of the case shall be carried out in accordance with the rules established by this Code. The summary judicial investigation must be terminated within ten days; in exceptional cases this period may be extended by a motivated resolution of the judge.

4. If in the course of interrogation of the accused or the victim the circumstances are established which require their investigation at the judicial session, the court may resolve to conduct the judicial investigation in full volume.

**Footnote. Article 363 as amended by the Laws of Republic of Kazakhstan dated 16.03.2001 No. 163; dated 11.07.2001 No. 23; dated 21.12.2002 No. 363; dated 09.11.20011**

No. 490 - IV (shall be enforced upon expiry of ten calendar days after its first official publication)

## **Chapter 43. Judicial pleadings and the last word of the person on trial**

### **Article 364. Contest and procedure of judicial pleadings**

1. After the termination of the judicial investigation the presiding judge shall announce that the court is proceeding to judicial pleadings.

2. Pursuant to the petition of a participant of the judicial pleadings he shall be provided with time for preparation to the judicial pleadings, for which the presiding judge shall announce a break in the judicial session with the indication of its length.

3. The judicial pleadings shall consist of the speeches of the prosecutor, the victim or his representative, the civil plaintiff and the civil defendant or their representatives, the person on trial and the defense lawyer. The sequence of the speeches of the participants of the proceeding shall be established by the court on the basis of their proposals, but in any case the prosecutor shall be the first to speak.

4. If the state prosecution is supported by several state prosecutors, several victims, defense lawyers, civil defendants and their representatives, civil plaintiffs and their representatives, persons on trial participate in case, the presiding judge shall grant them time for coordination of the sequence of their speeches between themselves. Appropriate break of the judicial session may be announced for that. If the said persons fail to reach consensus on the sequence of their speeches in pleadings, the court upon hearing their opinions shall adopt a resolution on the sequence of the speeches.

5. The participants of the judicial pleadings shall not have the right to refer in their speeches to the evidence that has not been examined in the judicial session. When they need to present new evidence to the court, they may petition for the resumption of the judicial investigation.

6. The court may not restrict the length of the judicial pleadings to a certain period of time, but the presiding judge shall have the right to stop the persons who participate in the pleadings if they relate to the circumstances that have no relevance to the case in question, or are based on the evidence that has not been examined in the judicial session.

7. After all the participants of the judicial pleadings make their speeches, each of them shall have the right to speak he more time with brief objections or comments (replies) concerning what was said in the speeches of the parties' representatives. The right of the last comment in all instances shall rest with the person on trial and his defense layer.

8. Each participant of judicial pleadings may present in writing to the court the statement proposed by him for a solution on the issues indicated in items 1-6 of part one of Article 371 of this Code. The proposed statement shall not be binding for the court.

## **Article 365. Last word of the person on trial**

1. After the completion of the judicial pleadings, the presiding judge shall grant the last word to the person on trial. No questions to the person on trial shall be allowed during his last word.

2. The court shall not have the right to establish the length of the last word of the person on trial. The presiding judge shall have the right to stop the person on trial in cases where he touches upon circumstances that are not related to the case in question.

## **Article 366. Resumption of judicial investigation**

If those making speeches in the judicial pleadings or the person on trial in his last word tell about new circumstances which are material for the case, the court pursuant to the petition of the parties or on its own initiative shall resume the judicial investigation. Upon the completion of the resumed judicial investigation, the court shall open judicial pleadings again and grant the last word to the person on trial.

## **Article 367. Court removal to the consultation room**

1. Upon hearing the last word of the person on trial, the court shall remove to the consultation room for compilation of the sentence, of which the presiding judge shall inform those present in the judicial session room.

2. The time of announcement of the sentence may be communicated to the participants of the proceeding prior to the removal of the judges to the consultation room.

## **Chapter 44. Rendering of a sentence**

### **Article 368. Rendering of a sentence on behalf of the Republic of Kazakhstan**

The courts in the Republic of Kazakhstan shall render sentences on behalf of the Republic of Kazakhstan.

### **Article 369. Legality and validity of the sentence**

1. A court sentence must be legal and valid.

2. A sentence shall be recognized as legal if it is rendered in compliance with all the requirements of the law and on the basis of the law.

3. A sentence shall be recognized as valid if it is rendered on the basis of a comprehensive and impartial research of the evidence presented to the court at the judicial session.

## **Article 370. Secrecy of sentence rendering**

1. The sentence shall be resolved by the judge who considers the case under the conditions which exclude the possibility to exert any influence upon him. During the rendering of a sentence any other persons including the substitute judge shall not be allowed to attend.

2. Upon expiry of the working time and also during the working day, the judge shall have the right to make a break for rest and leave the consultation room.

3. The judge shall not have the right to disclose his opinions and views which determinate the decision on a case prior to the announcement of the sentence.

**Footnote. Article 370 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227 - IV (shall be enforced from 01.01.2010)**

## **Article 371. Issues resolved by the court when rendering a sentence**

1. When rendering a sentence, the court in the consultation room shall resolve the following issues:

- 1) is it proved that the act of the commission of which the person on trial is accused took place;
- 2) is that act a crime and what criminal law exactly specifies it (Article, part, paragraph);
- 3) whether the commission of that act by the person on trial has been proven;
- 4) whether the person on trial is guilty of committing that crime;
- 5) are there circumstances that mitigate or aggravate his liability and punishment;
- 6) whether the accused is subject to punishment for the crime he has committed;
- 7) what sentence must be given to the accused;
- 8) whether there are reasons to render the sentence without inflicting a punishment or to release from punishment or to postpone the punishment in cases provided for by Article 72 and part two of Article 74 of the Criminal Code of the Republic of Kazakhstan;
- 9) what of a correctional or educative institution and regime the person sentenced to deprivation of freedom must endure the punishment in;
- 10) whether the civil claim is to be satisfied, in whose favour and in what amount, and also whether the material harm is also subject to reimbursement if the civil claim has not been filed;
- 11) what to do with the property on which arrest has been imposed for securing the civil claim or potential confiscation;
- 12) what to do with the material evidence;
- 13) who must incur the procedural costs and in what amount;
- 14) whether the court must deprive (submit proposal to the President of the Republic of Kazakhstan on such deprivation) the person on trial of an honorary, military, special or

another title, rank, diplomatic rank, qualification, state awards;

15) on application of compulsory measures of medical nature in cases provided for by Article 88 of the Criminal Code of the Republic of Kazakhstan;

16) whether there are circumstances assisting the commission of the crime;

17) on the measure of restraint in respect of the accused;

18) on abolition or retention of a conditional sentence on the preceding sentence.

2. When rendering sentence of acquittal, the court shall make a decision on compensation of harm caused to the acquitted person by unlawful acts of the bodies of investigation, prosecutor office, court.

3. When the person on trial is accused of the commission of several crimes, the court shall decide the issues indicated in paragraphs 1-7 of part one of this Article in respect of each crime separately.

4. Where several persons on trial are accused of commission of a crime, the court shall resolve all the issues indicated in part one of this Article in respect of each person on trial separately, and determine the role and degree of his participation in the committed act.

5. Upon resolving the main issues listed in part one of this Article, the court shall proceed to resolve the following additional issues:

1) arrangements in respect of minor children of the convict who remain without parents, and where necessary, of the victim;

2) protection of the property of the convict, in appropriate cases of the property of the victim;

3) need to render a private resolution.

**Footnote. Article 371 as amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47; dated July 11, 2001 No. 238.**

## **Article 372. Resolving the issue of putability of the person on trial**

1. In those cases where during the preliminary investigation or judicial investigation the issue arose whether the person on trial is criminally sane, the court shall be obliged when rendering the sentence to discuss this issue once again.

2. Upon recognition that the person on trial was in the condition of imputability during the commission of the crime and after the commission of the crime contracted a mental disorder which deprives his possibility to realize the actual nature and public danger of his acts (failure to act) or control them, the court shall have the right to terminate the criminal case and make a resolution on application of compulsory measures of medical nature to the person on trial, if the defense lawyer participated in case from the time of bringing the accusal.

3. In cases indicated in part two of this Article, when the defense lawyer did not participate in case from the time of bringing the accusal, the court shall make a resolution to transfer the criminal case for its consideration in accordance with the procedure established

by Article 515 of this Code.

Footnote. Article 372 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227 - IV (shall be enforced from 01.01.2010)

### **Article 373. Procedure for consultation of judges and making decisions in the collegial consideration of a case**

Footnote. Article 373 is excluded by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227 - IV (shall be enforced from 01.01.2010)

### **Article 374. Types of sentences**

The court sentence may be either a sentence of guilt or a sentence of acquittal.

### **Article 375. Sentence of guilt**

1. The sentence of guilt shall contain a court decision to recognize the person on trial as guilty of the commission of the crime.

2. The sentence of guilt shall be rendered:

- 1) with assignment of the criminal punishment to be endured by the convict;
- 2) with release of the person from criminal liability;
- 3) with assignment of the criminal punishment and release from enduring it;
- 4) without assignment of criminal punishment;
- 5) with a postponement of endurance of the criminal punishment.

3. The sentence of guilt may not be based on presumptions and it shall only be resolved on the condition that in the course of the court investigation the culpability of the person on trial of commission of the crime is confirmed by the cumulative evidence examined by the court.

4. When rendering a sentence of guilt with assignment of punishment to be endured by the convict, the court must precisely define its, length, regime and commencement of endurance period.

5. The court shall render the sentence of guilt with release of the person from the criminal liability, if the limitation period for holding the person responsible for the given crime has expired, as well as in cases provided for by part one of Article 38 of this Code.

6. The court shall render the sentence of guilt with assignment of punishment and release from it in cases if by the moment of rendering the sentence:

- 1) an act of amnesty has been issued which releases from assignment of the punishment prescribed to the convict by a given sentence;
- 2) the time of the person on trial being in custody in relation to the case, considering the rules for inclusion of the time of preliminary custody as established by Article 62 of the

Criminal Code of the Republic of Kazakhstan, covers the punishment prescribed by the court.

7. The court shall terminate the case or pursuant to the petition of the parties render a sentence of guilt without assignment of the punishment, if by the time of rendering it the person on trial died.

8. The court shall render a sentence of guilt with postponement of endurance of the criminal punishment in cases provided for by Article 72 and part two of Article 74 of the Criminal Code of the Republic of Kazakhstan.

**Footnote. Article 375 as amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.**

### **Article 376. Sentence of acquittal**

1. By the sentence of acquittal the court shall recognize and proclaim the innocence of the person on trial of commission of the crime with regard to the accusation for which he was held responsible through the criminal procedure and subjected to the court.

2. The sentence of acquittal shall be rendered if:

1) there is no event of the crime;

2) there are no components of a crime in the act of the person on trial;

3) participation of the person on trial in the commission of the crime is not proved.

3. The acquittal due to any of the above-listed reasons means the recognition of the innocence of the person on trial by the court and it shall entail his full rehabilitation.

4. If when rendering the sentence of acquittal the person who committed the crime remains unidentified, the court upon the entry of the sentence into legal force shall transfer the criminal case to the prosecutor for his resolving the issue of whether another person must be prosecuted through the criminal procedure.

### **Article 377. Compilation of a sentence**

1. After resolving the issues indicated in Article 371 of this Code, the court shall proceed to compilation of the sentence.

2. The sentence shall be compiled in the language in which the judicial proceeding is carried out.

3. The sentence shall consist of the introductory part, descriptive and motivation part and resolution part.

4. The sentence may be written by hand, prepared using writing or computer method by the judge and signed by him.

5. Corrections in the sentence must be stipulated and certified with the signature of the judge at the relevant page of the sentence prior to its announcement.

6. Introduction of amendments into the sentence after its announcement shall not be allowed.

Footnote. Article 377 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227 - IV (shall be enforced from 01.01.2010)

### **Article 378. Introductory part of a sentence**

The following shall be indicated in the introductory part of the sentence:

- 1) that the sentence has been rendered on behalf of the Republic of Kazakhstan;
- 2) time and place of rendering the sentence. In the event that judges have a discussion for several days, the time of sentence rendering shall be determined by the day of its a n n o u n c e m e n t ;
- 3) name of the court which rendered the sentence, composition of the court, the secretary of the judicial session, participants of the proceeding, their representatives, the translator;
- 4) surname, name and patronymic of the person on trial, year, month, day and place of his birth, place of residence, place of work, occupation, education, marital status and other information in respect of the personality of the person on trial which are material for the case;
- 5) criminal law that establishes the crime of the commission of which the person on trial is accused (Article, part, item).

Footnote. Article 378 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227 -IV (shall be enforced from 01.01.2010)

### **Article 379. Descriptive and motivation part of a sentence of guilt**

1. The descriptive and motivation part of the sentence of guilt must contain description of the criminal act which has been recognized by the court as proved, with indication of the place, time, method of its commission, form of guilt, motives and consequences of the crime. The sentence shall present the evidence on which the conclusions of the court are based with regard to the person on trial, and the motives for which the court rejected other evidence. The circumstances shall be indicated which mitigate or aggravate the liability, and in case of recognition of a part of accusal as unreasonable or establishment of the wrong qualification of the crime - the reasons and motives for the alteration of accusal.

2. The court shall indicate the motives for resolution of all issues related to the assignment of the criminal punishment, release from it or from its real endurance, assignment of other measures of influence.

3. The descriptive and motivation part must also contain the motivation of the decisions adopted on other issues as indicated in Article 371 of this Code.

### **Article 380. Resolution part of a sentence of guilt**

1. The following must be indicated in the resolution part of the sentence of guilt:
  - 1) surname, name and patronymic of the person on trial;

2) decision on recognition of the person on trial as guilty of commission of the crime;  
3) criminal law (Article, part, paragraph) for which the person on trial is recognized guilty ;  
4) and length of the punishment assigned to the person on trial for each crime of the commission of which he has been recognized guilty, as well as a decision on abolition or retention of the suspended sentence on the preceding sentence and the final measure of punishment to be endured on the basis of Articles 58, 60 of the Criminal Code of the Republic of Kazakhstan .

When deprivation of freedom is assigned as a punishment, the court shall indicate in the sentence the and the regime of the institution in which the convict must endure it, and if punishments are assigned which are not related to isolation of the convict from the public, the court shall indicate the obligation of his attendance to the correctional inspection board for registration within ten days upon entry of the sentence into legal force;

5) the length of the probation period in case of a conditional sentence and the duties imposed on the convict; therewith the court shall explain the responsibility provided for by Article 64 of the Criminal Code of the Republic of Kazakhstan;

6) the decision on deprivation (submission of the proposal to the President of the Republic of Kazakhstan for such deprivation) of the convict of an honorary, military, special or other title, rank, diplomatic rank, qualification, state awards;

7) the decision on the inclusion of the preliminary custody, if prior to the rendering of the sentence the person on trial was detained or was subject to the measure of restraint in the form of arrest, house arrest or he was placed in a special medical institution;

8) the decision on the application of compulsory medical treatment and establishment of guardianship over the convict;

9) the decision on the measure of restraint with regard to the person on trial prior to the entry of the sentence into legal force.

2. If the accusal is filed against the person on trial under several Articles (parts of Articles, items) of the criminal law, then in the resolution part of the sentence it must be indicated on which of them the person on trial is acquitted and on which he is found guilty. Upon coming to the conclusion that the acts of the person on trial are to be re-qualified, or upon establishing that certain Articles (pars of an Article, item of a part of an Article) have been brought unduly , the court in the descriptive and motivation part of the sentence shall specify the Article (the part of the Article, the item of the part of the Article) of the criminal law which shall be used for qualification of the act and it shall mention the exclusion of the Article (a part of an Article, an item of a part of an Article) which was brought unduly.

3. In case of release of the person on trial from enduring the punishment or rendering of a sentence without assignment of a punishment or assignment of postponement of punishment endurance, this shall be indicated in the resolution part of the sentence.

**Footnote. Article 380 as amended by the Laws of the Republic of Kazakhstan dated**

05.05.2000 No. 47; dated 11.07.2001 No. 238; dated 15.02.2012 No. 556 - IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 381. Descriptive and motivation part of a sentence of acquittal**

1. In the descriptive and motivation part of the sentence of acquittal the following shall be indicated: the essence of the accusation brought; the circumstances of the case as established by the court; motives for which the court recognizes the evidence on which the statement of the guilt of the person on trial of commission of the crime was based as unreliable or insufficient; evidence that served as the basis for the acquittal of the person on trial; motives of the decision with regard to the civil claim.

2. It shall not be allowed to use in the sentence of acquittal any expressions that cast doubt upon the innocence of the acquitted person.

### **Article 382. Resolution part of a sentence of acquittal**

The resolution part of the sentence of acquittal must contain the following:

- 1) the surname, name and patronymic of the person on trial;
- 2) the decision on recognition of the person on trial as innocent and his acquittal; the grounds for the acquittal;
- 3) the decision on abolition of the measure of restraint if it was selected assigned;
- 4) the decision on abolition of measures of securing confiscation of property, as well as measures of securing compensation of damage, if such measures were assigned.

### **Article 383. Other issues to be resolved in the resolution part of a sentence of acquittal**

In the resolution part of both the sentence of guilt and the sentence of acquittal, aside from the items listed in Articles 380, 382 of this Code, the following must contain:

- 1) decision on the presented civil claim;
- 2) resolution of the issues of material evidence;
- 3) decision on sharing of procedural costs;
- 4) explanation of the procedure and period of appeal or protest against the sentence.

**Footnote. Article 383 is amended by the Law of the Republic of Kazakhstan dated July 11, 2001 No. 238.**

### **Article 384. Announcement of a sentence**

1. After the signing of the full text of the sentence the presiding judge shall return to the judicial session room and announce the introductory and resolution part of the sentence in the upright position. All those present in the judicial session room, shall hear the introductory and

resolution part of the sentence in the upright position.

2. If the introductory and resolution parts of the sentence are presented in the language of which the convicted (acquitted) person has no command, then after the announcement of the sentence or simultaneously with it they must be translated aloud by the translator into the native language of the person on trial or into another language of which he has command.

3. The presiding judge shall explain to the convicted (acquitted) person, other participants of the proceeding the procedure and the period for appeal of the sentence, the right to get familiarized with the record of the judicial sentence and filing comments to it, as well as the right to petition for participation in the appeal consideration of the case. The acquitted person must be explained his/her right to compensation of harm caused by unlawful detention, bringing a person in the proceedings as accused, application of the measure of restraint, unlawful subjection to the court, as well as the procedure for the exercise of that right.

4. If the person on trial is sentenced to the exceptional measure of punishment - the capital punishment, the presiding judge shall explain to him the right to petition for pardon.

**Footnote. Article 384 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 10.12.2009 No. 227 - IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490 - IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 385. Release of a person on trial from custody**

In the event of the acquittal of the person on trial or in the event of rendering of the sentence of guilt without assignment of punishment, or with release from enduring the punishment, as well as a sentence assigning a punishment not connected with deprivation of freedom, or conditional deprivation of freedom, the person on trial who is in custody, shall be subject to immediate release from custody in the judicial session room.

### **Article 386. Handing a copy of the sentence**

Not later than five days after the announcement of the sentence its copy must be handed to the convict or to the acquitted person, the defense lawyer and the prosecutor. Within the same period a copy of the sentence shall be handed to the victim, the civil plaintiff, the civil defendant and their representatives, if the court received petitions from the said persons.

### **Article 387. A private resolution**

1. The court, if there are reasons for that, shall pass a private resolution in the consultation room, by which it shall draw attention of the state bodies or official persons, organizations or their managers at the facts of violation of the law established in case, causes and conditions that assisted the commission of the crime and requiring adoption of appropriate measures. In

the event when in the acts of the person an administrative violation was established which assisted commission of the crime, the court shall have the right to impose the punishment on such person as provided for by the law.

2. A private resolution may also be rendered when the court discovers violation of the rights of citizens and other violations of the law admitted in the course of inquest, preliminary investigation.

3. The court shall have the right by its private resolution to draw attention of organizations and work collectives to misbehavior of certain citizens at work and at home or their violation of a service or civil duty.

4. The court based on the materials of the judicial proceeding shall have the right to pass a private resolution in other cases if it recognizes it as necessary.

5. The court by its private resolution may communicate to organizations and work collectives manifestations by citizens of high morals, courage when performing the civil duty or service duty, that assisted suppression or detection of a crime.

6. Not later than within the month appropriate measures must be taken on a private resolution and the results must be communicated to the court that rendered the private resolution.

**Footnote. Article 387 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565 - IV (shall be enforced from 01.07.2012).**

### **Article 388. Issues resolved by the court simultaneously with rendering the sentence**

1. When the convict sentenced to deprivation of freedom has minor children, elderly parents, other dependent persons who are left unattended, the court shall simultaneously with rendering the sentence of guilt pass a resolution on the transfer of the said persons under the tutelage or guardianship to relatives or other persons or institutions, and if the convict has property or housing which is left unattended, on the adoption of measures for their protection. Where appropriate, the court shall pass a resolution on transfer of minor children who are left unattended, incapable parents, other dependents of the victim due to his grave injury or death as a result of the crime, as well as on the protection of the property and housing of the victim.

2. In the event of participation in case of an appointed defense lawyer or representative of the victim appointed by the body conducting the criminal proceeding, the court simultaneously with rendering the sentence shall pass a resolution on amount of remuneration to be paid for the rendering of legal assistance to the person on trial or the victim and on compensation for costs associated with defense and representation.

3. The procedural decisions listed in parts one and two of this Article may also be adopted after announcement of the sentence pursuant to the applications of the concerned persons.

**Footnote. Article 388 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 11.12.2009 No. 230 - IV (shall be enforced from 01.01.2010).**

## **Chapter 45. Peculiarities of proceedings on cases of private prosecution**

### **Article 389. Procedure of proceedings on private prosecution cases**

Proceedings on private prosecution which the cases provided for by Article 33 of this Code are related to shall be governed by the general rules of the present Code with exceptions provided for by this Chapter.

### **Article 390. Institution of private prosecution cases**

1. A criminal case of private prosecution shall be instituted by a person (several persons) by submitting a complaint to the court requesting to hold a person criminally liable. When submitting a complaint to the body of inquiry, to the investigator or to the prosecutor, it shall be transferred to the court.

2. A complaint shall indicate the name of the court it is submitted to, description of the event of crime, place and time of its commission with indication of evidences, request to the court to accept the case for proceedings, information about the person to be held criminally liable; list of witnesses to be summoned to the court. The complaint shall be signed by the person who submitted it. Anonymous complaints shall not be accepted for proceeding.

3. A complaint may also contain a request to consider a civil suit.

4. A complaint shall be submitted to the court with a number of copies equal to the number of persons a case of private prosecution is instituted against.

5. From the moment the court accepts the complaint for proceeding, the person who submits it is a private prosecutor and he shall be explained the rights provided for by Article 76 and parts four and six of Article 392 of this Code of which a record signed by the judge and the person who submitted the complaint shall be compiled.

6. If an accusation is instituted by several persons in respect of one and the same person, they shall submit the complaint independently of each other.

7. If in respect of one and the same criminally punishable act several persons have the right to institute a private prosecution or, if it is already instituted based on the statement of one of them, the remaining persons shall have the right to join the commenced proceeding. In this case institution of a separate proceeding shall not be required based on the statement of each of the said persons.

8. The accused shall have the right to file a counter-accusation to the prosecutor if it is related to the subject of a criminally punishable act a proceeding is instituted upon. Accusation and counter-accusation shall be resolved simultaneously. Recall of the accusation shall not affect the proceeding on the counter-accusation.

9. The criminal case on the recalled private prosecution may not be re-instituted.

## **Article 391. Acts of the judge on a private prosecution case prior to the commencement of a judicial proceeding**

1. If the complaint submitted does not correspond to the requirements provided for by part two of Article 390 of this Code, the judge shall propose to the person who submitted it to bring it in line with the said requirements and shall set a term for it. If this instruction is not performed, the judge with his resolution shall refuse to accept the complaint for proceeding and shall notify thereof the person who submitted it.

2. Having considered a complaint on a private prosecution case the judge shall make one of the following resolutions within three days:

- 1) on acceptance of the complaint for his proceeding;
- 2) on transfer of the complaint to its investigative or judicial jurisdiction;
- 3) on refusal to accept the complaint for proceeding.

3. A copy of the resolution on the decision adopted with respect to the complaint shall be sent to the claimant, and, in case provided for by item 1 of part two of the present Article - also to the accused.

4. When there are reasons to appoint a judicial session, the judge within seven days from receipt of the complaint by the court shall summon the person the complaint is submitted against, familiarize himself with materials on the case, hand a copy of the complaint submitted, explain the rights of the person on trial at the judicial session as provided for by Article 69 of this Code and find out who in the opinion of such person shall be summoned to the court as defense witnesses, of which a signed testimony shall be given. If the person a complaint is submitted against does not appear at the court, the copy of the complaint with explanation of the rights of the person on trial and reconciliation opportunity shall be sent by post.

5. The judge shall explain to the parties their opportunity to reconcile, particularly through mediation procedure. If a statement on reconciliation or an agreement on arrangement of a conflict through a mediation procedure is received from the parties, the proceeding on the case shall be terminated by a resolution of the judge based on item 6 of part one of Article 37 of this Code.

6. If reconciliation of the parties is not achieved, the judge upon fulfilling the requirements of parts four and five of this Article shall appoint consideration of the case at a judicial session in accordance with the rules of Article 302 of this Code.

**Footnote. Article 391 as amended by the Law of the Republic of Kazakhstan dated 28.01.2011 No. 402-IV (shall be enforced from 05.08.2011).**

## **Article 392. Submission and collection of evidence on the initiative of the parties**

1. The victim, the other person who submitted a complaint on the committed crime shall indicate in it which evidence the circumstances of the crime specified in the complaint and guilt of the person suspected of its commission may be confirmed with.
2. The civil plaintiff, the civil defendant personally or through a representative prior to consideration of the case shall communicate to the judge by witness testimonies of which persons (surname, name, patronymic, place of residence), documents, other evidence the circumstances material for the protection of their interests may be established. If a complaint was submitted to the body of inquiry, to the interrogating officer, to the prosecutor, to the investigator, this information shall be communicated prior to the transfer of the case to the court, to the official or to the body who/which the complaint was submitted to.
3. The suspect, his legal representative, the defense lawyer shall have the right to communicate to the judge prior to the commencement of consideration of the case who may give witness testimony (surname, name, patronymic, place of residence), which documents and other evidence may serve this purpose.
4. Objects and documents, if it is possible, shall be transferred to the judge or to another person (body) the complaint is submitted to.
5. The suspect, his defense lawyer, legal representative and the victim, the civil plaintiff, the civil defendant and their representatives in all cases shall have the right to submit evidence directly to the court and communicate to the judge other information which may serve collection of evidence.
6. The judge shall render assistance to the parties in collecting evidence on their petition.

### **Article 393. Consideration of a private prosecution case at the judicial session**

1. Consideration of a private prosecution case at the judicial session shall be carried out based on the general rules of judicial proceeding, except for the cases provided for by this Article.
2. Judicial proceeding shall be commenced within fifteen days upon receipt of the complaint by the court, but not prior to three days upon receipt of a copy of the complaint with explanation of the rights by the accused.
3. At a judicial proceeding the private prosecutor and the accused shall have the right to be present personally or be represented by their representatives.
4. Consideration of a complaint on a private prosecution case may be combined in the proceeding with consideration of a counter-claim. Such combining shall be permitted subject to resolution of the judge prior to the commencement of a judicial investigation. When combining the complaints into he proceeding the persons who submitted them shall participate in the proceeding simultaneously as a private prosecutor and a person on trial. For preparation to defense due to receipt of a counter-claim and combining of proceedings the case may be postponed for the term not exceeding three days. Interrogation of such persons

on the circumstances specified by them in their complaints shall be carried out in accordance with the rules for interrogation of a victim, and of the circumstances specified in counter-claims - in accordance with the rules for interrogation of a person on trial. Prosecution at the judicial session shall be supported by a private prosecutor and his representative.

5. Prior to commencement of a judicial investigation the presiding judge shall adopt measures for reconciliation of the parties. Reconciliation of the parties shall be possible before the court leaves to the consultation room.

6. The judicial session shall commence from the statement of the complaint by the private prosecutor or his representative. During a simultaneous consideration of a counter-claim under a private prosecution case, its arguments shall be stated in the same order after the statement of the arguments of the main complaint. The prosecutor shall provide the evidence, shall have the right to participate in their investigation, set forward his opinion to the court on merits of the prosecution, on application of a criminal law to the person on trial and assignment of a punishment to him as well as on other matters which arise in the course of a judicial proceeding. The prosecutor at the judicial session may change the accusal if it does not aggravate the situation of the person on trial and does not violate his right to defense, and he may withdraw his accusal.

7. Failure of the private prosecutor or his representative to appear at the judicial session without sound reasons provided for by part five of Article 208 of this Code shall entail termination of the case; however based on the petition of the person on trial the case may be considered on merits in their absence.

**Footnote. Article 393 as amended by the Law of the Republic of Kazakhstan dated 5 May 2000 No. 47.**

### **Article 394. Decision of the court on a private prosecution case**

1. Having considered the private prosecution case the judge being guided by the rules of the present Code shall adopt one of the following decisions:

1) render a sentence of guilt or a sentence of acquittal;  
2) terminate the case if the private prosecutor withdraws the accusal and the parties reconcile;

3) transfer the case to the prosecutor for resolution of the issue of inquiry or preliminary investigation on the case. Therewith the court may assign a measure of restraint to the accused.

2. Decision of the court on a private prosecution case may be appealed by the parties in accordance with the procedure and the terms provided for by this Code on a common ground.

### **Article 395. Termination of a private prosecution case**

1. A criminal case of private prosecution shall be terminated if there are circumstances provided for by Article 37 of the present Code, and also due to the death of the private prosecutor except for the cases when close relatives of the victim or the accused insist on consideration of the case. The case may be also terminated due to the reasons provided for by part one of Article 38 of this Code.

2. The order of termination of proceeding on a private prosecution case shall be governed by general rules of this Code, except for the cases provided for by this Chapter.

**Footnote.** Article 395 as amended by the Law of the Republic of Kazakhstan dated May 5, 2000 No. 47.

## **Section 8. Revision of sentences and resolutions of a court in accordance with appeals and cassation procedure**

**Footnote.** The title of Section 8 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Chapter 46. Appealing, protesting against a court decision, which have not entered into legal force.**

**Footnote.** The title of Chapter 46 as amended by the Law of the Republic of Kazakhstan dated July 11, 2001 No. 238.

### **Article 396. Right to appeal and protest against a sentence (resolution)**

1. The right to appeal a sentence, a resolution belongs to the convict, the acquitted person, their defense lawyers, representatives and legal representatives, the victim (private prosecutor), their representatives and legal representatives. A civil plaintiff, a civil defendant, their representatives and legal representatives shall have a right to appeal against a sentence in a part related to a civil claim.

2. A protest on revision of a judicial act in accordance with the appeal procedure may be brought by a prosecutor who participated in consideration of a case as a state prosecutor. Prosecutor General and his deputies, prosecutors of regions and prosecutors equivalent to them and their deputies, prosecutors of districts and prosecutors equivalent to them within his competence may bring a protest on the revision of the sentence regardless of his participation in the consideration of the case.

3. Persons who are not parties to a case may appeal against a sentence of a court if the resolution affects their rights and legal interests.

**Footnote.** Article 396 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 396-1. Judicial acts subject to revision in accordance with the appeal procedure**

1. Sentences of district courts and courts equivalent to them, specialized inter-district criminal courts, specialized inter-district courts on criminal cases, specialized inter-district juvenile courts, military courts of garrisons which have not entered into legal force are subject to revision in accordance with the appeal procedure.

2. A private complaint, a protest may be brought with respect to sentences of first instance courts which have not entered into legal force except for those provided for by part three of this Article in accordance with the procedure provided for by Chapter 46 of this Code.

3. In accordance with the rules of Chapter 46 of this Code, resolutions issued in the course of a judicial investigation with respect to the issues provided for by part two of Article 10 of this Code and those related to the order and the means of evidence examination, petitions of participants of a proceeding, maintenance of order in a judicial session room shall not be subject to revision except for resolutions on recovery of administrative penalty. Objections to the above-listed resolutions may be specified in appeal petitions, protests brought against a s e n t e n c e .

**Footnote.** The Code is supplemented with Article 396-1 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010), as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 397. Courts considering appellate (private) complaints, protests against sentences, resolutions which have not entered into legal force**

1. Appellate (private) complaints, protests against sentences, resolutions of district courts and courts equivalent to them, specialized inter-district criminal courts, specialized inter-district juvenile courts which have not entered into legal force shall be considered by an appellate instance of the relevant regional court or a court equivalent to it.

2. Appellate (private) complaints, protests against sentences, resolutions of military courts of garrisons, specialized inter-district military courts for criminal cases which have not entered into legal force shall be considered by the Military Court.

3. If a sentence or a resolution is issued on a case, then appellate complaints, protests against the sentence and private complaints, protests against the resolution shall be considered in the session of the appellate instance of a regional court or a court equivalent to it.

**Footnote.** Article 397 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 398. Procedure for making appellate (private) complaints, protests**

Footnote. The title is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

1. Appellate (private) complaints, protests shall be made through the court which rendered the sentence, the resolution. Appellate (private) complaints, protests submitted directly to an appellate instance shall be transferred to the court which rendered such sentence, resolution to carry out the requirements provided for by Article 401 and part two of Article 402 of this Code.

2. A sentence, a resolution rendered after the reconsideration of the case may be appealed, protested in accordance with the same procedure.

Footnote. Article 398 as amended by the Law of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 399. Periods to appeal, protest against sentences (resolutions)**

Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

1. Appellate (private) complaints, protests may be made within fifteen days upon announcement of a sentence (resolution), and in respect of convicted individuals in custody - within the same period from the moment a copy of the sentence (resolution) is handed to them.

2. Within the period established for appealing of a judicial act the case may not be evoked from the first instance court.

3. Appellate (private) complaint, protest made after expiration of the period shall be left unconsidered.

Footnote. Article 399 as amended by the Law of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 30.12.2005 No. 111 (the order of enforcement see Article 2); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 400. Procedure for restoration of a period of appellate (private) complaint, protest submission**

Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

1. If the period for the submission of an appellate (private) complaint, protest is defaulted due to a sound reason, persons who have a right to make such a complaint, a protest may petition to the court which rendered the sentence (resolution) on restoration of the defaulted period. The petition on restoration of the period shall be considered at a judicial session by

the judge who was presiding at the main judicial proceeding on a case, and, if such person is absent for a long period of time, by a judge of the same court who has a right to summon the person who filed the petition to provide clarification.

2. Resolution of the judge to refuse restoration of the defaulted period may be appealed, protested against in the relevant regional court or the court equivalent to it which has a right to restore the defaulted period and consider the case on a complaint, protest considering the requirements provided for by Article 401 and part two of Article 402 of this Code.

3. The court specified in part one of this Article shall restore the defaulted period for making an appellate (private) complaint, protest if a law was violated and it restricts opportunity of the participant of the proceeding to defend his rights and legal interests (untimely compilation of a record of a judicial session, handing of a copy of a judicial act to the person participating in case and who has no command of the language of the legal proceeding without a translation, inaccuracy in setting the appeal period in the resolution part of the judicial act), and if there are other circumstances which reasonably restricted such person to make a complaint or a protest.

**Footnote.** Article 400 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

#### **Article 401. Notification of making an appellate (private) complaint and protest**

1. The court which rendered a sentence, resolution shall notify the convict or the acquitted person, the defense lawyer, the prosecutor, the victim and his representatives, as well as the civil plaintiff, the civil defendant or their representatives of filing the appellate (private) complaint or a protest if such a complaint, a protest affects their interests.

2. A copy of the complaint, the protest shall be sent to the persons specified by part one of this Article with clarification of their rights to file written objections to such complaints or protests with indication of the period for their submission. Objections obtained with respect to the complaint, the protest shall be enclosed to the case.

3. The parties shall have the right to submit to the appellate instance together with the objection to the appellate (private) complaint, the protest or separately submit to the appellate instance new materials and petition to request and examine them, and petition to summon to the court and interrogate the victims, the witnesses and the experts specified by them.

**Footnote.** Article 401 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

#### **Article 402. Consequences of making an appellate (private) complaint and a protest**

1. Filing of the appellate (private) complaint and the protest shall suspend entry of the sentence (the resolution) into legal force and its serving.

2. Within not later than the day upon expiration of the period established for appealing, protesting of the sentence (resolution) the court of the first instance shall carry out the requirements provided for by Article 401 of the present Code, and after that it shall transfer the case with submitted complaints, protest and objections to them to the appellate instance. The appellate instance court shall notify the participants of the proceeding of the place and the time of case consideration in accordance with the appeal procedure. When a complaint, a protest is made in respect of the resolution adopted in the course of the judicial proceeding which terminated with rendering of a sentence, the case shall be transferred to the higher judicial instance only upon expiration of the period established for sentence appeal.

The term of case consideration in accordance with the appeal procedure shall start from the moment the case is received by the appellate instance court.

3. The person who appealed, protested the sentence (resolution) shall have the right to recall his complaint, protest prior to commencement of the judicial session of the appellate instance. Protest of the prosecutor may also be recalled by a higher prosecutor.

**Footnote.** Article 402 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 403. Appealing, protesting against the resolution made by the court of the first instance**

1. Excluded by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

2. Excluded by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

3. A private complaint, a protest against the resolution made by the court of the first instance shall be filed to the higher court within fifteen days upon adoption of the appealed decision and shall be considered in accordance with the rules of the appeals procedure. Based on the results of consideration of a resolution on dismissal of the complaint, the protest or cancellation or alteration of the appealed decision.

4. When a resolution adopted in the course of the judicial proceeding which terminated with rendering of a sentence is appealed, the case shall be transferred to the higher judicial instance only upon expiration of the period established for appealing the sentence. Therewith if an appellate complaint, a protest is filed against the sentence, inspection of a private complaint, a protest shall be conducted by the same judicial instance which considers the case in accordance with the appeal procedure.

5. Persons who are not parties to the case shall also have the right to appeal the court resolution if such resolution affects their interests.

Footnote. Article 403 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 11.07.2001 No. 238; dated 30.12.2005 No. 111 (the order of enforcement see Article 2); dated 29.06.007 No. 270 (shall be enforced on expiry of ten days after its first official publication); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

#### **Article 404. Limits of case consideration in the appellate instance**

1. The court which considers the case in accordance with the appeal procedure shall review the legality, justification of the sentence (resolution) only in the part and only in respect of those convicts the complaint or the protest is related to.

2. If any violations of the rights and legal interests of other convicts are discovered in the course of consideration of the case which entails rendering of an unlawful sentence (resolution), the court considering the rules provided for by this Code shall have the right to cancel or amend it in non-appealed, unprotested part in respect of the persons the complaint, the protest are not filed.

3. Considering a case under an appellate complaint, a protest against the sentence of the first instance court the court shall have the right, if there are no private complaints, protests, to review the legality of private and other resolutions of the court adopted on a case.

Footnote. Article 404 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

#### **Chapter 47. Consideration of cases under appellate complaints, protests**

Footnote. Chapter 47 is in the wording of the Law of the Republic of Kazakhstan dated July 11, 2001 No. 238.

#### **Article 405. Subject of appeal consideration**

Based on appellate complaints, protests the court of appellate instance based on the materials in case and additionally submitted materials examined at the session of the appellate instance shall review in full volume the correctness of actual circumstances substantiation and application of the criminal law, compliance with regulations of the criminal procedure law during proceedings on the case, lawfulness and justification of the sentence or the resolution of the court of first instance.

Footnote. Article 405 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 406. Periods for consideration of a case in the appellate instance**

The case shall be considered in accordance with the appeals procedure within the month from its receipt. In cases when the court finds that it is necessary to examine new materials and evidence and render a new sentence, the case shall be considered in accordance with the appeals procedure within two months from its receipt. The period indicated herein may be extended for month if there is a sound reason with a resolution of the court of appellate instance which has the case in its proceeding. If required to further extend the period of case consideration in the appellate instance, it may be extended based on the resolution of the chairman of the collegium of the relevant regional court or a court equivalent to it. Therewith each extension of the period of case consideration shall not increase the month.

**Footnote. Article 406 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 407. Appellate (private) complaint, protest**

1. Appellate complaint, protest shall contain the following:
  - 1) name of the court the complaint, the protest is addressed to;
  - 2) information on the person who filed the complaint or the protest with indication of his procedural status, place of residence or location;
  - 3) sentence or resolution the complaint, the protest is filed against and the name of the court which rendered such decision;
  - 4) indication of what part of the sentence, the resolution the complaint, the protest is filed against or if it is filed against the full volume of the sentence, the resolution;
  - 5) arguments of the person who filed a complaint, a protest, what it consists in in his opinion, incorrectness of the sentence, the resolution of the court and the merits of his request ;
  - 6) evidence which the author of the complaint, the protest bases his requirements on, including those which were not examined by the court of the first instance;
  - 7) list of materials enclosed to the complaint, the protest;
  - 8) date of complaint, protest filing and signature of complaint, protest author.
2. If the filed complaint, protest does not correspond to the present requirements, they are considered filed but shall be returned with indication of the period given for further compilation. If the appellate (private) complaint, the protest are not refilled to the court within the said period, they shall be considered unfiled.
3. The parties shall have the right to submit to the court of appellate instance new materials or petition to request and examine them as a confirmation of their grounds for the appellate (private) complaint, protest together with the complaint or after it has been filed, and petition to summon to the judicial session and interrogate the witnesses, the victims, the

experts, the specialists specified by them, and request performance of other acts directed to address any gaps in the judicial investigation performed by the first instance.

4. The person who filed an appeals (private) complaint, protest prior to the commencement of the judicial session shall have the right to amend or supplement his complaint, protest with new arguments. Therewith the additional protest of the prosecutor or his application to amend the protest, as well as the additional complaint of the victim, the private prosecutor or their representatives filed after the expiration of the sentence appeal period may not contain the request to aggravate the status of the convict if such request was not contained in the initial protest or complaint.

**Footnote. Article 407 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 408. Appointment of appellate instance judicial session**

1. Upon expiration of the period for filing appellate (private) complaints and protests and performance of the requirements provided for by Article 401 of the present Code the court of the first instance shall transfer the case to the relevant appellate instance.

2. The court of appellate instance shall notify the parties of the time and the place of case consideration. When the convict in custody files a petition requesting his participation in the judicial session of appellate instance during consideration of the complaint or the protests of the prosecutor which aggravate his status, the judge of the appellate instance shall adopt a resolution on consideration of the case with immediate participation of the convict or using scientific and technological means which enable the said person's distant participation and such resolution shall be sent to the relevant bodies for performance.

3. The matter of summons of the convict in custody to the judicial session in other cases shall be considered by the court of appellate instance. Participation of the convict (acquitted person) in the appellate instance session shall be obligatory when the court considers new evidence which was not the subject of consideration by the court of the first instance. Consideration of the case in such cases in the absence of the convict (acquitted person) shall be permitted if there are circumstances provided for by Article 315 of the present Code.

4. The defense lawyer shall participate in the appellate instance in cases provided for by Article 71 of the present Code. In those cases when the case is considered in relation to a minor convict or when the case is considered based on the appellate complaint of the victim (civil plaintiff), their representatives, on the protest of the prosecutor which raise a question of convict's status aggravation, or when the pre-trial procedure on a case and consideration of the case in the court of the first instance was carried out without the participation of the accused, or when the appellate instance examines the new evidence, participation of the defense lawyer in the apples instance is mandatory.

5. Participation of the prosecutor in the appellate instance is mandatory except for the

private prosecution cases.

The prosecutor shall be vested with authority provided for by Article 317 of the present Code in the appellate instance.

Failure of other participants of the proceeding to appear, except for the defense lawyer, when they were timely notified of the place and the time of the appeal session shall not impede consideration of the case.

6. The persons who in accordance with Article 396 of the present Code were provided with the right to appeal the sentence, and the defense lawyer of the convict (acquitted person) and representative of the victim who accepted the instruction after the sentence is rendered in all cases shall be permitted to participate in the appeal judicial session. At their request they shall be provided with an opportunity to speak substantiating the complaint or the protest filed by them or providing his objections to them.

**Footnote.** Article 408 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 408-1. Preparation to a judicial session of the appellate instance**

1. When in order to review the arguments of complaints, protest it is required to perform relevant procedural acts, within ten days from the moment the case is received the judge shall adopt a decision on appointment of expert examinations, summon and interrogation of the convict (acquitted person), the victim, the witnesses, the experts, the specialists, on request of materials and performance of other acts required for the correct consideration of the case. Due to the necessity to perform the said acts the date of case consideration in the appellate instance may be postponed by the judge to another term in accordance with the provisions of Article 406 of this Code, of which the parties shall be notified.

2. The judge shall resolve the matter regarding the maintenance, selection, cancellation or change of the measure of restraint in respect of the person on trial or the convict, which he shall specify in the resolution.

3. The judge shall render a resolution on preparation to consideration of the case in the appellate instance and indicate therein the decisions adopted with respect to the matters considered and the time and the place of case consideration in accordance with the appeal procedure. The copy of such resolution shall be sent to the participants of the proceeding within three days.

**Footnote.** The Code is supplemented by Article 408-1 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 409. Procedure for consideration of a case in the appellate instance**

1. The appellate instance shall consider cases in an open judicial session, except for the cases provided for by Article 29 of the present Code. The presiding judge shall open the judicial session, announce which case is considered and under whose appellate (private) complaints and protest. After that the presiding judge shall announce the composition of the court, surnames of the persons present who are parties to the case and surnames of translators.

2. The presiding judge shall explain to the persons being present at the session their procedural rights during the consideration of the case in appellate instance and ask the persons whether they have recusations and petitions, and, if they are stated, the presiding judge shall ask the opinion of other participants of the process with respect to such recusations and petitions, and after that the court in compliance with the procedure provided for by Article 325 of this Code shall make a resolution based on the results of their c o n s i d e r a t i o n .

3. The person who submits additional materials to the court shall indicate how they were obtained and why the need arose to submit them, and substantiate the necessity to complete the judicial investigation conducted by the court of the first instance. Additional materials may not be obtained through the performance of investigative acts.

4. If the parties file their petitions on enclosure of new materials to the case or on their reclamation and examination, as well as the petitions on summon to the juridical session and interrogation of the witnesses, the victims, the experts, the specialists specified by them, of the performance of other acts directed to address the gaps in the judicial investigation of the first instance, the court shall hear the opinions of the participants of the proceeding and after that it shall make a resolution on their satisfaction or rejection. The petitions shall be permitted only in compliance with the requirements of part five of Article 102 of this Code. Petitions of the parties on interrogation of the witnesses who appeared at a judicial session on their initiative shall be satisfied. If due to satisfaction of the petitions the time for the performance of appointed expert examinations or for the performance of other acts is required , the court shall announce a break and, if required, it shall extend the term of case consideration in the appellate instance.

5. The court of appellate instance shall examine additional materials presented by the parties or reclaimed upon their petition, received expert opinions, interrogate the persons summoned to the judicial session in accordance with the rules provided for the court of the first instance and if they are material for the correct consideration of the case.

6. After the performance of the judicial investigation the court shall hear the speeches of the participants of the proceeding who state arguments and motives of their complaints, protests or objections thereto in accordance with the rules of judicial pleadings. The parties in their speeches may refer to the materials examined by the court of the first instance and to additional materials examined by the appellate instance. The participant of the proceeding

who filed a complaint, a protest shall speak first, and if there are several such persons, the court considering their opinions shall set the sequence of their speeches. If in their complaints, protests the prosecution parties raise the question of convict's (acquitted person's) situation aggravation, the defense party shall speak after having heard the speech of the prosecution party

7. When the court of appellate instance examines new evidence, interrogates the convict (the acquitted person), the witness, the victim, the expert, the specialist and other persons, a record of a judicial session shall be maintained which shall be compiled in accordance with the requirements of Article 328 of this Code. The parties and the persons interrogated as the session of the appellate instance shall have the right to get familiarized with the record of the judicial session and submit their comments to it in accordance with the procedure provided for by Article 329 of this Code. Comments to the record shall be considered in accordance with the procedure provided for by Article 330 of this Code.

8. The order of the judicial session and the measures adopted in respect of the offenders shall be established by Articles 326, 327 of this Code. Procedure for decisions making in a consultation room shall be defined by the rules of Article 370 of this Code.

**Footnote. Article 409 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

## **Article 410. Powers of appellate instance**

1. When considering a case received with an appellate complaint or a protest, the court based on the petition of the parties or on its own initiative, aiming to review the lawfulness of the sentence and correct consideration of the case shall have the right to:

1) request the documents related to the health status, family status and information on previous convictions of the convict, the victim and other persons participating in case, and based on the petition of the parties it shall reclaim other documents;

2) appoint forensic psychiatric expert examination or another expert examination;

3) summon to the judicial session and interrogate additional witnesses, experts, specialists, examine written, material and other evidence presented by the parties or reclaimed by the court at their request;

4) recognize the materials examined by the court of the first instance as inadmissible evidence and exclude them out of the number of evidence;

5) recognize materials excluded by the court of the first instance out of the number of evidence as admissible and examine them again;

6) examine the circumstances related to the civil suit and make a decision on it;

7) perform other acts required to provide full, comprehensive and objective examination of all materials of the case and to establish the issue of the case.

2. If there is any doubtfulness in the testimonies of the convict (the acquitted person), the

victims, the witnesses, other persons interrogated by the court of the first instance and stated in the record of the judicial session and it provides an opportunity for their divergent interpretation, the court on its own initiative or upon the petition of the parties shall have the right to clarify them by interrogating such persons in respect of such circumstances.

**Footnote.** Article 410 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 411. Decisions made by the appellate instance**

1. In consequence of consideration of a case in accordance with the appeals procedure the court shall make one of the following decisions:

1) affirm the sentence (resolution) of the court of the first instance and dismiss the appeal (private complaint), protest;

2) amend the sentence;

3) cancel the sentence and terminate the case;

4) cancel the sentence of guilt and render a sentence of acquittal;

5) excluded by the Law of the Republic of Kazakhstan dated 17.02.2012 N565-IV (enforced from 01.07.2012);

6) cancel the sentence of acquittal and render a sentence of guilt;

7) cancel the sentence rendered with participation of juniors and transfer the case for a new judicial consideration;

8) cancel the sentence and transfer the case for further investigation based on the reasons provided for by part one of Article 303 of this Code;

9) amend the resolution, cancel the resolution and adopt a new resolution.

2. The court of appellate instance may adopt a decision which aggravates the situation of the convict (the acquitted person) only within the limits and on the grounds which are stated in the complaints, the protest of the prosecution party.

3. When substantiating the facts specified by Article 387 of this Code the court of appellate instance shall make a private resolution.

**Footnote.** Article 411 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Laws of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 411-1. Consideration of a civil suit in a criminal proceeding by the appellate instance**

1. The court of appellate instance when considering the case shall also review lawfulness, justification and fairness of the sentence in respect of the civil suit and make a decision in

accordance with the requirements of Article 169 of this Code.

2. The court of appellate instance shall have the right to amend the sentence in a part of the civil suit.

3. Adoption of a decision on a civil suit which aggravates the situation of the convict shall be permitted only if there are relevant arguments in the complaints of the prosecution party or in the protest of the prosecutor;

**Footnote.** The Code is supplemented by Article 411-1 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 412. Reasons for abolition or alteration of a sentence**

The following shall be recognized as reasons for abolition or alteration of a first instance court decision:

- 1) bias and incompleteness of the court investigation;
- 2) inconsistency of court conclusions presented in the sentence (decision) with actual circumstances of the case;
- 3) material violation of the criminal procedure law;
- 4) wrong application of the criminal law;
- 5) inadequacy of the punishment to the gravity of the crime and character of the convict.

## **Article 413. Bias or incompleteness of the court investigation**

1. A court investigation which left unclear the circumstances, of which the establishment might have material significance for the accurate adjudication of the case, shall be recognized as biased or incomplete.

2. A court investigation shall be recognized as incomplete in any of the following cases:

- 1) persons whose testimony has material significance for the case, have not been interrogated, or no expert evaluation has been carried out where its performance is obligatory in accordance with the law, and similarly documents or material evidence, which are important for the case, have not been procured;
- 2) the evidence indicated in the resolution of the court which submitted the case for fresh court consideration, have not been examined;
- 3) information, which may not be established by the appellate instance concerning the character of the sentenced person, has not been established with sufficient fullness.

3. After the gaps of judicial examination are eliminated, the court of appeal accepts one of the decisions specified in paragraph one of Article 411 hereof.

4. The judicial investigation carried out in the form of truncated proceedings in compliance with the requirements set forth herein may not be regarded as incomplete or

biased, and lead to the abolition of the sentence (judgment) of the court on these grounds.

**Footnote. Article 413 as amended by the Law of Republic of Kazakhstan No. 227-IV dated 10.12.2009 (shall be enforced from 01.01.2010).**

#### **Article 414. Inconsistency of the court conclusions presented in the sentence (decision) with actual circumstances of the case**

1. A sentence (decision) shall be recognized as inconsistent with actual circumstances of the case, where:

1) conclusions of the court are not confirmed with the evidence considered in the court session;

2) the court failed to take account of circumstances which might render material impact on the conclusions of the court;

3) contradictory evidence exist, which have material significance for the court conclusions; and in the sentence (decision) it is not mentioned for what reason the court accepted some of those evidences and rejected others;

4) conclusions of the court presented in the sentence (decision) contain material contradictions, which affected or might affect the outcome of the case, including the solution by the court of the issue of guilt or innocence of the convicted, acquitted person, the accuracy of application of the criminal law or affect the establishment of the measure of punishment.

2. Having considered the case materials, evidences submitted by the parties and received during the appeal proceedings, the court has the right to reappraise them and take a new decision, provided for in paragraph one of Article 411 hereof.

**Footnote. Article 414 as amended by the Laws of Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

#### **Article 415. Material violation of the criminal procedure law**

1. Violation of the principles and other general provisions of this Code in the course of case pre-trial investigation, which by way of deprivation or restriction of the rights guaranteed by the law to the persons participating in case, non-compliance with the court procedure or in any other manner impeded a comprehensive, full and impartial examination of the circumstances of a case, affected or might have affected the resolution of a fair sentence or other court decision, shall be recognized as material violations of the criminal procedure law.

2. A sentence shall be subject to abolition or repeal, where the bias or incompleteness of the court investigation of first instance resulted from an erroneous exclusion from consideration of the allowed evidence or unreasonable denial to a party of examining the evidence, which may have significance importance for the case, or examination of incompetent evidences.

3. A sentence (decision) shall be subject to abolition in any case where:
- 1) the court did not dismiss the criminal case while the grounds specified by Article 37 of this Code were available;
  - 2) the judgment was delivered by the improper composition of the court;
  - 3) hearings were conducted in the absence of the accused, except for the cases specified in the second paragraph of Article 315 hereof;
  - 4) conduct of proceedings in a case without participation of the defender or representative of the victim, where their participation is obligatory in virtue of the law, or where the right of defense of the accused was infringed;
  - 5) the right of the accused to use his (her) native language or the language, which he (she) knows, or to use services of a translator, was infringed;
  - 6) the accused was denied the right to participate in court debates;
  - 7) the right to say the last word was not granted to the accused;
  - 8) the secrecy of conference of judges in passing the sentence was violated;
  - 9) the sentence was not signed by the judge;
  - 10) no protocol of the court session is available in case file.

**Footnote. Article 415 as amended by the Laws of Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).**

### **Article 416. Wrong application of the criminal law**

The following shall be recognized as wrong application of the criminal law:

- 1) violation of requirements of the general part of the Criminal Code of the Republic of Kazakhstan;
- 2) application of the wrong article, a part of the article, a paragraph of the part of the article of the Special Part of the Criminal Code of the Republic of Kazakhstan, which should have been applied;
- 3) more tough sentencing than that provided by the sanction of a particular article of the Special Part of the Criminal Code of the Republic of Kazakhstan.

### **Article 417. Inadequacy of the punishment prescribed by the court with the gravity of the crime and the sentenced individual's personal characteristics**

1. A sentence that is made within the limits specified by the relevant article of the Criminal Code of the Republic of Kazakhstan but, by its nature and extent, is unfair due to excessive lenience or excessive severity, shall be recognized as inadequate to the gravity of the crime and the personal characteristics of the convict.

2. The court of appeal may commute the sentence or decide on a stricter punishment both in view of application of the law on more grave crime and without re-characterization of

actions of a convict. Taking decision which aggravates the position of the convicted person is permitted only with the appropriate arguments in appeals by the prosecution or in protest of the prosecutor and only within their scope. Application of law on more grave crime may not go outside the bounds of imputation of a crime to the accused, being supported as well by the prosecution in the court of first instance.

3. In cases where the court of first instance decided on theification of the crime under paragraph 7 of Article 317 of this Code in view of change by public and private prosecutors of accusation to lesser, the appeal instance is not entitled to apply the law on more grave crime, however, in case of complaints, protests it may extend the duration or amount of penalty or to prescribe a convict another stricter punishment than that, prescribed in the sentence.

**Footnote. Article 417 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 418. Abolition of an accusatory sentence with dismissal of the case**

1. When the court of appeal quashes a sentence and dismisses a case on appeal, in the course of protest hearing where there are grounds, specified in paragraphs 3) -10) of the first paragraph of Article 37 and the first paragraph of Article 38 hereof.

2. When the case is dismissed on the grounds specified in paragraph 9) of the first paragraph of Article 37 of this Code, the court of appeal decides on issues, specified in Article 516 hereof, and issues decrees in accordance with Article 517 of the Code.

**Footnote. Article 418 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 419. Abolition of an acquittal**

1. An acquittal, a decision on case dismissal or any other decision passed in favor of the accused, may be abolished by the appellate instance in no other manner than by the protest of the prosecutor or pursuant to the complaint of the victim or his (her) representative, as well as the acquitted by the court, who disagrees with the reasons for the acquittal.

2. A decision on case dismissal or any other decision passed in favor of the accused may not be abolished on the grounds of fundamental breach of the criminal procedure law referred to in Article 415 hereof, if the innocence of the acquitted individual or the essence of another decision passed in favor of the accused is not challenged.

3. The decision of the court to dismiss the case because of the refusal of the public prosecutor and victims of prosecution in the event of appeal hearing is not subject to abolition.

**Footnote. Article 419 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

## **Article 420. Abolition of a sentence with involvement of the jury with submission of the case for a fresh court trial**

**Footnote.** The title of Article 420 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

1. The sentence, pronounced with involvement of the jury, shall be subject to abolition in full or in part with submission of the case for a fresh court trial to the court which issued the sentence, but with the differently constituted bench on the grounds specified in Article 575 of this Code.

2. In which case the court of appeal may not decide the issues of proof or failure to prove the accusation, issues of accuracy or inaccuracy of any evidence, superiority of one over the other evidences, the issues of applying by the court of first instance of a criminal law and the level of punishment, as well as to prejudge the conclusions that may be made by the court.

**Footnote.** Article 420 as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010), dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 420-1. Repeal of a Sentence with Pronouncing of a New Sentence**

1. The court of appeal in compliance with the requirements of Chapter 44 of this Code shall have the right to:

1) overturn the conviction and acquit on the grounds provided for in clauses 1) and 2) of the first paragraph of Article 37 of this Code;

2) based on the complaint or protest of the prosecution party to acquit and bring in the verdict of guilty.

2. The court of appeal may not go outside the bounds of the accusation presented as well as outside the bounds of accusations and extent punishment, which in the main proceedings were supported by the public or private prosecutor.

3. Appeal judgments, pronounced according to the requirements of part one of this Article, may be appealed against by a prosecutor, or a cassation appeal may be brought in by persons referred to in Article 396 hereof within six months of pronouncement of appeal judgments, and by the accused in custody - within the same period from the moment of delivery to the latter of the copy of a judgment.

4. Filing of a complaint, a protest for revision in the court of cassation of the judgment of guilt based for the reasons of innocence of the convicted person, as well as in connection with the necessity of applying of the legal provision covering a less serious crime considering the severity of the punishment or other reasons, resulting in improvement of the state of the convicted person, shall not be limited by the time frame.

**Footnote.** The Code is supplemented by Article 420-1 in accordance with the Law of the

Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565- IV (shall be enforced from 01.07.2012).

## **Article 420-2. Abolition of a Sentence with Submission of the Case for Further Investigation**

Due to the petition of litigants the appellate court shall be entitled to cancel the sentence and refer the matter for further investigation on grounds specified in the first paragraph of Article 303 of this Code.

Footnote. The Code is supplemented by Article 420-2 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 421. Change of Judgment**

1. The Court of appeal may change the judgment:

1) to mitigate the punishment and of the correction institution prescribed by the court;  
2) to apply the legal provision covering a less serious crime and to prescribe punishment in accordance with the modified qualification, and also to replace the of the correction institution for the more lenient;

3) excluded by Law of the Republic of Kazakhstan No. 227-IV dated 10.12.2009 (shall be enforced from 01.01.2010);

4) to increase the scale of the punishment if its increase is connected with elimination of arithmetic errors or errors in the offset of the preliminary custody with elimination of inaccurate application of the criminal law which regulates the prescription of the punishment on the basis of a combination of crimes as well as in case of criminal recidivism.

4-1) to apply additional punishment in case of correctly determined circumstances, complete investigation and evaluation of evidences, proper legal qualification of actions of the convicted and properly prescribed basic punishment;

5) excluded by Law of the Republic of Kazakhstan No. 227-IV dated 10.12.2009 (shall be enforced from 01.01.2010);

6) to abolish prescription to the sentenced individual of a more lenient of the correctional institution, than that provided for by the law, and to prescribe the of the correctional institution in accordance with the Criminal Code of the Republic of Kazakhstan;

7) to recognize the existence of relevant criminal recidivism if it was not done or was done inappropriately by the first instance court and prescribe a more austere regime of the penal colony;

8) to abolish in accordance with the fifth paragraph of Article 64 of the Criminal Code of the Republic of Kazakhstan the suspended sentence under the previous sentence and, therefore, to prescribe the punishment in accordance with the rules of Article 60 of the

Criminal Code of the Republic of Kazakhstan, if it was not done by the first instance court;

9) to abolish parole and impose punishment according to the rules of Article 60 of the Criminal Code of the Republic of Kazakhstan in cases stipulated in items b) and c) of the seventh paragraph of Article 70 of the Criminal Code of the Republic of Kazakhstan;

10) to alter the sentence concerning the civil action, including issues on recovery of procedural costs, decision on material evidences;

11) to apply coercive measures of a medical nature in accordance with Article 95 of the Criminal Code of the Republic of Kazakhstan;

12) to apply the legal provision covering a more serious crime, to prescribe a more severe penalty or apply an additional penalty if there are grounds or satisfying the complaint, protest of the prosecution party on the need for applying of the legal provision covering a more serious crime or prescribing the more severe punishment.

2. The court of appeal shall have the right to take a decision, which adversely affects the position of the convicted person only in the event that the protest of the prosecutor or a complaint of the private prosecutor, victim, their representatives was brought in.

**Footnote. Article 421 as amended by the Law of the Republic of Kazakhstan dated 21.12.2002 No. 363; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication), dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 422. Contents of the Appeal Sentence, Decision**

1. In cases stipulated by items 1) -3) and 8) of the first paragraph of Article 411 of the Code (on affirming the decision of the court of first instance, on changing the sentence, abolishing the sentence with submission of the case for further investigation), the appeal decision is made.

An appeal sentence shall consist of the introductory, descriptive-motivation and judicial disposition parts.

2. The following must be indicated in the introductory part of a resolution:

- 1) time and place of passing the resolution;
- 2) name of the court and membership of the appellate panel which passed the resolution;
- 3) persons who filed the appellate protest or appellate complaint;
- 4) persons who participated in consideration of the case in the appellate instance.

3. The descriptive-motivation part of a resolution must contain a brief outline of arguments of the filed appellate complaints, protest, objections to them, opinion of the persons who participated in the appellate instance court, as well as the motives of the taken decision.

4. If the complaint, protest have not been satisfied due to absence of new arguments in the descriptive-motivational part of the appellate order, there will be specified only the lack of

stipulated by the given Code reason to amend the judicial act or repeal it.

In the event of specifying in the appeal of new arguments which were not the subject of hearing in the court of first instance, the descriptive-motivational part must contain the grounds on which the new arguments have been recognized as to be unfounded.

5. In case of abolition or alteration of a sentence it must be specified the requirements of which provisions of the criminal or criminal procedure law were violated, what were the nature of those violations, the reasons for which amendments were introduced to the sentence of the court of first instance.

6. In the judicial disposition part of the appeal resolution there should be specified a decision of the appellate instance court as it regards to the complaint or protest.

7. In cases referred to in items 4) and 6) of the first paragraph of Article 411 of this Code (on abolition of the judgment of conviction and on pronouncing of the acquittal verdict, on abolition of acquittal and on pronouncing of judgment of conviction), the appeal judgment shall be made under the rules of Chapter 44 of this Code;

8. In the judgment of appeal there shall be specified what rules of the criminal law or criminal procedure law have been violated, what are these violations, the grounds on which the judgment of the court of first instance is recognized as to be unlawful.

9. In case the appellate court makes decisions, referred to in the first paragraph of Article 421 of this Code, the descriptive-motivational part of the decision must give the reasons based on which the decision of the court of first instance has been recognized as to be wrong, as well as the grounds of weakening of the position of the convicted person.

10. The court of appellate instance may, not altering the essence of the appeal judgment or decision, pronounce the sentence in addition on elimination of committed obvious clerical errors and clarification of contained there ambiguities.

**Footnote. Article 422 is in the wording of the Law of the Republic of Kazakhstan No. 565-IV dated 17.02.2012 (shall be enforced from 01.07.2012).**

### **Article 423. Imposition of Appellate Sentence and its entry into Legal Force**

1. An appellate sentence shall be passed in the jury room, signed by a judge (the judges) and pronounced in the court room after the return of the judge (judges) from the consultation room.

2. In compliance with the requirements of the first paragraph of this Article, the court may adopt the judicial disposition part of the sentence, decree. In that event the full text of the appellate sentence, decree shall be compiled and signed by the judge (judges) within seven days from the date of considering the case.

3. An appellate sentence, resolution shall enter into force of their pronouncement.

**Footnote. Article 423 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 423-1. Appealing to Execution of the Sentence, Resolution of the Court of Appellate Instance**

1. The appellate instance sentence, decree shall be submitted together with the case file to the court of first instance not later than within three days after the date of their pronouncement, and in case specified in the second paragraph of Article 423 of this Code after the date of completing of its full text.

2. When the case is returned for additional investigation in accordance with Article 303 of this Code, the decree of the appellate instance together with the case shall be directed to the relevant prosecutor. In that event a copy of the decree of the appellate instance shall be submitted to the court of first instance.

3. The sentence, decree, in accordance with which the convict is subject to release from the custody, shall be executed in that respect immediately if the sentenced person is participating in the session of the court of appellate instance. In other cases a copy of the appellate sentence, resolution or an extract from its judicial disposition part shall be immediately directed to the administration of the place of confinement for the execution of the decision on release of the sentenced person from the custody.

4. In event of pronouncing by the court of appeal of the new sentence the case is sent to the court of first instance for applying for execution of the sentence.

**Footnote. Article 423 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).**

## **Article 423-2. Repeated Consideration of the Case in the Appellate Instance**

1. A repeated consideration of the case in the appellate instance without abolishing of the first appellate sentence, decree, pronounced in the course of examination of legality of the sentence of the court of first instance, shall be allowed if:

1) the appellate complaints, protest concerning certain sentenced individuals, complaints of other participants of court proceedings, entitled to appeal against the appellate sentence (decree), that were filed within the established period, shall be received by the court of appellate instance after consideration of the case with regard to complaints of other participants of hearings;

2) the missed period for appeal, protest has been restored by the court in a manner as provided by this Code after consideration of the case in the appellate instance with regard to complaints of other participants of hearings.

2. The court of appellate instance shall be obliged to consider complaints of the sentenced person, his (her) attorney for the defense or representative and in those cases where the case was considered with regard to that person pursuant to the appellate complaints, protest of other participants of the process.

3. In case where a newly-passed decree contradicts a resolution of the appellate instance which was adopted previously, the chairman of the Panel of Arbitrators brings a decree on elimination of arose contradictions to the cassation instance of the regional and the equivalent c o u r t .

Footnote. Article 423-2 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010), as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 423-3. Consideration of a Case in the First Instance after Abolition of the Initial Sentence, Pronounced with Involvement of Jury Members**

1. After abolition of the initial sentence, the case shall be subject to consideration in accordance with the procedure, provided by Chapter 57 hereof.

2. The appellate instance may apply to the convict the criminal law provision covering a less serious crime and reduce the degree of the punishment according to the changed qualification of the committed offense. Therefore, the appellate instance may not apply a criminal law provision covering a more serious crime oren the pronounced punishment.

3. The acquittal verdict of the court with involvement of the jury may not be canceled on appeal, other than as result of violation of the criminal procedure law, which restricted the right of the prosecutor, victim or his (her) representative to present evidences, and cases provided for in item 5) of the first paragraph of Article 575 of this Code.

4. A sentence, pronounced by the court of first instance may be challenged generally in the course of new consideration of the case.

Footnote. Article 423-3 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

Footnote. Chapter 48 is excluded by the Law of the Republic of Kazakhstan dated July 11 , 2001 No. 238.

### **Chapter 48-1. Proceedings in a Case under Cassation Complaints, Protests**

Footnote. The Code is supplemented by Chapter 48-1 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 446-1. General Conditions of Appeal of Judgments, Court Decisions under Cassation Procedure**

1. According to the rules, contained herein, the legally effective judgments, decisions of district and equivalent courts (including specialized, inter-district courts) as well as judgments and decisions of the appellate instance are subject to resentence.

2. Sentences, court decisions, pronounced in view of waiver of prosecution by the public

and private prosecutors upon the issue of authorization of the measure of restraint in the form of imprisonment and extension of its term, resolution of complaints against actions and decisions of persons, prosecuting an inquiry or a pre-trial investigation, or against the actions and decisions of the prosecutor on the stage of the preliminary investigation of the case, are not subject to revision under the cassation procedure.

3. The scope of persons, authorized to bring the cassation appeals, and the procedure of filing of appeals are determined based on the rules set out in Articles 396 and 398 hereof.

4. A protest for review of the judicial act under the cassation procedure may be brought by the regional prosecutor and the equivalent prosecutor, as well as by the Prosecutor General and deputies of the latter according to the rules specified in Article 398 of this Code.

Criminal proceedings may be requested from the appropriate court to examine under the cassation procedure by the Prosecutor General of the Republic of Kazakhstan and deputies of the latter, prosecutors of oblasts and equivalent prosecutors, within the time frame specified in paragraph 2.1 of Article 460 of this Code.

5. A cassation protest or a cassation complaint may be lodged against legally effective judgments, decisions of district and similar to them courts (including specialized, inter-district courts) within six months from the date of entry into force, and the accused in custody - within the same period from the date of delivery of the sentence copy.

Judgments, decisions of the appellate instance may be appealed against within six months from the date of their pronouncement, and the accused in custody may appeal against within the same period from the date of delivery of the sentence, decision copy.

6. Filing of complaints or protests for review in the appeal court of the legally effective judgment of conviction on grounds of innocence of the convict and whereas it is necessary to apply a law provision on a less serious crime for the severity of the punishment or otherwise, entailing the advancement of the convict, are open-dated.

**Footnote. Article 446-1 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 446-2. Subject of Cassation Appeal**

The appeal court examines compliance of the court, which pronounced a sentence (decision), with the provisions of the criminal law and criminal procedure law, and considering the above examines legality, validity and fairness of the judgment (decision).

## **Article 446-3. Cassation Complaint or Protest**

1. A cassation complaint or a protest must include:

- 1) the name of the court, which a complaint or a protest is addressed to;
- 2) details of the individual, who filed a complaint or a protest, specifying his (her) procedural status, place of residence or place of location;

- 3) a judgment or another decision that is being appealed or protested against, and the name of the court which ruled that decision;
- 4) arguments of an individual, who filed a complaint or a protest, specifying the essence of wrong application of the criminal or criminal procedure law, and how it affected the substance of the judgment, as well as the matter of the request;
- 5) the list of attached to the complaint or protest materials;
- 6) the signature of the complainant or protest initiator.

2. Should a complaint, a protest be not in line with the requirements set forth in paragraph he herein, they are deemed to be filed, but returned with the note of need for additional documentation. Should a cassation complaint, a protest after being redrawn be not submitted to the court within this period, they are considered to be not filed.

3. Should judgments, decisions pronounced by the court in the course of consideration of the case under the cassation procedure be appealed against, a cassation complaint, a protest have to specify the grounds of agreement or disagreement with the judgment, decision of the a p p e l l a t e c o u r t .

**Footnote. Article 446-3 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012)**

#### **Article 446-4. Terms of Appeal Hearing**

The case must be reviewed no later than the month from the date of its acceptance by the court of cassation. This period of time due to complexity or length of the case and in case of existence of other valid reasons may be extended by the decision of the court, which considers the case, but each time no more than to he month.

#### **Article 446-5. Scheduling Hearings of the Court of Cassation Instance**

1. Following the acceptance of a complaint, a protest, the cassation court judge obtains on demand the case, upon which delivery the date of its consideration is defined.

2. The place and time of consideration of the case under the cassation procedure are communicated to the parties of the case. An issue of calling of the convict is subject to the decision of the court of appeal. Following the acceptance from the convict of a petition on taking part in hearings in the court of appeal, considering a complaint or a protest of a prosecutor, which worsen the convict's position, the court of appeal issue a decree on consideration of the case with direct involvement of the convict or with the use of the scientific and technological tools, allowing to ensure distance participation of the above person, which in its turn is submitted to the appropriate authorities for execution.

3. Failure to appear of persons, being promptly notified of the time and place of hearings in the court of appeal, will not hamper consideration of the case. Involvement of a prosecutor in hearings in the court of appeal is mandatory.

4. Persons, entitled to bring appeals, protests, as well as the counsel for the convict (acquit), or representative of the victim, who accepted the commission after a sentence, a decision have been pronounced, will in all cases be admitted to take part in hearings in the court of cassation instance. At their request they will be given the floor in support of lodged complaints or protests or counter-arguments.

**Footnote. Article 446-5 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).**

#### **Article 446-6. Powers of the Court of Cassation Instance**

The judge, while preparing the case for hearing, or the court, while considering the case, attached with the cassation complaint or protest, may on own initiative or by petition of the parties :

- 1) obtain on demand the documents related to health state, marital status and data on previous convictions of the convict;
- 2) obtain on demand information, needed to determine the operation of law in time and in space, and to determine whether the court of first instance and of appeal instance applies the provisions of the criminal and criminal procedure law while considering the cases.

**Footnote. Article 446-6 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).**

#### **Article 446-7. Procedure of Cases Consideration by the Court of Cassation Instance**

1. The court of cassation instance examines cases in open court except as provided in Article 29 hereof.

2. The presiding judge opens a court and announces the case subject to hearing and whose cassation complaints or protests initiated the above hearing. From then on, the presiding judge declares the court, the names of the persons who are parties to the case and present in the court membership, names of persons, being the parties to the case, and of those who attend the hearing, and the names of translators, the presiding judge explains persons present their rights, which may be exercised in the course of case consideration in the court of cassation instance.

3. The presiding judge questions everyone who attended the court if they file objections and petitions, and based on the results of their consideration the court shall issue a decree subject to Article 325 of this Code.

4. Consideration of the case begins with the speech of the party to a trial, who has filed a cassation complaint or a protest. If there are several such parties to a trial, the presiding judge, giving due consideration to the opinion of the parties to a trial, ranks oral pleadings in priorities. The parties to a trial specify in their oral pleadings the circumstances, relating to the subject matter of the case, considered upon cassation appeal, and connected with the

breaches in law applying, committed by the court of first or appeal instance, in what is expressed, what are consequences of such a breach and how it affected the merits of taken decision upon the case.

5. To confirm or refute the arguments, given in the appeal or protest, the spokesmen may submit to the court of cassation instance the additional materials, thus inform the court on the way the documents have been obtained, and therefore on the need for their submission. No additional materials may be obtained through the investigative actions. The court, having heard the opinions of the parties, shall issue an order on acceptance or rejection of additional materials. The additional materials, if they are relevant to resolution of the case, may serve as the grounds for dismissal or change of the sentence, if the contents of such materials or data information do not require additional verification. In other cases the additional materials may be the grounds for vacating of judgment, sentencing and submission of the case to the court of appeal or the court of first instance, if the case has not been considered under the appellate procedure.

6. Schedule of hearings and actions taken against the offenders are defined by the rules of Articles 326 and 327 of this Code. The breaking case procedure and procedure of taking decisions are defined by the rules of Article 370 of this Code. The procedure of taking a decision follows the breaking case procedure.

**Footnote. Article 446-7 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012)**

### **Article 446-8. Decisions Made by the Court of Cassation**

As a result of consideration of the case in the court of cassation, the court by its decision shall take one of the following decisions:

- 1) affirms the sentence of the court of first instance and decision of the court of appeal, and dissatisfies a complaint or a protest;
- 2) recalls the judicial acts and dismisses the case;
- 3) recalls the judicial acts of the court of appeal instance and vacates the judgment of the court of first instance;
- 4) recalls the judicial acts of the court of appeal instance and submits the case to the court of appeal for new trial;
- 5) discharges the judicial acts of the court of first instance and submits the case to the court of first instance for new trial, if the case has not been considered under the appellate procedure and if the case has been considered in the court of first instance with involvement of jury;
- 6) changes the sentence of the court of first instance and the decision of the appellate court;
- 7) recalls the sentence and submits the case for further investigation on the grounds

specified in paragraph one of Article 303 of this Code;  
8) pronounces a separate decision when establishing the circumstances referred to in  
Article 387 of this Code.

Footnote. Article 446-8 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012)

### **Article 446-9. Grounds for Recall or Change of the Sentence, Decision of the Court of Appeal Instance**

The grounds for recall or change the sentence, decision under the appellate procedure are  
as follows:

- 1) wrong application of the criminal law;
- 2) material breach of the criminal procedure law;
- 3) injustice in the verdict.

Footnote. Article 446-9 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 446-10. Wrong Application of the Criminal Law**

Wrong application of the criminal law shall be:

- 1) violation of the General Part of the Criminal Code of the Republic of Kazakhstan;
- 2) application of the wrong article or a paragraph (item) of the article of the Special Part of the Criminal Code of the Republic of Kazakhstan, which were subject to applying;
- 3) imposition of the punishment more severe than the sanction provided for in a particular article of the Criminal Code of the Republic of Kazakhstan.

### **Article 446-11. Material Breach of the Criminal procedure law**

1. Substantial violations of the criminal procedure law shall be violations of the principles and other general provisions of this Code, committed during judicial proceedings, which through deprivation or restraining of guaranteed by law rights of parties in a trial, failure to comply with legal proceedings or otherwise impeded to comprehensively, in full volume and impartially investigate the circumstances of the case, affected or could have affected rendering the legal sentence.

2. The sentence is subject to repeal in any case, if the court committed breach of the criminal procedure law, referred to in paragraph three of Article 415 of this Code.

### **Article 446-12. Injustice in Sentencing**

1. The sentence, based on which a punishment has been prescribed, is deemed to be unjust should it be not in line with the requirements of Article 52 of the Criminal Code of the

2. The court of appeal may, based on provisions of Article 446-17 hereof, change the sentence as being unjust.

3. If the sentence is considered to be unfair because of unreasonable acquittal, applying of a legal provision covering a less serious crime or due to excessive leniency of a punishment, the court of appeal in the presence of the prosecutor's or the victim's complaint or a complaint of the representative of the latter, brought in based on the above reasons, mayen the punishment or apply a legal provision covering more serious c crime.

**Footnote. Article 446-12 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

### **Article 446-13. Repeal of Judgment of Conviction due to Case Dismissal**

Considering the case in the court of appeal, the court repeals the judgment of conviction and dismisses the case under circumstances specified in paragraph one of Article 37 and paragraph one of Article 38 of this Code.

### **Article 446-14. Repeal of the Acquittal**

1. The acquittal may be repealed in the court of cassation instance only based on the protest of the prosecutor or the complaint of the victim or the representative of the latter, as well as based on the complaint of the acquit at law, dissenting with the grounds of justification.

2. The acquittal, the decision to dismiss the case or another decision, rendered in favor of the accused, may not be repealed for the reasons of the fundamental breach of the Criminal procedure law, if guiltiness of the acquit or merits of other decision rendered in favor of the accused are not in doubt.

### **Article 446-15. Repeal of the Sentence with Submission of the Case for Reconsideration**

**Footnote. The title of Article 446-15 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012)**

1. The sentence shall be subject to cancel with submission of the case for new consideration in the court of appeal or for new consideration in the court of first instance, if the case has not be considered in the court of appeal, provided only that the court of cassation instance has found substantial breach of the criminal procedure law, which has affected or could affect the legality of the sentence.

2. The sentence may also be repealed with submission of the case for new consideration in the court on the grounds provided in paragraph three of Article 446-12 of the Code.

3. The court of cassation instance may not prejudge the issues of validity or failure to prove the accusations, credibility or unreliability of a particular evidence, superiority of the evidence over the other, applying by the court of first instance of a particular provision of the criminal law and degree of punishment, as well as to prejudge the conclusions that may be made by the court.

**Footnote. Article as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

### **Article 446-16. Repeal of the Sentence with Submission of the Case for Further Investigation**

If there are grounds, the court of appeal instance based on the petitions of the parties to a trial may repeal the sentence and submit the case for further investigation on the grounds specified in paragraph one of Article 303 of this Code.

### **Article 446-17. Change of the Sentence**

1. In case of wrong application of provisions of the criminal law by the court of first and appeal instance, the court of cassation instance may apply to the convict a legal provision of a less serious crime and to reduce the degree of the punishment in accordance with the changed qualification of the offense, as well it may apply the legal provision of a more serious crime on the degree of the punishment imposed.

2. The court of cassation instance may reduce the degree of the punishment imposed on the convicted person without changing the qualifications if it is recognized as to be unfair because of its excessive severity.

3. The court of cassation instance may en the degree of punishment, if its increase is associated with the elimination of arithmetic mistakes or errors in set-off of pre-trial detention in custody, with elimination of improper use of criminal law, regulating the imposition of the punishment per cumulative sentences and crimes. The court of cassation instance may repeal the unmotivated in the verdict assignment to the convict of a softer of a correctional institution, than that required by law, and to appoint the of a correctional institution in accordance with the Criminal Code of the Republic of Kazakhstan.

4. The court of cassation instance may make under this Article changes, worsening the position of the convicted person, if the prosecutor has brought in a protests on these grounds or if a complaint is filed by the victim, private prosecutor or their representatives.

5. The court hearing the case checks the legality, validity and fairness of the court verdict in full. Changes to the judicial act on grounds not specified in the causational complaint (protest) as well as in respect of other convicts regarding, in whose regard no cassation complaint (protest) has been brought in, shall be admitted only when the qualification of the crime committed in complicity with the convict, in whose respect the cassation complaint has

been filed, is changed, provided no worsening of the position of the convict takes place. The decision on worsening of the position may be taken by the court only in respect of those convicts, who are specified in the prosecutor's protest or a cassation complaint. The court may not worsen the position of the convict based on the cassation complaint, filed by the latter or his (her) advocate or representative.

**Footnote. Article 446-17 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 446-18. Content of the Cassation Decision**

1. The cassation decision consists of the introductory, descriptive and motivation and c o n c l u s i v e p a r t s .

2. The introductory part of the decision shall include:

- 1) the time and place of judgment delivery;
- 2) the name of the court and the composition of the appellate board that render a decision;
- 3) the person who filed the cassation complaint or brought a cassation protest;
- 4) persons who participated in the proceedings in the court of cassation instance.

3. The descriptive and motivation part of the decision must contain a brief description of arguments of the person who has filed a complaint or brought in the protest, objections of other parties to a cassation trial, as well as the motives of the decision rendered. If a complaint or a protest has been remained unsatisfied, there should be shown the grounds on which the arguments in a complaint or in a protest are found as to be unfounded or inessential .

In case of repeal or changing of the sentence, there should be stated the articles of the criminal or criminal procedure law, which requirements have been violated, and the essence of such violations; the grounds, pursuant to which the imposed by the court of first instance or the court of appeal instance punishment has been recognized as to be unjust. Where a case is submitted for a new trial, there should be indicated the violations of the law subject to elimination. In which case, the court of cassation instance may not prejudge the issues of validity or failure to prove the accusations, reliability or unreliability of any particular evidence and the superiority of one of evidences over the other ones, applying by the court of first instance, cassation instance of a particular provision of the law and degree of punishment .

4. When the complaint or the protest remain unsatisfied due to lack of new arguments, the descriptive and motivation part of the cassation decision should provide only for absence under this Code of reason to make changes to the judicial act or repeal it.

If the cassation complaint provides for new arguments, not being subject to consider in the courts of first instance and cassation instance, the descriptive and motivation part should provide for the reasons, based on which new arguments have been recognized as to be

u n f o u n d e d .

5. The operative part of the decision provides for a decision of the court of cassation instance, delivered based on the complaint or protest.

**Footnote. Article 446-18 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

### **Article 446-19. Pronouncement of the Cassation Decision**

1. The cassation decision is made in the conference room, complying with the requirements of Article 423 of this Code.

2. The cassation decision enters into force from its announcement.

**Footnote. Article 446-19 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

### **Article 446-20. Enforceability of the Decision of the Court of Cassation Instance**

1. A decision of the court of cassation instance shall be submitted within at the latest three days of its pronouncement together with the case file to be executed to the court of first instance that delivered the sentence. When the case is submitted for further investigation, the decision of the court of cassation instance attached with the case file is submitted to the appropriate prosecutor. In this case, the court of first instance that delivered a sentence is submitted with the copy of the decision of the court of cassation instance.

2. A decision, according to which the convicted person shall be released from custody, should be executed in this respect immediately, if the convict attends the sessions of the court of cassation instance. In other cases, a copy of the cassation decision or an excerpt from the cassation decision from its operative part is submitted immediately to the administration of the place of detention for execution of the decision on release of the convicted person.

**Footnote. Article 446-20 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).**

### **Article 446-21. Reconsideration of the Case in the Court of Cassation Instance**

1. If for any reason whatsoever the cassation complaint or the protest, being lodged within the established term in respect of some particular convicts, are received by the court of cassation instance after the case in respect of other convicts has been considered, and if the cassation complaint of the convicted person, the advocate of the latter is received when the case in respect of the above convict has been already considered based on the cassation complaint of another party to a trial or prosecutor's protest, the court shall have to consider such a complaint or a protest and to issue an appropriate decision.

2. If the newly issued decree comes into conflict with the decree rendered previously, the

court of cassation appeal will submit the case to the Supreme Court of the Republic of Kazakhstan for examination in the exercising of supervisory powers.

**Footnote. Article 446-21 as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).**

### **Article 446-22. Consideration of the Case in the Court of First, Appellate Instance following the repeal of the Sentence**

1. After the sentence is repealed, the case should be considered under the general procedure .

2. ening of the degree of the punishment or applying the legal provision on a more grave accusation in the course of new consideration of the case by the court of first, appeal instance, are allowed if such a request is contained in the cassation complaint, a protest of the party of prosecution, and the court of appeal instance is specified as one of the grounds for sentence repeal .

3. In the event of new consideration of the case, the court of first, appeal instance may not :

1) adjudge the convict guilty in respect of accusation, which has been excluded by the primary sentence, if the sentence in that respect has not been reversed based on the complaint, protest of the party of prosecution;

2) en the degree of punishment, sentence the period of time for serving a part of the term of the punishment in prison or term for serving punishment in a colony with a more strict regime, sentence additional punishment or apply a legal provision on more serious crime, if the initial sentence has been repealed based on the complaint, protest of the prosecution, but not on the above grounds .

**Footnote. Article 446-22 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

### **Article 446-23. Extent of the Punishment Sentencing in the Course of New Trial**

The verdict, sentenced by the court of first, appeal instance in the course of new trial, may be appealed against generally. In this case, if the first sentence is repealed by the complaint, protest in defense of the convicted person, and the second sentence is repealed by a complaint , a protest of the party to a prosecution referring to the leniency of a punishment or in view of necessity to apply a legal provision on a more serious crime, the court, considering the case for the third time, may sentence more severe punishment or apply a legal provision on a more serious crime in comparison with that, sentenced by the second verdict, but may noten the degree of the punishment or apply a legal provision on a more serious crime in comparison

with that, sentenced by the first verdict.

Footnote. Article as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Section 9. Execution of Court Decisions**

### **Chapter 49. Execution of Court Judgments and Decisions**

#### **Article 447. Entry of Judgment into Legal Force and Appeal to its Execution**

1. The sentences of the first instance court, issued by a district court or an equivalent court, by a specialized inter-district criminal court, by a specialized inter-district military court, by a specialized inter-district military court, dealing with criminal cases, by a specialized inter-district military juvenile court, by a garrison military court, shall enter into legal force and shall be subject to implementation upon expiry of the period for appellate challenge or protest, unless they were challenged or protested against.

2. If the case is reconsidered on appeal, if it is not repealed, the sentence shall enter into force on the date of the issue of the appellate resolution. If the appellate (private) complaints, protests were revoked prior to the beginning of the session of the appellate instance court, the sentence shall enter into force on the day of the passing of the resolution by the appellate instance on termination of the appellate procedure in connection with the revocation of the complaint, protest.

3. The sentence shall be executed by the first instance court not later than three days after the day of entry into legal force of the sentence or return of the case from the higher court.

4. The person that has been sentenced for a crime shall be released from endurance of the punishment, unless the accusatory sentence has been executed within the period established by Article 75 of the Criminal Code of the Republic of Kazakhstan.

5. If the court resolves an acquittal sentence or the accused has been convicted without prescription of the punishment or released from the punishment or sentenced to a punishment not connected with deprivation of freedom, and prior to the resolution of the sentence the convict was in custody, the court that passed such a decision shall immediately release the latter from custody.

Footnote. Article 447 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

#### **Article 448. Entry of Court Judgment into Legal Force and Appeal to its Execution**

1. A judgment of the first instance court shall enter into legal force and shall be executed upon expiry of the period for appeal or protest, or in case of submission of a private complaint or a protest, upon the consideration of the case by the higher court.

2. A judgment of the court, which is not subject to appeal or protest against, shall enter into force and executed immediately upon its sentencing.

3. A judgment of the court on dismissal of the case when deciding the issue of appointment of the court session or at the court session shall be subject to immediate execution to the extent, which concerns the release of the convict or the accused from custody

4. The decision, sentence of the appellate instance court shall enter into force immediately upon its announcement.

5. The decisions and sentences of the appellate instance court shall be executed in accordance with the procedure specified in Article 423-1 of this Code.

6. The court private resolution is submitted to the appropriate official, executing the administrative functions upon expiry of no more than three days from the date of entry into legal force. Not later than within the month, measures must be taken in respect of the private resolution, and the results must be communicated to the court that passed the resolution.

**Footnote.** Article 448 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238, dated 09.12.2004 No. 10, dated 30.12.2005 No. 111 (the order of enforcement see Article 2), dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010), dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 449. Procedure for Applying for Execution of the Court Judgment, Sentence**

1. The legally effective court judgment and sentence shall be obligatory for all without exception state bodies, bodies of local self-government, legal entities, officials, citizens, and they shall be subject to strict execution in the entire territory of the Republic of Kazakhstan. Failure to implement the court judgment, sentence shall entail criminal liability.

2. Appeal to execution of the sentence and judgment shall be imposed on the court that considered the case in the first instance. The ordinance on execution of the sentence shall be submitted by the judge together with a sentence copy to the authority which in accordance with the criminal penal legislation has the duty of executing the sentence. The duty to communicate the results of the appellate consideration of the case in respect of persons which are in custody is imposed on the court of appellate instance. In case of alteration of the sentence in consideration of a case through the appellate procedure, a sentence copy of the appellate instance must be attached to sentence copy.

3. If the sentence indicates the need to raise the issue of depriving the convict of the state award of the Republic of Kazakhstan, honorary, military, special or other title, rank, diplomatic rank or qualification granted by the President of the Republic of Kazakhstan, the

court that passed the sentence shall submit the presentation of deprivation of the convict of the state award, said title, rank, diplomatic rank or qualification, as well as a copy of the sentence and a statement to confirm its entry into legal force, to the President of the Republic of Kazakhstan.

4. The bodies which are executing the sentence shall immediately notify the court that delivered the sentence that it has been put to execution. The administration of the correctional institution must notify the court, which rendered a sentence, of the place where the convict is enduring the punishment. The notice on the execution of the sentence of the court of appeal shall be sent to the relevant court of first instance.

**Footnote. Article 449 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 450. Notification of Relatives of a Convict and a Civil Plaintiff of Appealing of the Sentence to Execution**

1. After entry into legal force of the sentence, by which the convict in custody was sentenced to military confinement or deprivation of freedom, the administration of the place of confinement must notify the family of the convict of where the latter is directed for enduring the punishment.

2. In case of satisfying of the civil claim, the civil plaintiff shall be notified by the court bailiff that the sentence has been appealed to execution.

**Footnote. Article 450 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 451. Allowing Relatives to Visit the Convict**

Prior to appealing to execution of the sentence, the presiding judge in case or the presiding judge of the court shall be obliged to provide the wife (husband), close relatives of the convict in custody, at their request, an opportunity of a visit and a telephone conversation with the convict.

### **Article 452. Postponement of Sentence Execution**

1. The execution of the sentence on conviction of a person and engagement into public work, correction labor, restriction of freedom or deprivation of freedom may be postponed where there is one of the following reasons:

- 1) serious disease of the convict, which impedes endurance of the punishment, until the latter recovers;
- 2) pregnancy of the convict or if a convicted woman has young children and for men,

alone raising young children, - in accordance with the procedure specified in Article 72 of the Criminal Code of the Republic of Kazakhstan;

3) where immediate endurance of the punishment may entail serious consequences for the convict or his (her) family due to a fire or a different natural calamity, a serious disease or a death of the only capable family member or other extraordinary circumstances - for a period established by the court, but not more than six months and with regard to the persons indicated in the second paragraph of Article 74 of the Criminal Code of the Republic of Kazakhstan - not more than three months.

2. Payment of a penalty may be postponed or spread over a period of up to six months if its immediate payment is impossible for the convict.

3. The issue of postponement of the execution of the sentence shall be decided by the court pursuant to the petition of the convict, legitimate representative of the latter, close relatives, counsel for the defense or pursuant to the proposal of the prosecutor or on own initiative.

**Footnote. Article 452 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 453. Issues to be considered by the Court In the Course of Executing the Sentence**

Handling of the following issues connected with the execution of punishments shall be within the scope of the court:

1) the issue of substitution in case of malicious evasion of the punishment in the form of a penalty, engagement in public work, correctional labor (Article 40 of the Criminal Code of the Republic of Kazakhstan), engagement in public work with restriction of freedom (Article 42 of the Criminal Code of the Republic of Kazakhstan), correctional labor with restriction of freedom or deprivation of freedom (Article 43 of the Criminal Code of the Republic of Kazakhstan), restriction of freedom with deprivation of freedom (Article 45 of the Criminal Code of the Republic of Kazakhstan);

1-1) the issue concerning circulation and selection of a preventive measure in relation to persons convicted to a punishment, not connected with isolation from the society, hiding from supervision or evading servicing the sentence;

2) the issue of alteration of the of the correctional institution prescribed by the sentence to the person sentenced to deprivation of freedom in accordance with the criminal penal legislation;

3) the issue of conditional ahead of time release from endurance of the punishment (Article 70 of the Criminal Code of the Republic of Kazakhstan), substitution of the unserved part of the punishment with more lenient (Article 71 of the Criminal Code of the Republic of

K a z a k h s t a n ) ;

3-1) the issue on the abolition of parole from endurance of the punishment (part seven of Article 70 of the Criminal Code of Kazakhstan);

4) the issue on release from punishment in connection with the disease, whether applying or not applying the compulsory measures of medical character (Article 73 of the Criminal Code of the Republic of Kazakhstan);

5) the issue on abolition of the conditional punishment or extension of a probation period (Article 64 of the Criminal Code of the Republic of Kazakhstan)

5-1) the issue on full or partial abolition of the duties established previously for the convict sentenced to restriction of freedom (Article 45 of the Criminal Code of the Republic of Kazakhstan);

5-2) the issue on the abolition of suspended sentence at the end of its term or upon the death of the child, or in case of interruption of pregnancy (the third paragraph of Article 72 of the Criminal Code of the Republic of Kazakhstan);

6) the issue on release from endurance of the punishment in connection with expiry of the statute of limitation of the accusatory court sentence (Article 75 of the Criminal Code of the Republic of Kazakhstan);

7) the issue on execution of the sentence while there are other unexecuted sentences, unless this was decided in the sentence that was last in time (Article 60 of the Criminal Code of the Republic of Kazakhstan);

8) the issue on offset of the time of confinement in custody, as well as the time of presence in the medical institution (Articles 62, 94, 95 of the Criminal Code of the Republic of Kazakhstan);

9) the issue on extension, alteration or termination of applying the compulsory measures of medical character (Articles 93, 95 of the Criminal Code of the Republic of Kazakhstan);

10) the issue on release from punishment or mitigation of the punishment, change of qualification of the committed by the convict offence, recidivism of crimes consequential to adoption of a criminal law which has a retroactive force, as well as act of amnesty (Article 5 of the Criminal Code of the Republic of Kazakhstan);

11) the issue on reduction of amounts withheld from wages of the person sentenced to correctional labor in connection with the criminal penal legislation;

12) the issue on explanation of various doubts and uncertainties that arise in the course of execution of the sentence;

13) the issue on termination of proceedings in connection with the death of the convict.

**Footnote. Article 453 as amended by the Laws of the Republic of Kazakhstan dated 05.05.2000 No. 47; dated 21.12.2002 No. 363; dated 09.12.2004 No. 10; dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 454. Courts that Decide Issues Connected with the Execution of the Sentence**

1. Issues associated with postponement of execution of punishments in accordance with Article 452 of this Code, substitution of one of the punishment with another (paragraph 1 of Article 453 of this Code), release from punishment in connection with expiry of the statute of limitation of the accusatory sentence (paragraph 6 of Article 453 of this Code), execution of the sentence when there are other unexecuted sentences (paragraph 7 of Article 453 of this Code), reduction of the amounts withheld from wages of those sentenced to correctional labor in case of deterioration of their financial status (paragraph 11 of Article 453 of this Code), as well as doubts and uncertainties that arise in the course of execution of the sentence (paragraph 12 of Article 453 of this Code) shall be decided by the court that rendered the s e n t e n c e .

2. If the sentence is to be executed outside the area of functioning of the court that resolved the sentence, those issues shall be settled by the similar court and in the event that there is no similar court in the area of the execution of the punishment - by a superior court. In that event, a copy of the court judgment shall be directed to the court that rendered the s e n t e n c e .

3. Issues of alteration of the correctional institution prescribed to a person sentenced to deprivation of freedom (paragraph 2 of Article 453 of this Code), of conditional release ahead of time from punishment or substitution of the unserved part of the punishment with more lenient punishment (paragraph 3 of Article 453 of this Code), of release from punishment in connection with disease (paragraph 4 of Article 453 of this Code), of offset of the preliminary custody or time of presence in a medical institution (paragraph 8 of Article 453 of this Code), of extension, alteration, termination of applying the compulsory measures of medical nature (paragraph 8 of Article 453 of this Code), of extension, alteration or termination of applying the compulsory measures of medical nature (paragraph 9 of Article 453 of this Code), as well as of release from punishment or mitigation of the punishment due to adoption of the law that has the retroactive force (paragraph 10 of Article 453 of this Code) shall be settled by the district court or the equivalent court in the place of endurance of the punishment by the c o n v i c t .

4. The issue of abolition of conditional release ahead of time (paragraph 3-1 of Article 453 of this Code), of abolition of conditional sentence and other issues specified by paragraphs 1-1, 5 and 5-2 of Article 453 of this Code shall be decided by the court in the place of residence of the convict.

**Footnote. Article 454 as amended by the Laws of the Republic of Kazakhstan dated 09.12.2004 No. 10; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated**

09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 18.01.2012 No. 547-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 455. Procedure for Settlement of Issues Associated with the Implementation of the Sentence**

1. Applying the compulsory measures of medical character when releasing from endurance of the punishment in cases specified by paragraph 4 of Article 453 of this Code, shall be carried out by the court consisting of three judges. All other issues connected with the execution of the punishment shall be decided by the judge personally at the court session.

2. Issues connected with the execution of the sentence shall be considered by the court within the month pursuant to the proposal (petition) of the authority in charge of execution of punishments, or pursuant to the proposal of the specialized state body that is in charge of correction of the juvenile. The representatives of the bodies and organizations pursuant to whose proposals (petitions) the case is being considered shall be summoned for the court session.

3. The petition of the convict may serve as the basis for consideration of an issue by the court in cases indicated in Article 452, in paragraphs 3, 4, 6, 7, 10, 11 and 12 of Article 453 of this Code.

4. In the court session in cases specified by paragraphs 1), 2), 3), 3-1), 5), 6), 7), 10) and 11) of Article 453 hereof, the participation of the convict whose case is being considered shall be obligatory. The participation of the convict in the court hearing in the event provided by paragraph 1) of Article 453 of this Code is not necessary when there are reasonable grounds to believe that the convict is hiding outside the Republic of Kazakhstan. The convicted person may get acquainted with the materials submitted to the court, participate in their consideration, file petitions and objections, give explanations, present evidences.

5. The convict may exercise own rights with the assistance of the defender. When the court considers the issues associated with the execution of sentences concerning juveniles, as well as those suffering from physical and psychic disorders that deprive them of the opportunity to exercise independently their right to defense, and equally those who are lack of knowledge of the language in which the proceedings on the case are carried out, the participation of the defender shall be obligatory. In cases of legal assistance to convicts by lawyers under court order, payment for their job shall be effected in accordance with article 72 of this Code.

6. When considering the issue of release of the convict due to illness or when the latter is placed into a medical institution, the presence of a representative of the medical commission that gave the conclusion shall be obligatory.

6-1. While considering the issue on the parole from serving the sentence there is taken

into account the opinion of the victim or the representative of the latter.

The court shall notify the victim or his (her) representative on the upcoming hearing by certified mail. In case of failure of personal involvement of the victim or his (her) representative in hearings, the court may consider written statements and petitions. In case of proper notification of the victim or the representative of the latter and absence on the part of the latter of any written statements and petitions, as well as in case of damage to the interests of the state, a conclusion of the prosecutor shall be mandatory on the issue of observance of rights of the victim or the state.

7. If the issue relates to the execution of the sentence in respect of the civil claim, the civil plaintiff or his (her) representative shall be summoned for the court session as well. Failure of said persons shall not impede the consideration of the case.

8. The prosecutor shall participate in the court session.

9. Consideration of the case shall begin with the report of the representative of the body, pursuant to whose representation (petition) the case is being considered, or with the explanation of an applicant. Thereupon, the presented materials shall be examined, explanations of the persons who appeared at the court session, the opinion of the prosecutor shall be heard, and subsequently the judge shall pass a resolution.

**Footnote. Article 455 as amended by the Law of the Republic of Kazakhstan dated 26.03.2007 No. 240 (the order of enforcement see Article 2); dated 10.12.2009 No. 228-IV (the order of enforcement see Article 2); dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 456. Consideration of Petitions for Expungement**

1. The issue of expungement in accordance with Article 77 of the Criminal Code of the Republic of Kazakhstan shall be decided by the court at the place of residence of the person who is enduring punishment, pursuant to the petition of the latter.

2. Participation in the court session of the person whose case is being considered with regard to expungement shall be obligatory.

3. Consideration shall begin with the hearing of the explanations of the person who have applied with the petition, following which the presented materials shall be examined and summoned persons shall be heard.

4. A repeated petition for expungement may be submitted to the court not sooner than upon expiry of the year from the date of rendering of the decision on denial.

## **Article 457. Challenging and Protesting against the Decrees of the Judge**

The court resolutions passed for the settlement of the issues associated with the execution of a sentence, may be challenged and protested against through the appellate procedure in

accordance with the rules established by Chapters 46, 47 and 48-1 of this Code.

**Footnote.** Article 457 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565 -IV (shall be enforced from 01.07.2012).

## **Section 10. Proceedings Associated with the Revision of Court Decisions Becoming Effective in Law**

### **Chapter 50. Revision of Court Sentences through the Supervisory Procedure of the Supreme Court of the Republic of Kazakhstan**

**Footnote.** The title of Chapter 50 is in the wording of the Law of the Republic of Kazakhstan No. 565-IV dated 17.02.2012 (shall be enforced from 01.07.2012).

#### **Article 458. Court Sentences, which may be revised in order of Supervisory Procedure after becoming effective in Law**

**Footnote.** The title of Article 458 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012-IV No. 565 (shall be enforced from 01.07.2012).

1. Upon entry into legal force in a supervisory judicial panel for criminal cases of the Supreme Court of the Republic of Kazakhstan there may be reconsidered:

- 1) the sentences, decisions of the first, appellate courts only after consideration on appeal;
- 2) court decisions pronounced by the court of cassation instance.

2. The legally effective court decisions, made in connection with the abandonment of prosecutions of the public and private prosecutor, on the issues of authorization of a preventive measure in the form of arrest and extension of its deadline for resolving the complaints against the actions and decisions of persons conducting an inquiry or a preliminary investigation or the actions and decisions of a prosecutor in the pre-trial investigation, shall not be subject to supervisory review.

3. Resolutions of the Board of the Supreme Court of the Republic of Kazakhstan shall be final. In exceptional cases, they may be revised in response to evidences that the made decision could lead to serious irreversible consequences to the life, health or the economy and security of the Republic of Kazakhstan.

4. In exceptional cases specified in third paragraph of this Article, the General Prosecutor may lodge a protest against the judgments and decisions of the court of first instance, which have not been revised under the appeal and cassation procedure, and the judgments and decisions of the court of appeal, which have not been revised under the cassation procedure.

**Footnote.** Article 458 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009-IV No. 227 (shall be enforced from 01.01.2010); as amended by the Laws of Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 459. Grounds for Revision in manner of judicial supervision of the Court Sentences and Decisions, Which Have Entered into Legal Force**

1. The violations of the constitutional rights and freedoms of citizens or wrongful application of the criminal and criminal procedure laws, committed in the course of case investigation or court trial, which entailed the following, shall be recognized as the grounds in manner of judicial supervision for the revision of the sentences and decisions that have entered into legal force:

- 1) conviction of the not guilty person;
- 2) unreasonable passing of an acquittal sentence or case dismissal;
- 3) deprivation of the victim of the right to court protection;
- 4) inadequacy of the punishment prescribed by the court to the seriousness of the crime and personality of the convicted person.
- 5) wrong resolution of the civil lawsuit, except the abandonment of the claim without consideration;

6) unlawful or unjustified delivery of decisions under new found circumstances or applying the compulsory medical measures.

2. The court decisions that entered into legal force in a manner of judicial supervision may also be revised in the following cases:

- 1) a judicial act involves state or public interests, national security, or may result in serious irreversible consequences for human life and health;
- 2) a person is convicted to a sentence of death or life imprisonment;
- 3) there is a notion of eliminating the contradictions in cases provided by paragraph two of Article 446-21 of the Code.

3. The death sentences that entered into legal force may also be revised in a judicial review after the abolition of a death penalty moratorium.

**Footnote. Article 459 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

## **Article 460. Persons who have the Right to Apply for Revision in manner of Judicial Supervision of Court Sentences and Decisions that have entered into Legal Force, Protest Against Sentences and Decisions That Have Entered into Legal Force**

**Footnote. The title is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

1. The appeals for revision in manner of judicial supervision of sentences and decisions that have entered into legal force may be challenged by the parties to a trial, who have the right to file the appeal and cassation complaints.

2. The General Prosecutor may file a protest in manner of judicial supervision on revision

of sentences and decisions that have entered into legal force.

The criminal case file may be obtained on demand from the appropriate court to verify in manner of supervision by the General Prosecutor of the Republic of Kazakhstan or by order of the latter by the Deputy Prosecutor General of the Republic of Kazakhstan, the prosecutor of regions and equivalent prosecutors.

2-1. The Prosecutor's request on obtaining on demand of the case file shall be executed by the court within seven days of its receipt by the court. Requests may be made by communication channels.

If the case is obtained on demand, a petition on bringing the supervisory protest shall be subject to consideration by the prosecutor within thirty calendar days of receipt of the case file by the prosecutor.

3. Excluded by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (to be entered into force on 01.01.2010).

3-1. Excluded by the Law of the Republic of Kazakhstan No. 111 of 30.12.2005 (the order of enforcement see Article 2).

4. A petition, protest prior to the consideration of the case through the supervisory instance may be revoked by the person who filed them

5. The rules specified in Articles 463-465 of this Code shall not apply to the protests of the prosecutor and they shall be considered by the supervisory instance directly.

In this case, the supervisory panel shall decide whether there are grounds for review of the case in manner of supervision provided for in Article 459 of this Code, following which it considers the protest of the prosecutor in essence. In the absence of grounds for supervisory, the panel makes a decision not to review the case by way of judicial supervision.

Footnote. Article 460 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 30.12.2005 No. 111 (the order of enforcement see Article 2); dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 461. In manner of Judicial Supervision Terms for Challenging the Court Decisions Which Have Entered into Legal Force**

1. Filing of the petition, the protest on revision through the supervisory procedure of an accusatory sentence, which has entered into the legal force, based on the motives of guiltlessness of the convict, as well as in connection with the need to apply the legal provision on a less serious crime, due to severity of the punishment or for other reasons whatsoever that entail improvement of the position of the convict shall not be limited by deadlines.

2. Challenging, protesting through the supervisory procedure of the court decision which have entered into legal force, the accusatory sentence on the motives of the need to apply the legal provision on a more serious crime, for leniency of the punishment or due to other

reasons that entail worsening of the position of the convict, as well as the court decision on case dismissal shall be allowed within the year upon their entry into legal force.

3. A petition, a protest to the legally effective court order on submission of the case for further investigation or for new trial may be filed within fifteen days of receipt of a court order by persons entitled to apply for revision of the legally effective sentences and decisions of the courts, to protest the legally effective judgments and court orders if they are not accepted by the court or held for further investigation.

**Footnote.** Article 461 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012-IV No. 565 (shall be enforced from 01.07.2012).

### **Article 462. Procedure for filing the Petition, Protest on Review of the Court Decision, Court Judgment That Have Entered into Legal Force**

1. A petition, a protest on review of the judicial acts that have entered into legal force shall be filed in writing to the Supreme Court. In the petition, protest in addition to the circumstances listed in Article 407 of the Code there should be indicated which law violations have been committed during the proceedings and how they affected the court decisions and which of the listed in Article 459 of the Code reasons may serve for reviewing of the challenged judicial act.

2. Copies of the court decisions to be challenged and other materials confirming the validity of the arguments of the complaint, protest, must be attached to the petition, protest.

3. Petitions to the legally effective sentences, court orders addressed to other state bodies or public organizations may not be accepted for hearing by the Supreme Court.

4. Filing of a petition, a protest on revision of the court decisions that have entered into legal force shall not suspend their execution, except for the cases specified in Article 466 of this Code.

**Footnote.** Article 462 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009-IV No. 227 (shall be enforced from 01.01.2010).

### **Article 462-1. Return of Petitions, Protests without Consideration**

**Footnote.** The title is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

1. Petitions, protests for revision of the entered into force court decisions are to be returned to persons who submitted them on the following grounds:

- 1) The petition, protest are not in line with the requirements of Article 462 of this Code;
- 2) The petitions, protests are filed by persons who in accordance with Article 460 of this Code shall not have the right to appeal the came into force particular judicial act;
- 3) The petitions, protests are filed after the expiration of the date specified in the second paragraph of Article 461 of this Code;

4) Before consideration of petitions, protests they were recalled in essence;  
5) Excluded by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV ( shall be enforced from 01.01.2010);

6) The petitions, protests are filed against the judicial acts, which according to the second paragraph of Article 458 of this Code shall not be subject to judicial supervision.

2. In case of elimination of deficiencies stated in paragraphs 1) and 2) of the first paragraph of this Article, being the grounds for the return of petitions and protests, they may be re-filed on the usual terms.

Footnote. The Chapter is supplemented with Article 462-1 in accordance with the Law of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2 ); as amended by the Law of Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 463. Preliminary Consideration of the Petition for Revision of Court Decisions that have entered into Legal Force**

1. A petition for revision of the entered into force court act, by order of the Presiding Judge or the Presiding Judge of the Supreme Court is previously examined and considered by the court of three judges. If necessary, a criminal case file may be obtained on demand.

The case may not be obtained on demand to examine the arguments of the petition, protest to the court judgment for further investigation or a new trial, if at the time the claim is accepted by the court and opening of the trial or further investigation are initiated or carried out.

2. The petition for review of the court acts that have entered into legal force shall be considered within the month of its receipt or, in the event of obtaining on demand of the case - within the month of receipt.

3. A prosecutor as well as a person, having filed the petition, shall be informed on the date of the preliminary review of a petition; however, their absence does not preclude the existence or absence of grounds for instituting the proceedings for judicial review.

Footnote. Article 463 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 464. Decisions which are made pursuant to the Results of Consideration of a Petition**

Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

1. Based on a preliminary review of the petition, the court shall order:  
1) to institute supervisory proceedings to review the contested court decision and consider a petition by the supervisory authorities with obtaining on demand of the criminal case file;

2) to dismiss a supervisory review proceedings of the contested judicial act;

3) to return the petition.

2. The decision, rendered by the court based on the results of the preliminary consideration of the petition, must include:

1) The date and place of delivery of the decision;

2) The name and initials of the judges of the appropriate court, who considered the petition and made the decision;

3) The case in which respect a ruling has been made, indicating the contested judicial act;

4) The person who filed the petition;

5) Reasons given in the petition;

6) Grounds to initiate supervisory proceedings to review the challenged judicial act or to nonsuit for the return of the petition to the persons who filed the petition;

7) one of the decisions, mentioned in paragraph one of this Article.

3. The results of a preliminary review of the petition are notified to the person who submitted it.

**Footnote.** Article 464 is in the wording of the Law of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2); as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 465. Appointment of Hearings of the Supervisory Instance**

1. Upon receipt of a court order on institution of the supervisory proceedings on the revision of the contested judicial act, the supervisory instance submits the parties a copy of the petition for revision of the judicial acts, which have entered into legal force, a notice of hearing in the supervisory instance indicating the date, time, and venue of the trial.

2. A case in the supervisory instance must be considered within the month from the date of referral to the supervisory instance with the order on instituting the supervisory procedure or receipt of the protest of the prosecutor.

**Footnote.** Article 465 is in the wording of the Law of the Republic of Kazakhstan dated 30.12.2005 No. 111 (the order of enforcement see Article 2); as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 466. Suspension of Execution of the Sentence, Court Decision**

The Chairman of the Supreme Court, the Prosecutor General of the Republic of Kazakhstan simultaneously with the requesting of the case file shall have the right to suspend the execution of the sentence, decision of the court for review through the procedure of supervision for a period of not more than three months.

Footnote. Article 466 is in the wording of the Law of the Republic of Kazakhstan dated August 9, 2002 No. 346; as amended by the Law of the Republic of Kazakhstan dated December 30, 2005 No. 111 (the order of enforcement see Article 2 of Law No. 111).

## **Article 467. Procedure for Consideration of the case through the Supervisory Instance, Decisions of the Supervisory Instance Court**

1. The court session of the supervisory instance shall be opened with the announcement of the Chairman of what court decision and due to whose complaint (protest) it is being revised, who are the court members and who of participants of the proceedings are present in the court session room. The absence of the person who filed the complaint (protest), and who was appropriately notified of the time and place of consideration of the case, shall not exclude the possibility of continuation of the court session. Participation of the prosecutor in the court session of the supervisory instance shall be obligatory.

2. After the resolution of the filed recusals and petitions, the court shall take the decision on continuation of the hearings or on their postponement. If the court takes a decision to continue the hearing of the case, the presiding judge shall give the floor to the participant of the proceedings who filed the complaint (protest). If such participants are several, they shall communicate to the court the sequence of the speeches proposed by them. If they fail to reach consensus, the sequence of speeches shall be determined by the court.

3. The person who filed a complaint (protest) shall outline the motives and arguments due to which in his (her) opinion the decision to be challenged shall be deemed unlawful, unreasonable, unfair. Then the presiding judge shall give the floor to other participants of the p r o c e e d i n g s .

4. If the complaint has been filed by a defense team, then the participants of the proceedings who represent it shall be the first to speak. The sequence, in which they speak, shall be determined either in accordance with the agreement reached by them, or if no such agreement is reached, by a court decision.

5. If the complaint (protest) has been filed by a prosecution team, then its representatives shall be the first to speak, after that the presiding judge shall give the floor to other participants of the proceedings.

6. As a result of considering the case through the supervisory procedure, the court in compliance with the requirements of Article 370 of this Code shall in the conference room make one of the following decisions:

- 1) the complaint (protest) remains dissatisfied; the petition (protest) to revise them r e m a i n s d i s s a t i s f i e d ;
- 2) to alter the sentence and decision of the appellate and supervisory instances;
- 3) to abolish the sentence and all subsequent decisions and to dismiss the case;
- 4) to abolish the sentence and all subsequent decisions and to submit the case for judicial

review in the court of appeal or the court of first instance, if the case on appeal has not been considered, and if the case has been considered in the court of first instance by jury;

5) to abolish the decisions passed under the appellate and supervisory procedure, altering the court sentence or leaving it without alteration.

A decision on abolishing of the court order on submission of the case to further investigation or new trial may not be taken, if the case was accepted by the court and proceedings in which respect were instituted or if the further investigation was initiated.

7. The circumstances indicated in Article 412 of this Code shall be recognized as the basis for abolition or alteration of the sentence.

8. Resolutions of the court of first instance, appellate instance and supervisory instance shall be subject to abolition or alteration, if it is acknowledged that by that resolution the first instance court adopted an unlawful and unmotivated decision, or a superior court unlawfully and unreasonably abolished or altered the previous resolutions or a sentence on the case, or, if in the consideration of the case in the superior court material violations of the law were committed, which affected or might affect the accuracy of the adopted decision.

9. If unlawful dismissal of the case or mitigation of the punishment of a convict was allowed when considering the case through the procedure of supervision, the Supreme Court of the Republic of Kazakhstan shall have the right to abolish the resolution and to leave the court decision of the first instance court, appellate decree in force, with amendments or without amendments.

10. The court may mitigate the punishment prescribed to the convict or to apply a legal provision on a less serious crime, but may not note the degree of the punishment or apply a legal provision on a more serious crime, and also may not establish or deem proven any fact which have not been subjected to the court trial.

11. If the case is submitted for a new investigation, the supervisory instance court shall not have the right: to predetermine the issues of validity or failure to prove the accusation, of whether certain evidence is reliable or not reliable and of advantages of certain evidences over others, of application by the first instance court of certain provisions of the criminal law and of measure of punishment, as well as to pre-determine the conclusions that might be made by the court.

12. The court, which is considering the case, shall review the legality, motivation and fairness of the court sentence in full volume. Changes to the judicial act on grounds not specified in the petition (protest) as well as changes to be made in respect of other convicts, in which regard a petition (protest) has not been brought in, shall be permitted, provided only here should be changed the qualification of the crime committed in complicity with the convict in respect of which a petition has been filed and if no worsening of the position of convicts takes place. A decision on worsening of the position may be taken by the court only with regard to those sentenced, who are mentioned in the protest of the prosecutor or in the petition. The court shall not have the right to deteriorate the status of a sentenced person

while considering the petition of the latter or the petition of his (her) advocate or representative .

**Footnote.** Article 467 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 2009 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 467-1. Grounds for Obligatory Participation of the Counsel for the defense in the Court of Supervisory Instance**

Participation of the lawyer in the court of supervisory instance is required in the event where the case is considered at the request of the victim (civil claimant), the prosecutor's protest, which raises the issue of the deterioration of the situation of the convicted person, or when the pre-trial procedures and proceedings in courts of first instance have been carried out without the participation of the accused. In such cases, the issues associated with the invitation, appointment, replacement of the defense counsel, paid job of the latter, shall be resolved in accordance with the provisions of Article 72 of this Code.

**Footnote.** The Code is supplemented by Article 467-1 in accordance with the Law of the Republic of Kazakhstan dated 11.12.2009 No. 230-IV (shall be enforced from 01.01.2010).

### **Article 468. Contents of the Supervisory Instance Court Resolution**

A resolution of the supervisory instance court must be consistent with the requirements established by this Code for appellate resolutions. A supervisory instance court resolution shall be signed by all the judges, involved in making a decision on the case.

**Footnote.** Article 468 is amended by the Law of the Republic of Kazakhstan dated July 11 , 2001 No. 238.

### **Article 469. Consideration of the Case Following the Abolition of the Court Sentence and Decision**

1. Following the abolition of the court sentence or decision, the case shall be subject to consideration in accordance with the general procedure. Instructions of the supervisory instance court are required when re-trial is carried out by a lower instance court.

2. ening of the degree of the punishment or application of the legal provision on a more serious crime when the case is considered by the first instance, appellate instance court shall be allowed only on the condition if the initial sentence or decision were abolished through the procedure of supervision due to lenience of the punishment or in connection with the need to apply a legal provision on a more serious crime. A sentence resolved by the first instance court, if the case is subject to the new consideration, may be challenged and protested against

through the general procedure.

Footnote. Article 469 as amended by the Laws of the Republic of Kazakhstan dated 11.07.2001 No. 238; dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 470. Bringing the Petition (Protest) to Revise Court Judgment and Decision Issued by New Trial**

The petition (protest) to review the new sentence or judgment, which have been passed in connection with the abolition of previous ones, may be filed on the general bases, irrespective of the motives, for which the first sentence or court judgment were abolished.

Footnote. Article 470 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 470-1. Appointment of the Plenary Session of the Supreme Court of the Republic of Kazakhstan**

On receipt of representations from the Chairman of the Supreme Court of the Republic of Kazakhstan or the Prosecutor General of the Republic of Kazakhstan, the Chairman of the Supreme Court shall convene a plenary session. The Secretary of the plenary session shall notify the members of the plenary sessions, as well as the Prosecutor General of the Republic of Kazakhstan of the date, time and venue of the plenary session.

Footnote. The Code is supplemented by Article 470-1 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Article 470-2. Procedure for Consideration of the Representation or Protest by the Plenary Session of the Supreme Court of the Republic of Kazakhstan**

1. The plenary session of the Supreme Court of the Republic of Kazakhstan considers the representation or protest at presence of not less than two thirds of the total number of judges of the Supreme Court of the Republic of Kazakhstan.

2. The Chairman of the Supreme Court of the Republic of Kazakhstan or the Prosecutor General of the Republic of Kazakhstan shall report on the reason for bringing the representation or protest, provided by paragraph 3 of Article 458 of this Code.

3. The plenary session of the Supreme Court of the Republic of Kazakhstan in the absence of such grounds shall decide not to review the case, and if there are grounds shall designate the hearing to consider the case in essence.

4. Consideration of the case in essence begins with the judge's report on circumstances and reasons of the representation, or the report of the prosecutor on circumstances and reasons of the protest. Further examination of the case is carried out according to the rules

provided for in Article 467 of the Code.

Footnote. The Code is supplemented by Article 470-2 in accordance with the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

## **Chapter 51. Resumption of proceedings on a case in view of newly - discovered circumstances**

### **Article 471. Reasons for Resumption of Proceedings on the Case**

1. The court sentence, resolution that have entered into legal force may be abolished and proceedings on the case may be resumed in view of the newly-discovered circumstances.

2. The following shall be recognized as the bases for resumption of proceedings on a criminal case in view of newly-discovered circumstances:

1) being established by the court sentence, which has entered into legal force, the aforethought falsehood of the testimony of the victim or witness, conclusion of the expert, as well as falsehood of material evidences, protocols of investigative and judicial acts and other documents or aforethought wrongfulness of translation that entailed sentencing of the illegitimate or unreasonable sentence or resolution;

2) criminal acts of the inquest officer, investigator or prosecutor that entailed sentencing of an illegitimate or unreasonable sentence, resolution as established by the court sentence which has entered into legal force;

3) criminal acts of judges committed by them when considering a given case as established by the court sentence which has entered into legal force;

4) defined through examination or investigation in accordance with the procedure specified by Article 474 of this Code and presented in the conclusion of the prosecutor other circumstances, unknown to the court when passing the sentence, decision, which by themselves or together with the circumstances that were established previously confirm guiltiness of the convict or committing by the latter of a crime which is different with regard to a degree of seriousness from that for which he (she) has been accused, or confirm the guilt of the acquitted person or the person whose case has been dismissed;

5) expression of the will of a convict whose case has been considered in accordance with the procedure, established by item 2) of the second paragraph of Article 315 of this Code, in case of his visit to the body which carries out the criminal procedure.

6) recognition by the Constitutional Council of the Republic of Kazakhstan the law or other regulatory legal act as to be unconstitutional, which was applied by the court in making a judicial act.

3. Circumstances, listed in items 1-3 of the second paragraph of this Article, may be established alongside with the sentence, by the resolution of the court, prosecutor, investigator or inquest officer on dismissal of the criminal case due to expiry of the statute of

limitation, consequential to an amnesty or pardon act, in connection with the death of the accused person or if a convict is under the age, not entailing criminal responsibility.

Footnote. Article 471 as amended by the Laws of the Republic of Kazakhstan dated 16.03.2001 No. 163; dated 30.12.2005 No. 111 (the order of enforcement see Article 2 of Law No. 111); dated 10.07.2012 No. 35-V (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 472. Court Decisions Under Criminal Cases Which are Subject to Revision on the Basis of Newly-Discovered Circumstances**

The following may be revised on the basis of newly-discovered circumstances:

- 1) accusatory sentence;
- 2) acquittal sentence;
- 3) resolution on dismissal of the case.

Footnote. Article 472 is amended by the Law of the Republic of Kazakhstan dated July 11, 2001 No. 238.

## **Article 473. Period for Resumption of Proceedings**

1. Revision of an accusatory sentence in view of newly-discovered circumstances in favor of the convict shall not be restricted with any deadlines.

2. Death of the convict shall be no obstacle for resumption of proceedings in view of newly-discovered circumstances for the purposes of rehabilitation.

3. Revision of an acquittal sentence, decision on dismissal of a case, as well as revision of an accusatory sentence due to motives of leniency of the punishment or need to apply to the convict of a legal provision on a more serious crime shall only be allowed within the statutes of limitation for holding responsible through the criminal procedure as established in Article 69 of the Criminal Code of the Republic of Kazakhstan, and not later than the year after the day of discovery of the new evidence.

4. The day of discovery of the new evidence shall be recognized as follows:

1) in cases specified in items 1-3 of the second paragraphs of Article 471 of this Code - the day of entry into legal force of the sentence (judgment) concerning persons guilty of giving the false testimony, submission of false evidences, wrong translation or criminal acts committed in the course of investigation or consideration of the case;

2) in case specified by item 4 of the second paragraph of Article 471 of this Code - the day of signature by the prosecutor of the conclusion on the need to resume proceedings in view of newly-discovered circumstances.

## **Article 474. Institution of Proceedings In View of Newly-Discovered Circumstances**

1. The right to institute proceedings in view of newly-discovered circumstances is held belongs by the convicted or acquitted person, or a justified person or a victim or their legal representatives, the defense counsels, and the prosecutor. The petition is brought to the court that rendered the verdict, sentence.

2. Applications of citizens including the participants of that case procedure, reports of officials of organizations as well as information received in the course of investigation and consideration of other criminal cases shall serve as reasons for institution of proceedings in view of newly-discovered circumstances.

3. If in the received application or message there is a reference to availability of the court sentence that was passed in connection with the circumstances indicated in items 1-3 of the second paragraph of Article 471 of this Code, the court decision raises commencement of proceedings due to newly discovered circumstances, conducts trial proceedings according to the rules established herein, with vindication of the relevant procedural documents from the prosecution and the court.

4. If in the application or a message there is a reference to other circumstances indicated in item 4 of the second paragraph of Article 471 of this Code, the court directs materials to the prosecutor for investigation. Interrogations, examinations, examination, seizure and other investigative activities may take place due to this investigation. Following an investigation, the prosecutor presents to the court a report, which sets out the results of the investigation and the court is proposed to satisfy the petition or refuse its satisfaction.

5. Failing to find grounds for initiating the proceedings due to newly discovered evidence, the prosecutor refuses to do so by the reasoned decision. A copy of the prosecutor sentence is sent to the person, who applied for initiation of proceedings within three days with an explanation of his (her) right to appeal against the decision to a higher prosecutor and the court in accordance with Article 109 of this Code.

**Footnote. Article 474 is in the wording of the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 475. Actions of the Court Upon Court Session Completion**

1. At the end of the hearing, considering the petition for examination of materials on newly discovered circumstances, the court shall satisfy the petition and cancels the verdict, sentence and submits the case for a new investigation or new trial or dismisses the proceedings on the case when no new investigation or trial is required, or refuses to review through the order on case dismissal.

2. A decision on satisfying the petition for review of the judgment, decision upon the newly revealed circumstances is not subject to protest against except the judgment on abolishment of the sentence with dismissal of the criminal proceedings.

An order on proceedings dismissal in view of the newly discovered circumstances shall brought to the attention of interested parties with an explanation of their right to appeal to a h i g h e r c o u r t

3. The judgments on proceedings dismissal, rendered by the court in view of newly discovered circumstances, shall be communicated to interested persons with explanation of their right to appeal to the higher court or the lack thereof.

**Footnote.** Article 475 is in the wording of the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 476. Resolution by the Court of the Issue on Renewal of Proceedings**

The issue of reopening of proceedings on new circumstances shall be resolved by the court of first instance that rendered the decree, sentence, and in respect of cases involving jurors, solely by a judge. If the decision was rendered by the court of appeal or cassation instance, the judicial review is carried out by the specified instances accordingly. If the case was considered by way of supervision, the revision of the judicial acts by newly discovered circumstances shall be considered by the Supreme Court. In cassation and supervisory instances the case is considered jointly based on the rules established to deal with cases in such instances. Complaints against rulings on dismissal of the proceedings in the absence of grounds for the resumption of proceedings under the newly discovered circumstances shall be considered accordingly by the said judicial instances.

**Footnote.** Article 476 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012-IV No. 565 (shall be enforced from 01.07.2012).

### **Article 477. Judgments of the Court Considering the Opinion of the Prosecutor**

**Footnote.** Article 477 is excluded by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 478. Proceedings Following the Abolition of Court Decisions**

The investigation and court proceedings of the case after the abolition of court decisions, rendered in its respect in view of newly discovered circumstances, as well as challenging and protesting against the passed new court decisions shall be carried out in accordance with the general procedure as established by this Code.

In respect of cases, considered with jury participation, the court proceedings following the abolition of judicial decisions due to newly discovered circumstances shall be carried out by the court of first instance with the new jury composition.

Footnote. Article 478 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

## **Article 479. Civil Claim When Resuming the Case on Newly Discovered Circumstances**

In case of abolition of the sentence on newly discovered circumstances, the civil claim instituted during the initial consideration of the case shall be considered anew on general terms. The resumption of the case only with regard to the civil claim shall be allowed only through the procedure of civil proceedings.

## **Section 11. Special Considerations in Proceedings on Certain Categories of Criminal Cases**

### **Chapter 52. Proceedings on Juvenile Crime Cases**

#### **Article 480. Procedure for Consideration of Cases of Crimes of Juveniles**

1. The provisions of this Chapter shall apply to the cases of the persons who by the time of commitment of the crime have not reached the age of majority, which constitutes eighteen years .

2. The procedure for considering the cases of crimes of juveniles shall be determined by general rules as established by this Code as well as by Articles of this Chapter.

3. The procedure for considering the cases of crimes of juveniles shall not apply in cases where :

- 1) the cases of several crimes of a given person, out of which some crimes were committed after reaching eighteen years, have been merged into the procedure;
- 2) the accused person by the time of the court proceedings reached the age of majority.

#### **Article 481. Circumstances to Be Established in Respect of Cases of Crimes of Juveniles**

The following circumstances shall be subject to establishment in cases of juveniles when conducting the preliminary investigation and court investigation, aside from those to be proven as specified in Article 117 of this Code:

- 1) the age of the juvenile (day, month, year of birth);
- 2) living standards and upbringing of the juvenile;

- 3) the degree of intellectual, volitional and psychic development, details of the character and temperament, needs and interests;
- 4) influence of adults and other juveniles on the juvenile.

### **Article 482. Restriction of Publicity in Cases of Juveniles**

The right of a juvenile suspect, accused to confidentiality must be observed at all stages of the criminal court procedure.

### **Article 483. Motion of a Juvenile Case to Sever**

1. A case of the juvenile, who participated in commission of the crime together with adults, shall be motioned to sever in accordance with item 3 of the first paragraph of Article 49 of this Code at the stage of the preliminary investigation.

2. The rules of this Chapter shall apply to a juvenile accused, held in the case with adults in the instances where the motion to sever with regard to a juvenile may create material obstacles for comprehensive and impartial investigation of the circumstances of the case.

### **Article 484. Procedure for Summoning a Juvenile Suspect, Accused**

1. A juvenile suspect, accused shall be summoned by the investigator or the court through the parents of the latter or other legitimate representatives, and in the event of their absence through the bodies of tutelage and guardianship.

2. A juvenile, who is confined to a special-purpose institution or to custody shall be summoned through the administration of the place of his (her) confinement.

**Footnote. Article 484 as amended by the Law of the Republic of Kazakhstan dated 29.12.2010 No. 372-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 485. Interrogation of a Juvenile Suspect, Accused**

1. The interrogation of a juvenile accused, suspect shall be carried out in accordance with the procedure specified in Articles 216, 217 of this Code in the presence of the defense counsel, legitimate representative, and where appropriate of the psychiatrist, teacher. The counsel for the defense shall have the right to set questions to the interrogated, and upon the end of the interrogation to peruse the protocol and make comments on the accuracy and fullness of the testimonial record.

2. The interrogation of a juvenile suspect, accused shall be carried out during the day time and it may not continue for more than two hours without a break, and in total for more than four hours per day. In cases of obvious tiredness of the juvenile the interrogation must be interrupted even prior to that time.

## **Article 486. Participation of the Defense Counsel**

1. Participation of the counsel for the defense in cases of crimes of juveniles in accordance with item 2 of the first paragraph of Article 71 of this Code shall be obligatory.

2. In cases of crimes of juveniles, the counsel for the defense shall be admitted from the time of the first interrogation of the juvenile as a suspect or accused, and in case of detention or arrest until the charges are presented - from the time of the detention or arrest.

3. The investigator, prosecutor, court must ensure the participation of a counsel for the defense in case if the juvenile suspect, accused or their legitimate representatives have not concluded an agreement with an advocate.

## **Article 487. Participation of the Legitimate Representative of the Juvenile Suspect, Accused in the Preliminary Investigation**

1. If the juvenile suspect, accused has parents or other legitimate representatives, their participation in case shall be obligatory. In case of their absence, the participation of a representative of the body of tutelage and guardianship shall be obligatory.

2. The legitimate representative and in his (her) absence - a representative of the body of tutelage and guardianship shall be allowed to participate in case by a resolution of the investigator from the time of the first interrogation of the juvenile as a suspect or accused. In case of admission to participate in case, the legitimate representative and in his (her) absence the representative of the body of tutelage and guardianship shall be given explanations on the rights indicated in the third paragraph of this Article.

3. A legitimate representative shall have the right: to know of what the juvenile is suspected or accused; to be present when charges are brought, participate in the interrogation of the juvenile, as well as with the permit of the investigator - in other investigative acts carried out with the participation of the juvenile accused, suspect and his (her) defense counsel; to peruse the protocols of the investigative acts in which he (she) participated and make written comments on the accuracy and fullness of the notes made in them; to file petitions and recusals, submit complaints against acts and decisions of the investigator and prosecutor; to present evidences; upon the end of the investigation to peruse all the materials of the case, to copy any information, contained therein and in any volume.

4. The investigator shall have the right upon the end of the preliminary investigation to pass a resolution on non-presentation to the juvenile for peruse of those materials that may render negative impact upon him, but to introduce those materials to the legitimate r e p r e s e n t a t i v e .

5. The legitimate representative may be removed from the case if there are reasons to believe that his (her) acts inflict damage to the interests of the juvenile or are aimed at impediment of impartial investigation of the case. The investigator shall pass a motivated

resolution in this respect. Another legitimate representative of the juvenile may be admitted to participate in case.

### **Article 488. Participation of the Teacher and Psychologist**

1. When performing procedural acts with the participation of the juvenile suspect, accused, who have not reached the age of sixteen years, as well as of the juvenile suspect, accused, who reached that age but has the symptoms of retardation in his (her) psychic development, the participation of the teacher or psychologist shall be obligatory.

2. In cases of the juveniles, who reached the age of sixteen years, the teacher or psychologist shall be admitted to participate in case at the discretion of the investigator, court or pursuant to the petition of the defense counsel, legitimate representative.

3. The teacher, psychologist shall have the right with the permission of the investigator, court to question the juvenile suspect, accused, and upon the end of the procedural act, to peruse the protocol of the investigative act (protocol of the court session in as much as presents their participation in the court trial) and to make written comments on the accuracy and fullness of the notes made in it, shall have the right at the discretion of the investigator, court to peruse the materials of the case, which characterize the character of the juvenile. The above rights shall be explained by the investigator, court to the teacher, psychologist prior to the beginning of the procedural act, of which a note shall be made in the protocol of the investigative act, protocol of the court session.

### **Article 489. Integrated Psychological and Psychiatric and Psychological Expert Evaluation of the Juvenile**

1. The prescription of an integrated psychological and psychiatric expert evaluation shall be obligatory in order to decide the issue of whether a juvenile suspect, accused has psychic illness or deviation in development and whether he (she) has capacity, whether full or partial, to realize the meaning of his (her) acts and to control them in specific situations.

2. A psychological expert evaluation may be appointed in order to clarify the level of intellectual, volitional, psychic development, other social and psychological details of the character of the juvenile suspect, accused.

### **Article 490. Placement of a Juvenile into a Special-Purpose Institution**

**Footnote. The title as amended by the Law of the Republic of Kazakhstan dated 29.12.2010 No. 372-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

In cases where a juvenile accused due to conditions of life and education may not stay in the former place of residence, he (she) may be placed into a special-purpose institution.

Footnote. Article 490 as amended by the Laws of the Republic of Kazakhstan dated 29.12.2010 No. 372-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 491. Detention and Application of Restrictive Measures to Juveniles**

1. The restrictive measures provided for by Article 140 of this Code may be applied to juvenile suspects, accused.

2. The possibility of selecting such measure as placement under supervision in accordance with the procedure specified in Article 147 of this Code of a juvenile suspect, accused, must be discussed in each case when deciding the issue of application of a restrictive measure with regard to a juvenile suspect, accused.

3. Arrest as a restrictive measure as well as detention may apply to a juvenile where there are reasons indicated in Articles 132, 150 of this Code only in exceptional cases in the event of commitment of the serious or especially serious crime.

4. The period of detention of a juvenile in custody at the stage of preliminary investigation as established by Article 153 of this Code may be extended to a period not more than six months. Juveniles shall be confined separately.

5. The parents of a juvenile or his /her other legitimate representatives and in their absence close relatives shall be immediately notified of detention, arrest or extension of the period of confinement in custody.

## **Article 492. Participation of the Legitimate Representative of a Juvenile Accused in the Court Trial**

1. The parents or other legitimate representatives of a juvenile accused must be summoned to the court session. They shall have the right to participate in the investigation of evidences in the court investigation, provide testimony, present evidences, file petitions and challenges, file complaints against acts and decisions of the court, participate in the session of the court considering cases through the appellate procedure, and to provide explanations to complaints. Said rights must be explained to them in the preparatory part of the court trial. Legitimate representatives shall be present in the court session room during the entire court trial. With their consent they may be interrogated by the court as witnesses.

2. The legitimate representative by a motivated court resolution may be removed from participation in the court trial if there are reasons to believe that his (her) acts cause harm to the interests of the juvenile accused or are aimed at impeding the impartial consideration of the case. In this case another legitimate representative of the juvenile accused shall be admitted.

3. Failure of the legitimate representative of a juvenile accused to appear shall not

suspend the consideration of the case unless the court finds that his (her) participation is indispensable .

4. If the legitimate representative of a juvenile accused is held to participate in case as a counsel for the defense or civil defender, he (she) shall have the rights and bear obligations of said participants of the proceedings.

**Footnote. Article 492 is amended by the Law of the Republic of Kazakhstan dated July 11 , 2001 No. 238.**

### **Article 493. Removal of a Juvenile Accused from the Court Session Room**

1. Pursuant to the petition of the counsel for the defense or legitimate representative as well as on own initiative, the court shall have the right, subject to the opinion of the parties in a trial, by its resolution to remove a juvenile accused from the court session room for the time of investigation of the circumstances that may render negative impact upon him/her.

2. After the return of the juvenile accused to the court session room, the presiding judge shall communicate to him (her) in the appropriate form and volume the contents of the trial that had taken place during his (her) absence, and provide the juvenile with the opportunity to question the persons interrogated without his (her) participation.

### **Article 494. Issues Settled by the Court When Sentencing on the Case of a Juvenile**

1. When the sentence is being rendered to a juvenile, the court aside from the questions listed in Article 371 of this Code shall be obliged to discuss the issue of conditional sentencing, appointment of the punishment not connected with deprivation of freedom as well as the issue of release from punishment in cases specified by the Criminal Code of the Republic of Kazakhstan .

2. In cases of conditional sentencing, appointment of the measure of the punishment not connected with deprivation of freedom, placement into special-purpose educational institution for juveniles or applying the compulsory measures of educative influence, the court shall appropriately notify the specialized state body and entrust it to exercise supervision of the convict's behavior .

**Footnote. Article 494 as amended by the Law of the Republic of Kazakhstan dated 23.11.2010 No. 354-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 495. Release of a Juvenile from Punishment with Applying the Compulsory Measures of Educative Influence**

If in case of a crime of lesser, medium or high seriousness it is recognized that the juvenile, who committed that crime, may be improved without application of criminal

punishment measures, the court shall have the right upon resolving an accusatory sentence to release the juvenile accused from punishment and to impose on him (her) compulsory measures of educative influence as provided for by Article 82 of the Criminal Code of the Republic of Kazakhstan. A copy of the sentence shall be directed to the specialized state body

**Footnote. Article 495 as amended by the Law of the Republic of Kazakhstan dated 23.11.2010 No. 354-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Chapter 53. Peculiarities in Consideration of Cases of Persons Having Privileges and Immunity from Criminal Prosecution**

### **Article 496. Performance of the Preliminary Investigation with Regard to a Deputy of the Parliament of the Republic of Kazakhstan**

1. A criminal case against a Deputy of the Parliament of the Republic of Kazakhstan may be instituted only by the head of the state body of the Republic of Kazakhstan which exercises inquiry and preliminary investigation. The Prosecutor General of the Republic of Kazakhstan shall be immediately notified of institution of a criminal case. After the performance of the immediate investigative acts, the case shall be not later than within forty eight hours passed through the Prosecutor General of the Republic of Kazakhstan to the investigator. The performance of the preliminary investigation in cases against deputies of the Parliament of the Republic of Kazakhstan shall be obligatory.

2. A Deputy of the Parliament of the Republic of Kazakhstan within the period of his (her) office may not be arrested, subjected to bringing, held responsible through the criminal procedure without approval of the relevant Chamber of the Parliament of the Republic of Kazakhstan, except for the cases of detention at the scene of crime or commitment of the serious or especially serious crimes.

3. In order to receive approval for holding a Deputy responsible through the criminal procedure, arrest, bringing by force, the Prosecutor General of the Republic of Kazakhstan shall pass the representation to the Senate or Mazhilis of the Parliament of the Republic of Kazakhstan. The representation shall be submitted prior to bringing charges against the Deputy, giving sanctions for the arrest, deciding the issue on the need of compulsory bringing the Deputy to the body of criminal prosecution.

3-1. An issue of authorization of the preventive measure in the form of detention or house arrest of a Deputy of the Parliament of the Republic of Kazakhstan, accused of a crime, is permitted by the District Court of the city of Astana on the basis of the decision of the person who performs the preliminary investigation, supported by the Prosecutor General of the Republic of Kazakhstan.

4. If the relevant Chamber of the Parliament of the Republic of Kazakhstan gives its consent for the holding of a Deputy responsible through the criminal procedure, further investigation shall be carried out in accordance with the procedure established by this Code, subject to special considerations specified in this Article.

5. If the relevant Chamber of the Parliament of the Republic of Kazakhstan gives its consent to the arrest, bringing to court, the issue of applying to a Deputy of those restrictive measures, procedural compulsion measures shall be decided through the procedure established by this Code.

6. In the event that the relevant Chamber of the Parliament of the Republic of Kazakhstan failed to give its consent for holding a Deputy responsible through the criminal procedure, the criminal case shall be subject to dismissal for that reason.

7. In the event that the relevant Chamber of the Parliament of the Republic of Kazakhstan failed to give its consent for the arrest, bringing to court, the Deputy in accordance with the procedure established by this Code may be subjected to other restrictive measures, procedural compulsion measures.

8. The supervision of legitimacy of the investigation of a criminal case against a Deputy of the Parliament of the Republic of Kazakhstan shall be carried out by the Prosecutor General of the Republic of Kazakhstan. Sanctions for the performance of investigative activities with regard to a Deputy of the Parliament of the Republic of Kazakhstan, which in accordance with this Code must be sanctioned by the prosecutor, shall be given by the Prosecutor General of the Republic of Kazakhstan. Extension of the period of arrest or home arrest of a Deputy of the Parliament of the Republic of Kazakhstan in accordance with the procedure specified in Article 153 of this Code and supported by Prosecutor General of the Republic of Kazakhstan shall be carried out by the District Court of Astana city. The issue on support of the petition by the General Prosecutor of the Republic of Kazakhstan on the extension of detention for more than nine months shall be previously considered by the Collegium of the General Prosecutor's Office of the Republic of Kazakhstan.

9. The case, in which respect the consideration has been completed with an accusatory conclusion, shall be passed by the investigator in accordance with the procedure established by this Code to the Prosecutor General of the Republic of Kazakhstan for submission to the court.

**Footnote. Article 496 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

#### **Article 497. Performance of the Preliminary Investigation Against the Chairman or Member of the Constitutional Council of the Republic of Kazakhstan**

1. A criminal case against the Chairman or Member of the Constitutional Council of the Republic of Kazakhstan may be instituted only by the head of the state body of the Republic

of Kazakhstan, which carries out inquiry and preliminary investigation. The Prosecutor General of the Republic of Kazakhstan shall be immediately notified of the institution of the criminal case. After the performance of the immediate investigative acts, the case shall be not later than within forty eight hours passed through the Prosecutor General of the Republic of Kazakhstan to the investigator. The performance of the preliminary investigation of cases, involving the Chairman or Member of the Constitutional Council of the Republic of Kazakhstan, shall be obligatory.

2. The Chairman and Member of the Constitutional Council of the Republic of Kazakhstan within the period of their powers may not be arrested, subjected to bringing to court, held responsible through the criminal procedure without approval of the Parliament of the Republic of Kazakhstan, except for the cases of detention at the scene of crime or commitment of serious or especially serious crimes.

3. The Prosecutor General of the Republic of Kazakhstan in order to obtain approval for holding responsible through the criminal procedure, arrest, bringing to court of the Chairman or Member of the Constitutional Council of the Republic of Kazakhstan, shall submit representation to the Parliament of the Republic of Kazakhstan. The representation shall be submitted prior to the bringing of charges against the Chairman or Member of the Constitutional Council of the Republic of Kazakhstan, giving sanctions for arrest, deciding the issue of whether his (her) compulsory bringing to the body of criminal prosecution is needed.

3-1. An issue of authorization of the preventive measure in the form of detention or house arrest of the Chairman or Member of the Constitutional Council of the Republic of Kazakhstan, accused of a crime, is permitted by the District Court of the city of Astana on the basis of the decision of the person who performs the preliminary investigation, supported by the Prosecutor General of the Republic of Kazakhstan.

4. After the Prosecutor General of the Republic of Kazakhstan receives the decision of the Parliament of the Republic of Kazakhstan, further proceedings on the case shall be carried out in accordance with the procedure established by the fourth, fifth, sixth, seventh, eighth, ninth paragraphs of Article 496 of this Code.

**Footnote. Article 497 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

## **Article 498. Performance of the Preliminary Investigation Against a Judge**

1. A criminal case against a judge may be instituted only by the Prosecutor General of the Republic of Kazakhstan, who shall entrust the investigation to the body which carries out inquest and preliminary investigation. The performance of the preliminary investigation in cases, lodged against a judge, shall be obligatory.

2. A judge may not be arrested, subjected to bringing to court, held responsible through

the criminal procedure without approval of the President of the Republic of Kazakhstan, based on the conclusion of the High Judicial Council of the Republic of Kazakhstan, or in case specified by subparagraph 3) of Article 55 of the Constitution - without approval of the Senate of the Parliament of the Republic of Kazakhstan, except for the cases of detention at the scene of the crime or commitment of serious or especially serious crimes.

3. In order to receive approval for holding a judge responsible through the criminal procedure, arrest, bringing to court, the Prosecutor General of the Republic of Kazakhstan shall submit representation to the President of the Republic of Kazakhstan, and in case specified in subparagraph 3) of Article 55 of the Constitution - to the Senate of the Parliament of the Republic of Kazakhstan. The representation shall be submitted prior to bringing charges against the judge, giving sanctions for the arrest, deciding the issue of whether compulsory bringing of the judge to the body of criminal prosecution is needed.

3-1. An issue of authorization of the preventive measure in the form of detention or house arrest of the judge, accused of a crime, is permitted by the District Court of the city of Astana on the basis of the decision of the person who performs the preliminary investigation, supported by the Prosecutor General of the Republic of Kazakhstan

4. After the Prosecutor General of the Republic of Kazakhstan receives the decision of the President of the Republic of Kazakhstan, Senate of the Parliament of the Republic of Kazakhstan, further proceedings on the case shall be carried out in accordance with the procedure established by the fourth, fifth, sixth, seventh, eighth, ninth paragraphs of Article 496 of this Code.

**Footnote. Article 498 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

## **Article 499. Performance of the Preliminary Investigation Against the Prosecutor General of the Republic of Kazakhstan**

1. The criminal case against the Prosecutor General of the Republic of Kazakhstan may be instituted only by his (her) First Deputy. The Prosecutor General of the Republic of Kazakhstan from the time of institution of the criminal case against him (her) until the end of the investigation, pursuant to the representation of the First Deputy Prosecutor General shall be removed by the President of the Republic of Kazakhstan from performance of his (her) duties. The Prosecutor General of the Republic of Kazakhstan within the term of his (her) office may not be arrested, subjected to bringing to court, held responsible through the criminal procedure without approval of the Senate of the Parliament of the Republic of Kazakhstan, except for the cases of detention at the scene of the crime or commitment of serious or especially serious crimes.

2. In order to receive approval for the holding the Prosecutor General of the Republic of Kazakhstan responsible through the criminal procedure, arrest, bringing to court, the First

Deputy Prosecutor General shall submit a representation to the Senate of the Parliament of the Republic of Kazakhstan. The representation shall be submitted prior to the presentation of charges against the Prosecutor General of the Republic of Kazakhstan, giving sanction for the arrest, deciding the issue of whether his (her) compulsory bringing to the body of criminal prosecution is needed.

3. After the first Deputy 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 shall be carried out in accordance with the procedure established by the fourth, fifth, sixth, seventh paragraphs of Article 496 of this Code.

3-1. An issue of authorization of the preventive measure in the form of detention or house arrest of the Prosecutor General of the Republic of Kazakhstan, accused of a crime, is permitted by the District Court of the city of Astana on the basis of the decision of the person who performs the preliminary investigation, supported by the Deputy Prosecutor General of the Republic of Kazakhstan.

4. The supervision of legitimacy of investigation of a criminal case against the Prosecutor General of the Republic of Kazakhstan shall be carried out by his (her) First Deputy. The sanctions for the performance of investigative acts against the Prosecutor General of the Republic of Kazakhstan shall be given by his (her) First Deputy. Extension of the period of investigation in respect of the Prosecutor General of the Republic of Kazakhstan in accordance with the procedure specified by this Code shall be carried out by the First Deputy Prosecutor General of the Republic of Kazakhstan. Extension of the period of a detention or house arrest in respect of the Prosecutor General of the Republic of Kazakhstan shall be ensured after obtaining of the support, rendered to the representation of the, of the Deputy Prosecutor General of the Republic of Kazakhstan in a manner as provided by Article 153 and paragraph eight of article 496 of the code

5. A case, in which respect the consideration of the case was completed with passing of an accusatory conclusion, shall be passed by the investigator in accordance with the procedure established by this Code to the First Deputy Prosecutor General of the Republic of Kazakhstan for the submission to the court.

**Footnote. Article 499 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2).**

## **Article 500. Judicial Examination of the Criminal Case Against a Deputy of the Parliament of the Republic of Kazakhstan, Chairman or Member of the Constitutional Council of the Republic of Kazakhstan, Judge, Prosecutor General of the Republic of Kazakhstan**

1. Judicial examination of the case shall be carried out in accordance with the general rules of the court trial subject to the provisions presented in this Article.

2. The court shall have the right to apply to the accused Deputy of the Parliament of the Republic of Kazakhstan, Chairman or Member of the Constitutional Council of the Republic of Kazakhstan, Judge, Prosecutor General of the Republic of Kazakhstan as a preventive measure arrest, and as a procedural compulsion measure - bringing to court by petitioning with a representation to obtain the approval to that effect in accordance with the procedure specified in the third paragraph of Article 496, the third paragraph of Article 497, the third paragraph of Article 498, the second paragraph of Article 499 of this Code, if it is refused to give an approval for the arrest, bringing to court by the state bodies indicated in paragraph 4 of Article 52, paragraph 5 of Article 71, paragraph 2 of Article 79, paragraph 3 of Article 83 of the Constitution of the Republic of Kazakhstan during the preliminary investigation, or such approval was not sought.

### **Article 501. Persons who have 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 shall have immunity from criminal prosecution in the Republic of Kazakhstan:

1) the heads of the diplomatic representations of foreign states, members of the diplomatic personnel of those representations and their family members, if they reside together with them and are not citizens of the Republic of Kazakhstan;

2) on the reciprocity principle, the employees of the service personnel of diplomatic representations and their family members who reside with them, if those employees and their family members are not the citizens of the Republic of Kazakhstan, or do not permanently reside in Kazakhstan, the heads of the consulates and other consular officials with regard to the acts committed by them when performing service duties, unless it is otherwise specified in the international treaty of the Republic of Kazakhstan;

3) on the basis of the reciprocity principle, the employees of the administrative and technical personnel of diplomatic representations and their family members who reside with them, unless those employees and their family members are citizens of the Republic of Kazakhstan, nor reside permanently in Kazakhstan;

4) diplomatic couriers;

5) the heads and representatives of foreign states, members of parliamentary and governmental delegations, and on the reciprocity principle - employees of delegations of foreign states, who arrive in Kazakhstan for the participation in international negotiations, international conferences and meetings or with other official assignments, or those travelling by transit through the territory of the Republic of Kazakhstan for the same purposes and family members of said persons, who accompany them, provided those family members are not citizens of the Republic of Kazakhstan;

6) the heads, members and personnel of representative offices of foreign states in

international organizations, officials of those organizations, who stay in the territory of the Republic of Kazakhstan, on the basis of international treaties or generally recognized international traditions;

7) heads of diplomatic representations, members of diplomatic personnel of representative offices of foreign states in a third country, who travel by transit through the territory of the Republic of Kazakhstan, and their family members who accompany said persons or travel separately in order to join them or return to their country;

8) other persons in accordance with the international treaties of the Republic of Kazakhstan.

2. The person indicated in items 1, 4-7 of the first paragraph of this Article, as well as other persons in accordance with international treaties of the Republic of Kazakhstan may be subjected to the criminal prosecution only in the event that the foreign state provides expressly presented denial of immunity from criminal prosecution. The issue of such denial shall be decided pursuant to the presentation of the Prosecutor General of the Republic of Kazakhstan through the Ministry of Foreign Affairs of the Republic of Kazakhstan by diplomatic channels. If there is no denial of the relevant foreign state of immunity from criminal prosecution of said persons, the criminal case against them may not be instituted and the instituted he shall be subject to termination.

3. The rules of the second paragraph of this Article shall not apply to the persons indicated in items 2 and 3 of the first paragraph of this Article, except for the cases where the crime committed by those persons is connected with their performance of service duties and is not aimed against the interests of the Republic of Kazakhstan, unless it is otherwise provided for by the international treaty of the Republic of Kazakhstan.

## **Article 502. Detention and Arrest of the Persons Enjoying Diplomatic Immunity**

1. The persons listed in items 1, 4-7 of the first paragraph of Article 501 of this Code, as well as other persons in accordance with the international treaty of the Republic of Kazakhstan shall enjoy personal inviolability. They may not be detained or arrested, except for the cases where it is required for the execution of the sentence passed against them that entered into legal force.

2. The persons indicated in items 2 and 3 of the first paragraph of Article 501 of this Code may be detained or arrested, unless it is otherwise provided for by an international treaty of the Republic of Kazakhstan, only in case of their prosecution for commitment of the serious, especially serious crime or when executing the sentence of the court, that entered into legal force.

## **Article 503. The Diplomatic Immunity from Giving Testimony**

1. The persons listed in items 1, 3-6 of the first paragraph of Article 501 of this Code, as well as other persons in accordance with the international treaty of the Republic of Kazakhstan may not provide testimony as witnesses, victims, and if they agree to provide such testimony they shall not be obliged to appear at the body which is leading the criminal procedure. Subpoenas for interrogation handed to said persons must not contain a threat of compulsory measures for failure to appear at the body leading the criminal procedure.

2. In the event that those persons gave testimony as victims, witnesses at the preliminary investigation, and failed to appear at the court session, the court may voice their testimony.

3. The persons indicated in item 2 of the first paragraph of Article 501 of this Code may not refuse to provide testimony as witnesses and victims, except for the testimony on the issues connected with their performance of service duties. In the event of refusal of consular officials to provide testimony, procedural compulsion measures may not be applied to them.

4. The persons who enjoy diplomatic immunity shall not be obliged to present correspondence and other documents pertaining to their performance of service duties to the body leading the criminal procedure.

#### **Article 504. The Diplomatic Immunity of Premises and Documents**

1. The residence of the head of a diplomatic representation, premises occupied by a diplomatic representation, housing of members of the diplomatic corps and their family members, their property, and transport vehicles shall be inviolable. Access to those premises, as well as search, seizure, imposition of arrest on the property may be carried out only with the consent of the head of the diplomatic representation or person who is substituting for him/

h e r .

2. On the reciprocity principle the immunity provided for by the first paragraph of this Article shall apply to housing occupied by the employees of the service personnel of the diplomatic representation and their family members who live with them, unless those employees and their family members are citizens of the Republic of Kazakhstan.

3. Premises occupied by a consulate and the residence of the head of the consulate shall enjoy inviolability on the reciprocity principle. Access to those premises, search, seizure, arrest may take place only at the request or with the consent of the heads of the consulates, or diplomatic representation of that foreign state.

4. Archives, official letter exchange and other documents of diplomatic representations and consulates shall be inviolable. They may not be subjected to inspection and seizure without approval of the head of the diplomatic representation, consulate. Diplomatic mail shall not be subject to unsealing and detention.

5. The consent of heads of diplomatic representations and consulates to provide access to the premises indicated in the first, second, and third parts of this Article, the performance of search, seizure in them, as well as inspection and seizure of documents indicated in the fourth

paragraph of this Article, shall be requested by the prosecutor through the Ministry of Foreign Affairs of the Republic of Kazakhstan.

6. The search, seizure, inspection in said cases shall be carried out in the presence of the prosecutor and representative of the Ministry of Foreign Affairs of the Republic of Kazakhstan.

## **Section 12. Special Proceedings**

### **Chapter 54. Court Proceedings on Applying the Compulsory Medical measures to Mentally Defective Persons**

#### **Article 505. Reasons for Applying the Compulsory Measures of Medical Character**

1. Proceedings for applying the compulsory measures of medical character as indicated in Article 90 of the Criminal Code of the Republic of Kazakhstan, shall be carried out in cases against the persons who committed an act prohibited by the criminal law in a condition of insanity or contracted psychic disorder which makes it impossible to prescribe or execute the punishment after the commitment of a crime.

2. Compulsory measures of medical character shall be prescribed only in the event where homicidal psychic disorders are connected with a hazard for the individual or other persons, or a risk of causing other material harm.

3. Proceedings on cases of applying the compulsory measures of medical character shall be determined by the general rules of this Code and, aside from that, by the provisions of this Chapter.

#### **Article 506. Circumstances which are subject to Proof**

1. In cases, instituted against the persons indicated in the first paragraph of Article 505 of this Code, the performance of preliminary investigation shall be obligatory.

2. The following circumstances must be clarified when conducting the preliminary investigation :

- 1) time, place, method and other circumstances of the committed act;
- 2) commitment of the act prohibited by the criminal law by a given person;
- 3) nature and degree of harm caused by the act;
- 4) behavior of the person that committed the act prohibited by the criminal law, both prior to and after its commitment;
- 5) whether a given person had psychic disorders in the past, degree and nature of the psychic illness at the time of commitment of the acts prohibited by the criminal law, or during the time of consideration of the case.

## **Article 507. Safety Measures**

1. Preventive measures may not be imposed on the persons who suffer from psychic illnesses, who committed acts prohibited by the criminal law.

2. The following safety measures may be applied to those persons where appropriate:

- 1) placement of the diseased persons under supervision of relatives, tutors, guardians with notification of the bodies of health protection;
- 2) confinement to a special medical institution that renders psychiatric assistance.

## **Article 508. Placement under the Supervision of Relatives, Tutors, Guardians**

1. From the time of establishing the fact of a psychic illness, the person who committed the act prohibited by the criminal law, but not representing a risk for the public, may be placed under the supervision of relatives, tutors, guardians with notification of the bodies of health protection.

2. The investigator, court shall pass a motivated resolution on selection of a particular measure.

## **Article 509. Confinement to a Specialized Medical Institution**

1. When establishing the fact of a psychic illness of the person, for whom arrest was previously used as the preventive measure, pursuant to the resolution of the prosecutor he (she) shall be moved to a special-purpose medical institution that renders psychiatric assistance and is adjusted for the maintenance of diseased under the condition of strict isolation.

2. Placement of a person, who is not in custody, into a special medical institution that renders psychiatric assistance, shall be carried out in accordance with the rules of Article 247 of this Code.

## **Article 510. Separation of a Case Against a Person Who Committed an Act Prohibited by the Criminal Law in the Condition of Insanity or Contracted a Psychic Disorder after Commitment of the Crime**

If in the course of investigation of a criminal case it is established that one of accessories committed an act in the condition of insanity or after its commitment contracted a psychic disorder, his (her) case may be separated into independent proceedings.

## **Article 511. Rights of the Person against whom a Case is carried out for Applying the compulsory Measures of Medical Character**

1. The person against whom a case for applying the compulsory measures of medical character is carried out, shall have the right, if pursuant to the conclusion of the judicial psychiatric expert evaluation it is not impeded by the nature and degree of seriousness of his (her) illness, to know of what act he is being accused; to provide explanations; present evidences; to file petitions and objections; to speak his (her) native language or the language he (she) knows; to use the charge-free assistance of a translator; to have a counsel for the defense and to meet him (her) privately and in confidence; to participate with a permit of the investigator in the investigative acts carried out pursuant to his (her) petition or petition of his (her) defense counsel; to peruse protocols of those acts and to file comments on them; to peruse the resolution on appointment of expert examination and conclusion of the expert; to peruse upon termination of the preliminary investigation all the materials of the case and to make from the copies of any information in any volume; to file complaints concerning the acts and decisions of the investigator, prosecutor and court; to receive a copy resolution on directing the case to the court for applying the compulsory measures of medical character. Besides, in case court trial the said person shall have the right to participate in investigation of evidences and in court debates; to peruse the protocol of the court session and to file comments on it; to appeal the court resolutions and to obtain copies of the decisions which are appealed; to know the complaints and protests filed in relation to the case and to file objections against them; to participate in court consideration of filed complaints and protests.

2. The investigator shall be obliged to explain the rights and to hand over their list in writing to the person indicated in the first paragraph of this Article. A note shall be made in the protocol of the court session on explanation of the rights in the court trial.

## **Article 512. Participation of the Legitimate Representative**

1. A close relative of the person against whom the proceedings of applying the compulsory measures of medical nature are carried out or another person shall be recognized as the legitimate representative of that person and shall be involved in case pursuant to the resolution of the investigator or prosecutor or pursuant to a court order.

1-1. Participation in the court proceedings of the legal representative of the person against whom the proceedings are conducted on the applying the compulsory medical treatment is **m a n d a t o r y** .

2. The legitimate representative shall have the right to know of the commitment of what act, prohibited by the criminal law, the person represented by him (her) is established the guilty; to file petitions and objections; to represent evidences; to participate with the permit of the investigator in investigative acts which are carried out pursuant to his (her) petition or petition of the defense counsel; to peruse protocols of the investigative acts in which he (she) took part and to make written comments on the accuracy and fullness of the records made in them; upon termination of the preliminary investigation to peruse all the materials of the case,

to copy from it any information and in any volume; to receive a copy resolution on termination of the case or on direction of the case to the court for applying the compulsory measures of medical character; to participate in the court trial; to file complaints on the acts and decisions of the investigator, prosecutor and court; to appeal the resolutions of the court and to receive copies of the decisions which are appealed; to know of the complaints and protests, filed in relation to the case, and to file objections against them; to participate in the court consideration of the filed complaints and protests.

3. The protocol on explanation of the rights to the legitimate representative shall be compiled .

**Footnote. Article 512 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No.490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 513. Participation of a Counsel for the Defense**

1. The participation of a counsel for the defense shall be obligatory in the proceedings on the case of applying the compulsory measures of medical nature, from the time of establishing of the fact of insanity or psychic disorder of the person against whom the proceedings are carried out, if the counsel for the defense has not joined the suit earlier for other reasons .

2. From the time of joining the suit, the counsel for the defense shall have the right to see his (her) client privately, unless the health condition of the client precludes this, and also he (she) shall enjoy all the other rights provided for by Article 74 of this Code.

### **Article 514. Completion of the Preliminary Investigation**

1. Upon completion of the preliminary investigation, the investigator shall pass a resolution :

1) on termination of the proceedings on the case, in the instances provided for by Article 37 and the third paragraph of Article 269, and also when unhealthy psychic disorders are not connected with a hazard for the individual and other persons, or potential causing of other serious damage ;

2) on directing the case to the court for applying the compulsory measures of medical character .

2. The investigator shall notify the person with regard to whom the preliminary investigation was carried out of the termination of the case or of directing the case to the court , if by his (her) psychic condition that person is capable to participate in investigative acts, his (her) legitimate representative and counsel for the defense, as well as the victim. The investigator shall explain to said parties in a trial their right to peruse materials of the case, and shall inform where and when they may exercise that right. The procedure for perusal of

the case, applications and permission to file petitions on further investigation are determined by Articles 275, 276 of this Code.

3. A resolution on case dismissal shall be passed in accordance with the rules of Article 269 of this Code. In the resolution on directing the case to the court for applying the compulsory measures of medical character there must be outlined the circumstances indicated in Article 506 of this Code and established by the case; the reasons for applying the compulsory measures of medical character; the arguments of the counsel for the defense and other persons who challenge the reasons for applying the compulsory measures of medical character, if they were expressed.

4. Supplements to the resolution on directing the case to the court shall be compiled in accordance with the rules of Article 279 of this Code.

5. The case file with the resolution on its submission to the court shall be passed by the investigator to the prosecutor who upon examining the case shall take one of the following decisions:

- 1) to submit the case to the court;
- 2) to return the case to the investigator for the performance of an additional investigation;
- 3) to dismiss the case for the reasons indicated in item 1 of the first paragraph of this Article.

6. A copy resolution on submission of the case to the court for applying the compulsory measures of medical character shall be handed over to the legitimate representative.

### **Article 515. Court Proceedings**

1. The consideration of the case on applying the compulsory measures shall be carried out by the court of first instance. In cases stipulated by the given Code, the issue of applying of compulsory measures of a medical character to the insane people may be considered by the appellate court in the criminal proceedings on the appeal or protest filed against the verdict, sentence of the court of first instance.

2. Upon receipt by the court of the case on applying the compulsory measures of medical character, the judge shall schedule the same for consideration at a court session in accordance with the rules specified by this Code.

3. The composition of the court in cases relating to the imposition of coercive measures of a medical nature shall be determined in accordance with Article 58 of this Code.

**Footnote. Article 515 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 516. Issues to Be Resolved by the Court When Taking a Decision on the Case**

1. In the course of the court trial the following issues must be studied and resolved:
  - 1) whether the act, specified by the criminal law, took place;

- 2) whether the act was committed by the person, whose case is considered;
- 3) whether the act was committed by the person, whose case is considered, in a condition of insanity;
- 4) whether the person contracted the psychic disorder after the commitment of the crime, which makes it impossible to sentence or execute the punishment;
- 5) whether the unhealthy psychic disorders of the person represent a hazard for himself (herself) or other persons, or potentially causes other material harm;
- 6) whether the compulsory measure of medical character is to be applied and what exactly.

2. The court shall also resolve the issues indicated in paragraphs 10, 11, 12 of the first part of Article 371 of this Code.

### **Article 517. Court Judgment**

1. Upon recognizing as proven the act prohibited by the criminal law and committed by a particular person in a condition of insanity or that the above person after commitment of the crime fall psychic disorder, which makes it impossible to prescribe or execute the punishment, the court shall pass a resolution in accordance with Articles 16, 73 of the Criminal Code of the Republic of Kazakhstan on release of that person appropriately from the criminal liability or from punishment and on applying to him (her) of a compulsory measure of medical character and the of the measure.

2. If the person indicated in the first paragraph of this Article does not represent a danger in view of his (her) psychic condition or he (she) committed an act of a less seriousness, the court shall pass a resolution on dismissal of the case and on non-applying the compulsory measures of medical character.

3. In the event that the court acknowledges that the participation of a given person in commitment of an act is not proven, equally to when the circumstances provided for by items 1-12 of the first paragraph of Article 37, the first paragraph of Article 38 of this Code are established, the court shall pass a resolution on dismissal of the case for the reason established by it, irrespective of whether the person is ill and of the nature of the illness.

4. In the event that a case is dismissed for the reasons indicated in the second and third paragraphs of this Article, a copy resolution of the court shall be within five days directed to the bodies of health protection for resolving the issue of medical treatment or directing to a psycho-neurological institution of the persons who need psychiatric assistance.

5. Upon recognizing that psychic disorder of the person, whose case is considered, has not been established or that the illness of the person, who committed the crime, does not exclude the application to him (her) of punishment, the court by its resolution shall return the case for

the performance of additional investigation and further submission of the case in accordance with the general procedure.

6. The court decision shall resolve the issues indicated in Article 383 of this Code.

### **Article 518. Appeal and Protest against a Court Judgment**

1. A decision of a district court and the equivalent court may be appealed through the appellate procedure in accordance with the rules outlined in Chapter 47 of this Code, and a sentence of appellate instance - according to the cassation procedure, stipulated by Article 48-1 of this Code, by the defense counsel, the victim and his (her) representative, legal representative or a close relative of the person in whose respect the case is considered, and appealed by the prosecutor. In the event that in accordance with Article 511 of this Code the person, on whom a compulsory measure of medical character has been imposed, participated in the court trial of the case, he (she) shall have the right to appeal the resolution of the court against, if in accordance with the conclusion of the forensic psychiatric expert examination the character and degree of seriousness of his (her) illness does not impede it.

2. A decree on applying a compulsory measure of medical nature shall be appealed for execution in accordance with the procedure specified in Chapter 49 of this Code.

**Footnote. Article 518 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); as amended by the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).**

### **Article 519. Termination, Alteration and Extension of Applying the Compulsory Measures of Medical Character**

1. Issues of termination, alteration or extension of applying the compulsory measure of medical nature in accordance with the procedure provided for by Article 93 of the Criminal Code of the Republic of Kazakhstan, shall be considered by the court that has passed the resolution on applying the compulsory measure of medical character, and if the compulsory measures is applied outside the territory of activities of that court- by the appropriate court in the place of application of that measure.

2. The court shall notify of the appointment of the case hearing the legitimate representative of the person, who the compulsory measure of medical nature was applied to, the administration of the institution that is carrying out the compulsory medical treatment, the counsel for the defense and the prosecutor. The participation in the court session of the counsel for the defense and prosecutor shall be obligatory, failure of other persons to appear shall not impede the consideration of the case.

3. The representation (conclusion) of the institution that carries out compulsory medical treatment, conclusion of the commission of psychiatrist physicians shall be examined at the court session, the opinion of the persons who participate in the session shall be heard. If the

conclusion of the commission of psychiatrist physicians causes doubt, the court pursuant to the petition of the persons participating in the session or on its own initiative may prescribe to hold judicial psychiatric expert evaluation, to obtain on demand the additional documents and to interrogate the person, in whose respect an issue of termination, alteration or extension of application of the compulsory measure of medical character is being decided, if it is possible in view of his (her) psychic condition.

4. The court shall terminate or alter the compulsory measure of medical character in case of such psychic condition of the person, whereby the need of application of the previously prescribed measure disappears, or the need arises to prescribe another measure of medical nature. The court shall extend the compulsory medical treatment if there are no reasons for termination or alteration of the compulsory measure of medical nature.

5. The court shall pass a resolution in the conference room on termination, alteration or extension, and on denial of termination, alteration or extension of application of the compulsory measure of medical nature, and it shall voice it at the court session.

**Footnote. Article 519 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

## **Article 520. Renewal of the Criminal Case against a Person who is subject to Compulsory Measure of Medical Nature**

1. If the person, who was subjected to a compulsory measure of medical character due to his (her) illness of psychic disorder after commitment of a crime, is recognized by the commission of psychiatrist physicians as he who recovered, then the court on the basis of the conclusion of the medical institution that carries out compulsory medical treatment in accordance with paragraph 9 of Article 453 and the third paragraph of Article 454 of this Code shall pass a resolution on termination of application of the compulsory measure of medical nature and decide on the issue of directing the case for the performance of interrogation or preliminary investigation, holding a given person as the accused and passing the case to the court in accordance with the general procedure.

2. The time spent at a medical institution shall be included into the period of endurance of punishment.

## **Chapter 55. Fundamental Provisions on Interaction of Authorities, Involved into the Criminal Proceedings, with the Competent Institutions and Officials of Foreign States for Criminal Cases**

### **Article 521. Procedural and Other Acts which are carried out in the Procedure of Rendering Legal Assistance**

1. In order to render legal assistance to bodies of investigation and courts of the foreign states, with which the Republic of Kazakhstan concluded an international agreement on legal assistance, or on the principle of reciprocity, procedural acts may be carried out as provided by this Code, as well as other acts specified in other laws and international treaties of the Republic of Kazakhstan.

2. In the event that provisions of the international treaty ratified by the Republic of Kazakhstan contradict this Code, the provisions of the international treaty shall apply.

3. Expenditures connected with rendering of legal assistance shall be incurred by the requesting institution in the territory of its state, unless it is otherwise specified by the international treaty of the Republic of Kazakhstan.

### **Article 522. Validity of Procedural Documents**

The procedural documents compiled in the territory of the state indicated in the first paragraph of Article 521 of this Code in accordance with the legislation, effective in its territory and certified with the state seal, shall be accepted as procedural documents without any restriction, unless it is otherwise provided for by the international treaty of the Republic of Kazakhstan.

### **Article 523. Procedure for Interaction in Issues of Rendering Legal Assistance**

1. The instruction for the performance of an investigative act shall be directed through the Prosecutor General of the Republic of Kazakhstan, and in case of a court act - through the Minister of Justice of the Republic of Kazakhstan, or accordingly their deputies, or through authorized officials, who in appropriate cases shall resort to mediation of the Ministry of Foreign Affairs of the Republic of Kazakhstan.

2. When formulating the instruction, there shall be used the language of the foreign state to which it is directed, unless it is otherwise specified in the international treaty of the Republic of Kazakhstan.

3. The court, prosecutor, investigator, inquest officer shall compile the instruction for rendering the legal assistance associated with performance of procedural and other acts in the territory of the other state in writing, on appropriate official paper, sign and certify it with the state seal of the body that carries out the criminal procedure.

4. The instruction on rendering the legal assistance pursuant to a motivated petition of the appropriate prosecutor, court shall be passed accordingly to the Prosecutor General, Minister of Justice of the Republic of Kazakhstan or authorized prosecutor.

5. The Prosecutor General of the Republic of Kazakhstan, Minister of Justice shall decide on the issue of passing the instruction for rendering the legal assistance to the competent

institution of the other state.

6. The procedure for rendering the legal assistance in issues of extradition and criminal prosecution shall be determined by Articles 527, 529 of this Code.

#### **Article 524. Contents of the Commission Concerning the Performance of Procedural Acts**

1. A commission, concerning the performance of investigative and court-related acts, must be compiled in writing, signed by the official, who is sending a commission, certified with the state seal of the institution and contain the following:

- 1) the name of the authority, initiated a commission;
- 2) the name and address of the authority to which the commission is directed;
- 3) the name of the case and nature of the commission;
- 4) information concerning the persons, in whose respect a commission was issued, their citizenship, of business, place of residence or location, in case of legal entities - their business name and address;
- 5) presentation of the circumstances to be clarified, as well as the list of the documents so requested, material evidences and other evidences;
- 6) information on actual circumstances of the committed crime and its qualification, where needed - information on the degree of the damage caused by the act;
- 7) other information needed for the implementation of the commission.

2. The contents of the claims of extradition and institution of a criminal prosecution shall be determined by Articles 529, 530 of this Code.

#### **Article 525. Procedure for the Implementation of a Commission for the Performance of Procedural Acts**

1. The court, prosecutor, investigator, inquest authority shall implement the instructions passed to them in accordance with the established procedure from the relevant institutions and officials of foreign states concerning the performance of investigative or judicial acts in accordance with the general rules of this Code.

2. Procedural rules of the foreign state may be used when executing a commission, if that is provided for by the international treaty of the Republic of Kazakhstan with that state.

3. When implementing a commission, the state language of the Republic of Kazakhstan or the Russian language shall be used.

4. With a permit from the official indicated in the first paragraph of Article 523 of this Code, in cases provided for by the international treaty, a representative of the competent institution of the other state may be present during the implementation of the commission.

5. If a commission may not be implemented, the received documents shall be returned accordingly to the foreign institution from which the commission was received with

indication of the reasons that impeded its implementation. A commission shall be returned in any case if its implementation may cause harm to the sovereignty or security, or contradicts the legislation of the Republic of Kazakhstan.

**Footnote. Article 525 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 526. Summon and Interrogation of the Witness, Victim, Civil Plaintiff, Civil defendant, their Representatives, Expert**

1. The witness, victim, civil plaintiff, civil defendant, their representatives, expert if they are citizens of a foreign state may be summoned with their consent for the performance of investigative or judicial acts in the territory of the Republic of Kazakhstan by appropriate official who is handling the criminal case.

2. A request to a person to appear shall be directed in accordance with the procedure specified in the second paragraph of Article 523 of this Code.

3. The performance of investigative and judicial acts with the participation of the witness, victim, other participants of the process indicated in the first paragraph of this Article, shall be carried out in accordance with the rules of this Code with the following exceptions: bringing by force, money penalty, as well as holding responsible in accordance with the criminal procedure for refusal or evasion of testimony and for deliberate perjury or deliberately false conclusion shall not be allowed. They may not be held responsible in the territory of the Republic of Kazakhstan through the criminal and administrative procedure, imprisoned and subjected to punishment for the acts committed prior to the crossing of the national boundaries. Also, such persons may not be held responsible, imprisoned or subjected to punishment in connection with their witness testimony or conclusions, given as experts in connection with the criminal case which is subject matter of the trial.

4. If the subpoenaed person indicated in the first paragraph of this Article has been held responsible through the criminal procedure or sentenced for another crime in the territory of the requested state, he (she) irrespective of his (her) citizenship may be extradited for a time.

5. The persons indicated in the first paragraph of this Article shall lose the guarantees specified in the fourth paragraph of this Article, if they fail to leave the territory of the Republic of Kazakhstan, although they have such opportunity, prior to expiry of fifteen days from the day when the body leading the criminal procedure communicates to them that their further presence is not required. That period shall not include the time during which those persons could not leave the territory of the Republic of Kazakhstan through no their fault.

## **Article 527. Direction of Case Materials for Continuation of Criminal Prosecution**

In the event of commitment of the crime in the territory of the Republic of Kazakhstan by a foreigner who exited the boundaries of the Republic of Kazakhstan, the body that is carrying out the criminal proceedings shall pass a motivated resolution on suspension of proceedings in case in accordance with the procedure specified by Articles 50, 265 and 304 of this Code, as well as a resolution on transfer of criminal cases in terms of their jurisdiction or cognizance in accordance with the procedure specified in Articles 192, 306 of this Code. The materials of the case shall be directed to the Prosecutor General of the Republic of Kazakhstan or authorized prosecutor with a petition to carry out criminal prosecution for deciding the issue of directing the case to the other state in accordance with the international agreement.

### **Article 528. Execution of Requests on Continuation of Criminal Prosecution or on Institution of a Criminal Case**

1. A petition of appropriate institution of a foreign state on the transfer for further investigation of a criminal case against a citizen of the Republic of Kazakhstan who committed a crime in the territory of the foreign states and returned to the Republic of Kazakhstan shall be considered by the Prosecutor General of the Republic of Kazakhstan or the authorized prosecutor. The preliminary investigation and court investigation in such cases shall be carried out in accordance with the procedure specified by this Code.

2. If the investigation continues in the Republic of Kazakhstan, the evidence obtained in the course of investigation of the case in the territory of a foreign state by the body or official person appropriately authorized for that, within the bounds of their authority and in accordance with the established procedure shall have legal validity on equal terms with other evidences collected on the case.

3. In case of commitment in the territory of a foreign state of a crime by a citizen of the Republic of Kazakhstan who then returned to the Republic of Kazakhstan prior to the institution of a criminal prosecution against him (her), the criminal case may be instituted and investigated by the bodies of preliminary investigation of the Republic of Kazakhstan on the basis of the materials of that case as presented by the institution of the foreign state to the Prosecutor General Office of the Republic of Kazakhstan.

4. The body leading the criminal proceedings shall be obliged to notify the Prosecutor General of the Republic of Kazakhstan or authorized prosecutor of the final decision taken on the case, and to send a copy of that decision.

### **Article 529. Direction of a Request for Extradition of a Person for Holding Responsible Through the Criminal Procedure or Execution of the Sentence**

1. In the event and in accordance with the procedure specified by the legislation of the Republic of Kazakhstan and international treaties, the Prosecutor General of the Republic of

Kazakhstan or the authorized prosecutor shall address the competent authority of the foreign state with the request to extradite the person who is a citizen of the Republic of Kazakhstan that committed a crime, if against that person an accusatory sentence or resolution on bringing him (her) into the proceedings as accused has been rendered.

2. In case and in accordance with the procedure specified in international treaties and legislation of the Republic of Kazakhstan the body leading the criminal procedure shall submit a petition for the extradition of the person who committed a crime in the territory of the Republic of Kazakhstan and left its territory to the Prosecutor General of the Republic of Kazakhstan or authorized prosecutor with attachment of appropriate documents thereto.

3. The request for extradition must contain the following:

- 1) the name of the authority who is handling the criminal case;
- 2) the surname, name, patronymic name of the convict (accused), year of birth, citizenship, description of appearance, photographs;
- 3) presentation of actual circumstances of the committed crime with presentation of the text of the law providing the liability for that crime, with obligatory indication of the sanction;
- 4) information on the place and time of passing the sentence which entered into legal force, or resolution on bringing a person into the proceedings as an accused, with attachment of certified copies of appropriate documents.

4. The following must be attached to the petition for extradition: a copy of the resolution on bringing charges, a copy of the resolution on imprisonment, documents to confirm the citizenship of the person to be extradited, the conclusion of the relevant prosecutor on legality and motivation of the petition for extradition.

### **Article 530. Limits of the Criminal Liability of the Extradited Person**

1. A person extradited by a foreign state may not be held responsible through the criminal procedure, subjected to punishment, as well as extradited to a third state for another crime not connected with the extradition, without approval of the state that has extradited him (her).

2. The rule of the first paragraph of this Article shall not apply to the cases of commitment of the crime by a person after his (her) extradition.

### **Article 531. Execution of the Request for Extradition of a Citizen of a Foreign State**

1. The request for extradition of a citizen of a foreign state, who is accused of commitment of a crime or sentenced in the territory of foreign states, shall be considered by the Prosecutor General of the Republic of Kazakhstan or by the authorized prosecutor, whose instructions are the basis for the execution of the extradition. In case of several requests of several states for extradition of a person, the decision on to which state the person is to be extradited shall be taken by the Prosecutor General of the Republic of Kazakhstan.

2. The terms and procedure for extradition shall be determined by this Code and

international treaty of the Republic of Kazakhstan with the foreign state.

3. In the event when the citizen of a foreign state for whose extradition a request was received, is enduring punishment for another crime in the territory of the Republic of Kazakhstan, the extradition may be postponed until the end of enduring punishment or release from punishment for any other legitimate reason. In the event that a citizen of a foreign state is held responsible through the criminal procedure, his (her) extradition may be postponed until the sentence have been resolved, punishment have been endured or the person has been released from criminal liability of punishment for any reason. If postponement of extradition may entail the expiration of the statute of limitations for the criminal prosecution or cause harm to the investigation of a crime, the person whose extradition is required in accordance with the petition may be extradited for a time as determined by the agreement of the parties.

4. The person who has been extradited for a period of time must be returned after performance of procedural acts on the criminal case, for which he (she) was extradited, but not later than within three months after the day of referral of the person. Upon mutual agreement that period of time may be extended, but not in excess of the period of the punishment for which the person was sentenced or for which in accordance with the law the person may be sentenced for a crime committed in the territory of the Republic of Kazakhstan

5. The administration of the place of custody after the receipt of instructions on extradition from the Prosecutor General of the Republic of Kazakhstan or authorized prosecutor shall be obliged to organize within thirty days the transport under guard and referral of the extradited person to the relevant body of that state, to which he (she) has been extradited, and to notify the Prosecutor General of the Republic of Kazakhstan or authorized prosecutor appropriately.

6. The result of the consideration by the Prosecutor General of the Republic of Kazakhstan or an authorized prosecutor of the request for extradition of a citizen of a foreign state shall be communicated to the person whose extradition has been requested, and explanations on the right to appeal the decision in the court shall be given to this person.

The extradition decree shall enter into force after ten days from the date of notification of the person against whom it is made. In case of an appeal against a decree, the permission on extradition shall not be granted until a court decision is entered into force.

**Footnote. Article 531 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 532-1. Appeal Against a Decision on the Extradition of a Person**

1. The decree of the Prosecutor General of the Republic of Kazakhstan or an authorized prosecutor for extradition may be appealed against by the person in respect of whom the

decision was made or by his (her) counsel to the district court or equivalent court at the place location of a person within ten days of receipt of the notification.

2. The administration of the place of detention of a person, against whom a decision was made, on receiving of a complaint addressed to the court, sends it to the appropriate court and notifies the prosecutor within twenty four hours.

3. The prosecutor directs materials confirming the legality and validity of his (her) decision within ten days of receipt of the notice of appeal against the decision on extradition.

4. Examination of the validity of the decision on extradition is made within he month from the date the complaint was received by the court in open court session with participant of the prosecutor, the person against whom the decision on extradition was made, and his(her) counsel for the defense, if he (she) is involved in a criminal case.

5. In the beginning of a court session the presiding judge announces which complaint is subject to review, explain to those who are present their rights, duties and responsibilities. Then the applicant and (or) his (her) counsel for the defense, if he (she) is involved in a criminal case, justify the complaint, then the prosecutor makes a speech.

6. During examination the court is not discussing the issues of guiltiness of the person bringing the complaint, limiting with the examination of the conformity of the decision of extradition of the person to the laws and international treaties of the Republic of Kazakhstan.

7. As a result of inspection, the court makes one of following decisions:

1) To declare the decision on extradition unlawful or unfounded and its abolition;

2) To decline the complaint without satisfaction;

3) To suspend the process of making a decision on extradition, considering the issues which are of vital importance for the adoption of the decision, with the simultaneous extension of detention for a period of not less than he month.

8. Release of the person arrested for extradition takes place after the court order declaring the extradition unlawful or unfounded and its abolition in the manner provided for in article 534 of the Code becomes legally effective.

9. The court decision on recognition of decisions on extradition as unlawful or unreasonable, and its cancellation or leaving the complaint without satisfaction can be challenged or appealed against to the regional court and equivalent court within ten days of its i s s u a n c e .

**Footnote.** The Code is supplemented by Article 531-1 in accordance with the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

## **Article 532. Denial of Extradition**

1. Extradition shall not be allowed in the following cases:

1) if the Republic of Kazakhstan grants political asylum to the person;

- 2) if the act that served as the basis for the extradition request is not recognized as a crime in the Republic of Kazakhstan;
- 3) if a sentence which entered into legal force for the same crime has already been issued against that person, or proceedings on the case have been terminated;
- 4) if pursuant to the legislation of the Republic of Kazakhstan the criminal case may not be instituted nor sentence may be executed because the statute of limitations expired or for any other legitimate reason.
- 5) there is a reason to believe that a person may be subjected to torture in the requesting state.

2. Extradition may be denied, if the crime in connection with which the extradition request was filed was committed in the territory of the Republic of Kazakhstan or outside its boundaries, but aimed against the interests of the Republic of Kazakhstan.

**Footnote. Article 532 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 533. Continuation of the Criminal Prosecution of Stateless Persons, Citizens of a Third Country and Their Extradition**

1. The procedure for directing the materials for continuation of criminal prosecution and implementation of requests on continuation of criminal prosecution or on institution of a criminal case against stateless persons, citizens of a third country shall be determined by the rules of Article 527, 528 of this Code.

2. The procedure for extradition of stateless persons, citizens of a third country shall be determined by the rules of Articles 529, 530, 531, 532 of this Code.

### **Article 534. Extradition Arrest (Detention and Imprisonment for Extradition)**

1. In case of receiving from a competent institution of a foreign state of the appropriately formulated request and provided there are legitimate reasons for the extradition of a person, that person may be detained and the restrictive measure in the form of the extradition arrest may be applied to him (her). Pursuant to the petition of the requesting state the person may be arrested prior to receipt of the extradition request. The petition must contain the reference to the resolution on imprisonment or to the sentence that entered into legal force and an indication that the extradition request will be presented additionally. A petition for imprisonment prior to the filing of the extradition request may be transmitted by mail, telegraph, telex or fax. After examining the presented materials and if sufficient reasons exist to believe that the detained person is the person for whom the search was announced, and if there are no reasons presented in Article 532 of this Code, the prosecutor shall pass a resolution on extradition to the district or equivalent court. The judge of a district or

equivalent court shall in compliance with the rules and terms stipulated in Article 150 of this Code review the petition and issue one of the following decisions: to issue an extradition arrest, to refuse the extradition arrest. The appeal, protest and appeal consideration of the judge's decision shall follow the procedure provided in Article 110 of this Code.

2. A person may be detained for up to three days even without the petition provided for in the first paragraph of this Article, if there are reasons provided for by the law to suspect that that person committed the crime in the territory of the other state that entails extradition.

3. The institution of the foreign state which directed or may direct an extradition request, a petition for arrest, with the proposal of the time and place for the extradition, shall be immediately notified of imprisonment of the person.

4. If within thirty days the extradition has not taken place, the person in custody shall be subject to release pursuant to the resolution of the prosecutor. A person detained in accordance with the second paragraph of this Article must be released, if the request for his (her) extradition has not been received within the period specified by the legislation of the Republic of Kazakhstan for detention. A repeated imprisonment shall be allowed only after considering a new extradition request in accordance with the first paragraph of this Article.

5. The extradition arrest of a person detained in accordance with Article 531 of this Code shall be carried out by the court for a period of up to forty days.

6. If no extradition petition is received during that period from a competent institution of the state that announced search, but there is the petition for imprisonment and the guarantee of subsequent submission of the extradition petition, the period of the extradition arrest pursuant to the petition of the prosecutor, who carried out the arrest, may be extended by the court to up to two months, which the Prosecutor General of the Republic of Kazakhstan or the authorized prosecutor shall be notified of.

7. In exceptional cases, when there are conditions indicated in the second paragraph of this Article, the period of the extradition arrest pursuant to the petition of the regional prosecutor or an equivalent prosecutor, may be extended to up to three months.

In case of availability of the appeal of the requested for extradition person or his (her) counsel for the defense on the issues of appealing against the extradition, granting to the person of the status of a refugee or an asylum seeker, or for other issues that are essential for the decision on the extradition, the term of arrest as per the extradition request of the prosecutor may be extended by the court to up to twelve months but not more than to a term to which the person is convicted in a foreign state, requesting for the extradition for the enforcement of the sentence.

8. The administration of the place of imprisonment not later than within seven days prior to the expiry of the period in custody of the arrested person shall be obliged to notify the prosecutor accordingly.

9. Release of the arrested person for extradition shall be carried out on the basis of the resolution of the prosecutor, in particular upon expiry of the periods indicated in this Article,

if no extradition took place within that period, of which the Prosecutor General of the Republic of Kazakhstan or the authorized prosecutor shall be notified immediately.

**Footnote. Article 534 as amended by the Law of the Republic of Kazakhstan dated 05.07.2008 No. 65-IV (the order of enforcement see Article 2); dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 535. Transit Transportation**

1. The petition of a foreign state authority for transit transportation through the territory of the Republic of Kazakhstan of a person extradited to that authority by a third state, shall be considered in accordance with the same procedure as the extradition request.

2. The method of transit transportation shall be determined by the Prosecutor General of the Republic of Kazakhstan in coordination with the appropriate departments.

### **Article 536. Transfer of Items**

1. When a person is extradited to a foreign state authority, the items which are tools of the crime shall be handed over as well as the items which have traces of the crime or obtained in a criminal manner. Those items shall be handed over pursuant to the request even in the event that the extradition of the person due to his (her) death or for other reasons may not take place

2. The items indicated in the first paragraph of this Article may be detained for a period of time, if they are needed for the proceedings on another criminal case.

3. In order to ensure the legitimate rights of third parties, the transfer of items indicated in the first paragraph of this Article shall be carried out only if there are guarantees of the foreign state authority of return of items upon the end of proceedings on the case.

## **Chapter 56. Extradition of a Person Sentenced to Deprivation from Freedom for Enduring Punishment in the Country, of which He (She) is a Citizen**

### **Article 537. Reasons for Transfer of a Person Sentenced to Deprivation of Freedom for Enduring Punishment in the State of which He (She) is a Citizen**

The international treaty of the Republic of Kazakhstan with the relevant foreign state or a written agreement on the terms of reciprocity of the Prosecutor General of the Republic of Kazakhstan with the competent authorities and official persons of the foreign state shall be the basis for transfer of a person sentenced by the court of the Republic of Kazakhstan to deprivation of freedom, for endurance of punishment in the state of which he (she) is a citizen

, and equally for transfer of the citizen of the Republic of Kazakhstan sentenced by a foreign state court to deprivation of freedom for endurance of punishment in the Republic of Kazakhstan.

### **Article 538. Terms and Procedure for Transfer of the Convict for Endurance of Punishment in the State of Which He (She) is a Citizen**

1. The transfer of a person sentenced in the Republic of Kazakhstan for enduring punishment in the state of which he (she) is a citizen, shall be allowed prior to his (her) endurance of punishment in the form of deprivation of freedom pursuant to the petition of the convict, legitimate representative or close relatives of the convict, as well as pursuant to the request of the competent authority of the relevant state with the consent of the convict.

2. The transfer of the persons indicated in the first paragraph of this Article may be carried out only after the entry of the sentence into legal force pursuant to the decision of the Prosecutor General of the Republic of Kazakhstan or his (her) deputy, who shall inform the court that passed the sentence on the transfer that has taken place.

### **Article 539. Denial of Transfer of a Person Sentenced to Deprivation of Freedom for Endurance of Punishment to a Foreign State**

The transfer of a person sentenced to deprivation of freedom by a court of the Republic of Kazakhstan for endurance of punishment in the state of which he (she) is a citizen may be denied in the following cases:

- 1) if none of the acts for which the person has been sentenced is recognized as a crime pursuant to the legislation of the state of which the convict is a citizen;
- 2) if the punishment may not be executed in the foreign state due to expiry of the statute of limitations or for another reason provided for by the legislation of that state;
- 3) if no guarantee has been received neither from the convict nor from the foreign state that the sentence will be executed with regard to the civil suit;
- 4) if no consensus has been reached on the transfer of the convict on the terms provided for by the international treaty;
- 5) if the convict has the permanent place of residence in the Republic of Kazakhstan.

### **Article 540. Consideration of a Petition for Acceptance of a Citizen of the Republic of Kazakhstan for Endurance of Punishment**

1. A citizen of the Republic of Kazakhstan sentenced to deprivation of freedom by a court of a foreign state, his (her) legitimate representative or close relatives as well as the competent authorities of the foreign state with the consent of the convict may apply to the Prosecutor General of the Republic of Kazakhstan with a petition for the convict enduring

punishment in the Republic of Kazakhstan.

2. In case of satisfaction of the petition, the Prosecutor General of the Republic of Kazakhstan shall submit a resolution on the execution of the foreign state court sentence to the regional court or the equivalent court at the place of permanent residence of the convict prior to the departure from the Republic of Kazakhstan. And if the convict has not the permanent place of residence, the representation shall be submitted to the Supreme Court of the Republic of Kazakhstan.

### **Article 541. Procedure for the Settlement by the Court of Issues Associated With the Execution of a Foreign State Court Sentence**

1. The representation of the Prosecutor General of the Republic of Kazakhstan shall be considered by the judge in the court session in the absence of the convict in accordance with the procedure and within the period established by this Code for the settlement of the issues associated with the execution of the sentence.

2. The following must be indicated in the resolution of the judge on execution of a foreign state court sentence:

- 1) the name of the foreign state court, time and place of passing of the judgment;
- 2) information on the last place of residence of the convict in the Republic of Kazakhstan, place of work, and the of occupation prior to the conviction;
- 3) qualification of the crime for which commitment the citizen is recognized as guilty and the name of the criminal law he (she) was sentenced on its basis;
- 4) the criminal law of the Republic of Kazakhstan that provides the liability for the crime committed by the convict;
- 5) the and term of punishment (the principle and additional), the date of beginning and end of the punishment that must be endured by the convict in the Republic of Kazakhstan; the of the criminal penal institution, procedure for compensation of losses pursuant to the claim.

3. If the maximum period of deprivation of freedom pursuant to the law of the Republic of Kazakhstan for a given crime is less than that prescribed pursuant to the sentence of a foreign state court, the judge shall determine the maximum period of deprivation of freedom for the commitment of a given act as provided for by the Criminal Code of the Republic of Kazakhstan. If deprivation of freedom has not been provided for as punishment, the judge shall determine punishment within the limits established by the Criminal Code of the Republic of Kazakhstan for a given crime and punishment, which is most consistent with that prescribed by the foreign state court sentence.

4. If a sentence pertains to two or several acts not all of which are recognized as crimes in the Republic of Kazakhstan, the judge shall determine what part of the punishment prescribed pursuant to the foreign state court sentence, shall apply to the act which is recognized as the crime.

5. The resolution of the judge shall enter into force from the time when it has been passed and it shall be directed to the Office of the Prosecutor General of the Republic of Kazakhstan for ensuring its execution.

6. In case of abolition or alteration of a foreign state court sentence, or application of an act of amnesty or pardon issued by the foreign state or in the Republic of Kazakhstan, the issues associated with the execution of the revised sentence, as well as application of the amnesty or pardon shall be resolved in accordance with the rules of this Article.

**Footnote.** Article 541 as amended by the Law of the Republic of Kazakhstan dated 18.01.2011 No. 393-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Section 13. Procedure on the Cases with Involvement of the Jury**

**Footnote.** The Law is supplemented by Section 13 by the Law of the Republic of Kazakhstan dated January 16, 2006 No. 122 (shall be enforced from January 1, 2007).

## **Chapter 57. General Provisions**

### **Article 542. Order of Proceedings in Cases Involving the Jury**

Proceedings in criminal cases considered by the court with involvement of the jury, are carried out in accordance with the rules of this giving due consideration to peculiarities set forth herein.

### **Article 543. Jurisdiction of the Court with Involvement of the Jury**

**Footnote.** The title as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

1. Court with participation of the jury considers the cases on most serious crimes with exception of cases on crimes defined in Articles 162 (paragraphs 2 and 3), 163 (paragraph 2), 165, 166, 166-1, 167, 168 (paragraph 1), 169, 171, 233 (paragraphs 3 and 4), 233-2 (paragraphs 1 and 3), 233-4 (paragraph 2), 234 (paragraph 3), 238 (paragraph 3), 239 (paragraph 3) of the Criminal Code of Republic of Kazakhstan, also the cases on applying the compulsory measures of medical character to persons who committed given acts in a condition of mental insanity or those who became insane after committing the crime.

2. If a person is accused of committing a crime, defined in several Articles of the Criminal Code of the Republic of Kazakhstan, the accused has the right for consideration of the case by the court with participation of the jury, if such kind of totality of crimes includes at least one of the most serious crimes with exception of crimes provided in Articles 165, 166, 167, 168 (

paragraph 1), 169, 233 (paragraphs 3 and 4) of the Criminal Court of the Republic of K a z a k h s t a n .

3. If in case several persons are being accused, its consideration by the court with participation of the jury is made by the rules provided by this paragraph in respect of all accused, if at least one of them files a petition on consideration of the criminal case with participation of the jury.

Footnote. Article 543 as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 14.06.2010 No. 290-IV (the order of enforcement see Article 2); dated 29.1.2011 No. 502-IV (shall be enforced upon expiry of ten calendar days after its first official publication).

### **Article 544. Composition of the Court with Participation of the Jury**

The court with participation of the jury in the inter-district specialized court on criminal cases and the specialized inter-district military court on criminal cases shall act in the membership of the judge and ten juries.

Footnote. Article 544 is in the wording of the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).

### **Article 545. Impermissibility of the Influence on the Juror**

The public prosecutor, the victim, the accused and his (her) counsel for the defense as well as other parties to a trial shall be during the proceedings with participation of the jury not allowed to contact, except for the established order, with the jury, involved in the consideration of the case.

### **Article 546. Petition for an Examination of the Case by the Court with Participation of the Jury**

1. The implementation of the criminal justice process in accordance with the rules, provided by this Article, is made at the request of the accused for considering the case by a court with the participation of jurors.

2. In the course of the convict's review of the materials of the case, upon completion of the preliminary investigation, the investigator shall explain the convict the right to apply for considering the case by a court with involvement of jurors as well as legal consequences of satisfaction of such a petition, including peculiarities of the appeal and consideration of complaints on the sentences of the court with participation of the jury.

3. The accused has the right to file petitions for consideration of the case by the court with participation of the jury members, when delivering to the convict of information on completion of the preliminary investigation and presentation for consideration of all materials

of the case and also in the subsequent period, including the preliminary hearing of the case in the court, but before the court appoints the main judicial proceedings.

4. The petition of the accused on considering of case by a court with participation of jurors or refusal of the accused to exercise the right for consideration of the case by a court with participation of jurors must be recorded by an investigator in the protocol on notification of the accused of completion of the investigative action and clarification of the rights of the latter. The petition, claimed later on, is stated by the accused in a written form and shall be immediately submitted to the court of jurisdiction over the case.

5. After the appointment by court of the main judicial trial, the accused person's petition on consideration of the by a court with the participation of jurors shall not be accepted.

6. The accused may refuse to file the petition for consideration of the case with participation of jury members prior to the preliminary hearings and during the preliminary hearings. The refusal of the accused of the petition for consideration of the case by the court with the participation of the jury after it has been confirmed during the preliminary hearings will not be accepted.

**Footnote. Article 546 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

## **Chapter 58. Particularities of Appointment of a Judicial Session**

### **Article 547. Appointment of the Court Session in the Presence of the Request for Trial with Involvement of the Jury**

In the presence of the petition of the accused for consideration of the case by a court with the participation of jurors, the judge shall conduct a preliminary hearing.

### **Article 548. Particularities of Preliminary Hearings**

1. A preliminary hearing of the case is made solely by the judge in a closed court session with the mandatory participation of the prosecutor, the accused, who brought the petition for consideration of the case by a court with the participation of jurors, and his (her) counsel for the defense.

2. If there is a petition for consideration of the case by a court with the participation of the jury of at least one of the accused, a preliminary hearing is made with the participation of all accused and their counsels for the defense.

3. In the beginning of the court session, the judge announces what case is subjected to consideration, introduces himself (herself) to all present at the court session, informs who is a public prosecutor, a secretary, establishes the identity of the accused, and sets the declared disqualifications. The public prosecutor announces the operative part of the indictment. The

judge asks if the indictment is clear to the accused and, in appropriate cases, explains the essence of the accusation to the accused and asks whether the latter confirms his (her) petition for consideration of the by the court with participation of the jury members.

4. If the accused confirms his (her) petition for considering of the case by a court with involvement of the jury, the judge shall take a decision to satisfy the petition and start consideration of other petitions, announced by the public prosecutor, the victim, the accused and his (her) his (her) counsel for the defense.

5. At the preliminary hearing, the materials of the case to verify their admissibility as evidences shall be announced if necessary.

6. If the accused has not confirmed his (her) petition for consideration of the case by a court with the participation of the jury, in the absence of other grounds, provided by paragraph one of Article 301 hereof, the judge announces the preliminary hearing ended. Further proceeding on the case is performed in compliance with the rules, provided by Chapter 40 of this Code.

7. The judge's decision for consideration of the case by a court with the participation of the jury is final. Subsequently, the decision may not be revised on the grounds of the refusal of the accused of considering of the case by the court with participation of the jury members.

#### **Article 549. Particularities of Decisions Rendered in a Preliminary Hearing When the Court Hearings are Appointed, Involving the Jury Members**

1. According to the preliminary hearing, the judge shall take one of the decisions, stipulated by Articles 302 -307 of this Code.

2. In the decision on appointment of the judicial session, the judge indicates that the case will be considered by the court with the participation of jurors, and determines the number of candidates for the jury, to be summoned in the judicial session, the number of which shall not be less than twenty five.

3. Upon the results of the preliminary hearing, the judge in accordance with article 116 of this Code excludes the evidences, recognized as inadmissible evidences, from the materials of the case.

#### **Article 550. Procedure for Preliminary Random Selection of Potential Jurors for Participations in Court Proceedings**

1. After rendering the determination ordering the examination of the case by the court with the participation of jurors, the judge shall instruct the secretary of the court session to ensure appearance in the court session of the candidates for jurors, the number of which is indicated in the determination.

2. After the appointment of the main proceedings at the instructions of the presiding judge, the secretary of the court session makes preliminary random selection of potential jurors out

of the court single and reserve (annual) lists.

3. one and the same person may not participate in the judicial sessions as a juror more than once a year.

4. Upon completion of the preliminary random selection of candidates for the jury to participate in the criminal case, a preliminary list shall be drawn, indicating their surnames, names, patronymic names and home addresses, which shall be signed by the Secretary of the judicial session.

5. The candidates for jurors, included in the preliminary list, not later than within seven days before the beginning of the trial are given a notification with indication of the date and time of arrival to the court.

6. Citizens who have received a notice must appear in court for participation in the procedure of selection of jurors.

## **Chapter 59. Selection of Candidates for the Jury to Participate in Court Proceedings**

### **Article 551. General Provisions**

1. Selection of jury members out of candidates is performed upon observance of requirements of Articles 331 - 344 of this Code:

1) release by the presiding judge of potential jurors from participation in the consideration of the case;

2) resolution of issues on rejection of own nomination;

3) resolution of issues on disqualification;

4) unmotivated rejection of candidates for potential jurors.

2. The secretary of the court session shall inform the presiding judge on appearance in court session of jury candidates and writes out the tickets for each candidate to the jury with the indication of their surnames.

3. The presiding judge delivers a brief introductory speech to the candidates for jurors, in which he (she):

1) introduces himself (herself) to them;

2) represents the parties;

3) Informs, what case is subjected to consideration;

4) informs on the objectives of the jury and the manner of their participation in the consideration of a particular criminal case in accordance with the law.

4. In order to unbiased settlement of the issue on the release of a candidate to the jurors from participation in consideration of the case, the presiding judge when selecting the jurors may ask the candidates question, given by the victims, the accused and his (her) counsel for the defense in a written form, as well as other issues at own sole discretion, important for formation of the jury. The prosecutor asks the candidates the questions on his (her) own and

5. The candidate to the jury must truthfully answer the questions of the presiding judge, asked in selection for participation in considering of the case, as well as to provide, at the request of the presiding judge, any other necessary information about themselves and about the relations with other persons, involved in case.

6. Questions that humiliate honor and dignity of candidates for the jury are not asked by the presiding judge.

7. All questions related to release of the candidate for the jury from participation in the consideration of the case, as well as the issues of rejection of own nomination and disqualifications, declared to the candidates for jurors, shall be settled by the presiding judge solely without the withdrawal to the conference room.

8. If less than twenty five candidates, summoned for the jury or if there are less than seventeen of them remained after satisfying of rejection of own nomination and disqualifications by the presiding judge, the latter instructs the secretary of the court to replenish the composition of the jury candidates by the required number of jurors from the extra list. In this case, the court announces a break to summon other potential jurors.

**Footnote. Article 551 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 552. Release by the Presiding Judge of Potential Jurors from Participation in Consideration of the Case**

1. The presiding judge explains the candidates for jurors their duties, established by this Code, subsequently questions the potential jurors on the circumstances that hamper their participation in case as a jury.

2. The presiding judge shall release the jury:

- 1) suspected or accused in committing of the crime;
- 2) persons who do not speak the language of the proceedings, the mute, the deaf, the blind ;

3) other persons with disabilities in the absence of organizational or technical capacity to ensure their full participation in the judicial session.

3. The presiding judge may release the jury at their oral or written applications:

- 1) persons over the age of sixty five years;
- 2) women with children under three years of age;
- 3) persons, who due to their religious beliefs, consider it impossible to take part in the justice proceedings ;

4) persons, the diverting of whom from the performance of official duties may result in substantial harm to the public and state interests (doctors, teachers, airline pilots and others);

5) other persons who have valid reasons for non-participation in the judicial session.

4. The presiding judge asks the candidates for the jury about their awareness of the circumstances of the case, which is to be considered in the court.

5. The presiding judge shall release any candidate for the jury, whose objectivity is doubtful due to unlawful influence, presence of preconceived opinion, knowledge of the circumstances of the case from non-procedural sources, as well as for other reasons, indicating the possible partiality of the candidates for jury during participation in the consideration of the case as a juror.

**Footnote. Article 552 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

### **Article 553. Settlement of Issues on Rejection of Self-Nomination of Potential Jurors**

The presiding judge asks about the availability of the reasons, defined by the law for the release of any of the potential jurors from participation in the consideration of the case. Each of the candidates for the jury has the right to tell the reasons, hampering to perform the duties as a juror, and to declare rejection of self-nomination.

### **Article 554. Settlement of Issues on Rejection of Potential Jurors**

Each of the candidates for the jury may be disqualified by the prosecutor, the victim, the civil plaintiff, the civil defendant and their representatives, the accused and his (her) counsel for the defense in cases if:

1) the candidate for the jury is the victim in this case, a civil plaintiff, a civil defendant, was or may be summoned as a witness;

2) the candidate for the jury participated in the proceedings on the given criminal case as an expert, a specialist, an interpreter (a translator), a witness, a secretary of the judicial session, an inquirer, an investigator, a prosecutor, a counsel for the defense, a legal representative of the accused, representative of the victim, the civil claimant or a civil defendant;

3) the candidate for the jury is a relative or a relative in-law (brother, sister, parent and child of spouses) of the victim, the civil claimant, the civil defendant or their representatives, of the accused or legal representative of the latter, a prosecutor, a counsel for the defense, an investigator or an inquiry officer;

4) there are other circumstances, giving reason to believe that a candidate for the jury is interested in case personally, directly or indirectly.

### **Article 555. Unmotivated Disqualification of Candidates for the Jury**

1. If as a result of implementation of requirements of Article 554 of this Code for participation in the judicial session, there are more than seventeen candidates for the jury, the presiding judge shall declare the number of the remaining candidates for jurors, and then puts the tickets in the urn with indication of their names, mixes the tickets and takes from it as many tickets as necessary and leaves seventeen tickets in the urn.

2. After implementation of the requirements of paragraph one of this Article, the presiding judge hands over the remaining seventeen tickets with indication of the names of the candidates for the jury in order the public prosecutor as well as the accused and (or) his (her) counsel for the defense may conduct unmotivated disqualification in order twelve candidates for jury must remain.

3. The public prosecutor, the accused and his (her) counsel for the defense shall have the right to request through the presiding judge any of the potential jurors to introduce themselves

4. If the accused is involved in case, the unmotivated withdrawal of the two candidates for the jury is made by the public prosecutor, and then the three candidates for the jury - by the accused and (or) his (her) counsel for the defense in the specified order of priority.

5. If several accused are involved in a case, the public prosecutor has the right to disqualify not more than two candidates for the jury. The withdrawal of candidates for jurors shall be settled by mutual agreement of the accused and in the absence of such an agreement - through division between them the number of the candidates for jurors in equal proportions, if possible.

6. In case of impossibility to fulfill the demands of the fifth paragraph of this Article, the withdrawal of candidates for the jury by several accused must be made by way of drawing with the placing in the ballot box of the tickets with the names of all the accused. Drawing will take place in the quantity equal to the number of the non-disqualified potential jurors. The accused has the right to withdraw as many potential jurors as many times a ticket with the name of the jury member had been drawn from the ballot box by the presiding judge.

7. The refusal of any of the accused of the right to reject the candidates for jurors shall not entail restrictions on the rights of other accused to disqualify so many potential jurors in order not less than twelve of them may remain.

8. The candidates for jurors may be rejected by the public prosecutor, the accused or his (her) counsel for the defense without the indication of motives of disqualification by writing on the tickets the names of the candidates for the jury the word "rejection", confirmed by the signature.

9. The accused shall have the right to instruct the counsel for the defense to exercise the right of rejection of the candidates for jurors. If the accused waived own right to reject the candidates for jurors, the counsel for the defense without the consent of the accused shall not be entitled to participate independently in the disqualification of candidates for the jury.

10. In case of refusal of the accused or all of the accused, if several accused are involved

in case, of their right to reject, the rejection of candidates for jurors shall be settled by way of drawing, in which course the presiding judge or the secretary of the court session draw as many tickets from the urn with indication of the names of non-disqualified candidates for jurors as many of them still may be disqualified.

11. The tickets with the names of the candidates for jurors, disqualified by the parties unmotivated, shall be enclosed to the materials of the case.

**Footnote. Article 555 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010)**

## **Article 556. Formation of the Jury by Drawing**

1. The jury, considering the case in the court, is formed by drawing in a number of ten jurors of the main membership (forming the membership of the jury) and two reserve candidates.

2. For the formation of the jury, the presiding judge puts the ballot-tickets with the names of non-disqualified candidates for jurors, mixes them together and takes twelve tickets he by one, announcing every time the candidate's name for the jury, specified in the ticket. If the taken and remaining tickets form the total number of non-disqualified candidates for jurors, as well as if any violations were not committed, which affected the correctness of the jury formation, the formation of the jury is recognized as valid. The first ten selected candidates for the jury by drawing shall be considered as the jury of the main body, and the two others - as the reserve candidates.

3. In that case, when resolving the issue on disqualification or during the formation of the jury any violations were committed, influencing the correctness of its formation, and in case he or more of the jurors are not admitted to the state secrets, the presiding judge announces the formation of the jury invalid or failed, and shall select the candidates for jury again in full.

4. The names of the twelve candidates for the jury, selected by drawing, shall be written by the secretary of the court in the court records in accordance with the order in which the tickets were taken out of the box. The tickets with the names of jurors, selected by drawing, shall be attached to the case file.

**Footnote. Article 556 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

## **Article 557. General Provisions for Participation of Jurors in Court Proceedings**

1. After completion of formation of the jury, the presiding judge offers the main composition of jurors to take their seats, allotted on the jury bench in accordance with the procedure, determined by the drawing. The bench of jurors should be separated from those, present in the courtroom and is, as a rule, opposite the prisoners' dock. Two reserve jurors sit on a jury bench on a place, specially assigned to them.

2. The jury and reserve jurors are constantly present at the judicial proceedings in the courtroom, except for the cases, stipulated by this Code.

3. If in the course of judicial proceedings, but prior to the withdrawal of the jury and the judge in the conference room to make the verdict, it turns out that any of the jurors could not continue to participate in the court session or suspended by the presiding judge from participation in the judicial session, then he is replaced by the alternative juror in accordance with the order in which the tickets with the names of reserve jurors were drawn from the ballot box. If the possibility of replacement of the former juror is exhausted, the presiding judge declares the held trial invalid and returns a trial to the stage of selection of potential jurors in accordance with Article 550 of the this Code.

4. If the impossibility of participation in the court session of any of the jurors is determined after withdrawal of the jury to the conference room, the judge and the jury should leave the hall of the judicial session, and replace a member of a jury and again withdraw to the conference room.

5. Any juror at any stage of case considering may be suspended from further participation in case of non-compliance with the restrictions, established by paragraph four of Article 559 of this Code.

6. Suspension of a juror is carried out by the presiding judge in the presence of the parties, of which a record is made in the protocol of the judicial session.

**Footnote. Article 557 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 558. Taking Oath by the Jury**

1. After formation of the jurors, the presiding judge or the secretary of the court session invites all those, present in the courtroom to rise. The presiding judge addresses to the jury with a proposal to take the oath.

2. A person selected in the procedure established by this Code to participate in the criminal proceedings as a juror, takes the oath of the following content: "Proceeding to perform the duties of a juror, I solemnly swear to perform my duties honestly and impartially, giving due consideration to all considered in court evidences, arguments, circumstances of the case, to resolve the case according to my inner conviction and conscience, demeaning myself as a free citizen and a fair person".

3. The juror confirms taking the oath by the phrase "I swear".

4. The fact of taking the oath by the jury shall be recorded in the protocol of the judicial session.

## **Chapter 60. Peculiarities of Consideration of the Case by the Court with Participation of Jurors**

### **Article 559. Rights, Duties of a Juror and Limitations on Activities Associated with Consideration of the Case**

1. The presiding judge explains the jury members their rights, duties and limitations on the activities, associated with consideration of the case, and also warn of the consequences of the violation of duties and incomppliance with the limitations.

2. The juror has the right:

1) to participate in the examination of evidences in the court in order to be able to evaluate the circumstances of the case, independently and according to their inner conviction and to answer the questions that go direct to the jury;

2) to questions the participants of the process through the presiding judge;

3) to participate in the examination of physical evidences, documents, examination of the localities and premises, in all other actions in the court procedure;

4) to apply to the presiding judge for an explanation of law provisions as well as the content of pronounced in the court documents and other incomprehensible to them issues, related to the case;

5) to make written notes during the trial.

3. The juror shall be obliged:

1) to observe the order at the judicial session, and to obey the lawful orders of the presiding judge;

2) to appear in the court at the time, defined by the court, to perform the duties of the juror, as well as for the continuation of the proceedings in case, if a break is declared in the court session or hearing of the case is postponed;

3) in case of impossibility to appear in the court in advance to notify the presiding judge of the reasons of absence.

4. The juror may not:

1) be absent from the courtroom during the hearing of the case;

2) get in touch during the court hearing with the persons not included in the membership of the court without the permission of the presiding judge;

3) collect information in the course of the proceedings away of the judicial session;

4) divulge information about circumstances which became known to the juror subsequent to his (her) participation in a closed judicial session, as well as violate the secrecy of the deliberations room.

5. Failure to comply by the jury with the service duties as well as failure to observe the restrictions, provided for herein, shall entail the responsibility established by the law of the

Republic of Kazakhstan as well as the possibility to dismiss a juror by the presiding judge from further participation in the consideration of the case.

### **Article 560. Competence of the Court with Participation of the Jury**

1. While consideration of the case in the court with the participation of jurors, the issues provided by items 1) - 8), 14) of paragraph one of Article 371 of this Code shall be settled.

2. If in the course of the trial there will be found the facts, inadmissible in accordance with Article 116 of this Code as the evidences, the presiding judge shall decide to exclude them from a list of those indicated in the list of evidences, and in case of study of such evidences to recognize them as to be unlawful and the process of their study as to be invalid.

3. The parties may not without the permission of the presiding judge mention in the court with the participation of jurors the existence of any of the evidences excluded from the trial, to refer to them to justify their position. A judge shall not inform the jurors on the factual data , being inadmissible as the evidence.

**Footnote. Article 560 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced ten calendar days after its first official publication)**

### **Article 561. Discontinuous of Proceedings in the Court with the Participation of Jurors**

The presiding judge shall dismiss the case on any stage of its consideration by the court with the participation of jurors, if during the court proceedings the circumstances are clarified , provided by paragraph one of Article 37 of this Code, and also in case of waiver by the public prosecutor of prosecution in accordance with paragraph seven of Article 317 of this Code.

### **Article 562. Peculiarities of Judicial Investigation in the Court with the Participation of Jurors**

1. A judicial investigation in the court with the participation of jurors shall be conducted in a manner as defined in Articles 345 -359, 362 of this Code.

2. The public prosecutor, while announcing the operative part of the indictment, may not mention the facts of the criminal record of the accused.

3. The jury through the presiding judge may question the accused, victim, witnesses and experts, when the above stated persons are interrogated by the parties in a trial. The questions are stated by the jury in a written form and submitted to the presiding judge.

4. The presiding judge may reject questions, which in the opinion of the presiding judge are have no bearing on the subject of the case and are of suggestive or offensive nature, declaring the motives of own refusal to the juror who asked the question.

5. The parties in a trial without the participation of the jury may apply for a study of evidences excluded previously by the judges from case consideration, not giving in this case their essence. Taking of opinions of participants of judicial proceedings consequent to such a petition is made by a judge.

6. No evidences are subject to examination in the court with the participation of jurors that are connected with the previous criminal record of the accused, recognition of the latter as to be a chronic alcoholic or drug addict, as well as other circumstances that can cause prejudice of the jury to the accused.

**Footnote. Article 562 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010), dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 563. Pleadings in Court with the Participation of Jurors**

1. Following the completion of the judicial investigation, the court with participation of the jury members hears the arguments of the parties. The pleadings of the parties in court with participation of the jury consist of two parts.

2. The part one of the debate consists of speeches of the public prosecutor, the victim, the counsel for the defense, and the accused, who state their positions on the occasion of validity or failure to prove guilt of the accused with no mentioning of the previous conviction of the accused.

3. The parties may not mention the circumstances, which are not subjected to consideration by the court with the participation of jurors, and refer to the evidences that were not examined in the court. The presiding judge interrupts such statements and explains the jurors that they should not take into account these circumstances when sentencing.

4. The part two of the debate consists of speeches of the public prosecutor as well as the victim, the civil claimant and the accused or their representatives, the counsel for the defense and the accused, in which they state their positions on qualification of actions of the accused, imposition of punishment, civil action. The second part of the debate is conducted without the participation of the jury.

### **Article 564. Replication and the Last Word of the Accused in the Court with the Participation of Jurors**

1. After giving speeches of each part of the pleadings, all the participants of pleadings in the court with the participation of jurors shall have the right to reply. The right of the last cue is held by the counsel for the defense.

2. The accused in accordance with Article 365 of this Code is entitled to the last word.

**Footnote. Article 564 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

## **Article 565. Raising Issues Subject to Settlement by the Court with the Participation of the Jury**

1. The presiding judge, taking into account the results of a judicial investigation, the pleadings of the parties, formulates in writing the questions subjected to resolution by the court with the participation of jurors, reads them and submits to the parties.

2. The parties may express their comments on the content and wording of questions and make suggestions on the formulation of new questions.

3. In the course of the discussion and formulation of the questions the jury members shall be withdrawn from the courtroom.

4. Taking into account the comments and proposals of the parties, the presiding judge in the conference room finally formulates the questions to be resolved by the court with the participation of jurors, records them in the question list and signs it.

5. The question list shall be announced in the presence of the jury and parties.

**Footnote. Article 565 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

## **Article 566. Content of Questions Subjected to Resolution by the Court with the Participation of the Jury**

1. For each of the acts of the accused, the three main questions are asked:

- 1) if it is proved that the act took place;
- 2) if it is proved that the act was committed by the accused;
- 3) if the accused is guilty of committing the acts.

2. Following the basic question on guiltiness of the accused, private questions may be asked about circumstances that en or reduce the degree of the guilt or change its nature, entail the release of the accused from the liability. In necessary cases, the questions on the degree of implementation of criminal intent, the reasons by virtue of which the act was not brought to completion, the extent and nature of participation of each of the accused in the crime may be asked separately. Questions shall be allowed if it becomes possible to establish the guilt of the accused in committing a less serious crime, if it does not violate the right of the accused to d e f e n s e .

3. Questions to be answered are asked in respect of each accused separately.

## **Article 567. Address of the Presiding Judge to the Jury Members**

1. Before withdrawal of the judge and jurors o the conference room, the presiding judge a d d r e s s e s t o t h e j u r y .

2. When addressing the jury, the presiding judge shall be prohibited to express in any form his (her) opinion on the questions, put before the jury and the judge.

3. While addressing the presiding judge:

1) states the content of the accusation;  
2) informs on the content of the criminal law, providing for liability for committing an act, which the accused is accused of;

3) reminds of the evidences investigated in the court as establishing the guilt of the accused as justifying the latter, not expressing own attitude to these evidences and making no conclusions of them;

4) states the position of the public prosecutor and the counsel for the defense;

5) explains to the jurors the basic rules of evaluating the evidences in their totality, the essence of the principle of the presumption of innocence; a provision on using of unresolved doubts in favor of the accused; a provision that their findings may be based only on the evidences that were directly examined in the trial, no other evidences for them have a pre-determined force, their conclusions may not be based on assumptions, as well as on the evidences that were recognized inadmissible;

6) draws the attention of the jury that the refusal of the accused to give testimony or keeping silence in the court have no legal value and may not be considered as the evidence of the guilt of the accused;

7) clarifies the order of the hearing, filling of bulletins on the main issues, the order of voting on issues of the sentence rendering.

4. The parties are entitled to claim objections in connection with the content of the address of the presiding judge on the grounds of violation of the principle of objectivity, which shall be entered in the protocol of the judicial session.

**Footnote. Article 567 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 568. Secrecy of Jury Deliberation**

1. After the end of the pleadings, the judge and main jurors leave for the conference room for sentencing.

2. No other persons are allowed to be in the conference room except the judge and jurors. On completing of working hours as well as during the working day the presiding judge shall have the right to make a break for the rest and leave the conference room.

**Footnote. Article 568 as amended by the Law of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010).**

### **Article 569. Procedure for Jury Deliberation and Voting in the Conference Room**

1. The presiding judge leads the debates of the jury, consistently puts the questions to be discussed and resolved, arranges voting on the answers and counts the votes.
2. In the conference room, the jury is entitled to receive explanations from the presiding judge on the arisen uncertainties in connection with the asked questions.
3. Voting on the main issues is carried out in a written form. The judge and the jury have no right to abstain from voting. The votes of the judge and jury are equal.
4. The judge and jurors receive a blank bulletin for voting with the stamp of the court according to the number of accused, which contains the following words: "By my troth, conscience and inner conviction, my conclusion is...". Ensuring secrecy, every one of them writes in the bulletin the answer to each question in the questionnaire, subjected to resolving. The answer should be positive "Yes" or negative "No" with the obligatory explanatory word or combination of words, explaining the essence of the answer ("Yes, it has been proved", "No, not proven", "Yes, guilty", "No, not guilty") in sequence of the questions, posed in the questionnaire. The judge and the jury deposit their voting papers in the ballot box.
5. Upon completion of voting, the presiding judge opens the ballot box and counts the votes of each ballot in the presence of the jury, the result of counting of votes is immediately written down opposite each of the three main questions, specified in the questionnaire.
6. The ballots with the answers of the jury and the judge are sealed in an envelope, which is kept in the criminal case files.
7. If the answer to the previous question excludes the need for a reply to the next question, the presiding judge with the consent of the majority of the jury enters the words "no answer" a f t e r i t .
8. A verdict of "guilty" is deemed accepted, if majority of voters gave positive answers to each of the three questions, mentioned in paragraph one of Article 566 of this Code.
9. A verdict of "Not guilty" shall be deemed accepted, if six or more voters gave negative answer to any of the main questions.
10. If the question about the guilt of the accused was answered positively, the judge solves the issue of whether the act was criminal and what provision of the criminal law provides for it (article, section, paragraph), explains the jury what punishment measures are p r o v i d e d f o r t h e s e a c t s .
11. Upon resolving by the judge of the issue on qualification of the act, the court with participation of the jury shall with no breaks solve the issues provided by items 5) - 8 and 14) of paragraph one of Article 371 of this Code, the decision on which shall be adopted by open voting. The decision shall be deemed adopted if majority of jurors voted for that. The questions, provided by items 9) - 13), 15) - 18) of paragraphs he and five of Article 371 of this Code, are considered by the judge solely.
12. Punishment in the form of imprisonment for a term of more than fifteen years may be imposed, if eight or more jurors voted for such a decision.
13. Exceptional measure of punishment - the death penalty may be sentenced only if the

decision of the judges and jurors was unanimous.

14. The question list with the answers of the judge and jurors shall be signed by the judge and jurors and attached to the materials of the case.

**Footnote. Article 569 as amended by the Law of the Republic of Kazakhstan No. 227-IV, dated 10.12.2009 (shall be enforced from 01.01.2010).**

### **Article 570.s of Decisions, Taken by the Court with the Participation of the Jury**

A criminal case in the court with participation of jurors shall be completed with the adoption of one of the following decisions:

- 1) the resolution on case dismissal in cases provided by article 324 of this Code;
- 2) the verdict of "Not guilty" in cases when the court with the participation of the jury gave a negative answer to at least one of the three main questions specified in paragraph one of Article 566 of this Code;
- 3) the guilty verdict in accordance with paragraph two of Article 375 of this Code.

### **Article 571. Sentencing**

1. The sentence shall be made by the presiding judge in a manner as established by Chapter 44 of this Code, with the following peculiarities:

- 1) the introductory part of the sentence does not contain the names of the jury;
- 2) the descriptive and motivation part of the "Not guilty" verdict contains the essence of the accusation, in which respect the court with the participation of the jury rendered a not-guilty verdict, and a reference to the verdict or the refusal of the public prosecutor of a c c u s a t i o n ;
- 3) the descriptive and motivation part of the sentence should contain a description of the criminal act, of which the accused is found guilty, the qualification of the committed crime, the motives of sentencing and the reasons for the court decision in respect of a civil claim;
- 4) the operative part of the verdict shall contain explanations of the procedure of appealing and protesting against the sentence to the court of appeal.

2. The sentence shall be signed by the presiding judge, considering the case.

**Footnote. Article 571 as amended by the Law of the Republic of Kazakhstan dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication).**

### **Article 572. Dismissal of the Criminal Case Consequent to Establishment of Insanity of the Accused**

1. If during considering of the by the court with the participation of the jury, there were revealed the circumstances, which give the grounds to believe that the accused due to

psychiatric condition cannot be brought to criminal responsibility or is mentally ill, which deprives the accused of the possibility to be aware of own actions or control them, that is confirmed by the corresponding conclusion of the forensic psychiatric examination, the presiding judge shall issue a resolution on discontinuation of consideration of the criminal case by the court with the participation of jurors and submits the same to the court in a manner as defined in Section 12 of this Code.

2. The presiding judge's resolution on discontinuation of consideration of the case by the court with the participation of jurors and its submission to the court for the consideration according to the standard procedure, provided by this Code, shall be final and is not subject to protest on appeal.

### **Article 573. Peculiarities of Maintaining the Protocol of the Court Session**

1. The protocol of the court session is maintained in accordance with the requirements of Article 328 of this Code, with the peculiarities, provided for herein.

2. The protocol must contain the composition of the candidates for jurors, summoned to the court session, and the process of formation of the jury.

3. The address of the presiding judge is recorded in the protocol of the court session or the text is attached to the materials of the criminal case, which fact should be recorded in the p r o t o c o l .

4. The protocol of the court session shall record all the proceedings to have an opportunity to confirm correctness of their conduct.

### **Chapter 61. Peculiarities of the procedure on revision of sentences, that have not come into legal force, resolutions on the cases, considered with the participation of jurors**

**Footnote.** The title of Chapter 61 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012).

### **Article 574. Appealing and Protestation of Sentences that Have not Come into Legal Force, Rendered by the Court with the Participation of the Jury**

The procedure for appeal against the court sentences and decisions, rendered by the court with the participation of the jury, that have not come into legal force is determined by the rules provided by Chapters 46 and 47 of this Code, with the peculiarities established by this C h a p t e r .

**Footnote.** Article 574 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 01.07.2012)

## **Article 575. Peculiarities of Proceedings in the Court of Appeal, Considered by the Court with the Participation of the Jury**

**Footnote.** The title of Article 575 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).

1. Grounds for cancellation or change of the court decisions of the appellate court are:

- 1) unjustified exclusion of admissible evidences from the proceedings, which may be of considerable importance for the outcome of the case;
- 2) unjustified refusal to the party in study of evidences, which may be of considerable importance for the outcome of the case;
- 3) investigation during the court session of factual data, inadmissible as evidences, which influenced the outcome of the case;
- 4) material breach of the criminal procedure law, stipulated by this Code;
- 5) violations that influenced or could have influenced rendering the just sentence, committed by the presiding judge while:  
forming the jury;  
discussing the issues, which are not subject to discussion in the presence of the jury;  
formulating the questions, being subject to resolving by the jury;  
pleading;  
addressing by the presiding judge to the jury members.

2. The appellate court may apply to the convict a legal provision on a less serious crime and reduce the degree of punishment in accordance with the modified qualification of the crime. In which case, the appellate court may not apply a legal provision on a more serious crime on the degree of the sentenced punishment.

3. The "Not guilty" verdict of the court with the participation of jurors may not be overturned by the appellate court, except for the cases of violation of the criminal procedure law, which limited the right of the prosecutor, the victim or the representative of the latter, for presentation of the evidence, as well as evidences provided by item 5) of paragraph one of this Article, including the unjustified exclusion of admissible evidences.

**Footnote.** Article 575 as amended by the Laws of the Republic of Kazakhstan dated 10.12.2009 No. 227-IV (shall be enforced from 01.01.2010); dated 09.11.2011 No. 490-IV (shall be enforced upon expiry of ten calendar days after its first official publication); dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).

## **Chapter 62. Peculiarities of Revision of Legally effective Sentences, Decisions on Cases, Considered by the Court with the Participation of the Jury**

**Footnote.** Chapter 62 is in the wording of the Law of the Republic of Kazakhstan dated 17.02.2012 No. 565-IV (shall be enforced from 07.01.2012).

## **Article 575-1. Revision of Legally Effective Verdicts and Judgments of the Court with the Participation of the Jury in the Court of Cassation Instance**

1. Cassation revision of the judgment of acquittal, rendered by the court with the participation of jurors, and decisions of the board of appeals shall be allowed, if in the course of judicial proceedings substantial breaches of the criminal procedure law were committed, w h i c h :

- 1) have resulted in the rendering of the verdict by the improper composition of the jury;
- 2) have deprived the victim of the right to judicial defense.

2. The revision should also be subject to:

- 1) incorrect determination of the of the recidivism and the of regime of the correctional c o l o n y ;
- 2) incorrect resolution of the civil action, except for the cases of declining the consideration of the statement;
- 3) unlawful decision in the exercise of sentence execution.

3. The cassation instance may apply to the convict a legal provision on a less serious crime and reduce the degree of punishment in accordance with the changed qualification of t h e c r i m e .

4. In cases, stipulated by paragraph one of this Article, the case is submitted for a new consideration to the court of first instance.

## **Article 576. Revision of Verdicts and Judgments of the Court that were issued with the Participation of the Jury and have Entered into Legal Force**

Revision of verdicts and judgments of the court that were issued with participation of the jury and have entered into legal force shall be carried out in the cassation instances of regional and equivalent courts on the grounds and in a manner as specified by Chapter 48-1 of this Code. Revision in the Panel of the Supreme Court may take place only following the revision by the court of cassation on the grounds provided by item 1) of paragraph one and items 1), 2) of paragraph two of Article 459 of this Code.

## **Article 577. Impermissibility of Aggravating the Position of the Convict by Revisions to the Verdict, Sentence of the Court that was issued with the Participation of the Jury**

Revisions to a judgment of conviction, as well as the decision of the court in view of necessity of applying the legal provision on a more serious crime because of the leniency of a punishment or on other grounds, giving rise to worsening of the state of the convict, as well as revision of the judgment of acquittal or a court decision on dismissal of a criminal case, shall not be allowed.

*the Republic of Kazakhstan*

*P r e s i d e n t                    o f*

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