

Questionnaire of the Third IAJ Study Group – 2023

Kazakhstan:

1-question

Answer: It follows from Part 1 of Article 111 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter - CPC RK) that, - evidence in a criminal case is legally obtained factual data, on the basis of which, in accordance with the procedure defined by the CPC, the body of inquiry, the investigator, the prosecutor, the court establish the presence or absence of an act provided for by the Criminal Code, the commission or non-commission of this act by the suspect, the accused or the defendant, his guilt or innocence, as well as other circumstances that are important for the appropriate resolution of the case.

Based on this, it follows that the bodies conducting the criminal process collect, consolidate, examine and evaluate evidence to establish the presence or absence of signs of a criminal offense. Cooperation between the bodies conducting criminal proceedings, including with the bodies of a foreign state, is regulated by international treaties and agreements, which the Republic of Kazakhstan is a party to, as well as the CPC RK.

The CPC RK contains section 12: INTERNATIONAL COOPERATION IN THE FIELD OF CRIMINAL PROCEEDINGS, which specifies procedural and other actions to provide legal assistance. In particular, documents may be handed over, execution of certain procedural actions, criminal prosecution may be carried out, extradition of persons (extradition), temporary extradition of persons (extradition), transit transportation, temporary transfer of persons, transfer of convicted persons and persons suffering from mental disorders to whom compulsory medical measures have been applied, recognition and execution sentences. At the same time, it follows from Part 1 of Article 558 of the CPC that, - In the absence of an international agreement of the Republic of Kazakhstan, legal or other assistance may be provided on the basis of a request from a foreign state or requested by the central authority of the Republic of Kazakhstan on the principle of reciprocity.

2-question

Answer: a) yes, **b)** Thus, from Part 2 of Article 559 of the CPC RK it follows that, - the Supreme Court of the Republic of Kazakhstan (refers to the central body), - makes requests (orders, petitions) of courts for legal assistance during judicial proceedings and considers relevant requests of courts of foreign states.

3-question

Answer: It follows from Part 3 of Article 565 of the CPC RK that – The original or certified copies of reasoned decisions of the competent authority on their production shall be attached to the request (instruction, petition) for the production of procedural actions requiring the sanction of an investigating judge (court) in accordance with this Code.

These requests are made by the competent authority of the Republic of Kazakhstan, which, in accordance with Part 3 of Article 559 of the CPC RK, has the right to 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 an investigating judge (court), and considers the relevant requests of foreign competent authorities.

It follows from Article 571 of the CPC RK that - If a procedural action requiring the sanction of an investigating judge (court) is necessary for the execution of a request (order, petition), such action is carried out only if the appropriate sanction is obtained in accordance with the procedure provided for by this Code, even if the legislation of the requesting party does not provide for this. The basis for resolving the issue of authorizing such procedural actions shall be the materials of the requesting party's application.

4-question

Answer: The CPC RK regulates the procedures for conducting procedural actions related to obtaining testimony from a witness. Part 2 of Article 565 of the CPC RK stipulates that: A request (instruction, petition) to question a person as a witness, victim, expert, suspect or accused person shall be accompanied by an extract of the relevant articles of this Code certified by the competent authority in order to explain to the person his/her procedural rights and obligations. The request (instruction, petition) is also accompanied by a list of questions to be put to the person, or information that needs to be received from the person.

In accordance with Part 3 of Article 54 of the CPC RK, an investigating judge is a judge of the court of first instance, whose powers include exercising judicial control over the observance of the rights, freedoms and legitimate interests of persons in criminal proceedings in accordance with the procedure provided for by this Code. If it is necessary to replace the investigating judge, he/she may be reappointed. According to paragraphs 5) and 12) of Part 1 of Article 55 of the CPC RK, - During pre-trial proceedings, the investigating judge, in the cases provided for by this Code, considers the following issues:

5) authorizing an extradition arrest;

12) declaring an international search for a suspect or accused person;

It follows from Part 2 of Article 55 of the CPC RK that, - In the cases provided for by this Code, the investigating judge: 3) deposits the testimony of the victim and witness during pre-trial proceedings; 6) upon a reasoned request of the lawyer participating as a defender, representative of the victim, considers the issue of requesting and attaching to the criminal case any information, documents, items relevant to the criminal case, with the exception of information constituting state secrets, in cases of refusal to execute a request or failure to take a decision on it within three days; 7) upon a reasoned request of a lawyer participating as a defender, a representative of the victim, considers the appointment of an expert examination or the conduct of other investigative actions by the criminal prosecution body, with the exception of secret investigative actions, including if the criminal prosecution body unreasonably refused to satisfy such a request or no decision was made on it within three days; 8) upon a request of a lawyer participating as a defender, considers the issue of forcible bringing to the body conducting the criminal process of a witness previously interviewed by him/her, ensuring the appearance of which is difficult to testify;

5-question

Answer: It does not matter for deciding whether and how assistance should be provided, since legal assistance will be provided in accordance with the requirements of the CPC RK.

6-question

Answer: When providing legal assistance and obtaining information or testimony, the courts strictly follow the rules of the court session, with mandatory observance of the rights and obligations of participants in the trial, all actions carried out within the framework of legal assistance are formalized in accordance with the requirements of the CPC RK, concluded agreements, and sent to the country that requested legal assistance. There are no problems with this issue when considering such appeals, there may have been problems with the deadlines for executing orders in another country.