

On some issues of implementation by courts standards of Chapter 29 of Civil Procedure Code of the Republic of Kazakhstan

Invalidated Unofficial translation

Normative Decree of the Supreme Court of the Republic of Kazakhstan dated December 24, 2010 No. 20. Abolished by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated September 29, 2022 No. 8

Unofficial translation

Footnote. Abolished by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated September 29, 2022 No. 8 (effective from the date of the first official publication).

Footnote. Title as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

Footnote. Throughout the text:

the words "chapters 27", "by chapter 27", "to chapter 27", as amended respectively by the words "of chapter 29", "by chapter 29", "to chapter 29";

the figures "278", "279", "280", "282" as amended respectively by the figures "292", "293", "294", "297";

the words "of individual legal act", "Individual legal act", "individual legal act" as amended respectively by the words "of legal act of individual implementation", "Legal act of individual implementation", "legal act of individual implementation" in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

In order to ensure uniform understanding and implementation by the courts of legislative acts when considering applications of individuals and legal entities in accordance with the procedure and on the grounds established by Chapter 29 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Procedure Code), plenary session of the Supreme Court of the Republic of Kazakhstan

hereby RESOLVED as follows:

Footnote. Preamble as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

1. In accordance with the procedure established by Chapter 29 of the Civil Procedure Code, any individual or legal entity (hereinafter referred to as the applicant) shall have the right to appeal against decisions, actions (omissions) referred to in part 1 of Article 292 of the Civil Procedure Code of the subjects, if these decisions have been taken, actions (omissions) have been committed in the exercise of managerial functions in the relevant sphere of state administration. Such entities should include bodies occupying a separate position in the system of state bodies (for example, the General Prosecutor's Office, the Central Election Commission, the National Bank, the National Security Committee, the State Security Service, the State Property and Privatization Committee of the Ministry of Finance, the Agency of the Republic of Kazakhstan for Civil Service Affairs and Anti-Corruption).

With regard to Chapter 29 of the Civil Procedure Code, bodies of state power should be understood as central and territorial bodies of the executive branch of state power, bodies of local self-government authorized by the Constitution, laws and other regulatory legal acts of the Republic of Kazakhstan to perform managerial functions in administrative and legal relations on behalf of the state (hereinafter referred to as the state body).

Pursuant to Article 1 of the Law of the Republic of Kazakhstan dated January 23, 2001 No. 148 “On local government and self-government in the Republic of Kazakhstan” local self-government bodies shall be the bodies entrusted with the functions of solving issues of local significance (akimat, maslikhat, local community body).

In the event of rejection of a protest against a legal act of individual implementation that shall not be in conformity with the law, as well as against the actions of a state body or official, the prosecutor shall apply to the court for recognition of the act, the actions shall be illegal in accordance with Chapter 29 of the Civil Procedure Code.

Footnote. Paragraph 1 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

2. A decision of the state body, the local self-government body, an action (omission) of the official or civil servant may be appealed to a court if the applicant believes that :

- his subjective rights, freedoms or legitimate interests have been violated;
- obstacles have been created to the exercise of its subjective rights, freedoms or legitimate interests;
- he has been unlawfully subject to any obligation.

The decision to bring a person to criminal and administrative liability may be challenged in accordance with the procedure established by the criminal procedure or administrative procedure law, respectively, and in the procedure of legal proceedings.

Footnote. Paragraph 2 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

3. An appeal against a decision of a state body, a local self-government body, an action (omission) of an official or a civil servant in the procedure of Chapter 29 of the Civil Procedure Code shall be permitted, if the decision is taken, the action (omission) is committed in the administrative and legal relations that have arisen in the performance of managerial functions in connection with:

the adoption of a legal act of individual implementation which shall establish, change or terminate the subjective rights or obligations of the applicant in public law relations;

monitoring or supervision of the applicant's compliance with the generally binding rules of conduct established for him by law.

Legal acts of individual implementation shall include written official documents of the established form, which shall meet the requirements specified in paragraph 1 of Article 63 of the Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V “ On legal acts (hereinafter referred to as the Law on legal acts).

The legal act of individual implementation in all cases must be taken within the competence of the state body or local self-government body, and the action (omission) must be carried out within the authority of an official or civil servant in the sphere of state administration and in accordance with the regulatory legal acts to be applied.

Footnote. Paragraph 3 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

4. The decision of a legal entity in the organizational and legal form of a state enterprise, a state institution, an economic partnership, a joint-stock company, a production or consumer cooperative, a public association may be appealed on the grounds provided for in Chapter 29 of the Civil Procedure Code, if the named legal entities have delegated the powers of a state body in the relevant sphere of administration.

5. In accordance with paragraph 2 of Article 76 of the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution), Articles 292 and 293 of the Civil Procedure Code, the applicant shall have the right to appeal against a collective or sole decision of a state body, a local self-government body, an action (omission) of an official or a civil servant if they meet two criteria at the same time:

follow from the public legal relations (the relations of the power and submission) in the sphere of state administration;

give the applicant any legal effect provided for in subparagraphs 1), 2), 3) of part 1 of Article 293 of the Civil Procedure Code.

On the grounds provided for in chapter 29 of the Civil Procedure Code, can be appealed, in particular, against the decision of the local authority to prohibit assembly, meeting, procession, picketing or demonstration; decision of the authorized state body to refuse to recognize a person as an oralman, a returnee, a forced migrant, refugee; actions by road police officials to restrict or prohibit the movement of vehicles.

On the basis of Article 34 of the Law of the Republic of Kazakhstan dated June 30, 2017 No. 81-VI "On Prosecutor's Office (hereinafter - the Law on Prosecutor 's Office) , actions (omission) may be appealed under Chapter 29 of the Civil Procedure Code and acts of the prosecutor if they give rise to any of the provisions of subparagraphs 1), 2), 3) of part 1 of Article 293 of the Civil Procedure Code for the applicant, the legal effect and the current legislation do not provide for a different procedure for their appeal.

In accordance with paragraph 2 of `Article 47 of the Constitution, decisions and actions (omissions) of the President of the Republic of Kazakhstan may not be appealed against in the judicial procedure provided for in Chapter 29 of the Civil Procedure Code.

Footnote. Paragraph 5 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication); dated 11.12.2020 № 6 (shall enter into force from the day of its first official publication).

6. An action which may be appealed under Chapter 29 of the Civil Procedure Code shall include a power claim by an official or civil servant which shall not be in the form of a decision but which shall have for the applicant any of the legal consequences provided for in part 1 of Article 293 of the Civil Procedure Code.

Actions shall include, more specifically, oral demands by an official or civil servant in the exercise of executive and administrative functions, the functions of a representative of the authority, state supervision or control.

7. Omission by the official or civil servant of the duties assigned to it by regulatory legal acts (duty regulations, provisions, regulations, orders) shall belong to omission which can be appealed in the procedure to Chapter 29 of the Civil Procedure Code. The omission should include, more specifically, leaving the application of a citizen or legal entity without consideration in whole or in part, responding to the applicant not on the merits of the application, if the examination of the application falls within the competence of the official or civil servant.

8. Officials whose actions (omissions) may be appealed in accordance with the procedure established by Chapter 29 of the Civil Procedure Code shall be persons referred to in Article 1 of the Law of the Republic of Kazakhstan dated November 23, 2015 No. 416-V “On civil service of the Republic of Kazakhstan” (hereinafter referred to as Law on civil service) and Article 1 of the Law of the Republic of Kazakhstan dated November 18, 2015 No. 410-V “On combating corruption”.

A civil servant shall be understood a person referred to in Article 1 of the Law of the Republic of Kazakhstan “On Civil Service”.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

9. Civil cases in applications filed under Chapter 29 of the Civil Procedure Code shall arise from public legal relations and shall be dealt with in special proceedings, except in cases arising out of substantive and binding legal relations, which shall be dealt with only in action proceeding.

A special action proceeding shall be a type of action proceeding having the following characteristics:

the dispute shall be resolved by appeal against the decisions, actions (omissions) of the entities listed in part 1 of Article 292 of the Civil Procedure Code, violating the rights, freedoms and legally protected interests of citizens and legal entities;

the case shall not be subject to consideration in absentia proceedings, as well as simplified (written) proceedings;

the case cannot be concluded by the settlement agreement, mediation settlement and participatory procedure;

in cases of this category, reduced time limits have been set for recourse to the courts, preparation of cases for trial and consideration of cases;

Since special action proceeding shall be a type of proceedings, cases in this category shall be dealt with in proceedings in accordance with the standards of Chapters 14, 23, 24 and 25 of the Civil Procedure Code.

Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

10. The standards of Chapter 29 of the Civil Procedure Code shall not apply to cases for which the standards of the Civil Procedure Code shall establish other procedures for consideration:

cases of special proceedings provided for in Chapters 31 to 49 of the Civil Procedure Code;

cases of special proceedings under Chapters 27, 28, 30 of the Civil Procedure Code
;

cases of appeal against decisions and actions (omissions) of a court, judge, prosecutor, investigator or person conducting an initial inquiry, in respect of which a different judicial procedure shall have been established by the relevant procedural law.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

11. In accordance with Article 65 of the Law on Legal Acts, a decision of a state body or a local self-government body in the form of a legal act of individual application may be appealed if such an act has not been terminated in connection with the execution of the instructions (requirements) contained therein.

If on the basis of the legal act of individual implementation the civil transaction is concluded, then disputed transaction, for example, the turnkey contract on performance of work (services) shall be subject to the appeal as action proceeding following the results of a competition (tender). If the transaction is recognized as invalid on the grounds of non-compliance with its requirements of the law, the reasoning part of the decision must indicate the court's conclusions on the illegality of the decision served as the basis for the conclusion of the disputed transaction.

Footnote. Paragraph 11 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

12. On the basis of the provisions of Articles 9 and 10 of the Law of the Republic of Kazakhstan “On Civil Service” and Article 1 of the Law of the Republic of Kazakhstan dated November 27, 2000 No. 107 “On administrative procedures” an official and a civil servant in the field of state administration shall exercise their functions on behalf of the relevant authority and local self-government.

Article 65 of the Law on Legal Acts shall provide for the right of a higher authority or official to reverse the decision of a lower authority if such a decision is taken in violation of the law, including abuse of authority.

A superior official shall have the right to demand from a lower official or civil servant that such actions be taken within the powers of the official or civil servant, which shall be aimed at restoring violated rights and freedoms and the legitimate interests of the applicant.

Footnote. Paragraph 12 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

13. In accordance with Article 57 of the Civil Procedure Code, in court, the case of a state body or a local self-government body shall be conducted by the head acting within the limits of the powers granted to him by law, other regulatory legal acts or constituent documents. The head shall submit to the court documents certifying his

official position or authority. Along with the head of the named body in court, the case may be conducted by a representative on instructions.

An official or civil servant who shall have committed an appealed action (omission) shall be called upon to participate in the case and shall be informed of the time and place of the trial if, at the time of consideration of the case, he continues to hold a position in which he has committed the appealed action (omission). If the named person has terminated labour relations with the state body or local self-government body on the grounds provided for by law, only the relevant state body or local self-government body shall be involved in the case.

Footnote. Paragraph 13 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

14. An application may be submitted to the court by an applicant with civil procedural capacity.

In accordance with part 3 of Article 54 of the Civil Procedure Code, the prosecutor shall have the right, in the interests of the categories of citizens specified in the law, to file an application with the court for the protection of subjective rights and freedoms violated by a state body, a local self-government body, an official or a civil servant in the exercise of managerial functions.

On the bases provided for by part 1 of Article 293 Civil Procedure Code the application of incapacitated or restrictedly the capable individual can be submitted to protection of the rights and freedoms by the lawful representative of the called person (parents, the trustee, the guardian).

Footnote. Paragraph 14 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

15. Submission of an application to a higher official or to a higher state body, a local self-government body shall not be a ground for refusal to accept the application in court proceedings.

If the applicant does not agree with the decision of a higher state body, a local self-government body or a higher official, both the decision of the higher state body, a local self-government body or a higher official and the decision of the lower state body, a local self-government body, the action (omission) of the official or civil servant shall be subject to judicial appeal.

If the law establishes mandatory consideration of an application by a higher body, organization, official, commissions or ombudsman, the application of a citizen or legal entity shall be submitted to the court after compliance with this procedure of

application. In the event of failure to comply with this procedure, the application shall be returned under Article 152 of the Civil Procedure Code or left without consideration under Article 279 of the Civil Procedure Code.

Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

16. Submission of an application to a higher state body or a higher official or to a court in accordance with paragraph 4 of Article 65 of the Law on Legal Acts shall suspend the validity of the legal act of individual implementation (decision) until a decision shall be taken.

The court, in accordance with Article 34 of the Law on Prosecutor's Office, may, pending a decision on an application (complaint) against the actions or acts of the prosecutor, suspend their operation.

Footnote. Paragraph 16 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

17. In accordance with part 1 of Article 294 of the Civil Procedure Code, the applicant shall have the right to appeal the decision, action (omission) within three months from the day on which the applicant became aware of the violation of his subjective rights, freedoms or legitimate interests. The prosecutor shall have the right to appeal to the court within ten days from the moment of receipt of the report on the results of the examination of the protest or after the expiry of the deadline established by law for its consideration.

The duty to prove the time when the applicant became aware of the violation of his rights, freedoms and legitimate interests, rests with the applicant.

Footnote. Paragraph 17 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

18. Skipping the three-month period for applying to the court shall not be the ground for the court to refuse to accept the application.

The time limit for recourse to the court, missed for good reasons, may be restored by the court, which the court is obliged to indicate in the decision. If the deadline has not been restored, the court shall decide to refuse the application, and other factual circumstances of the case shall not be examined, as the basis for refusal of the decision shall be indicated only the omission of the period of appeal to the court without valid reasons. Such a decision shall be taken in a preliminary hearing or following a judicial proceeding.

Footnote. Paragraph 18 in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

19. In accordance with part 3 of Article 292 and Articles 26. 27. 29 of the Civil Procedure Code, an application for appeal against the decision; an action (omission) shall be submitted to the court in accordance with the rules of jurisdiction:

An application of an individual or an application in his interests for appeal against the decision, an action (omission) shall be submitted to the district (city) court at the choice of the applicant: at the place of residence of the applicant or at the place of location of the state body, the body of local self-government, the decision of which shall be appealed.

Since an official or a civil servant acts in public law on behalf of a state body, a local self-government body, the location of an official or civil servant means the location of the state body, a local self-government body on whose behalf the named person committed the action (omission) being appealed;

In accordance with part 4 of Article 292 of the Civil Procedure Code, an application for appeal against the decision of the state body to refuse permission to travel abroad for a citizen of the Republic of Kazakhstan, who shall keep the information constituting a state secret, may be submitted to a district (city) court at the location of the body having decided to refuse to leave;

the application of a military or citizen passing military fees to challenge the decision of the military administration body or the action (omission) of an official may be submitted to the military court of the relevant garrison at the location of the military unit, the military administration body.

According to Article 1 of the Law of the Republic of Kazakhstan dated February 16 , 2012 No. 561-IV "On military service and the status of the military personnel" the military personnel shall be understood as the citizens of the Republic of Kazakhstan being in the military service in the Armed Forces, other troops and military formations of the Republic of Kazakhstan at the call of under the contract and also regular officers . A citizen shall lose the status of a military from the day he has been removed from the lists of the relevant military unit;

the application shall be applied from the citizen, carrying out individual business activity without education of legal entity, and equally legal entity about the appeal of the decision of state body, a local self-government body, public association, the organization, the official, civil servant according to part 1 of Article 27 of the Civil Procedure Code to specialized inter district economic court in the location of state body, local self-government body, public association, the organization, the official, civil servant;

The rules on exclusive or contractual jurisdiction provided for in Articles 30 and 31 of the Civil Procedure Code shall not apply to cases provided for in Chapter 29 of the Civil Procedure Code.

Footnote. Paragraph 19 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

20. An application for appeal against the decision, action (omission) must meet the requirements of Articles 148, 149 and 293 of the Civil Procedure Code.

The application must necessarily state:

when and by which state body, local self-government body an appealed decision has been taken, by which official or civil servant and when the appealed action (omission) has been committed;

content of the appealed decision, action (omission);

what, in the applicant's opinion, rights, freedoms or legitimate interests have been violated;

in the applicant's opinion, what obstacles have been created to the exercise of rights and freedoms or legitimate interests;

what, in the applicant's opinion, shall be the obligation unlawfully imposed on him; being of the requirement of the applicant.

Footnote. Paragraph 20 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

21. The application submitted in accordance with Chapter 29 of the Civil Procedure Code shall be subject to payment of the state duty in the amount provided for by subparagraphs 2), 3) and 4) of paragraph 1 of Article 610 of the Code of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget" (Tax Code).

Applications submitted to the court in other categories of cases of special proceedings shall be subject to payment of the state duty in the amount established by subparagraph 8) of paragraph 1 of Article 610 of the Tax Code.

In cases provided for in Article 616 of the Tax Code, the applicant shall be subject to exemption from payment of the state duty.

Footnote. Paragraph 21 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

22. If the applicant has not attached to the application the materials necessary for the consideration of the case, in accordance with Articles 163 and 165 of the Civil Procedure Code, when preparing the case for judicial proceedings, the judge shall request from the state body, the local self-government body:

the text of the regulatory legal act establishing the competence of the state body, the local self-government body (the relevant law, regulation, charter, constituent documents);

the text of a legal act of individual implementation by which the state body, the local self-government body shall have been established, modified or terminated the subjective rights and obligations of the applicant in the public-legal respect that shall have arisen;

regulatory legal act, which shall establish the scope of authority of an official or civil servant (regulation, rules, official instruction), if the action (omission) of that person is appealed;

materials, being served as the basis for the decision, the commission of an action (omission), which shall be appealed.

Footnote. Paragraph 22 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

23. Taking into account the circumstances specified in the application, the judge shall have the right to make a decision on mandatory appearance in the court hearing of the head of the state body, the local self-government body, official or civil servant for the purpose of considering the case with their participation.

Failure to appear the head of the state body, local self-government body, official or civil servant, as well as failure to appear the representative of the named persons, duly informed about the time and place of consideration of the case, if participation of the named persons in the court session is not recognized by the judge as mandatory, the basis for postpone of consideration of the case is not mandatory.

Failure to appear before the court of the head of the state body, local self-government body, official or civil servant, as well as representatives of the named persons, duly not informed about the time and place of consideration of the case, according to part 2 of Article 196 of the Civil Procedure Code, shall be a ground for postpone of consideration of the case. If the case is postponed, it must be considered within the procedural period established by the standards of the Civil Procedure Code for the consideration of the case of special proceedings of the relevant category.

Failure to appear before the court of the head of the state body, the local self-government body, the official or the civil servant, when the court has declared such appearance mandatory, must lead to administrative liability of the named persons in accordance with the legislative act on administrative offences.

Footnote. Paragraph 23 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

24. According to Articles 15 and 72 of the Civil Procedure Code the applicant with respect for the principle of competitiveness shall be obliged to prove the opinion on existence of any of the circumstances specified in subparagraphs 1), 2) or 3) of part one of Article 293 of the Civil Procedure Code. The head of the state body, local self-government body and its representative, official or civil servant participating in the court hearing shall be obliged to prove compliance with the law of the appealed decision, the committed action (omission).

The rules established by Article 72 of the Civil Procedure Code on the sharing of the burden of proof shall apply also to the hearing of a case before an appellate court, but in accordance with the provisions established by Article 413 of the Civil Procedure Code.

Footnote. Paragraph 24 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

25. When the court considers a case provided for in Chapter 29 of the Civil Procedure Code, the court may, on its own initiative, request from the state body or the local self-government body additional materials that served as the basis for the decision to be appealed, the commission by an official or civil servant of an action (omission).

Failure to submit the requested materials to the court shall entail the legal consequences provided for in part 9 of Article 73 of the Civil Procedure Code.

A person who failed to comply with the court's requirement for materials shall be held administratively liable for contempt of court. The imposition of an administrative penalty shall not exempt the person who owns the evidence claimed by the court from the obligation to submit it to the court. In the event of a malicious failure to comply with the court's requirement, the named persons shall be held criminally liable.

Footnote. Paragraph 25 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

26. The legality of the decision being appealed, the action (omission) shall mean that it has been taken (committed) in accordance with regulatory legal acts, within the competence of the state body or body of local self-government, the powers of an official or civil servant.

Having recognized the legality of the appealed decision, the action (omission), and the court shall, in accordance with part 2 of Article 227 of the Civil Procedure Code, decide to dismiss the application.

Footnote. Paragraph 26 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

27. When considering a case, the court shall not have the right to assess the expediency of the decision taken by the official or civil servant of an action (omission), if the substance of the decision taken, the action (omission) committed is derived from the powers of the state body, the local self-government body, the official or the civil servant provided for by regulatory legal acts.

28. If the court finds the appealed decision of the state body, a local self-government body, the action (omission) of the official or civil servant illegal, the court decision shall state:

- what regulatory legal acts this decision does not comply with the action (omission);
- what rights and freedoms, legitimate interests of the applicant have been violated;
- what obstacles have been created to the realization of the applicant's rights, freedoms or legitimate interests;
- what obligation have been unlawfully imposed on the applicant.

In the operative part of the decision, the court shall be obliged to specify the authority, the local self-government body, which shall be obliged to eliminate the violations of the applicant's rights, freedoms or legitimate interests, as well as the period during which the violations committed are to be eliminated. The period for the elimination of violations should be calculated from the date of entry into force of the court decision.

Depending on the claims made, the court may limit its decision to declaring the contested act illegal. In this case, a judicial decision recognizing the act unlawful means that it shall be illegal from the moment of adoption.

By recognizing illegal the refusal to commit an act (for example, the refusal to register a vehicle), the court shall place an obligation on the body or official to perform specific acts against the applicant within a time limit determined by the court (for example, to register a vehicle).

By recognizing illegal the failure of the body or official to consider the applicant's appeal, the court shall oblige the body or official to consider the applicant's appeal within the time limit set by the court, without specifying the content of the decision to be taken by the body.

Footnote. Paragraph 28 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

29. Within three working days from the date of entry into force of the court decision, a copy of it in accordance with part 2 of Article 297 of the Civil Procedure Code shall be sent for execution to the state body, the local self-government body, which is responsible for the execution of the court decision.

A copy of the court decision shall be sent to a higher state body or to a higher official.

A person who shall have not complied with a court decision within the time limit set by the court shall be held administratively liable for failure to comply with a judicial act on the grounds and in accordance with the procedure provided for in the legislative act on administrative offences. Bringing a person to disciplinary or administrative liability shall not relieve that person of the obligation to execute a court decision.

The Court shall be obliged to monitor the execution of the court's decision within the prescribed time limits, as well as the receipt of a communication on the execution of the decision within the time limits established by part 3 of Article 297 of the Civil Procedure Code.

Footnote. Paragraph 29 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

30. In making the decision, the court shall be obliged, in accordance with Articles 109 and 113 of the Civil Procedure Code, to distribute the court expenses among the parties.

Footnote. Paragraph 30 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

31. If there are grounds provided for in Article 270 of the Civil Procedure Code, the court should discuss the issue of making the private determination on the elimination of the causes and conditions that contributed to violations of the legality in the activities of the state body, the local self-government body, the official or the civil servant.

Footnote. Paragraph 31 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

32. In connection with the adoption of this regulatory resolution, the resolution of the Supreme Court dated December 19, 2003 No. 10 “On implementation by the courts of legislation on challenging decisions and actions (or omissions) of state bodies, local self-government, public associations, organizations, officials and civil servants have been recognized as invalid.

33. According to Article 4 of the Constitution, this regulatory resolution shall be incorporated into the law in force and shall be generally binding and shall be enforced from the date of its official publication.

Footnote. Paragraph 33 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 19.01.2018 № 2 (shall be enforced from the day of its first official publication).

Chairman of the Supreme Court

*of the Republic of Kazakhstan M. Alimbekov
Judge of the Supreme Court
of the Republic of Kazakhstan,
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