

On application of measures for legal proceedings on administrative violations

Unofficial translation

Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated April 9, 2012 No. 1.

Unofficial translation

Footnote. Title in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 25.11.2016 № 11.

In accordance with issues arising in the implementation of measures in judicial practice to legal proceedings on administrative violations Plenary Session of the Supreme Court of the Republic of Kazakhstan

Footnote. Preamble as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 25.11.2016 № 11.

hereby RESOLVED as follows:

1. The measures for legal proceedings on administrative violations (hereinafter referred to as measures) provided for by parts 1 and 2 of Article 785 of the Code of the Republic of Kazakhstan “On Administrative Violations” (hereinafter referred to as the Administrative Code) shall constitute specific means of administrative and legal coercion. They shall be used by authorized officials within the limits of their powers to suppress an administrative violations, establishing the identity of the suspect, drawing up a report on the administrative violations, when it is not possible to draw up it at the place where an administrative violations shall have been committed to prevent an imminent threat to human life or health, the threat of an accident or man-made disaster, and in cases where failure to take such measures prevent timely, comprehensive, complete and objective clarification of the circumstances of the case, its resolution in accordance with the law, ensuring the enforcement of the resolution.

Measures of ensuring may be applied in connection with commission of administrative violations before initiation of proceedings on administrative violations (except personal inspection, examination of the things which the individual shall have), during proceedings and at a stage of performance of the resolution on administrative violations.

The application of measures must be lawful, reasonable, necessary and sufficient. Each of the measures provided for by Article 785 of the Administrative Code may be applied separately or simultaneously with other measures, if necessary.

Security measures may be appealed by the person against whom they shall be taken to a superior authority (a superior official), in accordance with the procedure provided for in Chapter 44 of the Code on administrative infractions.

Footnote. Paragraph 1 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11; dated 07.12.2023 No. 5 (shall be enforced from the date of its first official publication).

2. Delivery to the place of drawing up the protocol on administrative violations shall be expressed in the forced transfer of an individual, a representative of a legal entity, an official, as well as a vehicle, a vessel and other instruments for the commission of violations in order to suppress the violations, establishing the identity of the offender, as well as drawing up the protocol on administrative violations or issuing a protective order if it is impossible to draw up them on the spot, if the drawing up of the protocol or the protective order is mandatory in cases where a person shall commit the violations referred to subparagraphs 1), 3), 4), 5), 7) of part 1 and part 2 of Article 786 of the Administrative Code.

The grounds for this security measure shall be the existence of objective data on the fact that administrative violations have been committed and a reasonable assumption having been committed by the person against whom it shall be applied. One of the additional grounds shall be the refusal of the offender to comply with the legal requirements or orders of representatives of state bodies to cease the commission of administrative violations.

Otherwise, the security measure may not be applied.

The instructions of the prosecutor or the requests of officials authorized to draw up the protocols on administrative violations on the delivery of an individual, in the case provided for by subparagraph (8) of paragraph 1, of Article 786 of the Administrative Code, must be in writing.

Footnote. Paragraph 2 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11.

3. Administrative detention should be understood as a short-term restriction of the personal freedom of an individual, a representative of a legal entity, an official, in particular, the freedom of action and movement with forced detention in a special room for a certain period of time.

This security measure shall be applied in the cases listed in Article 787 of the Administrative Code only for the purpose of suppressing the violations or securing proceedings.

The application of this security measure for the purpose of drawing up the protocol on administrative violations, checking documents, establishing identity, etc., shall not be permitted.

The terms of administrative detention and the procedure for their calculation shall be established by Article 789 of the Administrative Code.

Footnote. Paragraph 3 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11.

4. The bringing shall be the commitment of an individual or a representative of a legal entity in respect of who proceedings shall be under way in an administrative case, a representative of a minor brought to administrative liability, to the court or body considering the case of administrative violations, in case of evasion of these persons from appearance on the call of a judge or body (official). The bringing shall be carried out by the internal affairs agencies, the anti-corruption service, the economic investigation service on the basis of the decision of the judge, the body (official) considering the administrative violation case. A copy of the definition shall be given to the person subjected to the bringing.

Footnote. Paragraph 4 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11.

4-1. Before issuing an order on the attachment, the court, the body carrying out the proceedings in the case shall be obliged to check the reasons for the person's failure to appear (the presence of a receipt for delivery of the attachment, other evidence confirming the notification of the person in the ways specified in Article 743 of the Code on administrative infractions), documents indicating the existence of valid reasons for the failure to appear).

The order on the attachment must contain the information specified in subparagraphs 1), 2), 3), 5), 6), 7) and 8) of part one of Article 822 of the Code on administrative infractions, as well as the grounds for applying the measure to ensure the proceedings in the case..

The execution of the order on the attachment shall be carried out by an official of the authorized body in accordance with information about the person in respect of whom the attachment is carried out, set out in the definition. If it is impossible to execute the order on the attachment (for example, there is no information allowing to identify this person or his place of residence), the official shall be obliged to immediately notify the court or government body (official) that issued the order on the attachment.

The attachment cannot be carried out at night.

Persons who, for health reasons, cannot or should not leave their place of residence, which is subject to certification by an appropriate medical report, shall not be subject to attachment.

Footnote. The regulatory resolution is added with paragraph 4-1 in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 5 (shall be enforced from the date of its first official publication).

5. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication)

6. Personal inspection, examination of the things which the individual shall have and examination of the vehicle, small size vessel shall be made only in case of commission of administrative violations for detection of instruments or objects of commission of administrative violations. The use of these security measures in other cases shall not be permitted.

These security measures shall be applied by officials specified in Article 787 of the Administrative Code, in accordance with the requirements of Articles 791 and 792 of the Administrative Code.

Footnote. Paragraph 6 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication)

7. The security measure in the form of an inspection shall be used to identify traces of administrative violations, other material objects, as well as circumstances relevant to the drawing up the protocol on administrative violations. Depending on the circumstances of the case, vehicles, place, objects, goods imported into the territory of the Republic of Kazakhstan, as well as documents, living persons moved through the territory of the Republic of Kazakhstan may be inspected.

The general rules of inspection shall be defined by Article 794 of the Administrative Code

Footnote. Paragraph 7 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11.

8. The seizure of documents and items imported into the territory of the Republic of Kazakhstan, as well as goods transferred through the territory of the Republic of Kazakhstan, which shall be the weapon or subject of an violations, shall be permitted if they are found at the place where the violations were committed or when measures are applied to ensure the proceedings on administrative violations.

The seizure of documents and items, imported into the territory of the Republic of Kazakhstan, as well as goods transferred through the territory of the Republic of Kazakhstan, when enforcement of measures for proceedings on administrative violations shall be carried out by the relevant officials in accordance with the procedure provided for by Articles 795 and 799 of the Administrative Code.

In cases of administrative infractions in transport, in the road sector, seized documents shall be stored in the body that carried out the seizure until the decision adopted in the case is executed. A copy of the driver's license (regardless of the form of the driver's license) must be attached to the materials of the case of an administrative infraction.

The confiscation of state registration license plates of vehicles shall be carried out in compliance with the requirements of Article 795 of the Code on administrative infractions when the violations specified in subparagraph 3) of part one of Article 797 of the Code on

administrative infractions are committed. It is prohibited to seize state registration license plates of vehicles for the purpose of executing a decision to collect an administrative fine.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11; dated 07.12.2023 No. 5 (shall be enforced from the date of its first official publication).

9. The measure of enforcement for proceedings in the form of suspension from driving of a vehicle, a vessel, including a small vessel, should be applied in the procedure provided for by Article 796 of the Administrative Code, if there are sufficient grounds to believe that the person driving the vehicle, a vessel, including a small vessel, is in a state of alcohol, drug and substance abuse.

Sufficient data providing the grounds for the application of this security measure shall be the direct identification by the authorized official of signs of alcohol, narcotic, substance abuse, as well as statements, reports of the use of alcohol or psychoactive substances by drivers, vessel driver and their recognition of the use of these substances.

A person suspended from driving a vehicle, a vessel, including a small vessel, shall be subject to a state of intoxication examination.

If the driver and vessel driver avoid examination, the report on administrative violations and the certificate of examination drawn up at the place of commission of the administrative violations shall be made a note of this (paragraph 14 of the Rules of Referral for examination for the state of intoxication, examination for the state of intoxication and registration of its results, approved by the Resolution of the Government of the Republic of Kazakhstan dated June 4, 2003 No. 528).

In other cases, the measure shall not be applicable.

A person, removed from driving a vehicle, a vessel, including a small vessel, shall have the right to give his or her explanations on the application of the indicated security measure in the protocol on administrative violations.

Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11.

10. When committing administrative infractions specified in part one of Article 797 of the Code on administrative infractions, authorized officials listed in part 2 of the referred Article shall have the right to detain, transfer and prohibit the operation of vehicles and vessels, including small vessels, by bringing them for temporary storage to special areas, parking areas or areas adjacent to a stationary transport control post, including using another vehicle (tow truck), ship or small craft, until the reasons for the detention are eliminated.

The transfer (evacuation) of a vehicle for temporary storage in special areas, parking areas or areas adjacent to a stationary transport control post may also be applied in cases where drivers of vehicles shall violate the rules of stopping or parking in their absence, as well as to

vehicles left unattended by drivers on the road when it shall not be possible to find the location of the owner.

An act shall be drawn up on the arrest, transfer and prohibition of the operation of a vehicle or vessel, including a small vessel, which shall be attached to the protocol on administrative infraction and, upon application, shall be handed over to the person against whom the indicated security measures shall have been taken.

Security measures in the form of detention and/or prohibition of the operation of vehicles, vessels, including small vessels, shall remain in effect until the reasons for detention and/or prohibition of exploitation are eliminated.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11; dated 07.12.2023 No. 5 (shall be enforced from the date of its first official publication).

11. A medical examination of an individual for the state of alcohol, narcotic or substance abuse as a measure of enforcement of proceedings in a case shall apply only if the determination of such a fact is relevant to the correct resolution of the case.

12. The measures of enforcement of proceedings in the case against a legal entity shall be established by paragraph 2 of Article 785 of the Administrative Code. The application of such measures shall be defined in Articles 798, 799, 800 and 801 of the Administrative Code.

Footnote. Paragraph 12 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication) dated 25.11.2016 № 11.

13. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 25.11.2016 № 11.

14. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication)

15. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 25.11.2016 № 11.

16. The authorized official shall have the right, within the scope of his powers, to withdraw the driving license in order to ensure the enforcement of the order made in the case and only for the commission of an administrative violation leading to the imposition of a penalty in the form of deprivation of the right to drive the vehicle.

17. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 25.11.2016 № 11.

18. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication).

19. Excluded by the regulatory resolution of the Supreme Court of the Republic of

Kazakhstan dated 24.12.2014 № 3 (shall be enforced from the day of its first official publication).

20. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 25.11.2016 № 11 (shall be enforced from the day of its first official publication).

21. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 24.12.2014 № 3 (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 this law, as well as shall be generally binding and shall be put into effect from the date of its official publication

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