

Translation from Russian into English of an awareness-raising leaflet prepared in the framework of the Rule of Law Platform - Central Asia, a project funded by the European Union (© European Union)

Title	The rights of suspects	
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In accordance with the Constitution of the Republic of Kazakhstan, human life, rights and freedoms are recognized as having the highest value in our country¹. In this regard, it is important for everyone to know about their fundamental rights and freedoms and to be able to protect them if necessary.

1. Detention and the rights of a suspect

Since the human right to personal integrity is a fundamental basic standard of a democratic state, this right may be restricted only in the manner and on the grounds established by law.

In this regard, we will first envisage what to do in case of arrest. Detention on suspicion of committing a crime may be applied against a citizen based on initiated criminal proceedings in the following cases:

- 1) when the person has been caught committing a crime or immediately after its commission;
- 2) when witnesses, including victims, directly name the person who committed the crime;
- 3) when clear evidence of a crime is found on the person or on his clothes, with him or in his house;
- 4) when in the materials received in accordance with the law as a result of investigative activity in relation to a person there is good evidence about grave or especially grave crime committed or being prepared by him².

Detention means that you are officially recognized suspected offender and from that moment you can be imprisoned first for 72 hours, and then, after being charged with court approval, arrest can be applied for 2 months. This period may be extended in accordance with established procedure.

Sanctioning of arrest occurs in judicial session at the request of the investigator supported by the prosecutor. During a court hearing the defendant and his counsel may insist on non-use of arrest and prove illegality and invalidity of detention. The judge, after hearing the parties, retires for deliberations and announces his decision on his return from jury room.

¹ Article 1 of the Constitution of the Republic of Kazakhstan.

² Article 132 of Criminal Procedural Code of the Republic of Kazakhstan (hereinafter – CPC).

Since the detention and / or recognition as a suspect in the crime, everyone has the following rights guaranteed by the law:

- 1) obtain from the person in charge of detention immediate clarification of his rights;
- 2) know for what he is suspected;
- 3) independently or through his relatives or agents invite the defender; if the defender is not invited to the suspect by his relatives or agents, the investigator is obliged to do this;
- 4) have a meeting in private and on confidential basis prior to questioning with a defender of your choice or who has been appointed;
- 5) provide explanations and evidence only in the presence of a defender, except if the suspect refused the services of a defender;
- 6) receive copies of the resolution to initiate criminal proceedings against him, resolution on recognizing him as suspect, arrest report and resolution on application of preventive measures;
- 7) refuse to give explanations and evidence;
- 8) introduce evidence;
- 9) submit petitions, including on security measures, and challenges;
- 10) give evidence and explanations in his native language or in the language he speaks;
- 11) have free assistance of interpreter;
- 12) participate at the request of investigator in the investigation carried out at his request or the request of his counsel or legal representative;
- 12-1) reconcile with the victim in cases stipulated by law, including by way of mediation;
- 13) familiarize himself with the records of the investigative actions carried out with his participation, and submit comments on the records;
- 14) lodge complaints against actions (inaction) and decisions of investigator, prosecutor and court;
- 15) protect his rights and legitimate interests in other ways not contradicting the law³.

In addition, every detainee has the right to report on the phone about his detention and location to his loved ones. This message should also be sent by the investigation authority.

You also have the right to lodge complaints against the actions of preliminary investigation to the prosecutor. If the response of the prosecutor's office does not satisfy you, you can file a complaint with the court. Complaints must be substantiated and motivated, they should properly and consistently describe the substance of the case, your position in it, describe the acts complained of, explain why you think they are not legitimate, and what is actually wanted. You should refer to the articles of the law confirming your rightness.

2. Rights of a suspect in the course of examination

³ Article 68 of CPC.

In the course of examination of a suspect, everyone is entitled to witness immunity. This means that the parties being interrogated can refuse to testify⁴. In general, provision of evidence is the right that the suspect may use at his own discretion and not as an obligation. Nobody has the right to compel to testify. Application of violence, threats, other mental or physical pressure is prohibited by law. Torture is a crime, for which the law provides for criminal liability!

During detention and examination, the investigator must explain the nature of suspicion, namely to indicate the article of the Criminal Code, its part and paragraph, where alleged act is described. The suspect has the right to obtain a copy of the decision to initiate criminal proceedings against him.

When participating in an examination, one should remember the following rules:

- carefully read the protocols of procedural actions made with your participation, and do not sign, if their content is described in unreliable manner. You have the right to make additions and clarifications to the interrogation report;
- before giving any explanation to investigator, consult with your lawyer and testify in his presence;
- if you consider it to be necessary, you may in your own hand state your testimony in the interrogation report;
- interrogation can not last more than four hours without a break, a break must be at least of an hour, and total duration of questioning may not exceed eight hours⁵.

3. How to exercise your rights.

Always remember that you have the right to protection and to qualified legal assistance. This means that you are entitled to be represented by the lawyer of your own choice. If you are not able to invite a lawyer, the investigating body is obliged to do so at the expense of the State budget. Investigator, prosecutor or judge does not have the right to recommend you a specific person as defender⁶.

It is desirable to know the lawyer you trust and have his phone number and also let your relatives and friends know this number. If you do not have such an acquaintance, please find the phone number of the bar in your area, select a lawyer with an impeccable reputation, and apply to him for assistance.

Telephone number of the Republican Bar Association (Astana): +7 7172 79 27 41

RBA website: www.advokatura.kz

Telephone number of Almaty City Bar Association: +7 727 2780477

⁴Articles 27,68of CPC.

⁵ Articles 212, 216, 218 of CPC.

⁶ Article 72 of CPC.

ABA website: www.agka.kz

Telephone number of specialized legal advice office “Lawyer” in Almaty: +7 727 2482168

Be careful and cautious, respect your own and other people's rights, try to defend them anytime and anywhere, and keep presence of mind and dignity.