

"On practice of enforcement of criminal legislation in cases of criminal offences related to violation of the road traffic rules and operation of vehicles"

Unofficial translation

Normative Decree of the Supreme Court of the Republic of Kazakhstan dated June 29, 2011 No. 3.

Unofficial translation

Footnote. Title as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

Footnote. Throughout the text, the figures "300," 297, "298" shall be amended by the figures "351," 347, "348" respectively in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 N 8 (shall be enforced from the day of its first official publication).

In connection with the issues in judicial practice in cases of road traffic criminal offences and with a view to the correct and unified enforcement of legislation in cases of this category, the 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 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

1. Draw the attention of the courts to the fact that criminal liability for criminal offences under Articles 345, 345-1, 346 (parts three, four, five and six) 348, 349 of the Criminal Code of the Republic of Kazakhstan (hereinafter referred to as the Criminal Code), shall ensue only if the violation of the road rules or the operation of vehicles entailed consequences in the form of careless infliction of medium or serious harm to human health, or the death of one or more persons.

For criminal prosecution on Article 346, part one of the Criminal Code ensuing of any consequences shall not be required.

Under the second part of Article 346, of the Criminal Code, liability shall ensue if there are consequences in the form of careless damage to other people's vehicles, cargo, road and other structures or other property, as well as causing light harm to human health.

Footnote. Paragraph 1 – in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall enter into force from the day of the first official publication).

1-1. The fact of a person being, at the time of committing a criminal offense, in a state of alcohol, drug and/or inhalant intoxication shall be a mandatory sign of the acts provided for in Article 345-1 of the Criminal Code.

To qualify an act under the relevant part of Article 346 of the Criminal Code, it must be established that there shall be two circumstances: (1) a person being, at the time of committing a criminal offense, in a state of alcohol, drug (or) inhalant intoxication; 2) the fact of depriving a person of the right to drive a vehicle before committing this act. The existence of only one of these circumstances shall exclude the qualification of an act under Article 346 of the Criminal Code.

Footnote. As added by paragraph 1-1 of the regulatory resolution in accordance with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall enter into force from the day of the first official publication).

2. To clarify that the subject of a criminal offence under Articles 345, 346, 347, 348, 349, 351 of the Criminal Code shall be a person who, at the time of the commission of the criminal offence, reached the age of 16, driving a mechanical vehicle and committed a violation of the road traffic rules or operation of vehicles. The existence or absence of a driving license, as well as the knowledge and skills of its operation, shall not affect the basis of criminal liability.

Footnote. Paragraph 2 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

3. When classifying a vehicle as a mechanical, courts should refer to Article 345 of the Criminal Code and subparagraph 38) Article 1 of the Law of the Republic of Kazakhstan dated April 17, 2014 No. 194-V "On road traffic rules" (hereinafter referred to as the road traffic rules), as well as section 1, paragraph 2, subparagraph 45, of the road traffic rules, approved by the resolution of the Government of the Republic of Kazakhstan dated November 13, 2014 N 1196 (hereinafter referred to as the road traffic rules), according to which a motor vehicle shall be recognized as a self-propelled motor-driven road vehicle, including motor vehicles, trolleybuses, trams (excluding scooters and rail vehicles), tractors and self-propelled vehicles using road traffic.

In accordance with subparagraphs 38) and 41) of Article 1 of the Law of the Republic of Kazakhstan "On road traffic" and subparagraph 46) section 1, paragraph 2 of the road traffic rules shall not include a motor cycle two or three-wheeled vehicle equipped with an internal combustion engine with a cylinder volume not exceeding fifty cubic centimeters or an electric engine and having a maximum design speed not exceeding fifty kilometres per hour. Motor cycles shall be equivalent to suspended-powered bikes, mokies, scooters and other vehicles with similar characteristics.

A passenger, pedestrian or other road user, as well as a person driving a vehicle other than a mechanical vehicle, shall be subject to criminal liability for a criminal offence provided for in the relevant part of Article 351 of the Criminal Code, provided that their violations of the

road traffic rules shall have caused serious harm to human health or the death of one or more persons by negligence.

Footnote. Paragraph 3 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

4. Actions of persons driving vehicles in the course of non-road traffic-related work (for example handling, repair and filling of vehicles, construction, road, agricultural and other non-transport works) which shall have caused the consequences specified in Articles 345, 346 of the Criminal Code, depending on the specific circumstances of the case, shall be subject to qualification under the Articles of the Criminal Code entailing liability for violation of the rules for performance of some work, safety rules or for criminal offence against the person.

Footnote. Paragraph 4 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

5. Violation of the rules of driving or operation of a combat, special or transport vehicle of the Armed Forces of the Republic of Kazakhstan by a person who shall be subject to the status of a military, who by negligence caused serious harm to human health or his death shall be subject to qualification under the relevant part of Articles 463, 466 of the Criminal Code.

For violations of road traffic rules during driving or operation of other vehicles, the military shall be liable under the relevant part of Articles 345 and 346 of the Criminal Code.

Footnote. Paragraph 5 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

6. In view of the form nature of Articles 345, 346, 348, 349, 351 of the Criminal Code, in the resolution on the qualification of the act of the suspect, the indictment act (protocol on criminal misconduct, resolution on the application of order proceedings), the sentence (resolution) of the court must indicate which specific paragraphs of the road traffic rules or operation of vehicles shall have been violated by the guilty, as well as the content of these violations must be solved.

Violations of the road traffic rules or operation of vehicles that shall not be causally related to socially dangerous consequences (for example, the absence of a driving license at the time of the accident) shall not be able to form an objective side of the named criminal offences and shall be subject to exclusion from the charge.

Footnote. Paragraph 6 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

7. When the socially dangerous consequences have been the result of a road traffic accident involving several drivers, it shall be necessary to clarify the violation of which road

traffic rules shall have been committed by each of them, as well as the causal link between the actions of each and the socially dangerous consequences.

At the same time, it should be determined which actions of other drivers have created obstacles or dangers to road traffic, whether the latter have had the technical opportunity and have taken all measures to avoid an impact or collision with another vehicle or other obstacle, those who shall be in his way, and to pay attention if the driver have complied with section 10 , paragraph 1 of the road traffic rules, according to which it must choose the speed of movement that shall allow it to constantly monitor the movement of the vehicle.

If the harmful consequences of the accident resulted from the joint actions of several persons, but among them were not only the drivers of the vehicles specified in Articles 345, 346 of the Criminal Code, but also others (for example, pedestrians, cyclists, etc.), Articles 345, 346 of the Criminal Code shall apply to the persons driving the vehicle, and the unlawful actions of others shall be subject to qualification under Article 351 of the Criminal Code.

Footnote. Paragraph 7 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

8. When appointing an auto-technical expert, it should be borne in mind that questions of a legal nature cannot be raised for the permission of experts.

Auto-technical expertise only shall permit special technical issues, the subject of expert research may also be circumstances related to the actions of the driver of the vehicle and other road users, as they have specifically stated.

In sentencing, the court shall be obliged to indicate which of the initial data proposed to the expert on the basis of whom the calculations shall have made, shall be found to be reliable and to assess the expert opinion. At the same time, the expert's opinion, due to the requirements of Article 25, paragraph 2, of the Code of Criminal Procedure of the Republic of Kazakhstan, shall not have an advantage over other evidence, and shall be subject to analysis, comparison and evaluation in conjunction with other evidence investigated in the case.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

9. Acts provided for in different parts of Articles 345, 346 of the Criminal Code committed by the same person at different times shall be subject to qualification under the relevant part of the referenced article.

If in case of violation of the road traffic rules or operation of vehicles at the same time by negligence the health of one or more persons, as well as death of one or more persons, is caused, the act as a whole shall be the subject to qualification under the corresponding part of Articles 345, 346 of the Criminal Code, which shall provide for more serious consequences. At the same time, the less serious consequences caused by the same act must be specified in the indictment and in the sentence.

Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

10. If a person deliberately used a vehicle for the purpose of killing, causing harm to health or destroying or damaging property of others, the act must be qualified under the Articles of the special part of the Criminal Code on criminal offences against the person or property, without additional qualification under Articles 345, 346, 348, 351 of the Criminal Code.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

11. The actions of the driver liable for the violation of the road traffic rules or operation of vehicles in the event of the consequences referred to Articles 345, 346, 351 of the Criminal Code and who left the scene of the accident should be characterized by a combination of the offences referred to Articles 345, 346, 351 and 347 of the Criminal Code.

According to the note to Article 347 of the Criminal Code, a person who shall leave the scene of an accident in connection with assistance to victims shall be exempted from criminal liability under this Article.

A person shall not be liable under Article 347 of the Criminal Code and when he leaves the scene of an accident in order to report the incident to the police, to call for additional assistance if it is impossible to assist the victim himself at the scene of the accident.

Footnote. Paragraph 11 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

12. If the person who has stolen a motor vehicle, when driving it, shall commit a violation of the road traffic rules or operation of the vehicles, resulting in the consequences specified in Articles 345. 346 of the Criminal Code, his actions shall be qualified on the basis of the combination of the crimes committed under Articles 188 or 200 of the Criminal Code, respectively, as well as, depending on the specific circumstances of the case, Articles 345. 346. 347 of the Criminal Code.

Footnote. Paragraph 12 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

13. Under paragraph 1 of Article 348, of the Criminal Code, criminal liability shall entail only when the poor repair of vehicles, as well as the commissioning of vehicles known to be technically defective, have been in a causal relationship with the consequences specified in this article, the possibility of which the guilty anticipated, but by self-doubt expected to eliminate them, or shall not have foreseen, although he should have anticipated.

Poor repair shall mean performance of works to restore functional abilities of faulty vehicles and equipment with deviation from the established technological rules and quality standards.

The release of technically defective vehicles shall mean the authorization of an authorized person to use a vehicle for its intended purpose, which shall have technical faults that pose a threat to the safety of movement or operation of the vehicle (for example, failure of the braking system, steering, wheel attachment, control devices, automation, etc.).

Taking into account the fact that issues related to the repair of vehicles and their release into operation in technically serviceable condition shall require special knowledge, the correct resolution of cases shall require the carrying out of expertise, including automobile engineering.

14. The subjects of the criminal offence referred to paragraph 1, Article 348, of the Criminal Code may be employees of road organizations, irrespective of organizational and legal forms and forms of ownership carrying passengers and goods by road and urban electric transport, and employees of other organizations where the regulations or orders in force of the relevant order or by virtue of their official position, type of activity shall be responsible for the repair and technical condition or operation of vehicles, who carried out ill-quality repairs, resulting in negligent death, serious harm to health.

Footnote. Paragraph 14 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

15. The admission by an official, the owner or the owner of a vehicle to allow a person deprived of the right to drive vehicles and being in a state of alcohol, drug and/or inhalant intoxication shall entail liability under Article 346 of the Criminal Code.

The actions of an official, the owner of a vehicle to allow a person to drive a vehicle who shall not have the right to drive vehicles or the right to drive vehicles of the relevant category, if this act entailed, by negligence, causing moderate or serious harm to health or the death of one or more persons, are subject to qualification under the corresponding part of Article 349, of the Criminal Code.

Footnote. Paragraph 15 – in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall enter into force from the day of the first official publication).

16. In accordance with paragraph 3 of Article 50, of the Criminal Code, the court may impose additional penalty for the commission of a criminal offence, under paragraph 1 of Article 348, paragraph 1 of Article 349, and Article 351 of the Criminal Code, in the form of deprivation of the right to hold certain positions or engage in certain activities, if in view of the nature and degree of social danger of the act committed and the person of the guilty, it is considered impossible to retain his right to hold certain positions or engage in certain activities.

If the amnesty provides for the exemption only from the basic penalty and does not eliminate the application of additional punishment, the court, when finding a person guilty of criminal offences, provided for by Articles 345. 346, paragraphs 2, 3 and 4 of Article 348, paragraphs 2, 3 and 4 of Article 349, of the Criminal Code, shall decide on a conviction, with the release of the convicted person from the basic penalty and the imposition of an additional penalty of deprivation of the right to hold certain positions or engage in certain activities.

Footnote. Paragraph 16 in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

16-1. In cases of transport criminal offences, the courts should bear in mind that a motor vehicle being the object of a traffic accident cannot be classified as means of committing a criminal offence and confiscated into the state's income on that basis.

Footnote. As added by paragraph 16-1 of the regulatory resolution in accordance with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall enter into force from the day of the first official publication).

17. In accordance with part five of the Article 46, paragraph 1) of the Criminal Code, the person convicted of negligent criminal offenses under Articles 345. 345-1. 348. 349. 351, serving a sentence of deprivation of liberty, regardless of the term, shall be appointed to the detention centers of minimum security.

When imposing sentences on courts, it should be borne in mind that the acts provided for in Article 346, parts the second, third, fourth and fifth, sixth of the Criminal Code shall be criminal offences committed with two forms of guilt and shall be generally recognized as intentionally committed in accordance with the requirements of Article 22 of the Criminal Code.

In this regard, in case of careless infliction of moderate or grievous bodily harm or death to one or more persons as a result of a deliberate criminal offence (driving by a person deprived of the right to drive vehicles while intoxicated; transfer or admission of such a person to drive a vehicle) the guilty person to serve a sentence of imprisonment for a term of more than two years must be assigned to the institution of the detention centers of minimum security.

When the convicted of a combination of criminal offenses, if some are committed intentionally and others by negligence, the court has the right to appoint a sentence of imprisonment in detention centers of minimum security only if a sentence of imprisonment of up to two years is imposed for a deliberate criminal offense.

At the same time, the court shall have the right, on the basis of a combination of criminal offences, to sentence imprisonment in institutions of the correctional system of minimum security if a non-custodial penalty is imposed for an intentional criminal offence.

Footnote. Paragraph 17 in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

official publication); as amended by the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall enter into force from the day of the first official publication).

17-1. An additional penalty of life deprivation of the right to drive a vehicle on the basis of Article 345-1, part four of the Criminal Code and the relevant parts of Article 346 of the Criminal Code shall be imposed by virtue of the requirements of Article 6, part three of the Criminal Code only for criminal offenses committed after January 10, 2020. For criminal offences committed before the specified time, an additional punishment in the form of deprivation of the right to drive a vehicle shall be imposed for the period specified in the sanctions of these Articles in the previous version.

An additional penalty of deprivation of the right to drive shall be imposed regardless of whether or not the defendant had such a right at the time of sentencing.

Footnote. As added by paragraph 17-1 of the regulatory resolution in accordance with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall enter into force from the day of the first official publication).

18. In cases of criminal offences involving violations of the road traffic rules and operation of vehicles, the courts must ensure the correct resolution of civil claims, while respecting the requirements of the substantive and procedural laws, as well as the explanations given in regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated June 20, 2005 N 1 “On consideration of civil claims in criminal proceedings”.

In cases of this category, the civil defendants must be the owners of vehicles on which, in accordance with paragraph 1 of Article 931, of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Code), the obligation to compensate for damage caused by a source of increased danger shall be imposed.

At the same time, the courts should take into account that in case of damage to life, health or property as a result of a road traffic accident, the victim shall have the right to insurance compensation due to compulsory insurance of civil liability of vehicle owners. Under Article 924 of the Civil Code, the victim's claims against the defendant for recovery of the difference between insurance compensation and the actual amount of damage may be resolved.

If the damage caused by the accident shall not be an insurance case or shall be caused by the driver of a non-motor vehicle (for example, by a hit-of a vehicle or bicycle), the civil liability of the owner of which shall not be subject to compulsory insurance, it shall be compensated under the general rules referred to the civil legislation.

Footnote. Paragraph 18 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

19. When considering claims for compensation for moral damage, the courts must be guided by the provisions of Articles 951 and 952 of the Civil Code and by the explanations given in the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated

November 27, 2015 No 7 "On enforcement, by the courts, of legislation on compensation for moral damage" in determining the amount of compensation for moral damage, the courts must proceed on the basis of the principles of fairness and adequacy, so that the amount of compensation established would lead to the conclusion that the claimant's claims shall have been reasonably satisfied.

In case of gross negligence of the victim (state of intoxication, violation of road traffic rules, etc.), the amount of compensation for damage may be reduced or its compensation may be refused.

Insurance organizations may not be obliged to compensate third parties for moral damage in connection with an insurance case. The obligation to compensate for moral damage in case of an insurance case must be borne by the owner of the vehicle or the carrier.

Footnote. Paragraph 19 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

20. In the presence of a request for dismissal in connection with conciliation with victims, the courts must strictly comply with the requirements of Article 68 of the Criminal Code and be guided by the explanations given in regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated June 21, 2001 N1 "On judicial practice in the implementation of Article 68 of the Criminal Code of the Republic of Kazakhstan.

If a person's actions constitute a set of criminal offences under paragraphs 1, 2 of Article 345, paragraphs 1, 2 and 3 of Article 346, and Article 347 of the Criminal Code, the issue of the enforcement of Article 68 of the Criminal Code shall be solved each case-individually.

At the same time, the courts should bear in mind that the provisions of Article 68 of the Criminal Code shall not apply to persons who have committed criminal offences under Articles 345, 346, 348, 349, 351 of the Criminal Code, resulting in the negligent death of one or more persons.

Footnote. Paragraph 20 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

21. Upon termination of the criminal case against the person charged with a criminal offence, provided for by Articles 345, 346, 348, 349, 351 of the Criminal Code, under criminal procedure laws, in paragraph 6 of Article 62, of the Code of Administrative Offences of the Republic of Kazakhstan, a person may be brought to administrative liability no later than three months from the date of the decision to terminate a criminal case only if there are signs of an administrative offence in his or her actions.

The issue of recovery of material and moral damage may be resolved in civil proceedings.

Footnote. Paragraph 21 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 № 8 (shall be enforced from the day of its first official publication).

22. According to Article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution shall be included in the existing law, as well as shall be generally binding and shall be put into effect from the date of official publication.

Chairman of the Supreme

Court of the Republic of Kazakhstan

B. Beknazarov

Judge of the Supreme Court

of the Republic of Kazakhstan,

Secretary of the Plenary Session

Zh. Baishev

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