



# Kazakhstan

## Cybercrime legislation

Domestic equivalent to the provisions of the Budapest Convention

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[reference to the provisions of the Budapest Convention]

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[www.coe.int/cybercrime](http://www.coe.int/cybercrime)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

<b>State:</b>	
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BUDAPEST CONVENTION	DOMESTIC LEGISLATION
<b>Chapter I – Use of terms</b>	
<p><b>Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”:</b></p> <p>For the purposes of this Convention:</p> <p>a “computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;</p> <p>b “computer data” means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;</p> <p>c “service provider” means:</p> <p>i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and</p> <p>ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;</p> <p>d “traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service</p>	<p><b>a) The Law of the Republic of Kazakhstan on Informatization</b></p> <p>12) information system - an organizationally ordered set of information and communication technologies, maintenance personnel and technical documentation that implement certain technological activities through information interaction and are designed to solve specific functional tasks</p> <p><b>b) The Law of the Republic of Kazakhstan on Informatization</b></p> <p>35) open data - public electronic information resources, presented in a machine-readable form and designed for further use, re-publication in an unchanged form</p> <p><b>The Law of the Republic of Kazakhstan on Personal Data and their Protection</b></p> <p>2) personal data – details, related to the specific or identified on their basis subject of personal data, recorded on an electronic, paper and/or other physical media;</p> <p>12) processing of personal data – actions directed to accumulation, storage, change, supplement, use, distribution, depersonalization, blocking and destruction of personal data;</p> <p><b>c) i)</b></p> <p><b>The Law of the Republic of Kazakhstan on State Services</b></p> <p>1) State Corporation "Government for Citizens" (hereinafter referred to as the State Corporation) is a legal entity established by the decision of the Government of the Republic of Kazakhstan to provide state services, services for issuing technical conditions to connect to the networks of natural monopoly entities and services of quasi-state entities in accordance with the legislation of the Republic of Kazakhstan, organization of work on receiving applications for the provision of state services, services for issuing technical conditions to connect to the networks of natural monopoly entities, services of quasi-public entities and issuing their results to the service recipient on the the one-stop principle, as well as ensuring the provision of state services in electronic form,</p>

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implementing state registration of rights to immovable property at the place of its location;

2) one-stop shop principle – a form of centralized rendering of the state service, providing minimum participation of service recipient in the collection and preparation of documents in rendering of the state service and restriction of its direct contact with service providers;

4) service provider – central state bodies; foreign missions of the Republic of Kazakhstan; local executive bodies in the regions, cities of republican significance, capital, districts, cities of regional significance; akims of districts in the city, cities of district significance, rural settlements, villages, rural districts; as well as individuals and legal entities, rendering of the state services in accordance with the legislation of the Republic of Kazakhstan;

**The Law of the Republic of Kazakhstan on Informatization**

10) authorized body in the field of informatization (hereinafter - authorized body) - central executive body exercising management and intersectoral coordination in the field of informatization and "electronic government";

26) information and communication service - a service or a set of services for property hiring (leasing) and/or placing of computing resources, providing software, software products, service software products and technical means for use, including communication services, which help to provide these services;

63) "electronic government" - a system of information interaction of state bodies among themselves and with individuals and legal entities, based on automation and optimization of state functions as well as designed to provide services in electronic form;

64) objects of informatization of "electronic government" - state electronic information resources, software of state agencies and information and communication infrastructure of "electronic government", including non-state information systems integrated with information systems of state agencies or designed for the formation of state electronic information resources;

**ii) The Law of the Republic of Kazakhstan on Personal Data and their Protection**

2. Personal data is stored by the owner and/or the operator, as well as by a third party, in the database, which is stored in the territory of the Republic of Kazakhstan.

The term of storage of personal data shall be determined by the date of

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	achievement of the purposes of their collection and processing, unless otherwise provided by the legislation of the Republic of Kazakhstan.
<b>Chapter II – Measures to be taken at the national level</b>	
<b>Section 1 – Substantive criminal law</b>	
<b>Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems</b>	
<p><b>Article 2 – Illegal access</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p><b>Article 205. Illegal access to information in the information system or information and communication network</b></p> <p>1. Intentional illegal access of information, protected by the Law, contained in the electronic media, to the information system or information and communication network, causing substantial infringement of rights and legal interests of citizens and organizations or interests of society or the state, protected by the Law, -</p> <p>shall be punished by the fine in the amount of up to one hundred and sixty monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred and sixty hours, or arrest for the term of up to forty days, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years or without it.</p> <p>2. The same action, committed in relation of critically important facilities of information and communication infrastructure, -</p> <p>shall be punished by the fine in the amount of up to two hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to two hundred hours, or arrest for the term of up to fifty days, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years or without it.</p> <p>3. The actions, provided by first or second parts of this Article, entailed grave consequences by negligence, -</p> <p>shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the</p>

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	term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.
<p><b>Article 3 – Illegal interception</b> Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p><b>Article 147. Violation of integrity of private life and the legislation of the Republic of Kazakhstan on personal data and their protection</b></p> <p>1. Non-observance of measures on protection of personal data by person, to whom an obligation to take such measures is imposed, if this action is caused substantial harm to the rights and legal interests of persons, - shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>2. Illegal collection of details on private life of person, constituting his/her private or family secret, without his/her consent or infliction of substantial harm to the rights and legal interests of person as the result of illegal collection and processing of other personal data, - shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to eight hundred hours, or restriction of liberty for the term of up to three years, or imprisonment for the same term.</p> <p>3. The actions, provided by first or second parts of this Article, committed by persons with the use of his/her official position or special technical means, intended for private obtaining of information, <b>or by illegal access to electronic information resources, information system or illegal information capturing, transferred by information and communication network</b>, or in order of deriving profits and advantages for himself/herself or for other persons or organizations, -</p>

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shall be punished by imprisonment for the term of up to five years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of two to five years of without it.

4. Dissemination of details on private life of person constituting his/her private or family secret, without his/her consent or infliction of substantial harm to the rights and legal interests of person as the result of illegal collection and/or processing of other personal data –

shall be punished by imprisonment for the term of up to five years.

5. Dissemination of details provided by the fourth part of this Article, in public speaking, publicly performed work, in mass media or with the use of information and communication networks –

shall be punished by imprisonment for the term of up to seven years

**Article 208. Misappropriation of information**

1. Intentional illegal copying or other misappropriation of information, protected by the Law, stored in the electronic media, contained in the information system or transferred through the information and communication network, if it brings substantial infringement of rights and legal interests of citizens or organizations or interests of society or state, protected by the Law, -

shall be punished by the fine in the amount of up to two hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred and eighty hours, or arrest for the term of up to fifty days, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years or without it.

2. The same action, committed:

1) in relation of critically important facilities of information and communication infrastructure;

2) by group of persons on previous concert, -

shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or community

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	<p>services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>3. The actions, provided by the first or second parts of this Article:</p> <p>1) committed by criminal group;</p> <p>2) leading to grave consequences,-</p> <p>shall be punished by imprisonment for the term of three to seven years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p>
<p><b>Article 4 – Data interference</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p><b>Article 206. Illegal destruction or modification of information</b></p> <p>1. Intentional illegal destruction or modification of information, protected by the Law, stored in the electronic media, contained in the information system or transferred through the information and communication network, as well as entry of misleading information into the information system, if it leads to substantial infringement of rights and legal interests of citizens or organizations or interests of society or state, protected by the Law,-</p> <p>shall be punished by the fine in the amount of up to two hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to two hundred hours, or arrest for the term of up to fifty days, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years or without it.</p> <p>2.The same actions, committed:</p> <p>1) in relation of critically important facilities of information and communication infrastructure;</p>

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	<p>2) by group of persons on previous concert,-</p> <p>shall be punished by the fine in the amount of up to two thousand monthly calculation indices of correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>3. The actions, provided by the first or second parts of this Article:</p> <p>1) committed by criminal group;</p> <p>2) leading to grave consequences,-</p> <p>shall be punished by imprisonment for the term of three to seven years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p>
<p><b>Article 5 – System interference</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p><b>Article 207. Disfunction of information system or information and communication network</b></p> <p>1. Intentional action (omission), aimed at disfunction of information system or information and communication network, -</p> <p>shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years or without it.</p> <p>2. The same actions, committed:</p>



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	<p>1) in relation of critically important facilities of information and communication infrastructure;</p> <p>2) by group of persons on previous concert,-</p> <p>shall be punished by the fine in the amount of up to four thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to one thousand hours, or restriction of liberty for the term of up to four years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>3. The actions, provided by the first or second parts of this Article:</p> <p>1) committed by criminal group;</p> <p>2) leading to grave consequences,-</p> <p>shall be punished by imprisonment for the term of five to ten years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to five years or without it.</p>
<p><b>Article 6 – Misuse of devices</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:</p> <p>a the production, sale, procurement for use, import, distribution or otherwise making available of:</p> <p>i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;</p> <p>ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and</p> <p>b the possession of an item referred to in paragraphs a.i or ii above,</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p><b>Article 210. Creation, use or distribution of malicious computer programs and software products</b></p> <p>1. Creation of computer programs, software products or introduction of modifications in the existing program or software product for illegal destruction, blocking, modification, copying, use of information, stored in the electronic media, contained in the information system or transferred through the information and communication network, disfunction of computer, subscriber device, computer program, information system or information and communication network, as well as intentional use and/or distribution of such program or software product –</p>

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<p>with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.</p> <p>2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.</p> <p>3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.</p>	<p>shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to eight hundred hours, or restriction of liberty for the term of up to three years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>2. The same actions, committed:</p> <ol style="list-style-type: none"> <li>1) by group of persons on previous concert;</li> <li>2) by person with use of his/her official position;</li> <li>3) in relation of critically important facilities of information and communication infrastructure, -</li> </ol> <p>shall be punished by restriction of liberty for the term of three to seven years or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>3. The actions, provided by the first or second parts of this Article:</p> <ol style="list-style-type: none"> <li>1) committed by criminal group;</li> <li>2) leading to grave consequences, -</li> </ol> <p>shall be punished by imprisonment for the term of five to ten years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to five years or without it.</p>
<b>Title 2 – Computer-related offences</b>	
<p><b>Article 7 – Computer-related forgery</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p>Article 206. Illegal destruction <b>or modification of information</b></p>

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suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.

1. Intentional illegal destruction or modification of information, protected by the Law, stored in the electronic media, contained in the information system or transferred through the information and communication network, **as well as entry of misleading information into the information system**, if it leads to substantial infringement of rights and legal interests of citizens or organizations or interests of society or state, protected by the Law,-

shall be punished by the fine in the amount of up to two hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to two hundred hours, or arrest for the term of up to fifty days, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years or without it.

2.The same actions, committed:

- 1) in relation of critically important facilities of information and communication infrastructure;
- 2) by group of persons on previous concert, -

shall be punished by the fine in the amount of up to two thousand monthly calculation indices of correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.

3. The actions, provided by the first or second parts of this Article:

- 1) committed by criminal group;
- 2) leading to grave consequences, -

shall be punished by imprisonment for the term of three to seven years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.

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Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:

- a any input, alteration, deletion or suppression of computer data;
- b any interference with the functioning of a computer system,

with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.

**Penal Code of the Republic of Kazakhstan****Article 188. Theft**

1. Theft, in other words covert embezzlement of other property, - shall be punished by the fine in the amount of one thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to eight hundred hours, or restriction of liberty for the term of up to three years, or imprisonment for the same term, with confiscation of property or without it.

**2. Theft, committed:**

- 1) by group of persons on previous concert;
- 2) repeatedly;
- 3) with illegal entering in the dwelling, official or industrial premise, storage building or means of transport;

**4) by illegal access to the information system or change of information, transferred through information and communication networks, –**

shall be punished by the fine in the amount of up to three thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to one thousand and two hundred hours, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with confiscation of property.

3. Theft, committed on a large scale, - shall be punished by restriction of liberty for the term of three to seven years or imprisonment with confiscation of property.

**4. Theft, committed:**

- 1) by criminal group;
- 2) from oil and gas pipeline;
- 3) on a very large scale, - shall be punished by imprisonment for the term of five to ten years with confiscation of property.

**Article 190. Fraud**

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1. Fraud, in other words theft of another's property or acquisition of right to another's property by false pretenses or abuse of trust, -

shall be punished by the fine in the amount of up to one thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with confiscation of property.

**2. Fraud, committed:**

- 1) by group of persons on previous concert;
- 2) repeatedly;
- 3) by person with the use of his/her official position;

**4) by false pretenses or abuse of trust of the user of information system;**

5) in the scope of the state procurements, -

shall be punished by the fine in the amount of up to four thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to one thousand hours, or restriction of liberty for the term of up to four years, or imprisonment for the same term, with confiscation of property, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.

**3. Fraud, committed:**

- 1) on a large scale;
- 2) by person authorized to perform state functions, or person equated to him/her, or civil servant, or person holding responsible state position, if it

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involves the use of his/her official position;

3) in relation of two or more persons, -

shall be punished by restriction of liberty for the term of three to seven years or imprisonment for the same term with confiscation of property, and in the cases, provided for by paragraph 2), - by a fine from tenfold to twentyfold amount of stolen property or imprisonment for the term of three to seven years, with confiscation of property, with permanent deprivation of the right to hold certain positions or engage in certain activities.

4. The actions, provided for by the first, second or third parts of this Article, if they are committed:

1) by criminal group;

2) on a very large scale, -

shall be punished by imprisonment for the term of five to ten years with confiscation of property, with permanent deprivation of the right to hold certain positions or engage in certain activities or without it.

**Article 195. Infliction of property damage by false pretenses or abuse of trust**

1. Infliction of property damage to the possessor or other owner of property by false pretenses or abuse of trust in the absence of signs of theft -

shall be punished by the fine in the amount of up to one hundred and sixty monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred and sixty hours, or arrest for the term of up to forty days.

2. The same action, committed repeatedly, -

shall be punished by the fine in the amount of up to two hundred monthly calculation indices or correctional works in the same amount, or community services for the term of up to two hundred hours, or arrest for the term of up to

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	<p>fifty days.</p> <p>3. The actions, provided for by the first or second parts of this Article, committed:</p> <p>1) by group of persons on previous concert;</p> <p>2) by person with the use of his/her official position;</p> <p>3) <b>by illegal access to the information system or change of information, transferred through information and communication networks –</b></p> <p>shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy certain positions or to engage in a certain activity for the term of up to three years or without it.</p> <p>4. The actions, provided for by the first, second or third parts of this Article, if they:</p> <p>1) are committed by criminal group;</p> <p>2) inflicted heavy damage,-</p> <p>shall be punished by restriction of liberty for the term of up to five years or imprisonment for the same term with confiscation of property or without it, with deprivation of the right to occupy certain positions or to engage in a certain activity for the term of up to three years or without it.</p>
<b>Title 3 – Content-related offences</b>	
<p><b>Article 9 – Offences related to child pornography</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:</p> <p>a producing child pornography for the purpose of its distribution through a computer system;</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p>Article 212. <b>Provision of services for allocation of internet resources, pursuing illegal purposes</b></p>

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<p>b offering or making available child pornography through a computer system;</p> <p>c distributing or transmitting child pornography through a computer system;</p> <p>d procuring child pornography through a computer system for oneself or for another person;</p> <p>e possessing child pornography in a computer system or on a computer-data storage medium.</p> <p>2 For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:</p> <p>a a minor engaged in sexually explicit conduct;</p> <p>b a person appearing to be a minor engaged in sexually explicit conduct;</p> <p>c realistic images representing a minor engaged in sexually explicit conduct</p> <p>3 For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.</p> <p>4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.</p>	<p>1. Intentionally illegal rendering of services on provision of hardware and software facilities, operating in open information and communication network, for posting of internet resources, pursuing illegal purposes, - shall be punished by the fine in the amount of up to two thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to six hundred hours, or restriction of liberty for the term of up to two years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to two years.</p> <p>2. The same action, committed by group of persons on previous concert or criminal group, - shall be punished by imprisonment for the term of three to seven years with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years.</p> <p><b>Article 312. Production and trafficking of materials or items with pornographic images of the minors or their involvement in the entertainment events of pornographic nature</b></p> <p>1. Production, storage or transfer across the State border of the Republic of Kazakhstan for the purposes of distribution, public demonstration or advertisement, or distribution, public demonstration or advertisement of materials or items with pornographic images of the minors - shall be punished by imprisonment for the term of three to six years with confiscation of property.</p> <p>2. Involvement of the minors as executors for participation in the entertainment events of pornographic nature by person of the age of eighteen or above, - shall be punished by imprisonment for the term of five to seven years with confiscation of property.</p> <p>3. The actions, provided for by the first or second parts of this Article,</p>



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	<p>committed:</p> <ol style="list-style-type: none"> <li>1) by parent, teacher or other person, to whom the obligations of upbringing of the minor are imposed by the Law of the Republic of Kazakhstan;</li> <li>2) knowingly in relation to the minor;</li> <li>3) by group of persons on previous concert or by criminal group, -</li> </ol> <p>shall be punished by imprisonment for the term of five to eight years with confiscation of property, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of ten years, and in the cases, provided by paragraphs 1) and 2), with deprivation of the right to occupy determined positions or to engage in a determined activity for life.</p> <p><b>Article 80. Criminal responsibility of minors</b></p> <p>1. The minors to whom an action of this section is applied shall be recognized as persons who reached the age of fourteen, but did not reach the age of eighteen at the moment of commission of criminal infraction.</p>
<b>Title 4 – Offences related to infringements of copyright and related rights</b>	
<p><b>Article 10 – Offences related to infringements of copyright and related rights</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p><b>Article 198. Infringement of copyright and/or related rights</b></p> <ol style="list-style-type: none"> <li>1. Illegal use of objects of copyright and/or related rights, as well as acquisition, storage, transfer or production of pirated copies of objects of copyright and/or related rights in order of sale or appropriation of authorship or compulsion to co-authorship –shall be punished by the fine in the amount of up to eighty monthly calculation indices or correction works in the same amount, or community services for the term of up to eighty hours.</li> <li>2. The same actions, if they are committed by a significant amount or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly, -</li> </ol>

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Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

shall be punished by the fine in the amount of up to one hundred and sixty monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred and sixty hours, or arrest for the term of up to forty days.

3. The actions, provided by the second part of this Article, committed:

- 1) by group of persons on previous concert;
- 2) on a large scale or inflicted heavy damage;
- 3) by person with the use of his/her official position, -

shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to one thousand and two hundred hours, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.

4. The actions, provided for by the second or third parts of this Article, committed by criminal group, -

shall be punished by restriction of liberty for the term of three to six years or imprisonment for the same term.

**Article 199. Infringement of rights to invention, utility models, industrial designs, selection achievements or topologies of integrated microcircuits**

1. Disclosure of details before official publication without the consent of author or applicant of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit, as well as appropriation of authorship or compulsion to co-authorship or illegal use of invention, utility model, industrial design, selection achievement or topology of integrated microcircuit, -

shall be punished by the fine in the amount of up to eighty monthly calculation

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	<p>indices or correctional works in the same amount, or community services for the term of up to eighty hours.</p> <p>2. The same actions, if they are committed in a large scale or inflicted significant damage or substantial harm to the rights or legal interests of author or other possessor of right, or committed repeatedly, -</p> <p>shall be punished by the fine in the amount of up to one hundred and sixty monthly calculation indices or correctional works in the same amount, or community services for the term of up to one hundred and sixty hours, or arrest for the term of up to forty days.</p> <p>3. The actions, provided for by the second part of this Article, committed:</p> <p>1) by group of persons on previous concert;</p> <p>2) on a large scale or inflicted heavy damage;</p> <p>3) by person with the use of his/her official position, -</p> <p>shall be punished by the fine in the amount of up to five thousand monthly calculation indices or correctional works in the same amount, or community services for the term of up to one thousand and two hundred hours, or restriction of liberty for the term of up to five years, or imprisonment for the same term, with deprivation of the right to occupy determined positions or to engage in a determined activity for the term of up to three years or without it.</p> <p>4. The actions, provided for by the second or third parts of this Article, committed by criminal group, -</p> <p>shall be punished by restriction of liberty for the term of three to six years or imprisonment for the same term.</p>
<b>Title 5 – Ancillary liability and sanctions</b>	
<b>Article 11 – Attempt and aiding or abetting</b>	<b>Penal Code of the Republic of Kazakhstan</b>

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1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.

3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.

**Article 24. Preparation for crime and attempt to commit crime**

1. Preparation for crime shall be recognized as committed with direct intent of finding, production or adaptation of means or crime instruments, finding of companions in crime, conspiracy on commission of a crime or other intentional creation of conditions for commission of a crime, if upon that a crime was not carried out for circumstances beyond the reasonable control of person.

2. A criminal responsibility occurs for preparation of grave or especially grave crime, as well as for preparation of a terrorist infraction.

3. An attempt to commit crime shall be recognized as an action (omission), committed with direct intent, immediately directed to commission a crime, if upon that a crime was not carried out for circumstances beyond the control of person.

4. A criminal responsibility occurs for attempt to commit crime of average gravity, grave or especially grave crime, as well as for attempt to the crime of terrorism.

5. A criminal responsibility for preparation for crime and attempt to commit crime occurs under the same Article of this Code that is for completed crime, with reference to the relevant part of this Article.

**Article 27. The concept of complicity in criminal infraction**

A complicity in criminal infraction shall be recognized as an intentional joint participation of two or more persons in commission of intentional criminal infraction.

**Article 28. Types of accomplices of a criminal infraction**

1. Accomplices of criminal infraction along with the perpetrator shall be recognized as organizer, instigator and accomplice.

2. Perpetrator shall be recognized as a person, immediately committed a criminal infraction or immediately participated in its commission jointly with other persons (joint participants), as well as a person, committed a criminal

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infraction by use of other persons, not subject to the criminal responsibility by virtue of age, insanity or other circumstances, provided by this Code, and equally by use of persons, committed an action by negligence.

3. Organizer shall be recognized as a person, organized commission of a criminal infraction or managed its execution, and a person, created the criminal group or managed it.

4. Instigator shall be a person who incited another person to commit a criminal infraction by persuasion, bribery, threat or in another way.

5. Accomplice shall be recognized as a person, assisted in the commission of a criminal infraction with advices, instructions, provision of information, tools or means of commission of this action or removal of obstacles to its commission, as well as a person, previously promised to conceal the perpetrator, tools or other means of commission of criminal infraction, traces of this action or items obtained by illegal way, as well as a person, previously promised to acquire or sell such items.

**Article 29. Responsibility of accomplices of a criminal responsibility**

1. A criminal responsibility of accomplices shall be determined by the nature and extent of participation of each of them in commission of criminal infraction.

2. Joint participants are responsible for the same article of this Code for the joint commission of a criminal infraction by them without reference to Article 28 of this Code.

3. Responsibility of organizer, instigator and accomplice occurs according to the Article, providing a punishment for committed action, with reference to Article 28 of this Code, except for the cases, when they simultaneously were joint participants.

4. If the perpetrator has not completed the crime due to circumstances beyond his/her control, other participants shall bear responsibility for complicity in preparation for crime or in attempt to commit crime. Also a person who, for circumstances beyond his/her control failed to manage others to commit this

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	<p>action shall bear a criminal responsibility for preparation for crime.</p> <p>5. A person, not being a subject of criminal infraction, specially specified in the relevant Article of the Special part of this Code, participated in commission of action, provided by this Article shall bear a criminal responsibility for this criminal infraction as his/her organizer, instigator or accomplice.</p> <p><b>Article 56. Imposition of punishment for uncompleted crime</b></p> <p>1. Consequences by virtue of which a crime was not completed shall be considered upon imposition of punishment for uncompleted crime.</p> <p>2. The term or extent of punishment for preparation for crime may not exceed a half of maximum term or extent of the most severe type of punishment, provided by the relevant Article of the Special part of this Code for completed crime.</p> <p>3. The term or extent of punishment for attempt to commit crime may not exceed three-quarter of maximum term or extent of the most severe type of punishment, provided by the relevant Article of the Special part of this Code for completed crime.</p> <p>4. The death penalty and life imprisonment for preparing for a crime and attempted crime shall not be appointed.</p>
<p><b>Article 12 – Corporate liability</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:</p> <ul style="list-style-type: none"> <li>a a power of representation of the legal person;</li> <li>b an authority to take decisions on behalf of the legal person;</li> <li>c an authority to exercise control within the legal person.</li> </ul> <p>2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the</p>	<p>Criminal responsibility of legal entities is not compliant with the principles of justice provided by Article 77 of the Constitution, as well as the destabilization threats for economic activity in the country and increased criminal pressure on business creating prerequisites for raiding, etc.</p> <p>Liability of a legal entity occurs when criminal consequences are directly related to the results of the corporate activity, non-compliance with technical requirements, licensing legislation, etc. In our case, the use of legal entities for committing budget theft, as well as various kinds of frauds is related to the intent of an official and not related to the activity of the legal entity.</p> <p>In addition, the responsibility of legal entities is provided by administrative and civil legislation.</p>

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<p>benefit of that legal person by a natural person acting under its authority.            3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.            4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	
<p><b>Article 13 – Sanctions and measures</b>            1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.            2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p>	<p><b>Penal Code of the Republic of Kazakhstan</b></p> <p>When establishing responsibility for the crimes in the Penal Code, the purposes of punishment were taken into account. Besides, the provisions of the Constitution of the Republic of Kazakhstan on the equality of all before the law and the court must be taken in account by the law enforcer. And no one can be found guilty of committing a crime except by a court’s sentence.</p> <p>According to Article 38 (1) of the Penal Code, punishment is a measure of state coercion imposed by a court’s sentence.</p> <p>The concept of punishment as a measure of state coercion is a way of influencing a convict in strict accordance with the norms of the criminal law. The state nature of coercive measures serves as a guarantee that the punishment will be legal, justified with the materials of the case, fair and will testify to the inevitability of responsibility for the crime committed. Only court can impose a punishment for a crime after the person’s guilt has been established during the trial. A convicted person may be restricted in his/her freedom, labor and other rights provided for by the Constitution of the Republic of Kazakhstan.</p> <p>Since criminal punishment is a state response to crime, it must pursue certain goals. According to Article 38 (2) of the Penal Code of the Republic of Kazakhstan, it ensures, first of all, restoration of social justice, correction of the convicted, prevention of new crimes, both by the convicted and by other persons.</p> <p>Punishment is not intended to cause physical suffering or degrading treatment.</p>

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Restoration of social justice through the application of punishment to a convicted person is carried out in relation to the society as a whole and to the victim in particular. It is restored in the form of partial compensation to the state of damage by the fine, confiscation of property, correctional work and other types of punishment. In relation to the victim, social justice is restored by protecting his/her rights and freedoms in court, compensation for the caused damage, and punishment of the convicted person in proportion to the suffering that the victim has undergone due to the crime committed.

Correction of the convict corresponds to the purpose of the special warning. It represents such positive changes in the behavior of the convict, when he/she does not commit new crimes. The purpose of the correction is not aimed at achieving such a result as his/her re-education.

The prevention of a crime by other persons is addressed by the legislator to those who have not committed a crime, to whom the punishment has not been applied, and is a demonstration of the threat of inevitability of punishment.

The state, defining the concept and goals of punishment, establishes that the execution of punishment should not cause the convicted person to suffer or degrade his/her dignity. This is a manifestation of the humanism of the criminal policy of the state, which proclaimed a person, his/her life, rights and freedoms as supreme values.

The list of types of penalties in the Penal Code is exhaustive and is not subject to broad interpretation. The legislator has built a list of types of punishment based on the transition from a milder to the most severe punishment. This approach of the legislator directs the courts to the choice of fair punishment.

These types of punishment should be applied in such way as to allow the court to use effectively various measures of influence on the convict in strict jurisdiction among themselves on the basis of the law, taking into account the experience of judicial practice, public justice and scientific advice, rationally and whenever possible. The decision of the Plenum of the Supreme Court of the Republic of Kazakhstan on the observance of the law by the courts in imposing



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criminal punishment of April 30, 1999, states that the correct combination of primary and additional punishment contributes to the consistent implementation of the principle of its individualization, more successful achievement of the goal of punishment, thus in each case of sentencing courts should discuss the need for additional punishments, especially to those found guilty of grave, especially grave, and corruption crimes.

Basic punishments are applied independently and cannot be joined to the other punishments.

Additional punishments are not provided independently, but only in combination with the main ones. Additional penalties are provided within the limits established by the article of the law, according to which the defendant is found guilty. If the additional punishment is changed in accordance with article 41 or 50 of the Penal Code, the term may not exceed the limits established by law for this type of punishment.

When the sanction of a criminal law provides for applying or not applying additional punishment, the courts are obliged to discuss the issue of its imposition and indicate the reasons for the decision. If the additional punishment is not used it shall not be required in the operative part of the sentence. When convicting a guilty person under articles of the criminal law, according to which the additional punishment is mandatory, the court may not apply it only if there are conditions provided in Article 55 of the Penal Code, with the obligatory indication in the sentence of the reasons for the decision and with reference to Article 55 of the Penal Code in the operative part of the sentence.

Deprivation of a special, military or honorable title, class rank, diplomatic rank, qualification class and state awards may be assigned as an additional punishment in cases where it is not provided in the Special part of the Penal Code for which the crime was qualified. In this case, the decision of an additional punishment should contain a reference in the operative part of the sentence to Article 41 or to Article 50 of the Penal Code. Convicting for a grave

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or especially grave crime and simultaneously imposing a sentence, the court must discuss the issue of making, on the basis of Article 50 (2) of the Penal Code, a submission to the President of the Republic of Kazakhstan on depriving the convicted person of state awards or special, military or honorary title, class rank, diplomatic rank, qualification class awarded by the President of the Republic of Kazakhstan.

Confiscation of property as an additional penalty can be imposed only if it is provided by the sanction of an article of the Penal Code, according to which the defendant is found guilty. The court may also impose other types of additional penalties when they are not listed in the sanctions of the article or are basic, but not assigned to the defendant in this capacity.

A fine, deprivation of the right to occupy a certain position or engage in certain activities and community services by the court can be used as both basic and additional types of punishment.

**Article 10. The concept of crime and criminal offence**

1. A criminal infractions shall be divided into crimes and criminal offences depending on the level of social danger and penalty.
2. A crime shall be recognized as committed socially dangerous guilty act (action or omission), prohibited by this Code and punishable under it in the form of a fine, correctional works, community services, restriction of liberty, imprisonment or the death penalty.
3. Criminal offence shall be recognized as committed guilty act (action or omission), not presenting a great social danger, that causes insignificant damage or threatens to cause harm to the person, organization, society or the state, which is punishable in the form of a fine, correctional works, community services, arrest.
4. Action or omission shall not be a criminal infraction, although formally containing the signs of any act, provided for by the Special Part of this Code, but

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by virtue of insignificance not representing social danger.

**Article 11. Categories of crimes**

1. The crimes shall be divided into crimes of little gravity, crimes of average gravity, grave crime and especially grave crimes depending on the nature and level of social danger.

2. Crimes of little gravity shall be recognized as intentional acts, for commission of which the maximum punishment, provided by this Code, does not exceed two years of imprisonment, as well as reckless acts, for commission of which this Code provides the maximum punishment, not exceeding five years of imprisonment.

3. Crimes of average gravity shall be recognized as intentional acts, for commission of which the maximum punishment, provided by this Code, does not exceed five years of imprisonment, as well as reckless acts, punishable in the form of imprisonment for the term of over five years.

4. Grave crimes shall be recognized as intentional acts, for commission of which this Code provides the maximum punishment, not exceeding twelve years of imprisonment.

5. Especially grave crimes shall be recognized as intentional acts, for commission of which this Code provides a punishment in the form of imprisonment for the term of over twelve years, life imprisonment or death penalty.

**Article 39. Concept and purposes of punishment**

1. The punishment is a measure of the state coercion, imposed by court verdict. The punishment shall be applied to the person, recognized as a guilty in commission of criminal infraction and shall have the form of deprivation or restriction of rights and freedoms of such person.

2. The punishment shall be applied in order of rectification of social justice, as well as correction of convicted person and prevention of commission of new criminal infractions both by the convict and other persons. Punishment is not

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intended to cause physical suffering or to degrade human dignity.

Article 40. **Types of punishment**

1. The following basic punishments may be applied to the person found guilty in commission of criminal offence:

- 1) fine;
- 2) correctional works;
- 3) community services;
- 4) arrest.

2. The following basic punishments may be applied to the person found guilty in commission of crime:

- 1) fine;
- 2) correctional works;
- 2-1) community services;
- 3) restriction of liberty;
- 4) imprisonment;
- 5) death penalty.

3. The following additional punishments along with the basic punishment may be applied to the person found guilty in commission of criminal infraction:

- 1) confiscation of property;
- 2) deprivation of special, military or honorary rank, class rank, diplomatic rank,

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	<p>qualification class and state awards;</p> <p>3) deprivation of right to hold certain position or engage in certain activity;</p> <p>4) deportation of a foreigner or stateless person from the Republic of Kazakhstan.</p>
<b>Section 2 – Procedural law</b>	
<p><b>Article 14 – Scope of procedural provisions</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.</p> <p>2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:</p> <ul style="list-style-type: none"> <li>a the criminal offences established in accordance with Articles 2 through 11 of this Convention;</li> <li>b other criminal offences committed by means of a computer system; and</li> <li>c the collection of evidence in electronic form of a criminal offence.</li> </ul> <p>3 a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.</p> <p>b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:</p> <ul style="list-style-type: none"> <li>i is being operated for the benefit of a closed group of users, and</li> <li>ii does not employ public communications networks and is not connected with another computer system, whether public or private,</li> </ul>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p>Article 7. <b>Clarification of some definitions, used in this Code</b></p> <p>23) <b>bodies (officials) of criminal prosecution</b> - procurator (state prosecutor), investigator, the body of inquiry, interrogating officer;</p> <p><i><b>For reference:</b> Law enforcement in the field of criminal proceedings, carried out in the procedural form by the bodies (officials) of criminal prosecution, ensures the implementation of the tasks and objectives of the criminal process. Unlike other bodies (officials) of criminal prosecution, the prosecutor has powers that other criminal prosecution bodies do not have. He/she prosecutes at all stages of the criminal process. Of course, the scope of the procedural powers of the prosecutor increases his/her constitutional duty to represent the interests of the state in court. Along with prosecutors, the Criminal Procedure Code engages in criminal prosecution the investigators - officials authorized to carry out pre-trial investigation in a criminal case within their competence, they are: investigators of internal affairs bodies, national security agencies, anti-corruption service, economic investigation service. In the course of criminal prosecution an important role is occupied by the heads of the investigation departments, the heads of the inquiry body, as the heads of investigations of the criminal case, as well as the procedural prosecutors who supervise the criminal case since the start of the investigation and participate as the state prosecutor in the first instance court.</i></p> <p>26) <b>body, conducting the criminal proceedings</b> - court, as well as in the pre-trial investigation - prosecutor, investigator, the body of inquiry, interrogating officer;</p> <p><i><b>For reference:</b> Criminal procedure activity is carried out by the special authorized state bodies and officials and is a complex, sequential activity, which takes place in several stages. No one else in the state is allowed to apply the norms of criminal procedural law, the special legal form of combating crime and ensuring criminal justice. Legal relations</i></p>

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<p>that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21</p>	<p><i>that take place in the course of criminal proceedings are, in essence, relations of authority, have an authoritative nature, since are carried out with the help of the criminal prosecution authorities and the court, without which criminal procedure is impossible. Therefore, these bodies and officials are specified by the Criminal Procedure Code as the bodies conducting the criminal proceedings.</i></p>
<p><b>Article 15 – Conditions and safeguards</b></p> <p>1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.</p> <p>2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, <i>inter alia</i>, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.</p> <p>3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	<p><b>Constitution of the Republic of Kazakhstan</b></p> <p>Article 1</p> <p>1. The Republic of Kazakhstan proclaims itself as a democratic, secular, legal and social state whose highest values are an individual, his/her life, rights and freedoms.</p> <p>2. The fundamental principles of the activity of the Republic are public concord and political stability; economic development for the benefit of all people; Kazakh patriotism and resolution of the most important issues of the state by democratic methods including voting at the republican referendum or in the Parliament.</p> <p>Article 39</p> <p>1. Rights and freedoms of an individual and citizen may be limited only by laws and only to the extent necessary for protection of the constitutional system, public order, human rights and freedoms, health and morality of the population.</p>
<p><b>Article 16 – Expedited preservation of stored computer data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.</p>	<p><b>The Law of the Republic of of Kazakhstan on Communications</b></p> <p>Article 15. <b>Interaction of telecom operators, the operator of the centralized database of subscriber numbers with the bodies engaged in operational investigative activities</b></p> <p>2) to collect and store service information in the order determined by the</p>

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<p>2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person's possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Government of the Republic of Kazakhstan.</p> <p>3) to provide the bodies carrying out operational-search activities on communication networks, access to the service information, as well as take measures to prevent disclosure of forms and methods of conducting these activities</p> <p>4) to provide for their own or borrowed funds the functions of their telecommunications equipment for the technical conduct of operational-search activities in accordance with the requirements for networks and communication facilities and procedures determined by the Government of the Republic of Kazakhstan</p> <p><b>Resolution 246 of the Government of the Republic of Kazakhstan Rules for Communication Providers to Collect and Store Service Information about Subscribers of March 30, 2010</b></p> <p>Chapter 2. Procedure of collecting and storing service information about subscribers by communication providers.</p> <p>5. Provider shall collect and store service information about subscribers during two years, after which the information shall be destroyed. Provider shall be liable under the laws of the Republic of Kazakhstan for violation of the obligation to collect and store service information about subscribers.</p> <p>6. Provider shall continuously collect service information about the services provided to subscriber from means of telecommunication (means of communications) in accordance with these Rules and shall store it in the Operator's system (hereinafter referred to as the System).</p>
<p><b>Article 17 – Expedited preservation and partial disclosure of traffic data</b></p> <p>1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:</p> <p>a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and</p>	<p><b>The Law of the Republic of of Kazakhstan On Communications</b></p> <p><b>Article 15. Interaction of communication providers, operator of the centralized subscriber number database, operator of the database of identification codes of subscriber mobile communication devices with authorities carrying out intelligence and counterintelligence operations</b></p> <p>1. Communication providers and/or communication network owners</p>

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<p>b ensure the expeditious disclosure to the Party's competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>carrying out the activity in the territory of the Republic of Kazakhstan shall be obliged to:</p> <ol style="list-style-type: none"> <li>1) provide the authorities carrying out intelligence, counterintelligence operations on communication networks, with organizational and technical capabilities to conduct intelligence, counterintelligence operations on all communication networks, as well as to take measures to prevent disclosure of forms and methods of conducting these operations;</li> <li>3) provide the authorities carrying out intelligence, counterintelligence operations on communication networks, access to service information, as well as to take measures to prevent disclosure of forms and methods of conducting these operations ;</li> <li>4) to ensure, for their own expense or using borrowed funds, the functions of their telecommunications equipment for the technical conduct of intelligence, counter-intelligence operations in accordance with the requirements for networks and communication facilities and procedures determined by the Government of the Republic of Kazakhstan;</li> <li>5) to provide communication services, as well as the distribution of subscriber numbers by the representative of a communication provider only when a relevant contract for the provision of communication services is concluded in accordance with the rules for the provision of communication services.</li> </ol> <p>3. Communication providers, operator of the centralized subscriber number database and operator of the database of identification codes of subscriber mobile communication devices must provide free access to information contained in subscriber number databases and databases of identification codes of subscriber mobile communication devices to the authorities carrying out counter-intelligence and intelligence operations on communication networks in accordance with this Law and the Laws of the Republic of Kazakhstan On Intelligence Operations, On Counter-intelligence Operations, On Personal Data and Their Protection.</p>
<p><b>Article 18 – Production order</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:</p> <ol style="list-style-type: none"> <li>a a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and</li> <li>b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service</li> </ol>	<p><b>The Law of the Republic of of Kazakhstan On Communications</b></p> <p><b>Article 15. Interaction of communication providers, operator of the centralized subscriber number database, operator of the database of identification codes of subscriber mobile communication devices with authorities carrying out intelligence, counterintelligence operations</b></p> <ol style="list-style-type: none"> <li>1. Communication providers and/or communication network owners</li> </ol>



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<p>provider's possession or control.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p> <p>3 For the purpose of this article, the term "subscriber information" means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:</p> <ul style="list-style-type: none"> <li>a the type of communication service used, the technical provisions taken thereto and the period of service;</li> <li>b the subscriber's identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement;</li> <li>c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement.</li> </ul>	<p>carrying out the activity in the territory of the Republic of Kazakhstan shall be obliged to:</p> <ol style="list-style-type: none"> <li>1) provide the authorities carrying out intelligence, counterintelligence operations on communication networks, with organizational and technical capabilities to conduct intelligence, counterintelligence operations on all communication networks, as well as to take measures to prevent disclosure of forms and methods of conducting these operations;</li> <li>2) collect and store service information in accordance with the procedure determined by the Government of the Republic of Kazakhstan. Service information about subscribers shall be stored exclusively in the territory of the Republic of Kazakhstan. The transfer of service information about subscribers outside the Republic of Kazakhstan, except for the provision of communication services to subscribers of the Republic of Kazakhstan abroad, shall be prohibited</li> </ol>
<p><b>Article 19 – Search and seizure of stored computer data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:</p> <ul style="list-style-type: none"> <li>a a computer system or part of it and computer data stored therein; and</li> <li>b a computer-data storage medium in which computer data may be stored</li> </ul> <p style="padding-left: 40px;">in its territory.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 252. Search</b></p> <ol style="list-style-type: none"> <li>1. The search is performed for the purpose of detection and withdrawal of objects or documents, relevant to the case, including the detection of the property to be seized.</li> <li>2. The grounds for performing search are the existence of sufficient evidence to believe that these objects or documents may be in a particular premise or any other place or at a particular person.</li> <li>3. The search can be performed to detect the wanted person and a human corpse.</li> </ol> <p><b>Article 253. Seizure</b></p> <p>The seizure is performed with the purpose of withdrawal of certain objects and documents relevant to the case, and if it is known exactly, where they are and who ha them, as well as the property subject to confiscation.</p> <p><b>Article 254. Procedure of search and seizure</b></p> <ol style="list-style-type: none"> <li>1. Search and seizure shall be carried out by the person conducting the pre-trial investigation, under the reasoned decision. The decision on the search, as well</li> </ol>

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a seize or similarly secure a computer system or part of it or a computer-data storage medium;

b make and retain a copy of those computer data;

c maintain the integrity of the relevant stored computer data;

d render inaccessible or remove those computer data in the accessed computer system.

4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.

5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

as the seizure of documents containing state secrets or other secret protected by law, must be sanctioned by the investigating judge.

Sanctioning of the decision on the search and seizure shall be carried out in the manner provided in parts 13-1, 13-3, and 13-4 of Article 220 of this Code.

2. The seizure in a premise against the will of persons residing in it shall be carried out in accordance with the rules of parts 13, 13-1, 13-3 and 13-4 of Article 220 of this Code.

3. In exceptional cases, when there is a real fear that the person wanted and/or subject to be seized due to the delay of its discovery may be lost, damaged or used for criminal purposes, or the wanted person can escape, the search and seizure may be carried out without the sanction of the investigating judge in the manner prescribed by part fourteen of Article 220 of this Code.

4. The search is conducted with the participation of identifying witnesses, and if necessary - with the participation of a specialist and an interpreter. The seizure is conducted with the mandatory application of scientific and technical means of progress and results, if necessary, a specialist and an interpreter may be involved in it.

5. The search or seizure in the residential premises, the premises of the organizations are carried out in the presence of the persons, mentioned in the fifteenth and sixteenth parts of Article 220 of this Code.

6. The search and seizure in the premises, occupied by diplomatic missions, as well as inhabited by members of diplomatic missions and their families are carried out in compliance with the requirements established by the seventeenth part of Article 220 of this Code.

7. Prior to the beginning of the search or seizure, the person conducting the pre-trial investigation shall submit the decision on their production.

8. When starting the search, the person conducting the pre-trial investigation, offers to give voluntarily the objects and documents to be seized that may be relevant to the case. If they are given voluntarily and there is no reason to fear of concealment of the objects and documents to be seized, the person conducting the pre-trial investigation, shall have the right not to perform further searches.

The voluntariness of the issue by the person of the objects and documents, for the detection of which the search can be conducted, must be indicated in the search protocol.

9. When conducting a search, a locked room and storage can be opened, if the owner refuses to open them voluntarily. In this case, it should not be allowed

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	<p>the unnecessary damage to locks of doors and other items.</p> <p>10. When conducting the seizure, the person conducting the pre-trial investigation, offers to give objects and documents to be seized, and in case of refusal he (she) seizes it by force.</p> <p>11. The person, conducting the pre-trial investigation must take measures to ensure that the private life circumstances of the occupier of the premises or others, identified during the search and seizure shall not be announced.</p> <p>12. The person, conducting the pre-trial investigation, shall have the right to prohibit the persons in the room or place where the search or seizure is conducted, and the persons who come into this room or place, to leave it, as well as communicate with each other or other persons before the end of the search or seizure.</p> <p>13. When conducting the search and seizure, the person conducting the pre-trial investigation shall be limited to the seizure of objects and documents that may be relevant to the case. Objects and documents that are prohibited for circulation shall be seized regardless of their relation to the case.</p> <p>14. Seized objects and documents during a search shall be presented to identifying witnesses and other attending persons and shall be packed, sealed on the place of search and certified by the signatures of identifying witnesses and attending persons.</p> <p>15. Seized objects and documents during seizure shall be presented to the attending persons, and shall be packed, sealed on the place of seizure and certified by the signatures of the attending persons.</p> <p>16. Where necessary, the photographing, filming and video recording is made during the search.</p>
<p><b>Article 20 – Real-time collection of traffic data</b></p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:</p> <ul style="list-style-type: none"> <li>a collect or record through the application of technical means on the territory of that Party, and</li> <li>b compel a service provider, within its existing technical capability: <ul style="list-style-type: none"> <li>i to collect or record through the application of technical means on the territory of that Party; or</li> <li>ii to co-operate and assist the competent authorities in the collection or recording of,</li> </ul> </li> </ul>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 244. Secret obtaining of the information about the connections between subscribers and/or subscriber units</b></p> <p>1. The secret obtaining of the information about the connections between subscribers and/or subscriber units - is obtaining of the information about the date, time and duration of connections between subscribers and/or subscriber units (user equipment).</p> <p>2. After receiving the investigating judge’s sanction, the decision shall be sent by the body of pre-trial investigation to the authorized unit of the law enforcement agency or special state body for execution, the employee of which</p>

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traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.

2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.

3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

**Article 21 – Interception of content data**

1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:

- a collect or record through the application of technical means on the territory of that Party, and
- b compel a service provider, within its existing technical capability:

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shall provide the requested information, recorded in any material carrier of information.

The above information shall be provided in the sealed form with a cover letter, specifying the period for which it is provided, and the number of subscribers and/or subscriber units.

**The Law of the Republic of Kazakhstan On Operational Investigations.****Article 11. Operational investigation measures**

3. Special operational investigative activities shall be:

- 2) covert control, interception and removal of information transmitted over electrical (telecommunication) communication networks;
- 3) covert seizure of information on connections between subscribers and/or subscriber devices;
- 4) covert removal of information from computers, servers and other devices, intended for the collection, processing, accumulation and storage of information;

**For reference:** the covert obtaining of information about connections between subscribers and/or subscriber devices of control and recording of negotiations means that the pretrial investigation body making a reasoned decision to appeal to the court in order to obtain authorization for it, as well as in subsequent actions aimed at requesting and using received information in proving. The essential difference between the covert investigative action and the covert control, interception and removal of information transmitted over the electric (telecommunication) communication networks, is not the content of the information during telephone communication, but the demand for information about incoming and outgoing telephone communication. This covert investigative action is implemented by a law enforcement or special unit of a state body authorized to conduct operational investigation activities. Such information shall be provided by the body of pre-trial investigation on any material medium issued according to the instructions of the commented article.

**Criminal Procedure Code of the Republic of Kazakhstan****Article 245. Covert collection of information from computers, servers and other devices for collecting, processing, accumulating and storing information;**

1. The covert collection of information from computers, servers and other devices for collecting, processing, accumulating and storing information is a

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to collect or record through the application of technical means on the territory of that Party, or

ii to co-operate and assist the competent authorities in the collection or recording of, content data, in real-time, of specified communications in its territory transmitted by means of a computer system.

2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.

3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

secret removal by special scientific and technical means (or) computer programs of information from computers, servers and other devices for collecting, processing, accumulating and storing information, if necessary, produced by undercover penetration and surveys.

2. After recognizing the need for covert collection of information from computers, servers and other devices for collecting, processing, accumulating and storing information, the pre-trial investigation body shall give the appropriate instructions to the body of inquiry.

3. The results of covert removal of information from computers, servers and other devices for collecting, processing, accumulating and storing information shall be recorded in the relevant material carrier, which is packed, sealed and certified by the signatures of the official of the authorized body, carried out the uncover investigative action.

Material medium shall be transmitted to the investigator, interrogating officer.

**For reference:** *Part 1 of the commented article provides the legal and regulatory framework for the covert investigative action of obtaining information from computers, servers and other devices intended to collect, process, accumulate and store information. The essence of this event is to implement on the basis of a resolution approved by the prosecutor, to identify and record information contained in the electronic information system or its part, without the notification of the owner, owner or holder of the system. The specified covert investigative action shall be performed in case when there is intelligence about the availability of information in the electronic information system or its part, which is important for a certain pre-trial investigation. This information may be contained both in the electronic information system, and in its parts. Usually the parts of electronic informational system are: database, management systems, client software, etc. The implementation of these activities shall be assigned to the body of inquiry, carrying out operational investigation activities based on the relevant instructions. The conduct of this covert investigative action shall be intended to ensure the removal of information that was processed, stored on a personal computer or several personal computers connected to a local area network, or external data storage devices connected to electronic information systems. Removal of information from electronic information systems or parts may be carried out either by direct physical access by specialists of authorized law enforcement departments and through penetration of software. The covert removal of information from electronic computer technology means the use of special equipment with large resources of operational and long-term memory which provides full copying of information from the hard disk (s) and other electronic storage media of the suspect or*

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	<p><i>accused, which may contain information of relevance in criminal proceedings. Software penetration into electronic information systems (their parts) shall be carried out by using special software products that provide information copying of suspect or accused to the remote computer used by an authorized body conducting this covert investigative action. According to the results of penetration into the electronic information system, with the aim of covert removing of information from computers, servers and other devices intended for collecting, processing and storing information, the obtained information shall be stored in the form of material medium of information that shall be packaged, sealed and signed by the official authorized body performing covert investigative action. This material medium shall be given to the pretrial investigation authority.</i></p> <p><b>The Law of the Republic of Kazakhstan On Operational Investigations.</b>  <b>Article 11. Operational investigation measures</b>  3. Special operational investigative activities shall be:  2) covert control, interception and removal of information transmitted over electrical (telecommunication) communication networks;  3) covert seizure of information on connections between subscribers and/or subscriber devices;  4) covert removal of information from computers, servers and other devices, intended for the collection, processing, accumulation and storage of information;</p>
<b>Section 3 – Jurisdiction</b>	
<p><b>Article 22 – Jurisdiction</b>  1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:  a in its territory; or  b on board a ship flying the flag of that Party; or  c on board an aircraft registered under the laws of that Party; or  d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.  2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b>  <b>Article 3. Effect of the Criminal procedure law in space</b>  1. Criminal proceedings in the territory of the Republic of Kazakhstan, regardless of where the criminal offence committed, shall be conducted in accordance with this Code.  2. If an international treaty, ratified by the Republic of Kazakhstan stipulates other rules for application of this Code in the space, the rules of the international treaty shall apply.</p> <p><b>Penal Code of the Republic of Kazakhstan</b>  <b>Article 7. Effect of criminal law in relation of persons, committed a criminal infraction in the territory of the Republic of Kazakhstan</b></p>



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3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.

When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

1. A person, who committed a criminal infraction in the territory of the Republic of Kazakhstan, shall be subject to prosecution under this Code.

2. A criminal infraction, committed in the territory of the Republic of Kazakhstan shall be recognized an action which was initiated or continued or was completed in the territory of the Republic of Kazakhstan. An effect of this Code shall be also applied to criminal infractions, committed on the continental shelf and in the exclusive economic zone of the Republic of Kazakhstan.

3. A person, who committed a criminal infraction on vessel, assigned to the port of the Republic of Kazakhstan and located in open water or air space outside of the Republic of Kazakhstan shall be subject to the criminal prosecution under this Code, unless otherwise provided by international treaty of the Republic of Kazakhstan. Under this Code, a person, who committed a criminal infraction on warship or military aircraft of the Republic of Kazakhstan, independent from its location shall also bear a criminal responsibility.

4. The issue of criminal responsibility of diplomatic representatives of foreign states and other citizens who enjoy immunity, in the case of commission of criminal infraction by these persons in the territory of the Republic of Kazakhstan shall be resolved in accordance with regulations of international law.

***For reference:*** in the whole territory of the Republic of Kazakhstan during the criminal proceedings the provisions of the Criminal Procedure Code shall be applied regardless of the place of the crime. This procedure shall be applied to crimes committed both in the territory of the Republic of Kazakhstan and abroad. If a crime is committed by a citizen of the Republic of Kazakhstan outside its borders, there is an enforceable court ruling of a foreign state in his relation and the convict is transferred to the Republic of Kazakhstan to serve the sentence, then the sentence may be revised under the supervisory procedure or in view of newly discovered circumstances according to the CPC of Kazakhstan.

According to 2 article of the Constitution of the Republic of Kazakhstan the territory of the Republic of Kazakhstan is the land, air, water, underground space under the jurisdiction of the state and located within the state border of the Republic of Kazakhstan. When determining the procedural competence of the bodies conducting the criminal procedure outside the Republic of Kazakhstan (commission of a crime on board of an aircraft or ship assigned to the Republic of Kazakhstan, in the territory of a diplomatic mission), the jurisdiction of the flag state applies and the law of the Republic of Kazakhstan or a foreign state is applied, if provided for by an international treaty. Citizens of the Republic of Kazakhstan, foreign citizens, stateless persons permanently residing outside the Republic of Kazakhstan can be brought to criminal responsibility for crimes against the interests of Kazakhstan, if they are not convicted of these acts in a foreign state. In this case the

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*request to extradite a person shall be sent to a foreign state or criminal proceedings shall be conducted in absentia. If an international treaty ratified by the Republic of Kazakhstan establishes other rules for the operation of the CPC of Kazakhstan in space, then the rules of the international treaty apply. When executing instructions on the conduct of legal proceedings in order to provide legal assistance to foreign states, the rules of this Code generally operate, and criminal procedural rules of a foreign state can also be used, if it is provided for by an international agreement ratified by Kazakhstan with this state. In accordance with an international agreement ratified by the Republic of Kazakhstan, it is possible for the investigative bodies and the court of a foreign state to apply the rules of their criminal procedure in the territory of the Republic of Kazakhstan. Similar regulations of the CPC of a foreign state by analogy of law that are subject to application can be aimed at improving the situation of participants in criminal proceedings (granting additional rights, exemption from certain duties), for example, expanding types of witness immunity - medical, official, notary, etc. The activity of the investigating authorities and the court of a foreign state in accordance with its criminal procedure legislation in the territory of Kazakhstan means interference in the internal affairs of the Republic of Kazakhstan and is not consistent with the sovereignty of the state.*

**Chapter III – International co-operation****Article 24 – Extradition**

1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.

b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.

2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be

**Criminal Procedure Code of the Republic of Kazakhstan****Article 557. Procedural and other actions, carried out in order to provide legal assistance**

1. In order to provide legal assistance to the competent authorities of foreign states with which the Republic of Kazakhstan has concluded an international treaty, the service of documents, the execution of certain procedural actions, conducting criminal prosecution, extradition of persons (extradition), the temporary extradition of persons (extradition), transit, temporary transfer of persons, the transfer of convicted persons and persons suffering from mental disorders, who applied compulsory medical measures, recognition and enforcement of judgments may be made.

2. International treaty of the Republic of Kazakhstan may provide for other forms of cooperation in the criminal case, not covered by this Code.

3. If the provisions of the international treaty, ratified by the Republic of Kazakhstan, are in conflict with this Code, the provisions of the international



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<p>concluded between or among them.</p> <p>3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.</p> <p>4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.</p> <p>5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.</p> <p>6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.</p> <p>7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.</p> <p>b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure</p>	<p>treaty shall apply.</p> <p><b>Article 579. The request for extradition of a person (extradition)</b></p> <p>1. The request for extradition of a person (extradition) is sent on the condition that at least one of the offences for which extradition of a person (extradition) is requested, is punishable by the imprisonment for a term not less than one year or a person is sentenced to the imprisonment and the unexpired term of not less than six months.</p> <p>2. The request of the competent authority of a foreign state for extradition of a person (extradition) may only be considered if they meet the requirements stipulated by the first part of this Article.</p> <p>3. The requests for the temporary extradition of a person (extradition) and the transit of a person are sent in the same manner as requests for extradition of a person (extradition).</p> <p>4. The Office of the Prosecutor General of the Republic of Kazakhstan has the right to deny the competent authority of the Republic of Kazakhstan in the direction of a request to a foreign state if there are the circumstances, provided by this Code or an international treaty of the Republic of Kazakhstan that may impede the extradition of a person (extradition).</p>
<p><b>Article 25 – General principles relating to mutual assistance</b></p> <p>1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 557. Procedural and other actions, carried out in order to provide legal assistance</b></p> <p>1. In order to provide legal assistance to the competent authorities of foreign states with which the Republic of Kazakhstan has concluded an international</p>

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2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.

3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.

4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.

5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

treaty, the service of documents, the execution of certain procedural actions, conducting criminal prosecution, extradition of persons (extradition), the temporary extradition of persons (extradition), transit, temporary transfer of persons, the transfer of convicted persons and persons suffering from mental disorders, who applied compulsory medical measures, recognition and enforcement of judgments may be made.

2. International treaty of the Republic of Kazakhstan may provide for other forms of cooperation in the criminal case, not covered by this Code.

3. If the provisions of the international treaty, ratified by the Republic of Kazakhstan, are in conflict with this Code, the provisions of the international treaty shall apply.

**Article 558. Provision of legal or other assistance on the principle of reciprocity**

1. In the absence of an international treaty of the Republic of Kazakhstan legal or other assistance may be provided upon request of a foreign state or requested by the central authority of the Republic of Kazakhstan on the principle of reciprocity.

2. The central authority of the Republic of Kazakhstan, directing such request letter to a foreign state, guarantees to the requested party to consider the future its request for the provision of the same kind of legal assistance.

3. In accordance with the provisions of the first part of this Article, the central authority of the Republic of Kazakhstan shall consider a request of a foreign state only if there is a written guarantee of the requesting party to accept and consider the future request of the Republic of Kazakhstan on the principle of reciprocity.

4. The central authority of the Republic of Kazakhstan when applying for legal assistance and provision of legal assistance to a foreign state on the principle of reciprocity is governed by this Code.

5. In the absence of an international treaty with a foreign state, the central authority of the Republic of Kazakhstan shall send a request for legal assistance to the requested party by the diplomatic way.

**Article 559. The central authorities**

1. The Office of the Prosecutor General of the Republic of Kazakhstan or the authorized prosecutor shall apply with requests (instructions, petitions) on legal assistance in the process of procedural actions that require the sanction of the

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	<p>prosecutor (court), the prosecution, extradition, temporary extradition or transit transportation , temporary transfer of persons, the transfer of the convicted and persons suffering from mental disorders, to whom compulsory medical measures have been applied, the recognition and enforcement of sentences and shall consider the relevant requests of foreign competent authorities.</p> <p>2. The Supreme Court of the Republic of Kazakhstan makes requests (orders, petitions) of the courts for legal assistance during court proceedings, and considers such requests of foreign courts.</p> <p>3. The competent authority of the Republic of Kazakhstan shall apply to the competent authority of a foreign state with requests (instructions, petitions) for legal assistance in the production of procedural actions that do not require the sanction of the prosecutor (court) and shall consider relevant requests of foreign competent authorities.</p>
<p><b>Article 26 – Spontaneous information</b></p> <p>1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.</p> <p>2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 560. The request for legal assistance</b></p> <p>1. The request (instruction, petition) for legal and other assistance shall be made by the competent authority in accordance with the requirements of this Code and (or) the relevant international treaty of the Republic of Kazakhstan.</p> <p>2. The request (instruction, petition) and the attached documents shall be made in writing on the appropriate blank, and certified by the signature of the authorized official and the official stamp of the relevant authority.</p> <p>3. The request (instruction, petition) and the attached documents shall be accompanied by a translation into a language specified by the relevant international treaty of the Republic of Kazakhstan, and in its absence – into the official language of the requested party or other language acceptable to this party.</p> <p>4. The request (instruction, petition) shall be sent by the central authority of the Republic of Kazakhstan to the foreign states by mail, and in urgent cases - by e-mail, fax or other means of communication. In this case, the original request shall be sent by mail not later than three days after its sending by e-mail, fax or other means of communication.</p> <p>5. In the event of a failure in the direction of the request (instruction, petition), all the materials shall be returned by the central body of the Republic of Kazakhstan to the appropriate authority, leading the process, outlining the</p>

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	<p>deficiencies that shall be addressed, or explaining the reasons of the impossibility for the direction of the order.</p> <p>6. The central authority of the Republic of Kazakhstan may take into consideration the request (instruction, petition) received from requesting party by e-mail, fax or other means of communication. Execution of such request (instruction, petition) is carried out exclusively, subject to confirmation of sending or transfer of its original. The direction to the competent authority of a foreign state, the materials of the executed request (instruction, petition) is only possible in the receipt by the central body of the Republic of Kazakhstan of the original request.</p>
<p><b>Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements</b></p> <p>1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.</p> <p>b The central authorities shall communicate directly with each other;</p> <p>c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;</p> <p>d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.</p> <p>3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 558. Provision of legal or other assistance on the principle of reciprocity</b></p> <p>1. In the absence of an international treaty of the Republic of Kazakhstan legal or other assistance may be provided upon request of a foreign state or requested by the central authority of the Republic of Kazakhstan on the principle of reciprocity.</p> <p>2. The central authority of the Republic of Kazakhstan, directing such request letter to a foreign state, guarantees to the requested party to consider the future its request for the provision of the same kind of legal assistance.</p> <p>3. In accordance with the provisions of the first part of this Article, the central authority of the Republic of Kazakhstan shall consider a request of a foreign state only if there is a written guarantee of the requesting party to accept and consider the future request of the Republic of Kazakhstan on the principle of reciprocity.</p> <p>4. The central authority of the Republic of Kazakhstan when applying for legal assistance and provision of legal assistance to a foreign state on the principle of reciprocity is governed by this Code.</p> <p>5. In the absence of an international treaty with a foreign state, the central authority of the Republic of Kazakhstan shall send a request for legal assistance to the requested party by the diplomatic way.</p> <p><b>Article 560. The request for legal assistance</b></p>

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4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:

- a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or
- b it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).

c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent

1. The request (instruction, petition) for legal and other assistance shall be made by the competent authority in accordance with the requirements of this Code and (or) the relevant international treaty of the Republic of Kazakhstan.

2. The request (instruction, petition) and the attached documents shall be made in writing on the appropriate blank, and certified by the signature of the authorized official and the official stamp of the relevant authority.

3. The request (instruction, petition) and the attached documents shall be accompanied by a translation into a language specified by the relevant international treaty of the Republic of Kazakhstan, and in its absence – into the official language of the requested party or other language acceptable to this party.

4. The request (instruction, petition) shall be sent by the central authority of the Republic of Kazakhstan to the foreign states by mail, and in urgent cases - by e-mail, fax or other means of communication. In this case, the original request shall be sent by mail not later than three days after its sending by e-mail, fax or other means of communication.

5. In the event of a failure in the direction of the request (instruction, petition), all the materials shall be returned by the central body of the Republic of Kazakhstan to the appropriate authority, leading the process, outlining the deficiencies that shall be addressed, or explaining the reasons of the impossibility for the direction of the order.

6. The central authority of the Republic of Kazakhstan may take into consideration the request (instruction, petition) received from requesting party by e-mail, fax or other means of communication. Execution of such request (instruction, petition) is carried out exclusively, subject to confirmation of sending or transfer of its original. The direction to the competent authority of a foreign state, the materials of the executed request (instruction, petition) is only possible in the receipt by the central body of the Republic of Kazakhstan of the original request.

**Article 569. Refusal to execute the request (instruction, petition) for legal assistance**

1. The requesting party may be refused to fulfill the request (instruction, petition) for legal assistance in cases, stipulated by international treaties of the Republic of Kazakhstan.

2. In the absence of an international treaty of the Republic of Kazakhstan in the execution of the request (instruction, petition) it shall be refused if:

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<p>authorities of the requesting Party to the competent authorities of the requested Party.</p> <p>Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.</p>	<ol style="list-style-type: none"> <li>1) the execution of the request (instruction, petition) will contradict with the legislation of the Republic of Kazakhstan, or may harm the sovereignty, security, public order or other interests of the Republic of Kazakhstan;</li> <li>2) the requesting party does not provide reciprocity in this area;</li> <li>3) the request (instruction, petition) concerns an act which is not a criminal offence in the Republic of Kazakhstan;</li> <li>4) there are reasonable grounds for believing that the request (instruction, petition) is sent for the purpose of prosecution, conviction or punishment of a person on grounds of his (her) origin, social, official or property status, sex, race, nationality, language, religion, convictions, place of residence or any other circumstances.</li> </ol>
<p><b>Article 28 – Confidentiality and limitation on use</b></p> <p>1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:</p> <ol style="list-style-type: none"> <li>a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or</li> <li>b not used for investigations or proceedings other than those stated in the request.</li> </ol> <p>3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.</p> <p>4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 201. Prohibition of disclosure of data of the pre-trial investigation</b></p> <ol style="list-style-type: none"> <li>1. The data of the pre-trial investigation cannot be disclosed. They may be made public only with the permission of the prosecutor in the extent to which it will be recognized possible, if it is not contrary to the interests of the investigation and does not infringe the rights and legitimate interests of others.</li> <li>2. The person, conducting the pre-trial investigation, warns the defense counsel, witnesses, victim, civil claimant, civil defendant or their representatives, expert, specialist, interpreter, identifying witnesses and other persons, involved in the investigation, on the inadmissibility of the disclosure of the data available in the case without his (her) permission, about what the above persons shall give a personal recognizance with warning about the liability.</li> </ol> <p><b>Article 568. Confidentiality</b></p> <ol style="list-style-type: none"> <li>1. At the request of the requesting party the central authority of the Republic of Kazakhstan or the body authorized for communication, has the right to take additional measures to ensure the confidentiality of the receipt of the request (instruction, petition) for legal assistance, its contents and the information obtained as a result of its execution.</li> <li>2. If necessary, the conditions and terms of storage of confidential information, obtained as a result of execution of the request (instruction, request) are</li> </ol>



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	<p>agreed.</p> <p>3. When transferring materials to the competent authority of a foreign state, the central authority of the Republic of Kazakhstan or the body authorized for communication, may establish, in accordance with this Code and the international treaty of the Republic of Kazakhstan restrictions on the use of such materials.</p> <p>4. If as a result of execution in the Republic of Kazakhstan of the request (instruction, petition) for legal assistance, the information contained state secrets is received, they may be transferred to the requesting party, provided that such information does not harm the interests of the Republic of Kazakhstan or other state, which provides it to the Republic of Kazakhstan, only if there is agreement on the mutual protection of secret information and in accordance with the stipulated by it requirements and rules.</p> <p><b>Law of the Republic of Kazakhstan On Personal Data and Their Protection</b></p> <p><b>Article 11. Confidentiality of personal data</b></p> <p>1. The owners and (or) operators, as well as third persons, receiving an access shall ensure their confidentiality by observance of requirements to prevent their distribution without the consent of subject or his (her) legal representative or existence of other legal basis.</p> <p>2. The persons who became known about personal data of limited access shall be obliged to ensure their confidentiality in connection with professional, official necessity, as well as labour relations.</p> <p>3. Confidentiality of biometric data shall be established by the legislation of the Republic of Kazakhstan.</p>
<p><b>Article 29 – Expedited preservation of stored computer data</b></p> <p>1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.</p> <p>2 A request for preservation made under paragraph 1 shall specify:</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 561. Storage and transfer of material evidence</b></p> <p>1. Material evidence, transferred by the requested party in execution of a request (instruction, petition) of the competent authority of the Republic of Kazakhstan, shall be kept in the manner provided by this Code, and after the end of the proceedings shall be returned to the requested party if there is no other agreement between the parties.</p>

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a the authority seeking the preservation;  
 b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;  
 c the stored computer data to be preserved and its relationship to the offence;  
 d any available information identifying the custodian of the stored computer data or the location of the computer system;  
 e the necessity of the preservation; and  
 f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.

4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5 In addition, a request for preservation may only be refused if:  
 a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

4 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable

2. During the transfer to the competent authority of the requesting party of material evidence in order to execute the request (instruction, petition), the competent authority of the Republic of Kazakhstan may waive the requirement for their return to the Republic of Kazakhstan after the end of the criminal proceedings in the requesting party, if there is no need for their use in the territory of the Republic of Kazakhstan for the pre-trial investigation and trial of other criminal proceedings or legitimate claims of third parties on the right to the relevant property or the dispute concerning it, is considered in the court.

**Law of the Republic of Kazakhstan On Communications****Article 15. Interaction of communications providers, centralized numbers database operator, subscriber's identification codes operator with bodies carrying out the operational investigative activity**

1. Communications providers and communication network owners carrying out the activity in the territory of the Republic of Kazakhstan shall be obliged:

1) provide the bodies carrying out operational search, counterintelligence activities on communication networks, organizational and technical capabilities to conduct operational search, counterintelligence activities on all communication networks, as well as take measures to prevent disclosure of forms and methods of these activities

3) provide the bodies carrying out operational-search, counterintelligence activities on communication networks, access to the service information, as well as take measures to prevent disclosure of forms and methods of conducting these activities

4) to provide for their own or borrowed funds the functions of their telecommunications equipment for the technical conduct of operational-search, counter-intelligence activities in accordance with the requirements for networks and communication facilities and procedures determined by the Government of the Republic of Kazakhstan



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<p>the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.</p>	
<p><b>Article 30 – Expedited disclosure of preserved traffic data</b></p> <p>1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.</p> <p>2 Disclosure of traffic data under paragraph 1 may only be withheld if:</p> <p>a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or</p> <p>b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 557. Procedural and other actions, carried out in order to provide legal assistance</b></p> <p>1. In order to provide legal assistance to the competent authorities of foreign states with which the Republic of Kazakhstan has concluded an international treaty, the service of documents, the execution of certain procedural actions, conducting criminal prosecution, extradition of persons (extradition), the temporary extradition of persons (extradition), transit, temporary transfer of persons, the transfer of convicted persons and persons suffering from mental disorders, who applied compulsory medical measures, recognition and enforcement of judgments may be made.</p> <p>2. International treaty of the Republic of Kazakhstan may provide for other forms of cooperation in the criminal case, not covered by this Code.</p> <p>3. If the provisions of the international treaty, ratified by the Republic of Kazakhstan, are in conflict with this Code, the provisions of the international treaty shall apply.</p> <p><b>Law of the Republic of Kazakhstan On Communications</b></p> <p><b>Article 15. Interaction of communications providers, centralized numbers database operator, subscriber’s identification codes operator with bodies carrying out the operational investigative activity</b></p> <p>1. Communications providers and communication network owners carrying out the activity in the territory of the Republic of Kazakhstan shall be obliged:</p> <p>1) provide the bodies carrying out operational search, counterintelligence activities on communication networks, organizational and technical capabilities to conduct operational search, counterintelligence activities on all communication networks, as well as take measures to prevent disclosure of forms and methods of these activities</p> <p>3) provide the bodies carrying out operational-search, counterintelligence activities on communication networks, access to the service information, as well</p>

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	<p>as take measures to prevent disclosure of forms and methods of conducting these activities</p> <p>4) to provide for their own or borrowed funds the functions of their telecommunications equipment for the technical conduct of operational-search, counter-intelligence activities in accordance with the requirements for networks and communication facilities and procedures determined by the Government of the Republic of Kazakhstan</p> <p>5) to provide the communication services, as well as the spread of subscriber numbers by the representative of a communications providers only when a relevant contract of the communication provision is concluded in accordance with the rules for the communication provision.</p> <p><b>Resolution 246 of the Government of the Republic of Kazakhstan Rules for Communication Providers to Collect and Store Service Information about Subscribers</b> of March 30, 2010</p> <p><b>Chapter 2. Procedure of collecting and storing service information about subscribers by communication providers.</b></p> <p>5. Provider shall collect and store service information about subscribers during two years, after which the information shall be destroyed. Provider shall be liable under the laws of the Republic of Kazakhstan for violation of the obligation to collect and store service information about subscribers.</p> <p>6. Provider shall continuously collect service information about the services provided to subscriber from means of telecommunication (means of communications) in accordance with these Rules and shall store it in the Operator's system (hereinafter referred to as the System).</p>
<p><b>Article 31 – Mutual assistance regarding accessing of stored computer data</b></p> <p>1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.</p> <p>2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Section 12. International cooperation in criminal proceedings</b></p> <p><b>Article 561. Storage and transfer of material evidence</b></p> <p>1. Material evidence, transferred by the requested party in execution of a request (instruction, petition) of the competent authority of the Republic of Kazakhstan, shall be kept in the manner provided by this Code, and after the end of the proceedings shall be returned to the requested party if there is no</p>

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3 The request shall be responded to on an expedited basis where:

a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or

b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.

other agreement between the parties.

2. During the transfer to the competent authority of the requesting party of material evidence in order to execute the request (instruction, petition), the competent authority of the Republic of Kazakhstan may waive the requirement for their return to the Republic of Kazakhstan after the end of the criminal proceedings in the requesting party, if there is no need for their use in the territory of the Republic of Kazakhstan for the pre-trial investigation and trial of other criminal proceedings or legitimate claims of third parties on the right to the relevant property or the dispute concerning it, is considered in the court.

**Article 566. Consideration of the request (instruction, petition) for legal assistance**

1. The Central authority of the Republic of Kazakhstan or the body authorized for communication, according to the review of the request (instruction, petition) for legal assistance shall decide on:

- 1) instructing its execution to the body of pre-trial investigation, prosecutor's office or the court;
- 2) the possibility of execution of the request (instruction, petition) with application of the rules of procedural legislation of a foreign state;
- 3) postponement of execution of the request (instruction, request), if it may interfere in criminal proceedings in the territory of the Republic of Kazakhstan;
- 4) failure to execute the request (instruction, petition) on the grounds provided for in Article 569 of this Code;
- 5) the possibility of execution of the request (instruction, petition), if the cost of this performance clearly exceed the applied criminal offence harm or clearly do not meet the severity of a criminal offence, and if it is not contrary to the provisions of the international treaty of the Republic of Kazakhstan.

2. In the event of a decision to fulfill the request (instruction, petition), the central authority of the Republic of Kazakhstan or the body authorized for communication, sends a request (instruction, petition) to the competent authority of the Republic of Kazakhstan for execution. In cases stipulated by an international treaty, the central authority of the Republic of Kazakhstan also takes a decision on the presence of a representative of the competent authority of the requesting party in the execution of the request (instruction, petition) for legal assistance.

3. Within the limits of its authority the appropriate prosecutor may give instructions with regard to ensuring the proper, full and timely execution of the

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	<p>request (instruction, petition) for legal assistance. The instructions of the prosecutor are binding for the competent authority of the Republic of Kazakhstan.</p> <p><b>Article 567. The report on the results of consideration of the request (instruction, petition) for legal assistance</b></p> <p>1. In case of satisfying the request (instruction, petition) for legal assistance, the central authority of the Republic of Kazakhstan or the body authorized for communication shall ensure the transmission to the requesting party materials, obtained as a result of execution of the request (instruction, petition).</p> <p>2. In case of refusal to satisfy the request (instruction, petition) for legal assistance, the central body of the Republic of Kazakhstan or the body authorized for communication informs the requesting party about the reasons for refusal, as well as the conditions under which the request (instruction, petition) may be considered repeatedly, and returns the request (instruction, petition).</p> <p>3. If there are grounds for refusing to satisfy the request (instruction, petition) for legal assistance or postponing its execution, the central authority of the Republic of Kazakhstan or the body authorized for communication, may agree with the requesting party the procedure of execution of the request under certain restrictions. If the requesting party agrees to certain conditions, the request shall be satisfied after fulfillment of the conditions by the requesting party.</p>
<p><b>Article 32 – Trans-border access to stored computer data with consent or where publicly available</b></p> <p>A Party may, without the authorisation of another Party:</p> <p>a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or</p> <p>b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system.</p>	<p><b>The Law On Personal Data and their Protection</b></p> <p><b>Article 16. Trans-border transfer of personal data</b></p> <p>1. Trans-border transfer of personal data is a transfer of personal data to the territory of foreign states.</p> <p>2. Trans-border transfer of personal data to the territory of foreign states shall be carried out only in case of ensuring the protection of personal data by these states in accordance with this Law.</p> <p>3. Trans-border transfer of personal data to the territory of foreign states, not ensuring the protection of personal data may be carried out in cases of:</p> <p>1) existence of the consent of subject or his (her) legal representative to the</p>

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	<p>trans-border transfer of his (her) personal data;</p> <p>2) provided by international treaties, ratified by the Republic of Kazakhstan;</p> <p>3) provided by the Laws of the Republic of Kazakhstan, if it is necessary for the purposes of protection of constitutional order, protection of public order, rights and freedoms of persons and citizens, health and morals of population;</p> <p>4) protection of constitutional rights and freedoms of persons and citizens, if reception of the consent of subject or his (her) legal representative is impossible.</p> <p>4. Trans-border transfer of personal data to the territory of foreign states may be prohibited or restricted by the Laws of the Republic of Kazakhstan.</p> <p>5. Features of cross-border transmission of service information about subscribers and (or) users of communication services shall be determined by the Law of the Republic of Kazakhstan On Communications.</p>
<p><b>Article 33 – Mutual assistance in the real-time collection of traffic data</b></p> <p>1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.</p> <p>2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.</p>	<p><b>The Law of the Republic of of Kazakhstan On Communications</b></p> <p><b>Article 15. Interaction of communication providers, operator of the centralized subscriber number database, operator of the database of identification codes of subscriber mobile communication devices with authorities carrying out intelligence and counterintelligence operations</b></p> <p>2) collect and store service information in accordance with the procedure determined by the Government of the Republic of Kazakhstan.</p> <p>3) provide the authorities carrying out intelligence, counterintelligence operations on communication networks, access to service information, as well as to take measures to prevent disclosure of forms and methods of conducting these operations ;</p> <p><b>Resolution 246 of the Government of the Republic of Kazakhstan Rules for Communication Providers to Collect and Store Service Information about Subscribers of March 30, 2010</b></p> <p><b>Chapter 2. Procedure of collecting and storing service information about subscribers by communication providers.</b></p> <p>5. Provider shall collect and store service information about subscribers during two years, after which the information shall be destroyed. Provider shall be liable under the laws of the Republic of Kazakhstan for violation of the obligation</p>

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	<p>to collect and store service information about subscribers.</p> <p>6. Provider shall continuously collect service information about the services provided to subscriber from means of telecommunication (means of communications) in accordance with these Rules and shall store it in the Operator's system (hereinafter referred to as the System).</p>
<p><b>Article 34 – Mutual assistance regarding the interception of content data</b></p> <p>The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.</p>	<p><b>Criminal Procedure Code of the Republic of Kazakhstan</b></p> <p><b>Article 570. The order of execution of the request (instruction, petition) for legal assistance</b></p> <p>1. The body, conducting criminal proceedings, shall execute the request (instruction, petition) for legal assistance transferred to it in the provided manner according to the general rules of this Code.</p> <p>2. In the execution of the request (instruction, petition) the rules of procedural legislation of a foreign state may be applied, if it is provided by an international treaty of the Republic of Kazakhstan with this State.</p> <p>3. If the request (instruction, petition) for legal assistance cannot be executed, the received documents shall be returned in the provided manner to the requesting party stating the reasons that prevented its execution.</p>
<p><b>Article 35 – 24/7 Network</b></p> <p>1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:</p> <p>a the provision of technical advice;</p> <p>b the preservation of data pursuant to Articles 29 and 30;</p> <p>c the collection of evidence, the provision of legal information, and locating of suspects.</p> <p>2 a A Party's point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis.</p> <p>b If the point of contact designated by a Party is not part of that Party's</p>	<p>Competent authorities – Office of the Prosecutor General, National Security Committee, Ministry of Internal Affairs</p>

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<p>authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.</p> <p>3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.</p>	
<p><b>Article 42 – Reservations</b>            By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.</p>	