ABSTRACT
of the dissertation submitted for the degree of Doctor of Philosophy (PhD)
in the educational programme 8D04203 – Law
by NAZERKE SERIKZHANKYZY ZHUMADILOVA
entitled "Criminal procedure issues in the pre-trial investigation of criminal offenses involving the unlawful collection, processing, and dissemination of personal data"

Relevance of the study. In the context of digitalization, personal data have become an integral information resource in public administration, e-government, finance, banking, communications, healthcare, education, social networks, online platforms, and law enforcement. Consequently, the unlawful collection, processing, use, and dissemination of personal data have become a complex legal issue affecting not only individual rights and legitimate interests, but also public and information security and the effectiveness of criminal proceedings.

The distinctive role of personal data in criminal proceedings stems from their dual nature. On the one hand, they constitute a special informational asset protected by the rights to privacy and confidentiality; on the other, they serve as a source of evidentiary information that enables the establishment of circumstances relevant to a criminal case. Obtaining, recording, storing, verifying, assessing, and using personal data therefore require specific criminal procedure mechanisms that balance the effectiveness of an investigation with the protection of constitutional rights.

The relationship between personal data protection legislation and criminal procedure legislation has not yet been fully systematized. When data relevant to a criminal case are introduced into the process of proof, their lawful acquisition, recording in the appropriate procedural form, identifiable source, digital integrity, and verifiability in court must be ensured. A breach of any of these requirements may not only diminish the evidentiary value of the information obtained but also create a risk that it will be deemed inadmissible evidence.

Object of the study. Social relations governed by criminal procedure that arise in the protection of personal data and the pre-trial investigation of criminal offenses involving their unlawful collection, processing, and dissemination, as well as relations concerning the introduction of personal data into the process of proof in a criminal case, their use, and their protection.

Subject of the study. The provisions of substantive criminal law and criminal procedure governing the pre-trial investigation of criminal offenses involving the unlawful collection, processing, and dissemination of personal data; the patterns governing the identification, expedited preservation, acquisition, procedural recording, verification, assessment, and protection of personal data and digital information; practices of interaction with data holders, engagement of specialists and experts, and use of procedural measures that restrict rights; and practices for ensuring the confidentiality of personal data in criminal case files.

Aim and objectives of the study. The study aims to develop a scientifically grounded criminal procedure model that balances the effectiveness of the pre-trial investigation of criminal offenses involving the unlawful collection, processing, and dissemination of personal data with the protection of individuals' personal data, and to formulate conceptual proposals for improving the procedures for identifying, obtaining, recording, verifying, assessing, and protecting digital information.

To achieve this aim, the study identified the characteristics of criminal offenses involving the unlawful collection, processing, and dissemination of personal data and their significance in determining the scope of facts to be proved; examined the role of personal data in criminal proceedings; systematized the national legal framework and areas of state regulation; and developed differentiated procedural criteria for obtaining, using, storing, and protecting publicly accessible personal data and personal data subject to restricted access. It also examined the influence of criminal liability and legal classification criteria on the scope of facts to be proved, the specific features of obtaining information from data holders, the admissibility of evidence in the digital environment, the anonymization of personal data, and ways to expedite international cooperation in obtaining cross-border digital information.

Empirical basis of the study.

The empirical basis includes data from the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan on 302 criminal offenses registered in 2021–2025 under Parts 3–5 of Article 147 of the Criminal Code of the Republic of Kazakhstan (hereinafter, the CC RK). The annual figures were 35 offenses in 2021, 39 in 2022, 66 in 2023, 64 in 2024, and 98 in 2025. Of the total, 154 offenses (51.0%) fell under Part 5 of Article 147, 77 (25.5%) under Part 4, and 71 (23.5%) under Part 3. Between 2021 and 2025, the number of registered offenses increased from 35 to 98, a 2.8-fold increase.

The empirical study also used data from statistical reports No. 10, "On the Number of Persons in Respect of Whom Judicial Acts Have Been Issued," and No. 11, "On the Composition of Persons Convicted of Criminal Offenses," compiled by the Committee on Legal Statistics and Special Records of the Prosecutor General's Office of the Republic of Kazakhstan for 2021–2025. During this period, 53 persons were convicted under Article 147 of the CC RK, including 41 (77.4%) under Part 5 of Article 147. Under Part 2 of Article 147, 31 cases were discontinued, 34 persons were acquitted, and 3 were convicted; under Part 5, 1 case was discontinued, 2 persons were acquitted, and 41 were convicted. The average age of those convicted was 34.2 years; 62.3% had secondary education, and 66.0% were neither employed nor studying. These statistics made it possible to identify the structure of judicial practice under Article 147 and the relative proportions of case discontinuances, acquittals, and convictions under its individual parts.

The empirical study used the results of a survey of 850 respondents in Almaty across 5 target groups on the collection, recording, and use of evidence involving personal data: investigative practitioners – 150; prosecutors and investigating judges –

100; representatives of the defense – 150; representatives of organizations holding data – 200; and data subjects – 250. The survey showed that 67.4–78.6% of respondents supported uniform procedural standards for handling personal data; 71.0% indicated a need to clarify the procedure for recording evidence in the digital environment; 70.8% of data subjects identified a risk of further dissemination of their data, while 62.0% had not contacted law enforcement authorities at all.

Scientific novelty of the study. The dissertation substantiates the dual legal nature of personal data in criminal proceedings and proposes the author's definition. It develops a differentiated legal regime for the use of publicly accessible personal data and personal data subject to restricted access. It also substantiates a specific mechanism for limiting excessive disclosure of information concerning a criminal case in requests addressed to data holders.

The study also formulates the author's concept of evidence in the digital environment and legal and technical-procedural criteria for assessing its admissibility; proposes a mechanism for mandatory anonymization of personal data in published judicial acts and copies of case files; and develops a model of international cooperation based on distinguishing expedited preservation of cross-border digital information from its subsequent lawful acquisition.

Propositions submitted for defense:

1. The dual legal nature of personal data in criminal proceedings is substantiated, and the author's definition is formulated.

Personal data are both a source of evidentiary information in a criminal case and a distinct legal object protected by the individual's right to privacy.

The author's definition: "Personal data are information that directly or indirectly identifies, or enables the identification of, a particular individual, is relevant to establishing circumstances subject to proof in a criminal case or is used in the course of criminal procedural actions, and is subject to special legal protection regardless of the lawfulness of its acquisition."

2. A differentiated legal regime is proposed for the use of publicly accessible personal data and personal data subject to restricted access in criminal proceedings.

The level of accessibility of personal data must be considered when determining the procedural rules for their collection and use. Open publication of publicly accessible information does not confer a right to its unrestricted use, while restricted-access data may be obtained only in compliance with the grounds and safeguards established by law.

Accordingly, it is proposed to supplement Article 122 of the Criminal Procedure Code of the Republic of Kazakhstan with a new part requiring that the collection of personal data take account of their relevance to the circumstances subject to proof, the necessity of obtaining them, the proportionality of the volume of information, and the level of accessibility. This approach seeks to limit the unjustified collection of information about persons unrelated to the case.

3. A specific criminal procedure mechanism for confidential requests is developed for obtaining information from data holders.

The proposed mechanism distinguishes the content of an external request from the internal procedural records substantiating the lawfulness of sending it. It is proposed to provide expressly in legislation that a request addressed to a data holder may specify the relevant chapter of the Criminal Code of the Republic of Kazakhstan instead of the specific article and part under which the criminal offense is classified, unless otherwise provided by law and provided that this does not impede verification of the request's lawfulness.

The full legal classification of the criminal offense and the legal and factual grounds for requesting the information remain in the internal procedural records. The proposed mechanism must not restrict the data holder's rights to verify the lawfulness of the request and challenge it, or the full scope of prosecutorial supervision and judicial oversight. This proposal is intended to be incorporated into Article 122 of the Criminal Procedure Code of the Republic of Kazakhstan.

4. The author's definition of "evidence in the digital environment" and uniform criteria for assessing its admissibility are proposed.

The author's definition: "Evidence in the digital environment consists of factual data in digital form that enable the establishment of circumstances relevant to a criminal case, are created, stored, processed, transmitted, received, or recovered in electronic devices, information systems, databases, digital platforms, communications networks, or cloud services, and are obtained in accordance with the procedure prescribed by law and recorded in procedural form."

To assess the admissibility of digital evidence, a system is proposed comprising legal criteria, including lawful acquisition of information, recording in procedural form, and compliance with statutory requirements, and technical-procedural criteria, covering identification of the information source, data integrity, preservation of metadata, logging of actions performed on the data, and verifiability in court. Confirmation of technical integrity does not automatically establish the admissibility of evidence.

5. A specific mechanism is substantiated for mandatory anonymization of personal data in published judicial acts and copies of criminal case files.

The proposed mechanism comprises the following stages: identifying personal data, assessing the necessity of publishing them, masking information that directly or indirectly identifies a person, producing a redacted version, and retaining the complete original under a restricted-access regime.

Anonymization applies to published judicial acts and copies of case files lawfully provided to persons unrelated to the criminal case. This procedure must not alter original evidence or restrict the rights of a suspect, an accused person, or defense counsel to inspect case files to the extent prescribed by law.

6. Mechanisms are substantiated for accelerating international cooperation through the expedited preservation of cross-border digital information and its subsequent lawful acquisition.

To reduce the risk of destruction of information stored on foreign servers, in cloud services, and on international digital platforms, it is proposed to distinguish between two separate legal procedures: expedited preservation and acquisition as evidence.

For this purpose, the study substantiates the development of standardized forms for urgent requests, electronic transmission of requests for international legal assistance, improvement of a national contact mechanism operating around the clock, and clarification of interaction with foreign competent authorities. Preservation of information does not automatically confer a right to access its content; subsequent acquisition must comply with international legal requirements and national criminal procedure requirements.

Dissemination of the research results. A total of 11 research articles have been published based on the study, including 2 in scholarly journals indexed in the international Scopus database, 3 in scholarly publications recommended by the Committee for Quality Assurance in Science and Higher Education of the Ministry of Science and Higher Education of the Republic of Kazakhstan, and 2 in international conference proceedings. In addition, 1 research article has been accepted for publication in a scholarly publication recommended by the Committee and is currently in press. Certificates of state registration of rights to copyright-protected works have been obtained for 2 scholarly works resulting from the dissertation research.

Structure of the dissertation. The structure of the study is determined by its aim and objectives and the logical sequence in which the issues are examined. The dissertation comprises normative references, definitions, symbols and abbreviations, an introduction, three chapters containing nine sections, a conclusion, a list of references, and appendices.