



UDC 341:342(4/9)
IRSTI 10.87.17

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BAIL IN EXTRADITION PROCEEDINGS UNDER ARTICLE 589-1 OF THE CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF KAZAKHSTAN

Abstract. The article examines the legal nature and practical application of bail in extradition proceedings under Article 589-1 of the Criminal Procedure Code of Kazakhstan. It is demonstrated that extradition detention operates within a specific legal regime shaped by international cooperation obligations, heightened flight risks and the absence of domestic criminal adjudication. Through doctrinal analysis of national procedural law and functional assessment of prosecutorial and judicial powers, the institutional limitations of extradition bail are revealed. Particular attention is paid to prosecutorial gatekeeping, the conditional scope of judicial discretion and the mandatory termination of bail following the final extradition decision. Comparative analysis of extradition practice in the United Kingdom, the United States and Germany illustrates alternative regulatory models, including continuous judicial supervision and non-custodial approaches. The article concludes that extradition bail in Kazakhstan primarily functions as a temporary securing measure and does not constitute a genuine alternative to extradition detention.

Keywords: extradition proceedings; extradition detention; bail; proportionality; judicial control; international cooperation; deprivation of liberty.

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫ ҚЫЛМЫСТЫҚ-ПРОЦЕСТІК КОДЕКСІНІҢ 589-1-БАБЫ БОЙЫНША ЭКСТРАДИЦИЯЛЫҚ ІС ЖҮРГІЗУДЕ КЕПІЛ ҚОЛДАНУ

Аннотация. Мақала Қазақстан Республикасы Қылмыстық-процестік кодексінің 589-1-бабына сәйкес экстрадициялық іс жүргізуде кепілді қолданудың құқықтық табиғатын және практикалық іске асырылуын талдауға арналған. Автор экстрадициялық қамаудың халықаралық ынтымақтастық міндеттемелерімен, қашып кету тәуекелінің жоғары деңгейімен және ұлттық қылмыстық сот төрелігінің болмауымен шартталатын ерекше құқықтық режимде жүзеге асырылатынын көрсетеді. Ұлттық қылмыстық-процестік заңнаманы доктриналық талдау және прокурорлық пен соттық өкілеттіктерді функционалдық бағалау негізінде экстрадициялық кепілдің институционалдық шектеулері айқындалады. Ерекше назар прокурорлық процестік бақылауға, сот қалауының шартты сипатына және экстрадиция туралы шешім заңды күшіне енгеннен кейін кепілді міндетті түрде тоқтатуға аударылады. Ұлыбританиядағы, Америка Құрама Штаттарындағы және Германиядағы экстрадициялау тәжірибесін салыстырмалы талдау тұрақты сот қадағалауы мен күзетпен ұстаумен байланысты емес тәсілдерді қоса алғанда, реттеудің балама үлгілерін көрсетеді. Автор экстрадициялық кепіл Қазақстанда қамауға балама емес, уақытша қамтамасыз ету құралы ретінде қызмет етеді деген қорытынды жасайды.

Түйінді сөздер: экстрадиция; экстрадициялық қамау; кепіл; тепе-теңдік қағидаты; сот бақылауы; халықаралық ынтымақтастық; бостандықтан айыру.



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ЗАЛОГ В ЭКСТРАДИЦИОННОМ ПРОИЗВОДСТВЕ ПО СТАТЬЕ 589-1 УГОЛОВНО-ПРОЦЕССУАЛЬНОГО КОДЕКСА РЕСПУБЛИКИ КАЗАХСТАН

Аннотация. Статья посвящена анализу правовой природы и практического применения залога в экстрадиционном производстве в соответствии со статьей 589-1 Уголовно-процессуального кодекса Республики Казахстан. Показано, что экстрадиционное задержание осуществляется в особом правовом режиме, обусловленном международными обязательствами, повышенными рисками уклонения и отсутствием внутреннего уголовного судопроизводства. На основе доктринального анализа национального уголовно-процессуального законодательства и функциональной оценки прокурорских и судебных полномочий раскрываются институциональные ограничения экстрадиционного залога. Особое внимание уделяется прокурорскому процессуальному контролю, условному характеру судебного усмотрения и обязательному прекращению залога после вступления решения о выдаче в законную силу. Сравнительный анализ практики экстрадиции в Соединенном Королевстве, Соединенных Штатах и Германии иллюстрирует альтернативные модели регулирования, включая постоянный судебный надзор и подходы, не связанные с заключением под стражу. Делается вывод о том, что экстрадиционный залог в Казахстане функционирует преимущественно как временная обеспечительная мера и не является полноценной альтернативой экстрадиционному аресту.

Ключевые слова: экстрадиция; экстрадиционный арест; залог; принцип соразмерности; судебный контроль; международное сотрудничество; лишение свободы.

DOI: 10.52425/25187252_2026_39_207

Introduction. The introduction of Article 589-1 into the Criminal Procedure Code of Kazakhstan in 2025 formally incorporated bail into extradition proceedings for the first time¹. This reform appeared to signal a shift away from automatic custodial detention toward a proportionality-based approach to securing international cooperation. However, the institutional design of Article 589-1 raises a fundamental question: whether bail operates as a genuine alternative to extradition detention or merely as a temporary procedural mechanism within an otherwise detention-centred system.

Extradition constitutes a core instrument of international criminal cooperation, enabling states to prevent individuals accused or convicted of criminal offences from evading justice by crossing national borders [1]. In the system of international legal assistance in criminal matters, extradition traditionally occupies a central place as a form of inter-state procedural cooperation. In the literature on transnational criminal law, extradition is commonly described as one of the principal

mechanisms through which states cooperate in the suppression of cross-border crime [2]. At the same time, extradition proceedings inherently involve serious interferences with personal liberty, as they frequently rely on custodial measures applied in the absence of domestic criminal adjudication. Extradition therefore lies between two competing objectives: the need to ensure effective international cooperation and the obligation to protect the individual's right to liberty.

In practice, detention has traditionally been the main measure used in extradition proceedings in many states. Legal scholarship on extradition traditionally recognises detention as the principal mechanism used by requested states to secure the availability of the person sought pending surrender [3]. This practice is mainly explained by the need to secure the person's availability for surrender and to prevent absconding during a procedure that may take a considerable amount of time. At the same time, long periods of detention in the absence of a domestic criminal trial raise serious questions

¹ The Criminal Procedure Code of the Republic of Kazakhstan: No. 231-V of 4 July 2014 [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K1400000231> (Access date: 23.02.2026).



of proportionality and of the requirement to use less restrictive measures.

Within this context, Kazakhstan introduced the Article 589-1 in the CPC that formally permits courts to apply bail as an alternative to extradition detention. The amendment indicates an intention to bring national procedure closer to international standards that require an individual assessment of the necessity of detention. However, the inclusion of bail in the legislation does not by itself change the way extradition measures are applied in practice. How Article 589-1 operates in practice depends as much on institutions, prosecutors, and judges as on the text of the law itself, particularly through the ongoing assessment of proportionality. If the previous custodial approach is preserved in practice, bail may remain a rarely used option.

The article therefore examines whether the new provision actually ensures that detention is used only where it is strictly necessary. The study proceeds from the assumption that the institutional design of procedural safeguards may significantly influence the practical operation of proportionality in extradition proceedings. The central research question is whether Article 589-1 provides sufficient normative and procedural safeguards to ensure that detention is applied only where strictly necessary.

This inquiry unfolds within a broader global trend toward reducing automatic detention through expanded recognition of non-custodial measures in both domestic criminal procedure and international cooperation frameworks. International human rights bodies consistently emphasizes that deprivation of liberty must remain exceptional and justified through individualized assessment². Similar reform trajectories are observable across post-Soviet jurisdictions, where detention-centred models are gradually supplemented by alternative securing mechanisms [4]. Within this regional context, Kazakhstan's reform represents an

attempt to modernise procedural safeguards while preserving effective international cooperation.

Materials and methods. The study is based primarily on doctrinal legal analysis of Article 589-1 of the Criminal Procedure Code of Kazakhstan, examined in its procedural context alongside related provisions governing extradition and preventive measures. The analysis focuses on the legal design of extradition bail and its interaction with prosecutorial initiative and judicial discretion.

This doctrinal approach is combined with functional institutional analysis, assessing how prosecutorial and judicial powers are allocated in extradition proceedings and how this allocation affects the practical operation of proportionality.

A comparative legal method is applied through reference to extradition bail practice in the United Kingdom³, the United States⁴, and Germany⁵. These jurisdictions are used illustratively to demonstrate three distinct models: continuous judicial supervision (United Kingdom), exceptional bail (United States), and non-custodial extradition practice with judicial control up to surrender (Germany).

Structural examination of procedural stages from provisional arrest to final extradition decision is employed to identify the points at which judicial oversight is activated or terminated. Interpretative analysis of statutory provisions is used to assess whether Article 589-1 enables sustained judicial control over deprivation of liberty or functions primarily as a temporary procedural mechanism.

Results, discussion. Extradition proceedings occupy a distinctive position within criminal procedure: they do not determine criminal liability but facilitate international cooperation⁶. Despite this functional specificity, deprivation of liberty remains a central feature of extradition practice across jurisdictions. Detention is frequently treated as a structural default, justified by the

² International Covenant on Civil and Political Rights: adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976 [Electronic resource] – Access mode: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Access date: 23.02.2026).

³ Extradition Act 2003 (United Kingdom) [Electronic resource] – Access mode: <https://www.legislation.gov.uk/ukpga/2003/41/contents> (Access date: 30.01.2026).

⁴ Wright v. Henkel. 190 U.S. 40 (1903). Supreme Court of the United States [Electronic resource] – Access mode: <https://supreme.justia.com/cases/federal/us/190/40/> (Access date: 30.01.2026).

⁵ Act on International Mutual Assistance in Criminal Matters [Electronic resource] – Access mode: https://www.gesetze-im-internet.de/englisch_irg/englisch_irg.html (Access date: 30.01.2026).

⁶ Extradition and Mutual Assistance in Criminal Matters. – Wellington: New Zealand Law Commission, 2014. – 105 p.



perceived necessity to secure surrender and prevent absconding [1].

Procedurally, extradition in Kazakhstan unfolds through several successive stages: provisional arrest, verification of the foreign request, prosecutorial assessment of admissibility, judicial authorization of detention, and finally the adoption of an extradition decision by the Prosecutor General⁷. Bail under Article 589-1 may be considered only during the interim phase between provisional arrest and final extradition determination. Once the extradition decision is final, there is effectively no further judicial role, and detention becomes compulsory. This sequence of stages explains why bail has no lasting effect: it may be applied only during the preliminary phase and automatically ends once the extradition decision becomes final.

Historically, the preference for detention is determined less by an individual risk assessment and more by the institutional logic of extradition. Requested persons are usually foreign nationals without stable social or legal ties to the requested state, while the authorities remain accountable not only to the individual but also to the requesting state. As a result, detention is frequently applied as a precautionary measure, while alternatives are considered only in exceptional circumstances.

This institutional responsibility is strengthened by Kazakhstan's bilateral extradition treaties, which create specific duties to locate, detain, and surrender the requested person⁸. For instance, the Extradition treaty between Kazakhstan and the United Arab Emirates, along with similar agreements with other states, requires the requested state to secure the person's availability pending extradition [5]. Such treaty obligations make the authorities focus on guaranteeing surrender, which in practice favours the use of detention.

This default reliance on detention poses significant risks to individual rights. Extradition proceedings are often slow and unpredictable, involving diplomatic exchanges, document

checks, and judicial review, and during this time a person may remain in custody without any domestic charges or trial. In these circumstances, the compatibility of such detention with the prohibition of arbitrary deprivation of liberty becomes questionable.

At the same time, it must be acknowledged that custodial measures retain particular justification in cases involving violent and dangerous offences, such as homicide, rape, robbery, or aggravated assault⁹. In such situations, detention serves not only to secure extradition but also to protect public safety within the requested state. Although Article 589-1 of the Criminal Procedure Code refers generally to Article 145 of the Criminal Procedure Code, which regulates the use of bail in relation to a suspect/accused during a pre-trial investigation, it does not explicitly differentiate between violent and non-violent extradition cases. This normative silence risks treating fundamentally different risk categories as procedurally equivalent.

Proportionality plays a corrective role in this context. Academic discussion of extradition law emphasises the importance of proportionality and the need to assess the necessity of detention on the basis of individual circumstances [6]. It requires continuous evaluation of whether detention is necessary in light of concrete risks and whether such risks may be mitigated through less restrictive measures. Applied to extradition, proportionality demands individualized justification rather than reliance on abstract assumptions of flight risk.

Within this framework, bail emerges as a transitional instrument intended to reconcile competing interests. It does not undermine extradition objectives but offers a procedural mechanism to secure cooperation while minimizing liberty restrictions during periods of uncertainty.

However, bail under Article 589-1 differs fundamentally from domestic bail. While Articles 140-148 CPC conceptualize bail as a preventive measure within criminal proceedings, extradition

⁷ Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan dated July 4, 2014 № 231 [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K1400000231> (Access date: 30.01.2026).

⁸ Extradition. Agreement Between the United Arab Emirates and the Republic of Kazakhstan [Electronic resource] – Access mode: https://www.moj.gov.ae/assets/2026/1.%20Extradition_637429453842339853.pdf.aspx (Access date: 30.01.2026);

See also similar bilateral extradition treaties concluded by Kazakhstan and other states, imposing obligations to detain and surrender requested persons.

⁹ Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan dated July 4, 2014 № 231 [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K1400000231> (Access date: 30.01.2026).



bail functions as an auxiliary securing mechanism within international cooperation¹⁰. Its purpose is not to ensure participation in domestic proceedings but to guarantee availability for surrender.

Article 589-1 establishes a prosecutorial gatekeeping model in which judicial consideration of bail is possible exclusively upon prosecutorial motion¹¹. The defence is procedurally excluded from independently initiating bail review, and courts are deprived of autonomous authority to reassess detention on their own initiative. Judicial discretion is therefore structurally subordinated to prosecutorial strategy. Although paragraph 3 formally obliges courts to determine bail amounts in certain categories of cases, this obligation operates only within a narrowly defined interim phase and only after prosecutorial activation. In practice, this design transforms bail from a judicial safeguard into a prosecutorially mediated option, significantly weakening the court's role as an independent guarantor of personal liberty.

The most restrictive feature is mandatory termination of bail once extradition becomes final. At that point, detention becomes unavoidable. Bail therefore does not function as a substitute form of deprivation of liberty, but rather as a non-custodial preventive measure temporarily suspending extradition detention during the verification stage. Its purpose is not punitive, but procedural: to secure availability while avoiding unnecessary incarceration.

This design produces structural instability. From an institutional perspective, this model reflects a procedural configuration in which the formal availability of alternative measures does not eliminate the structural preference for detention. Courts operate under heightened presumptions of flight risk, while prosecutors may avoid bail motions due to institutional and diplomatic considerations. Consequently, bail risks marginalisation despite its legislative

introduction

At the time of writing, publicly available sources do not contain verified judicial decisions demonstrating the application of bail to a foreign national detained for extradition in Kazakhstan. This indicates either the absence of such practice or the lack of accessible official data¹². Media reports consistently describe extradition-related arrests involving suspects wanted for serious offences, including drug trafficking, violent crime and organized criminal activity – where detention was applied automatically, without reference to bail as a realistic alternative. Recent cases involving nationals sought by Armenia, Türkiye and other states demonstrate a uniform custodial response. Although such sources do not substitute official judicial statistics, they reflect prevailing enforcement practice and illustrate the absence of operationalised bail in extradition contexts.

Comparative analysis illustrates alternative models. In the United Kingdom, courts retain continuous discretion to grant bail throughout extradition proceedings. In the United States, bail exists but only under exceptional circumstances¹³. These systems demonstrate that bail's effectiveness depends not merely on statutory recognition but on allocation of procedural authority.

The contrast with United Kingdom practice is particularly illustrative. Under the Extradition Act 2003¹⁴, courts retain continuous authority to grant or revoke bail throughout proceedings, subject to periodic review and evolving factual circumstances. Bail therefore functions as an instrument of dynamic judicial management rather than as a transitional procedural device. By comparison, the Kazakh model embeds bail within a rigid temporal framework that precludes ongoing reassessment. Whereas UK courts exercise supervisory responsibility over liberty, Kazakh courts operate episodically and reactively. This difference is not merely

¹⁰ Criminal Procedure Code of the Republic of Kazakhstan: The Code of the Republic of Kazakhstan dated July 4, 2014 № 231 [Electronic resource] – Access mode: <https://adilet.zan.kz/eng/docs/K1400000231> (Access date: 30.01.2026).

¹¹ In the same place.

¹² 80 criminals extradited from Kazakhstan // EL.kz [Electronic resource] – Access mode: https://el.kz/en/80-criminals-extradited-from-kazakhstan_65617/ (Access date: 30.01.2026);

Kazakhstan refuses to extradite citizen of Kyrgyzstan to Russia [Electronic resource] – Access mode: https://24.kg/english/302410_Kazakhstan_refuses_to_extradite_citizen_of_Kyrgyzstan_to_Russia/ (Access date: 30.01.2026).

¹³ Wright v. Henkel, 190 U.S. 40 (1903) [Electronic resource] – Access mode: <https://supreme.justia.com/cases/federal/us/190/40/> (Access date: 30.01.2026).

¹⁴ Extradition Act 2003 [Electronic resource] – Access mode: <https://www.legislation.gov.uk/ukpga/2003/41/contents> (Access date: 30.01.2026).



technical but reflects fundamentally divergent conceptions of judicial role in extradition proceedings.

A particularly instructive comparative example is provided by German extradition practice. German legal doctrine highlights that extradition detention should be applied only where necessary and that courts may rely on alternative supervisory measures when the risk of absconding is limited [7]. Under the Law on International Mutual Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen, IRG)¹⁵, detention in extradition proceedings is not automatic. German courts retain discretion to refrain from ordering extradition custody even after an admissible surrender decision, provided that the requested person demonstrates cooperative behaviour and no concrete risk of absconding is established. Instead of arrest, courts may apply substitute measures such as reporting obligations, residence restrictions or surrender of travel documents. In practice, this allows individuals to remain at liberty until the moment of physical transfer to foreign authorities. This model reflects a structurally different understanding of judicial responsibility: deprivation of liberty is treated as ultima ratio, and judicial supervision continues throughout the entire extradition process rather than terminating upon approval of surrender.

Compared to this approach, Article 589-1 of the Criminal Procedure Code of Kazakhstan institutionalises the opposite logic by mandating detention once extradition is authorised, thereby eliminating judicial balancing at the most liberty-sensitive stage of the proceedings.

Extradition detention engages Article 9 ICCPR¹⁶. International jurisprudence requires that deprivation of liberty be lawful, necessary, and proportionate. Even when pursuing legitimate aims, authorities must demonstrate that less intrusive measures are insufficient.

The European Court of Human Rights has repeatedly condemned detention based

on abstract risks without consideration of alternatives¹⁷. Although Kazakhstan falls outside its jurisdiction, this jurisprudence reflects broader international standards of individualized justification.

Article 589-1 formally incorporates proportionality but confines it to a narrow temporal window. Once extradition is finalized, judicial balancing ceases. Compliance with bail conditions does not affect the inevitability of detention. Proportionality thus operates episodically rather than continuously.

This institutional design risks reducing bail to a symbolic concession. Without sustained judicial authority, detention remains dominant regardless of individual conduct or available safeguards.

The comparative overview demonstrates that Kazakhstan remains the only examined jurisdiction where non-custodial measures are structurally confined to a pre-decision phase, whereas courts in the United Kingdom and Germany retain continuous authority to reassess deprivation of liberty throughout extradition proceedings.

Conclusion. The introduction of bail in Article 589-1 of the CPC of Kazakhstan formally moves away from automatic detention in extradition cases. In legislative terms, the reform recognises the possibility of using less restrictive measures and reflects the idea of proportionality. In practice, however, its effect is limited.

Bail in extradition proceedings functions within a system where the prosecutor controls access to the court, judicial discretion arises only under certain conditions, and any alternative measure ends once the extradition decision becomes final. Under this model, the court does not retain continuous control over the necessity of detention, and non-custodial measures are limited to the period before the extradition decision is adopted. As a result, judicial involvement in liberty protection is episodic rather than sustained, while detention remains structurally dominant.

¹⁵ Act on International Mutual Assistance in Criminal Matters [Electronic resource] – Access mode: https://www.gesetze-im-internet.de/englisch_irg/englisch_irg.html (Access date: 30.01.2026).

¹⁶ International Covenant on Civil and Political Rights: adopted by General Assembly resolution 2200A (XXI) of 16 December 1966, entered into force 23 March [Electronic resource] – Access mode: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Access date: 30.01.2026).

¹⁷ Information Note on the Court's case-law. Note D'information sur la jurisprudence de la Cour [Electronic resource] – Access mode: https://ks.echr.coe.int/documents/d/echr-ks/clin_october_2019_bill (Access date: 30.01.2026).



Criterion	<i>Kazakhstan (Art. 589-1 CPC)</i>	<i>United Kingdom (Extradition Act 2003)</i>	<i>United States (Federal extradition practice)</i>	<i>Germany (IRG – Law on International Mutual Assistance in Criminal Matters)</i>
Legal nature	Temporary securing measure within international cooperation	Judicial alternative to detention	Exceptional remedy (“special circumstances”)	Preventive measure subject to proportionality
Initiator	Prosecutor only	Court or parties	Defence (burden on requested person)	Court (ex officio or upon motion)
Judicial discretion	Procedurally limited and conditional	Broad and continuous	Narrow and restrictive	Broad and continuous
Temporal scope	Only until final extradition decision	Throughout proceedings, subject to review	Rarely granted	Throughout proceedings, including post-decision stage
Termination	Mandatory after extradition decision	Discretionary	Discretionary	Discretionary
Risk assessment	Presumed elevated (foreign nationality)	Individualised	Presumed elevated	Individualised
Role of proportionality	Episodic	Continuous	Exceptional	Continuous

Table 1 – Comparative Models of Bail in Extradition Proceedings¹⁸

Comparative experience illustrates that bail functions as an effective safeguard only in systems where courts retain ongoing authority to reassess deprivation of liberty throughout extradition proceedings. Jurisdictions such as the United Kingdom and Germany embed proportionality within a model of continuous judicial control, enabling dynamic adjustment of coercive measures in response to evolving circumstances. By contrast, Kazakhstan’s framework aligns more closely with models in which custodial default persists despite the formal availability of alternatives.

Accordingly, bail under Article 589-1 should not be understood as a substantive transformation of extradition detention, but rather as its procedural reconfiguration. Proportionality is recognised at the textual level yet neutralised institutionally. Bail mitigates the appearance of custodial logic without displacing its structural primacy.

The Kazakh experience demonstrates that introducing non-custodial measures without recalibrating institutional roles cannot ensure meaningful protection of liberty. In extradition proceedings, proportionality is realised not through the formal existence of alternatives, but through continuous judicial responsibility. Where courts lack autonomous authority to reassess detention over time, bail risks functioning as a temporary procedural accommodation rather than a genuine safeguard of personal freedom. The identified model of “episodic proportionality” may be used as an analytical framework for assessing coercive measures in other forms of international cooperation. The analysis therefore suggests that the effectiveness of bail in extradition proceedings depends less on its formal legislative recognition than on the institutional allocation of procedural authority between prosecutors and courts.

¹⁸Wright v. Henkel, 190 U.S. 40 (1903) [Electronic resource] – Access mode: <https://supreme.justia.com/cases/federal/us/190/40/> (Access date: 30.01.2026);

Extradition Act 2003 [Electronic resource] – Access mode: <https://www.legislation.gov.uk/ukpga/2003/41/contents> (Access date: 30.01.2026);

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