

## **On state protection of persons, participating in criminal procedure**

### *Non-official translation*

The Law of the Republic of Kazakhstan dated 5 July, 2000 No 72

#### **Unofficial translation**

This Law establishes a system of measures of state protection of life, health, property, legal rights and interests of persons participating in the criminal procedure, their family members and close relatives, ensuring of their security in order to prevent unlawful interference in the criminal process.

### **Chapter 1. General Provisions**

#### **Article 1. Legislation of the Republic of Kazakhstan on state protection of persons, participating in the criminal procedure**

The legislation of the Republic of Kazakhstan on state protection of persons, participating in the criminal procedure, shall be based on the Constitution of the Republic of Kazakhstan and consist of the Criminal Code of the Republic of Kazakhstan, the Criminal Procedure Code of the Republic of Kazakhstan, the Penal Execution Code of the Republic of Kazakhstan, this Law and other regulatory legal acts of the Republic of Kazakhstan.

The rules of the international treaty shall be applied if there were established other rules than those which contain in this Law by the international treaty, ratified by the Republic of Kazakhstan.

**Footnote. Article 1 is in the wording of the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 1-1. Effectuation principles of the state protection of persons, participating in the criminal procedure**

The state protection of persons, participating in the criminal procedure shall be carried out in accordance with the principles of the legality, respect for the rights and freedoms of man and citizen, the priority of the rights and legitimate interests of the individual of protected person, the mutual responsibility of protected persons and bodies, ensuring the state protection.

**Footnote. The Law is supplemented by Article 1-1 in accordance with the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 1-2. Ensuring of the state protection of persons, participating in the criminal procedure**

Ensuring of the state protection of persons, participating in the criminal procedure, their family members and close relatives is in the implementation of security measures, legal and social protection by the authorized state bodies under this Law (hereinafter - State protection measures), applied in the presence of a real threat of violence to life, health and the property of such persons.

Footnote. The Law is supplemented by Article 1-2 in accordance with the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.

## **Article 2. Bodies, ensuring security**

The security of protected persons shall ensure:

- 1) the decision-making body on the application of security measures;
- 2) the body, carrying out security measures.

Implementation of security measures shall be imposed on the bodies of national security, the Financial Police, Justice, the Interior, the military administration and the customs authorities.

Footnote. Article 2 is in the wording of the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV; as amended by the Law of the Republic of Kazakhstan dated 30.06.2010 № 297 -IV (shall be enforced from 01.07.2010).

## **Article 3. Persons subject to the state protection**

To the state protection in accordance with the Criminal Procedure Code of the Republic of Kazakhstan and this Law shall be subject:

- 1) judges;
- 2) members of the jury;
- 3) prosecutors;
- 4) investigators;
- 5) interrogating officers;
- 6) persons, carrying out the operational investigations;
- 6-1) citizens who assist the bodies, carrying out the operational investigations;
- 6-2) private prosecutors;
- 7) defenders;
- 8) experts;
- 9) specialists;
- 10) secretaries of judicial sessions, bailiffs, enforcement agents;
- 11) injured persons;
- 12) witnesses;
- 13) alleged criminals;
- 14) accused, convicted, and the person against whom the criminal prosecution is dismissed or rendered a judgment of acquittal by the court;
- 15) translators;
- 16) attesting witnesses;
- 17) the legal representatives, representatives;
- 18) civil plaintiffs, civil defendants;
- 19) family members, close relatives of the persons, listed in subparagraphs 1) -18) of this Article.

State protection measures may also be applied to the institution of criminal procedure against the persons who contribute to the prevention or detection of crime in the presence of real threat of violence against them or other prohibited by criminal law.

Persons, listed in this Article, in respect of which, a decision on application of the

state protection measures is adopted in established order shall be referred hereinafter to as "protected persons".

Footnote. Article 3 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.

#### **Article 4. Creation of a right on the state protection**

1. In the presence of sufficient grounds that persons who are subject to be protected, threatened with murder, violence, destruction or damage of property or other dangerous illegal actions, the bodies, ensuring the security of protected persons shall take state protection measures within its competence under this Law.

2. In the cases, provided by the Law of the Republic of Kazakhstan "On operational investigations" the decision on the application of security measures for the citizens, promoting the bodies to carry out the operational investigations along with the body, carrying out the criminal proceedings according to the procedure, prescribed by this Law, shall take bodies, carrying out the operational investigations.

Footnote. Article 4 is in the wording of the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.

#### **Article 5. Types of the state protection**

In accordance with this Law and other legislative acts of the Republic of Kazakhstan the protected persons shall be ensured by:

1) use of the authorized state bodies of security measures to protect the life and health of protected persons, as well as the preservation of their property;

2) application of remedies, including providing for criminal liability for infringement of their lives, health and property;

3) implementation of social protection measures providing for the implementation of this Law, established the right to financial compensation in the case of their death, the infliction of bodily harm or other injury, destruction, or damage to their property.

#### **Article 6 Prosecutor's supervision in the implementation of state protection measures**

Supervision of the application of laws in the implementation of the state protection measures shall be imposed on the General Prosecutor of the Republic of Kazakhstan and second prosecutors.

### **Chapter 2. Security measures**

#### **Article 7. Types of security measures**

In order to ensure personal and property safety of protected persons during the performance of inquiry, preliminary investigation or during the court proceedings the body, conducting the criminal procedure, taking into account the specific circumstances have a right to apply the following procedural and other security measures:

1) an official warning to the person who makes the threat of violence or commitment of other actions, prohibited by the criminal law, about his possible criminal prosecution;

2) the restriction of access to information about the protected person;

3) the election of preventive measure regarding the accused (suspect), which excludes the possibility of using (the organization of application) in relation to persons, participating in the criminal proceedings, violence or commitment (organization of commitment) of other criminal acts;

4) removal of individuals from the courtroom;

5) a closed session of the court;

6) interrogation of a witness by the court

without disclosing information about his identity using a pseudonym;

under conditions precluding its recognition;

without visual observation of him by other participants in the proceedings;

the prohibition of the video recording production and other means of recording the interrogation if necessary;

7) personal protection, protection of the home and other property;

8) ensuring by weapons, protective equipment and technical means in the established order

;

9) temporary placement in a safe place;

10) ensuring of data confidentiality of protected persons;

11) relocation to another place of residence, change of place of work (service) or studies, assistance in finding the employment;

12) exchange of documents;

13) changes in appearance.

Relocation to another place of residence, exchange documents and change of appearance are exceptional security measures and shall be applied in cases where the security of the protected person cannot be achieved using other security measures.

In order to implement the specified herein security measures may be carried out search operations in accordance with the Law of the Republic of Kazakhstan "On operational investigations."

**Footnote. Article 7, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 8. Official warning to the person who makes threat of violence or other criminal actions, prohibited by law, about his possible criminal prosecution**

During the establishment of data, giving evidence of presence of violence threat to life, health, property of the protected persons, except the cases, provided for in Article 112 of the Criminal Code of the Republic of Kazakhstan, the body, carrying out the criminal procedure shall render an official warning to the person who makes the threat of violence or commitment of other illegal criminal acts, prohibited by law, about the possible participation of his criminal responsibility. The warning, rendered by the body, carrying out the criminal process, shall be declared to the person against signed receipt.

#### **Article 9. Access limitation to the information about protected person**

Access limitation to the information about protected person is a seizure of information about personal data from the case file and the keeping them separately from the main proceedings, as well as the use of this pseudonym.

#### **Article 10. The election of preventive measure against accused (alleged criminal), excluding the possibility of application (the organization of application) of violence or**

## **commitment of other criminal actions (organization of commitment) against participants in the criminal procedure**

If there are threats from the accused (alleged person) body, carrying out the criminal proceedings, has a right to elect in accordance with the Criminal Procedure Code of the Republic of Kazakhstan against the latter the preventive measure that excludes the possibility of using (the organization of application) or commitment violence (organization committed) other criminal acts what makes a reasoned decision. Copy of the order shall be given to the person against whom it is issued.

The protected person shall be notified about the adopted decision.

The protected person is subject to the immediate notification in the case of change of the preventive measure or jumping bail of the accused (alleged person).

### **Article 11. Removal of individual persons from the courtroom**

The presiding has a right to remove individual persons from the courtroom in the cases expressly provided by the Criminal Procedure Code of the Republic of Kazakhstan.

### **Article 12. Conducting of a closed session**

The presiding in the court proceedings shall conduct a closed session to ensure the security of protected persons. A closed session shall be allowed under the reasoned decree.

### **Article 13. Interrogation of a witness by the court**

Interrogation of a witness by the court without disclosing information about his identity can be produced using a pseudonym, as well as interrogation of the witness for the prosecution in the court can be carried out after the removal of accused, representatives of the defense from the courtroom.

In necessary cases the interrogation of the protected person may be carried out in conditions, excluding his recognition. For these purposes can be used: a mask, make-up, the device to change the voice of the protected person and the other not inconsistent with law protection methods.

The interrogation of the protected person without a visual observation of him by other participants of the proceedings can be carried out by applying the visual and technical equipment, screens, protective screen, with the participation of a limited number of participants in the process, warned about the confidentiality.

In necessary cases the presiding may prohibit to use video, audio and other means of recording the interrogation of the witness in the course of court proceedings.

The court shall render a reasoned decree on adopted security measures.

### **Article 14. Personal security, security of home and other property**

During the establishment of data, giving evidence of presence of violence threat to life or health, or property the protected persons with their consent by the bodies, providing security, shall carry out their personal protection, protection of their homes and property, the fire- and burglar alarm systems shall be established if necessary, surveillance technology with the consent of the protected person may be replaced by telephone and state registration

plates of used vehicles.

Footnote. Article 14, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.

#### **Article 15. Ensuring by weapons, means of individual protection and technical equipment**

The bodies, ensuring the security in the prescribed order may issue to protected persons weapons, special means of individual protection and technical equipment for fixing of allowed in respect of their security incidents and public alert, taking into account the extent of threat to life and health of protected persons.

Storage, carrying and use of issued weapons by the protected persons shall be carried out in accordance with the Law of the Republic of Kazakhstan "On state control over the circulation of certain types of weapons."

#### **Article 16. Temporary placement in a safe place**

In case of need the protected person of full age may be with their consent, and minors with the consent of their parents or other legal representatives, shall be held in places where they would be provided with security.

Stay in a given place shall be agreed between the protected persons and the body, ensuring protection.

#### **Article 17. Ensuring of data confidentiality about the protected persons**

A ban on the issuance of data about identity of protected persons, their place of residence and other information about them from the address bureau, passport services, traffic police departments, directory services of automatic dial-telephone service and other informational stocks regardless of affiliation, except the cases where such information is clarified in the established order in relation to proceedings in another criminal case according to the decision of the body, ensuring security on the determined by them term.

Footnote. Article 17, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.

#### **Article 18. Resettlement to another residence, change of workplace (service) or study, assistance in employment**

With the consent of the protected person or upon their application they can be transferred to another temporary or permanent work (service) or a place of study, resettled to another temporary or permanent residence.

State bodies and state organizations within their jurisdiction are obliged to support the assistance in employment and place for study of protected persons.

Footnote. Article 18, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.

#### **Article 19. Replacement of documents**

According to the application of protected persons or with their consent they can receive identity documents and other documents with the changed of their personal data.

New personal data is selected for compulsory consultation with the protected person or themselves, for minors - with the consent of their parents or other legal representatives.

#### **Article 20. Change in appearance**

In exceptional cases where the security of the protected person cannot be achieved by other measures, at his request or with his consent, for a minor -with the written consent of parents or other legal representatives may change his appearance.

**Footnote. Article 20, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

### **Chapter 3. The grounds and procedure for application of security measures. Rights and obligations of the protected persons and bodies, ensuring security.**

#### **Article 21. Application and implementation of security measures**

Security measures, provided in the Article 7 of this Law shall be carried out:

- 1) under items 1), 2 ), 3 ), 7 ), 8), 9) and 10) by the bodies which conduct the criminal case;
- 2) for paragraph 12) by the authorized state bodies;
- 3) on the sub-4), 5) and 6) by the courts;
- 4) for paragraph 13), the body which conducts the criminal case and, if necessary in conjunction with the state body for Health Affairs;
- 5) for paragraph 11) the body which conducts the criminal case in cooperation with local executive bodies.

Security measures in respect of military judges, prosecutors, military personnel of military police, military and investigative units, as well as their family members and close relatives can also be commanded by the appropriate military unit or military head of the relevant military institution.

State bodies and state organizations within their competence shall assist the bodies that decide to apply security measures and implementing security measures in the enforcement of standards of this Law.

**Footnote. Article 21, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 21-1. Ensuring the safety of servicemen, citizens who are on reserve at the time of passing their military trainings, persons of civilian personnel of military units, connections or state institutions of the Armed Forces, other troops and military formations**

The security of servicemen, citizens, who are on reserve in the time of their military trainings, members of civilian staff of military units or state institutions of the Armed Forces, other troops and military formations shall be ensured by application of security measures, established by this Law, taking into account the nature of military service passage and work in military units, formations or state institutions of the Armed Forces, other troops and military formations.

Concerning the protected person may be used security measures, as the transfer of the protected person to a new place of military service, including a military unit or state

institution of the Armed Forces, other troops and military formations of other state institution where according to the legislation of the Republic of Kazakhstan was provided a military service, detachment or transfer of serviceman, passing a compulsory military service military who can pose a threat to the protected person, if his actions do not constitute a crime to another military unit, other state institution of the Armed Forces, other troops and military formations.

Detachment and transfer of the protected person shall be carried out with the consent expressed in writing. When transferring the serviceman is appointed to equal military position at that shall be ensured his use on principal or a single line of military profession.

Other bodies, carrying out security measures shall assist the command of a military unit or the head of state institutions of the Armed Forces, other troops and military formations to ensure security of the protected person.

**Footnote. The Law is supplemented by Article 21-1 in accordance with the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 21-2. Security ensuring of the protected person, accused in custody or in the place of service**

Security of the protected person, accused in custody or being in places of service in the form of arrest or detention shall be ensured in accordance with the laws of the Republic of Kazakhstan.

**Footnote. The Law is supplemented by Article 21-2 in accordance with the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV; as amended by the Law of the Republic of Kazakhstan dated 10.07.2009 No 177 -IV (the order of enforcement see art.2).**

#### **Article 22. Grounds for the application of security measures**

The body, conducting the criminal procedure shall take security measures to protected persons on the basis of their oral (written) request or on its own initiative if there is sufficient evidence of the reality of threats to the protected person. A reasoned decision shall be rendered about it.

#### **Article 23. The order of application of security measures**

The body, conducting the criminal procedure, receiving an application on presence of real threat to the security of the protected person, specified in the Article 22 of this Law, shall take a decision on the application or refusal of the security measures in respect of the specified person no later than twenty-four hours of its receipt.

In cases of urgency, a decision on the application of security measures shall be adopted immediately.

The body, ensuring safety shall render a decision on the application of security measures , containing a reference to the specific security measures in relation to a particular person and terms of their application. The applicant shall be notified immediately about the decision with the direction of a copy of the relevant decision.

Protected person shall receive regulations, which abidance is mandatory in aid of his security. Changes in the regulations on the motion of the protected person may be amended only with the consent of the body, ensuring security.

A refusal to apply security measures may be appealed by the protected person in a court or to the prosecutor. The complaint is subject to immediate consideration.

The adopted measures shall not impair the security measures of housing, labor, pension

and other rights of the protected and other persons.

Regardless of the adoption of the security measures the body, conducting the criminal procedure, besides the court is obliged to initiate a criminal case in the presence of grounds in relation with the detected threat of commitment of forbidden action by criminal law in respect of a person, participating in the criminal procedure.

The application of security measures for minors or persons who are prevented from exercising their rights and interests in their physical or mental condition shall be carried out with the assistance of their legal representatives. The legal representatives have the same rights as they represent individuals within the limits provided in this Law.

**Footnote. Article 23 as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 24. Obligatoriness of judgment enforcement on the application of the security measures**

Judgments of bodies, ensuring security, adopted in accordance with their competence, are obligatory for enforcement by officials of executive bodies, institutions and organizations, to which address they were directed.

#### **Article 25. Rights of the protected persons**

Persons subject to the state protection have a right to:

- 1) know about applied security measures in their relation;
- 2) apply for the use or non-use in relation to their specific security measures, listed in the Article 7 of this Law;
- 3) appeal against illegal decisions and actions of officials, carrying out security measures in higher bodies, ensuring the security, in the prosecutor office or court.

#### **Article 26. Obligations of protected persons**

Persons, subject to the state protection shall:

- 1) comply instructions, given by the body, ensuring security, as well as its legal demands;
- 2) inform immediately the body, ensuring security, about each case of a threat or unlawful actions against them;
- 3) save property, issued to them for ensuring security in the event of sale, transfer to another person or damage to property, transferred for use in the aid of ensuring the security, the protected person shall be liable in accordance with the laws of the Republic of Kazakhstan;
- 4) not to disclose information on adopted security measures in their relation;
- 5) pass a training on the use of weapons, means of individual protection and special machines if necessary.

**Footnote. Article 26, as amended by the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

#### **Article 26-1. The rights and obligations of the bodies, ensuring the security**

1. Bodies taking decisions on the application of the security measures, have a right to:

- 1) request from state bodies, individuals and legal entities regardless of ownership and

receive from them the necessary information on the applications and reports on potential security of persons against whom was rendered decision on the application of security measures;

2) carry out legal proceedings or give necessary instructions to the bodies, carrying out security measures.

2. Bodies, implementing security measures, have a right to:

1) elect the necessary security measures, with the exception of legal proceedings in respect of the protected person, to determine the methods of their application, if necessary to amend and supplement the applicable security measures;

2) request from state bodies, individuals and legal entities regardless of ownership and receive from them necessary information to ensure the safety of protected persons against whom was rendered decision on the application of security measures;

3) require the compliance of application conditions of security measures from the protected person; comply with legal orders relating to the application of the measures;

4) apply to the bodies, taking decision on application of security measures, with the motion to apply security measures or their cancellation;

5) conduct special investigative activities according to the procedure provided for by the law.

3. The bodies, ensuring security of the protected persons shall:

1) react immediately on each case, became known to them, which requires application of security measures;

2) carry out all necessary security measures in relation of the protected person;

3) promptly inform the protected person about the security threat, application, modification or revocation of their application in respect of security measures, provided by this Law, as well as the adoption of the decisions by the legislation of the Republic of Kazakhstan, related with the ensuring of security;

4) clarify to the protected person his rights and obligations by reference to the decision on the application (failure to use) of the security measures.

**Footnote. The Law is supplemented by the Article 26-1 in accordance with the Law of the Republic of Kazakhstan dated 07.04.2009 No 149 -IV.**

## **Article 27. Cancellation of security measures**

The official shall render a relevant reasoned decision for cancellation of the security measures that is immediately declared to the protected person, in removing the security threat of the protected person or in the case of any other reason.

This decision may be appealed in the order, provided by the Article 23 of this Law.

## **Article 28. Responsibility for violation of the requirements of this Law**

Officials of the bodies, ensuring security, guilty of non-acceptance or improper implementation of security measures concerning protected persons or officials of the executive bodies, institutions, which address were directed decisions of the bodies, providing security, in case of their non-implementation shall bring responsibility in accordance with the laws the Republic of Kazakhstan.

In the case of disclosure of information about conducting security measures by persons to whom the information was entrusted or became known in relation with their official duties, they are subject to criminal liability according to the law.

## **Chapter 4. Funding and endowment of state protection measures. Measures of social protection**

### **Article 29. Funding and logistic support of state protection measures**

Funding and logistic support of state protection measures, provided by this Law shall be carried out in the established order at the expense of budget funds.

The expenses, related with the use of security measures cannot be imposed on the protected person.

Payment of allowances and reimburse costs, related to the change of residence and workplace, as well as to change the appearance, shall be carried out at the expense of budget funds in accordance with the legislation of the Republic of Kazakhstan by the body, providing security.

**Footnote. Article 29, as amended by the Law of the Republic of Kazakhstan dated 20.12.2004 No 13 (shall be enforced from 01.01.2005).**

### **Article 30. Social protection in the case of infliction of harm to life, health and property of the protected persons**

Social protection shall be ensured at the expense of the state budget in the case of infliction of harm to life, health and property, related with their participation in the criminal process to the protected persons, besides the individuals, which social services are regulated by special legislation.

The procedure and conditions for payment of social protection shall be determined by the Government of the Republic of Kazakhstan.

### **Article 31. The order of enforcement of this Law**

This Law shall be enforced from 01.01.2001.

**The President of the  
Republic of Kazakhstan**