

**The Response of the Republic of Kazakhstan to The Study on arbitrary detention
relating to drug policies**

Q1. According to statistics, in 2019, a total of 3941 criminal cases on drug crimes were considered (16.4%), the number of convicts was 4057 (14.9%), 7 people were acquitted (0.8%).

3198 cases were considered, 3283 people were convicted under Article 296 of the Criminal Code;

562 cases were considered under Article 297 of the Criminal Code, 586 people were convicted;

163 cases were considered under Article 300 of the Criminal Code, 171 people were convicted;

11 cases under Article 302 of the Criminal Code, 11 convicts;

6 convicted and convicted under Article 303 of the Criminal Code.

For crimes in this category:

- minors - 8 people;
- women 121 women;
- 19 people with disabilities were convicted.

In the 1st quarter of 2020, a total of 860 criminal cases on drug crimes were considered (16.9%), the number of convicts was 897 (15.6%), 1 person was acquitted (0.8%).

735 cases were considered under Article 296 of the Criminal Code, 759 people were convicted;

117 cases were considered under Article 297 of the Criminal Code, 129 people were convicted;

7 cases were considered under Article 300 of the Criminal Code, 8 people were convicted;

1 case was considered and 1 person was convicted under Article 303 of the Criminal Code.

For this category of crime:

- 2 minors;
- 22 women;
- 4 people with disabilities were convicted.

In total, in the 1st quarter of 2020, the internal affairs bodies applied a measure of restraint in the form of detention in relation to 4,103 people, of which 288 people were accounted for crimes related to drug trafficking, which amounted to 7% of the total number of detainees.

As of April 1 of this year in institutions of the penitentiary system 29,841 persons are held. For crimes related to drug trafficking (Articles 266-303 of the Criminal Code of the

Republic of Kazakhstan), the number of accused is 669 people (2.2%), convicts - 2713 (9%).
Of them:

- women - 281 (0.9%);
- men - 2438 (8.1%);
- youth aged 18-29 years - 351 (1.1%);
- disabled people - 60 (0.2%);
- foreigners - 146 (4%).

At the same time, state statistics do not keep records of persons convicted of drug offenses in the context of categories of interest (sex industry, lesbian, gay, bisexual, transgender (LGBT), ethnic minorities).

Q2. Article 17 of the Law of the Republic of Kazakhstan "On Narcotic Drugs" provides for the use of narcotic drugs, psychotropic substances and precursors in veterinary medicine, as well as for trapping animals, however, there are no facts of the use of such drugs in violation of applicable law.

Q3. In accordance with national criminal law, any illegal treatment of narcotic drugs and psychotropic substances without a marketing purpose is a criminal offense

(Article 266 of the Criminal Code of the Republic of Kazakhstan), the severity of which depends on the size of the seized drug.

The list and sizes of these substances are approved by the relevant Government Decree (dated July 3, 2019 No. 470).

For example, non-medical consumption in a public place of a single dose of heroin (about 0.01 g) is punishable by a fine of up to eighty monthly calculation indices (about \$ 550). Illegal sale of the same drug on a large scale (from 0.01 to 1 gr) is punishable by a fine of up to 160 MCI (about \$ 1,100), and in a particularly large amount (over 1 gr) - by imprisonment for a term of 3 up to 7 years.

Q4. The Code of Criminal Procedure of the Republic of Kazakhstan provides for a measure of procedural coercion "Detention of a suspect" (Article 131 of the CPC), which is used by the criminal prosecution body to stop the crime and resolve the issue of applying a preventive measure in the form of detention or to ensure criminal proceedings for which there is reason to believe that a person may hide or commit a more serious act.

Procedural detention of a person suspected of committing a criminal offense is carried out by an official of the criminal prosecution body for a period of not more than forty-eight hours, and for a minor - for a period of not more than twenty-four hours.

In the presence of exceptional cases, detention is allowed for a period not exceeding seventy-two hours.

Such exceptions include detention on suspicion of committing crimes related to the illicit trafficking of narcotic drugs, psychotropic substances, precursors and their analogues (paragraph 5 of part 4 of article 131 of the CPC).

In accordance with article 136 of the Code of Criminal Procedure, the grounds for applying preventive measures are the existence of sufficient grounds to believe that the suspect, the accused will be absconding from the criminal prosecution or the court, or will prevent an objective investigation of the case or its trial in court, or will continue to engage in criminal activity, and also to enforce the sentence.

One of the types of preventive measures related to the restriction of freedom includes: “Detention” (Article 147 of the Code of Criminal Procedure) and “House Arrest” (Article 146 of the Criminal Code).

Detention as a measure of restraint is applied only with the sanction of a judge and only with respect to a suspect, accused, defendant in committing a crime for which the law provides for punishment in the form of imprisonment for a term of more than five years, if it is impossible to apply other, less severe preventive measures. In exceptional cases, this preventive measure can be applied to: a person suspected, accused of committing a crime for which the law provides for a punishment of imprisonment of up to five years, person who does not have a permanent residence in the territory of the Republic of Kazakhstan, person whose identity was established, person that violated a previously selected preventive measure or a measure of procedural coercion, person that tried to hide or disappeared from the criminal prosecution authorities or the court, person that is suspected of committing crimes in an organized group or criminal community (criminal organization), person who has prior convictions for serious or especially serious crime and cases where there is evidence of continued criminal activities.

At the same time, to persons suspected of being accused of committing a number of especially grave criminal offenses, including crimes related to drug trafficking provided for in paragraph 4 of Article 286 of the Criminal Code (Smuggling of narcotic drugs, psychotropic substances, their analogues, committed on a particularly large scale), part 4 of article 297 of the Criminal Code (Illegal manufacture, processing, purchase, storage, transportation for sale, transfer or sale of narcotic drugs, psychotropic substances, their analogues committed by a criminal group , as well as the sale of narcotic drugs, psychotropic substances, their analogues in educational institutions or obviously a minor), Part 4 of Article 298 of the Criminal Code (Theft or extortion of narcotic drugs, psychotropic substances, their analogues in a particularly large amount), Part 4 of Article 299 of the Criminal Code (Inclination to the use of narcotic drugs, psychotropic substances, their analogues entailed, through negligence, the death of the victim or other grave consequences), detention in custody as a measure of restraint can be applied for one based on gravity of the crime.

House arrest consists in isolating a suspect accused from society without holding them in custody, but with the application of restrictions established by a judge in the manner prescribed by the Criminal Procedure Law (for example, a ban on leaving the house in full or

at a certain time, a ban on communication with certain persons and the receiving of guests at home, the use of electronic means of control and the imposition of the obligation to carry these means, etc.).

The period of detention in custody and house arrest during pre-trial investigation may not exceed two months.

In exceptional cases stipulated by the criminal procedural law, the period may be extended by the investigating judge at the motivated request of the person conducting the pre-trial investigation agreed by the prosecutor for no more than 18 months.

Further extension of the period of detention and house arrest is not allowed, the detained suspect, the accused are subject to immediate release.

On the facts of unlawful detention or detention in custody, a person has the right to apply to the prosecution authorities or to the court.

Juveniles to whom a measure of restraint in the form of detention was applied are kept separately from adults. The period of detention of minors during pre-trial proceedings may not be extended for more than six months.

Q5. A criminal act and the punishment imposed for it are determined only by the article 55 of the Criminal Code, the probation is by the article 63 of the Criminal Code, parole and release from criminal liability and punishment on the basis of an act of amnesty or pardon by the articles 72 and 78 of the Criminal Code.

In addition, parole, commutation of the unserved part of the sentence and reduction of the sentence is a complex legal institution. Issues of their application are resolved in accordance with Articles 72, 73, 86 and 87 of the Criminal Code of the Republic of Kazakhstan, Articles 476, 477, 478 and 480 of the Criminal Procedure Code (CPC), as well as Articles 161, 162 and 169 of the Criminal Procedure Code.

According to statistics, in 2019, 22 people were convicted for drug-related crimes under Article 63 of the Criminal Code (probation), 14 people were released under Articles 65-72 of the Criminal Code, using Article 55 of the Criminal Code (imposition of a lighter sentence than the one provided for one criminal offense) 9 persons were sentenced. In 2019, no amnesty was granted on the basis of an amnesty act.

In the 1st quarter of 2020, 9 people were convicted for drug-related crimes under Article 65 of the Criminal Code (probation), 3 people were released under Articles 65-72 of the Criminal Code, using Article 55 of the Criminal Code (imposition of a lighter sentence than the one provided for a specific criminal offense).

In the 1st quarter of 2020, there are no persons released from criminal punishment on the basis of an amnesty act.

In the criminal procedural legislation of the Republic of Kazakhstan, a measure of procedural detention for a period of not more than seventy-two hours (with a total term of up

to 48 hours), as one of the six exceptions provided for in paragraph 4 of Article 131 of the Code of Criminal Procedure.

So, in accordance with paragraph 4 of Article 131 of the Code of Criminal Procedure, a person may be detained on suspicion of committing a crime for a period of not more than forty-eight hours, and a minor may be detained for a period of not more than twenty-four hours, with the exception of the following cases, when detention is allowed for a period not more than seventy two hours with:

- 1) detention on suspicion of committing a particularly serious crime;
- 2) detention on suspicion of committing a terrorist or extremist crime;
- 3) detention on suspicion of committing a crime during the riots;
- 4) detention on suspicion of committing a crime as part of a criminal group;

5) detention on suspicion of committing crimes related to the illicit trafficking of narcotic drugs, psychotropic substances, precursors and their analogues, against the sexual inviolability of minors, as well as a deliberate crime that resulted in the death of a person;

6) the inability to ensure timely delivery of a person to the investigating judge due to the remoteness or lack of proper means of communication, as well as in a state of emergency or emergency.

This list of exceptions is exhaustive and not expandable.

In addition, in accordance with part 2 of article 136 of the Code of Criminal Procedure, when deciding on the application of preventive measures against suspects, accused of committing a number of especially grave criminal offenses, including crimes related to: drug trafficking provided for in part 4 of article 286 of the Criminal Code (Smuggling of narcotic drugs, psychotropic substances, their analogues, committed in a particularly large amount), part 4 of article 297 of the Criminal Code (Illegal manufacture, processing, purchase, storage, transportation for marketing purposes, forwarding or the sale of narcotic drugs, psychotropic substances, their analogues committed by a criminal group, as well as the sale of narcotic drugs, psychotropic substances, their analogues in educational institutions or obviously a minor), part 4 of article 298 of the Criminal Code (Theft or extortion of drugs, psychotropic substances, their analogues on an especially large scale), part 4 of article 299 of the Criminal Code (Inclination to the use of narcotic drugs, psychotropic substances, their analogues entailed, through negligence, the victim's death or other serious consequences) and custody as a preventive measure may be applied based on only one crime committed.

The procedure for the detention and house arrest of suspects, accused, the terms of their extension, changes in the preventive measure or its cancellation are determined by the general rules established by the Criminal Procedure Code, regardless of the type of crime.

In accordance with Article 13 of the Constitution of the Republic of Kazakhstan, everyone has the right to receive qualified legal assistance. In cases stipulated by law, legal assistance is provided free of charge.

Q7. In accordance with Article 66 of the CPC, the defense attorney protects the rights and interests of the person involved in the case in the manner prescribed by law. At the written request of the defendant, they may be protected together with the lawyer by his / her spouse or close relative, guardian or a representative of the organization that has taken the ward under guardianship or custody. Accordingly, at the request of the defendant, the spouse may participate in the case as a defense counsel by the decision of the body conducting the criminal proceedings.

Q11. The structure of military courts does not differ from the structure of other courts. The main difference between them is the specificity of the case, that is, the defendant in a criminal case must be a serviceman. Article 309 of the CPC specifies the jurisdiction of military courts.

According to statistics, in 2019 in military courts:

1 case under Article 296 of the Criminal Code;

According to Article 297 of the Criminal Code, 1 was convicted.

And in the first half of 2020: 1 was punished under Article 296 of the Criminal Code.

Q12. Part 1 of Art. 296 of the Criminal Code of the Republic of Kazakhstan provides for punishment for non-medical drug use in public places, including in the form of arrest for up to 20 days.

Q15. Criminal liability of minors is regulated by the provisions of the Criminal Code. Criminal liability is imposed at the age of sixteen, and juveniles are prosecuted at the age of fourteen for only certain crimes.

According to Article 15 of the Criminal Code, an act by person who has reached the age of fourteen at the time of the committing the offense, is categorized as a criminal offense. These include theft or intimidation to obtain psychotropic substance, drugs and the like.

In accordance with Article 15 of the Criminal Code of the Republic of Kazakhstan, a sane individual who has reached the age of sixteen by the time the criminal offense is committed is subject to criminal liability.

In the exceptional cases provided for in paragraph 2 of Article 15 of the Criminal Code, persons who have reached the age of fourteen by the time the crime is committed are subject to criminal liability. The list of this exception includes the commission of a crime under Article 298 of the Criminal Code - the theft or extortion of narcotic drugs, psychotropic substances, their analogues.

According to the requirements of Article 541 of the Code of Criminal Procedure, a minor may be detained and a preventive measure may be applied to them in the manner prescribed by the Code of Criminal Procedure.

At the same time, for juvenile suspects accused of committing a criminal offense, crimes of small or medium gravity, a preventive measure in the form of detention is not applied.

A preventive measure in the form of detention is applied to a minor only in cases where other preventive measures cannot be applied in the circumstances of the case.

Juveniles to whom a measure of restraint in the form of detention was applied are kept separately from adults. The period of detention of minors during pre-trial proceedings may not be extended for more than six months.

Q17. In January 2020, the Law of the Republic of Kazakhstan “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on Improving Criminal, Criminal Procedure Laws and Enhancing the Protection of Personal Rights” (hereinafter referred to as the Law) was enacted in the Republic of Kazakhstan.

The Law toughened liability for 42 crimes,

including criminal offenses related to drug trafficking.

For example, articles 297, 299, 301 of the Criminal Code are supplemented by an additional qualifying attribute - using electronic information resources:

- Part 3 of Article 297 of the Criminal Code of the Republic of Kazakhstan is supplemented by paragraph 5, which provides for criminal liability for “illegal manufacture, processing, purchase, storage, transportation for sale, transfer or sale of narcotic drugs, psychotropic substances, their analogues through the use of electronic information resources”, as well as paragraph 6 “in a public place”, for which a penalty of imprisonment for a term of ten to fifteen years with confiscation of property ”is imposed.

- Part 2 of Article 299 of the Criminal Code is supplemented by paragraph 3, which provides for criminal liability for “inducing the use of narcotic drugs, psychotropic substances, their analogues through the use of electronic information resources, for which a sentence of imprisonment of three to eight years is prescribed”.

- Part 3 of Article 301 of the Criminal Code is supplemented by paragraph 4, criminalizing “the illegal manufacture, purchase, storage, transportation, shipping for the purpose of marketing, as well as the illegal sale of substances, instruments or equipment used for the manufacture or processing of narcotic drugs, psychotropic substances, their analogues through the use of electronic information resources, for which a penalty of imprisonment of between seven and ten years is envisaged.”

Along with this, in order to prevent the involvement of citizens in the sphere of drug trafficking, criminal liability was introduced for their propaganda or illegal advertising

(previously there was administrative responsibility) - article 299-1 of the Criminal Code "Propaganda or illegal advertising of narcotic drugs, psychotropic substances or their analogues, precursors".

For this act, up to 3 years of imprisonment is provided, and under aggravating circumstances, from 3 to 6 years of imprisonment.

One of the aggravating circumstances included the commission of these acts using the media or electronic information resources (Clause 4, Part 2, Article 299-1 of the Criminal Code).

The thresholds of deprivation of liberty have been increased, and in parts 2-4 of Article 301 of the Criminal Code for the illicit trafficking of substances, tools or equipment used for the manufacture or processing of narcotic drugs, psychotropic substances, their analogues - from 3 to 15 years (previously the minimum term has not been determined, the maximum up to 10 years in prison).

The policy of arrest / detention on criminal offenses related to drug trafficking in force in the Republic is given in question No. 5.