

On processing of complaints by the courts about actions (omissions) and decisions of the prosecutor and criminal prosecution bodies (Article 106 of the Criminal Procedure Code of the Republic of Kazakhstan)

Unofficial translation

Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated June 27, 2012 No. 3.

Unofficial translation

Footnote. Title as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

Footnote. Throughout the text:

the words "bodies of investigation and inquiry," bodies of investigation, initial inquiry, "body of inquiry and investigation" shall be replaced by the words "bodies of criminal prosecution," the body of criminal prosecution" respectively;

figures "109" shall be replaced with figures "106" according to the regulatory resolution of the Supreme Court of RK dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

In order to ensure the judicial protection of the rights, freedoms and legitimate interests of the individual and legal entities during pre-trial proceedings in criminal cases, as well as to develop a uniform judicial practice for the processing of complaints against actions (omissions) and decisions of the prosecutor and criminal prosecution bodies, the plenary session of the Supreme Court of the Republic of Kazakhstan

hereby RESOLVED as follows:

1. Processing by the courts of complaints of pre-trial actions in criminal cases against actions (omissions), as well as decisions taken by the public prosecutor and the criminal prosecution bodies, shall be one way of ensuring the exercise of the right of everyone to judicial protection, as set forth in paragraph 2 of Article 13, paragraph 1 of Article 76 of the Constitution of the Republic of Kazakhstan and Article 8 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the Criminal Procedure Code), the courts must therefore ensure access to justice, the correct application of the standards of the law providing grounds for filing complaints with the courts and regulating the procedure for their processing.

Footnote. Paragraph 1 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

2. Individuals (citizens of the Republic of Kazakhstan, foreigners, stateless persons), whose personal rights and freedoms are directly affected by the actions (inaction) and decisions of the prosecutor, criminal prosecution bodies, as well as organizations, shall have the right to file a complaint with the court if these acts affect their legitimate interests, as well as their defenders, representatives. When checking the powers of persons to file a complaint with the court in the manner prescribed by Article 106 of the Code of Criminal Procedure, the courts should be guided by paragraph 4 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan No. 4 dated June 25, 2010 "On judicial protection of the rights, freedoms of a man and citizen in criminal proceedings".

Footnote. Paragraph 2 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 22.12.2022 No. 10 (shall be enforced from the date of the first official publication).

3. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

4. Actions (omissions) and decisions referred to part 1 of Article 106, of the Criminal Procedure Code shall be subject to judicial review.

In accordance with part four of Article 153 of the Code of Criminal Procedure, in the manner of Article 106 of the Code of Criminal Procedure, an appeal shall be made against the decisions of pre-trial investigation bodies on the application/non-application of preventive measures, their cancellation or change, not authorized by the investigating judge. In other cases, consideration of this issue is referred to the competence of the court, which has the powers to review the decisions of the investigating judge.

Footnote. Paragraph 4 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication); dated 22.12.2022 No. 10 (shall be enforced from the date of the first official publication).

4-1. Complaints by the convicts against actions (inactions) and resolutions of an institution or body that shall execute a sentence affecting their rights and legitimate interests, as well as resolutions of the prosecutor on issues related to the execution of the sentence, or refusal of the prosecutor to satisfy their similar complaints, shall be considered by the district court at the place of serving the sentence of the convict in the manner provided for in Article 106 of the Criminal Procedure Code, taking into account the provisions of Article 482 of Criminal Procedure Code. Based on the results of the consideration, the court makes one of the resolutions provided for in Article 482 part four of the Criminal Procedure Code.

Footnote. As added by paragraph 4-1 of the regulatory resolution in accordance with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

5. Complaints of annulment of proceedings cannot be considered under Article 106 of the Criminal Procedure Code actions (inactions) and resolutions against which the law provides otherwise, in particular complaints about the cancellation of the registration of an application or report on a criminal offence in the Unified register of pre-trial investigations, except if they are registered in violation of the requirements of part one, Article 179, paragraphs 1) and 2) of the Criminal Procedure Code, as well as complaints requesting inadmissibility of evidence, the recognition of a person as a suspect, a witness entitled to a defense, the misclassification of the act or the formulation of the charge, or his or her lack of evidence, on the improper application of the law in the recognition of a suspect and the characterization of an act, the amendment of the preventive measure authorized by the court, as well as complaints about the illegality of judicial acts.

Footnote. Paragraph 5 – in wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

6. Complaints may be filed with the court during the entire or preliminary investigation in a criminal case, including at the stage of bringing the accused to trial, subject to the period specified in paragraph 5 of Article 106, of the Criminal Procedure Code, which shall be calculated from the moment when the person became aware of the relevant action (omission) or decision.

After filing a complaint with the relevant prosecutor, the person shall have the right to file a similar complaint with the court within fifteen days from the date of familiarization with the prosecutor's response or within the same period, if by that time the response from the prosecutor has not been received.

The missed time limit for filing a complaint with the court at the request of the person concerned may be restored under the general rules provided for by Article 50 of the Criminal Procedure Code.

In accordance with part 3 of Article 305, of the Criminal Procedure Code, complaints about the illegality of actions (omissions), decisions of the prosecutor and criminal prosecution bodies received after the submission of a criminal case to the court shall be examined by the court when the criminal case is considered on the merits.

Footnote. Paragraph 6 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

7. The complaint submitted to the court shall be presented in writing, it shall indicate the first name, last name, patronymic name of the applicant and the person for whom it shall be submitted, their address and contact phones, the name and residence of the body whose official committed the action (omission) under appeal, and made a decision. The complaint must specify when, by whom (by which authority or its official) and what procedural actions (omissions) shall have been committed, what decisions shall have been taken. At the same

time, it shall be necessary to indicate in the complaint what standards of the law shall have been violated, how these violations shall have affected the rights and legitimate interests of the applicant, as well as the merits of the applicant's request. It shall be also necessary to indicate whether the actions (omissions) mentioned in the complaint have been appealed to the prosecutor when the response have been received (or not), the merits of the prosecutor's response and the arguments of disagreement with it before the appeal to the court.

The complaint shall be signed by the person who shall have filed it. Copies of the complaint must be attached to the complaint (for delivery to the prosecutor and persons, actions (omissions) whose decisions shall have been appealed); a copy of the procedural act being appealed; the material supporting, in the applicant's opinion, the arguments of the complaint; the prosecutor 's response to the failure to grant the complaint; a copy of the complaint sent to the prosecutor, to which no reply shall have been received; documents confirming the authority of the representative of the person for whom the complaint shall be filed.

In the absence of the necessary information in the complaint and in the materials attached to it, the judge shall, without refusing to accept the complaint or returning it without consideration, request it from the applicant or other persons and bodies and shall set a deadline for their submission. If the complaint fails to comply with the instructions, the judge shall refuse to accept the complaint and shall return it to the author.

Footnote. Paragraph 7 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

8. The applicant shall have the right, personally or through his representative, to withdraw his complaint before the commencement of the trial or before the judge shall leave the advisory room. Representatives may withdraw a complaint filed by them or by the person represented only with the consent of the person represented. The withdrawal of the complaint shall not prevent its repeated submission to the court until the end of the inquiry or preliminary investigation in the case within the time limits established in part 5 of Article 106 of the Criminal Procedure Code for appealing against procedural actions (omissions) and decisions.

The law shall not prohibit filing of complaints against actions (omissions) and decisions of bodies of inquiry, preliminary investigation, and prosecutor also during the consideration of criminal case in court. In such cases, the court shall consider complaints from the point of view of verifying the legality of the proceedings and the admissibility of evidence obtained as a result of the actions (omissions) appealed, decisions and shall make a decision when evaluating the evidence in the case under consideration.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

9. The applicant's submission of the complaint to the court for consideration under Article 106 of the Criminal Procedure Code and its consideration by the court shall not lead to the suspension of the proceedings in the case, including the continuation of the appealed action and the execution of the appealed decision.

10. Consideration of complaints of violations of the law in the course of procedural actions affecting the rights, freedom and legitimate interests of citizens and organizations shall be attributed to the jurisdiction of specialized inter district investigative courts, specialized investigative courts and district and equivalent courts (investigating judge). The jurisdiction of complaints shall be determined by the location of the relevant body of inquiry or preliminary investigation, the actions of which shall be appealed, and when appealing against the refusal of the prosecutor to satisfy the complaint or not receiving a response from him to the complaint, by the location of the relevant prosecutor's office.

If the judge, upon receipt of the complaint, finds that the complaint is not before the court, he must immediately order the complaint to be submitted to another court of jurisdiction.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

11. In cases of filing a complaint by persons who, in accordance with the law, do not have the right to appeal against this procedural action (omission), decision, or the filing of a complaint against action (omission) and decision that cannot be considered in accordance with Article 106 of the Criminal Procedure Code, or the delay in filing a complaint and the absence of an application for its reinstatement, as well as when an application for withdrawal of the complaint shall be received from the complainant before the beginning of the trial, the judge shall make a reasoned order to return the complaint without consideration.

Footnote. Paragraph 11 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication); dated 22.12.2022 No. 10 (shall be enforced from the date of the first official publication).

12. The acceptance of the complaint and the appointment of a court hearing for its consideration on the merits shall be formalized by a decision of the judge, which must specify the time and place of consideration of the complaint, the notification of the applicant, the prosecutor, as well as the person conducting the initial inquiry, the investigator whose actions (omissions) and decisions shall have been appealed.

When considering a complaint, it shall not be prohibited by law to call other persons to a court hearing for questioning as witnesses, experts, specialists, etc. If necessary, the judge in the decision may oblige the criminal prosecution body, the prosecutor to provide relevant materials concerning the appealed actions (omissions), decisions. The indicated request of the judge shall be subject to strict and timely execution within a period not exceeding three days.

Once a complaint has been received, the judge, with the exception of complaints about the actions of the prosecutor, shall also be entitled to grant a time of not more than three days to the prosecutor to take measures to respond to violations of the law committed during the pre-trial investigation or inquiry. The elimination by the prosecutor of violations of the rights, freedom and legitimate interests of the applicant shall be the basis for leaving the complaint to the investigating judge without consideration.

Footnote. Paragraph 12 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

12-1. Several complaints against the same decision or actions of the investigator, interrogating officer, prosecutor may be joined in one proceeding by the decision of the investigating judge.

If several complaints are combined in one proceeding, the period for consideration shall be calculated from the date of receipt of the last complaint.

Footnote. The regulatory resolution is supplemented by paragraph 12-1 in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 22.12.2022 No. 10 (shall be enforced from the date of the first official publication).

13. The complaint shall be examined by the investigating judge alone without holding a trial for three days. If it is necessary to examine the circumstances relevant to the adoption of a lawful and reasonable decision, the investigating judge shall consider the complaint within 10 days in closed court with the participation of the persons concerned and the prosecutor, the failure of which shall not prevent the consideration of the complaint. When holding a closed judicial hearing in video communication with the connection of the relevant persons and the prosecutor, the access to other persons who shall not be participants in the process should be limited. A record shall be kept during the trial. If necessary, the investigating judge may request additional materials, call and interview the persons concerned. Officials, whose actions (omissions) and decisions shall be appealed at the request of the court, shall submit to the court within three days the materials that gave rise to such actions (omissions) and decisions.

During the court hearing, the investigating judge shall declare the complaint to be considered, then the applicant, if he participates in the court hearing, shall justify the complaint, after which other persons who appeared shall be heard, entitling to provide the court with evidence. The burden of proving the legality of the appealed action (omission) or decision shall lie with the person who committed or took them.

In considering the complaint, the court, without assessing the evidence available in the case, must determine whether the person conducting the initial inquiry, the investigator and the prosecutor shall have been examined and taken into account all the circumstances indicated by the applicant in the complaint. At the same time, the court, without concluding on the proof or lack of proof of guilt, the admissibility or inadmissibility of the collected

evidence, must check the existence or absence of substantive and procedural grounds for deciding the case.

In accordance with paragraph 5 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated December 23, 2005 N 11 “On implementation of the standards of the Criminal Procedure Law on the minutes of a court hearing, it shall be mandatory to maintain the minutes of a court hearing” when considering a complaint in accordance with the procedure provided for by Article 106 of the Criminal Procedure Code.

The investigating judge who examined the complaint against the resolutions and actions (inaction) of the prosecutor and the criminal prosecution authorities, in accordance with Article 87, paragraph 2, part one of the Criminal Procedure Code, cannot participate in the consideration of a criminal case in the courts of first, appellate, cassation.

Footnote. Paragraph 13 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

14. In the preparatory part of the judicial hearing, the investigating judge, having announced the beginning of the judicial hearing to consider the corresponding complaint, shall explain to the applicant participating in the hearing, his defense counsel and representative, to the prosecutor, their right to challenge and their other procedural rights and obligations, related to the handling of the complaint, and to investigate, whether they have applications, consider them if they have been submitted, and then find out from the complainant whether he supports the complaint.

Consideration of the complaint shall consist in hearing the applicant, other persons, in examining the arguments of the complaint, the materials attached to the complaint and additionally submitted by the parties or requested by the court for the purpose of verifying the appealed actions (omissions), examining the appealed actions (omissions), deciding on their compliance with the law.

When considering a complaint, the judge must not go beyond the arguments of the complaint, and therefore shall have the right to examine the materials submitted by the applicant, the prosecutor or the court itself only to the extent necessary to make a correct decision on the complaint.

The challenge made to the investigating judge during the examination of the complaint under Article 106 of the Criminal Procedure Code shall be authorized by the same investigating judge alone, with a resolution following the consideration of the application. A challenge made to a judge of the appellate court hearing the appeal against the resolution of the investigating judge shall be authorized by the president of that court or by another judge of that court.

The resolution adopted following the consideration of the application for challenge of a judge shall not be subject to independent appeal. The arguments of the participant in the

hearing on the unjustified rejection of the application for challenge may be indicated in a private complaint or in the prosecutor's application for a resolution made on the basis of the consideration of the complaint.

Footnote. Paragraph 14 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

15. When considering a complaint of refusal to receive criminal applications or report, the court must check when and to which authority the applicant sent the communication, for what reasons the report was not received. When deciding on such complaints, the court should bear in mind that reports of criminal offences under part 1 of Article 185 of the Criminal Procedure Code shall be subject to mandatory acceptance, registration and consideration.

The court's decision to refuse to accept an application for a criminal offence prosecuted in private proceedings shall be subject to appeal under Article 422 of the Criminal Procedure Code to a higher court.

Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

16. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

17. The courts, when considering complaints against a decision of a criminal prosecution body to transmit a registered application or a report of a criminal offence on trial, should bear in mind that such transfer shall be permitted only in cases provided for in Article 186 of the Criminal Procedure Code. The decision to transmit a registered application or a report of a criminal offence on trial on other grounds not provided for by law shall be declared illegal.

Footnote. Paragraph 17 in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

18. Excluded by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

19. When considering a complaint against the resolution to interrupt a period of pre-trial investigation or to terminate proceedings in a criminal case, the court, without assessing the evidence available in the case, must determine whether all the circumstances indicated by the complainant in the complaint have been verified and taken into account by the person conducting the inquiry, the investigator and the prosecutor, and whether these circumstances could have affected the legality of the decision to interrupt the period of pre-trial investigation or to terminate the proceedings. At the same time, the court, without concluding on the proof or lack of proof of guilt, on the admissibility or inadmissibility of the collected evidence,

must check the existence or absence of substantive and procedural grounds for the termination of the case or the interruption of the terms of pre-trial investigation.

Footnote. Paragraph 19 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

20. After hearing the explanations of the persons participating in the court hearing on the merits of the complaint and the examination of the materials, the judge in the advisory room shall make one of the decisions referred to part 8 of Article 106 of the Criminal Procedure Code, which shall be the subject of a reasoned decision.

At the same time, if the judge's request to provide materials in connection with the examination of the complaint by the relevant authorities has not been fulfilled, the judge shall consider the complaint in their absence, and if the available materials do not refute the arguments of the complaint, shall decide to satisfy it.

21. If the criminal prosecution body complies with the requirements of the law when deciding to dismiss the case, the appealed decision cannot be declared illegal only on formal grounds (for example, due to failure to inform the persons concerned of the decision, failure to recognize the persons concerned by victims or civil plaintiffs, or failure to explain their procedural rights and obligations to the indicated persons).

Substantial violations of the procedural form of the decisions taken, confirmed in the court hearing, may lead to the recognition of illegal procedural acts if the court recognizes that as a result the rights, freedoms and legitimate interests of the applicant shall be infringed or otherwise diminished (for example, the inclusion in the order to terminate the case on rehabilitative grounds of language calling into question the innocence of the person).

Footnote. Paragraph 21 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

22. As a result of the examination of the complaint, the investigating judge shall issue the relevant orders:

on the annulment of an unlawful procedural decision;

on recognition of the action (omission) of the relevant official as illegal or unjustified and his obligation to remedy the violation committed;

entrusting the prosecutor with the obligation to eliminate the violation of the rights and legitimate interests of a citizen or organization;

to dismiss the complaint.

If the court hearing does not establish the grounds for declaring the appealed procedural action (omission) or decision illegal, the court shall order that the complaint be dismissed.

Footnote. Paragraph 22 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

23. The decision of the prosecutor, who, during the course of the procuratorial supervision, annulled the decisions of the investigator or the person conducting the initial inquiry to dismiss the case and others due to incomplete clarification of all the circumstances of the case or due to non-compliance with other requirements of the law, cannot be declared illegal, as it shall be aimed at ensuring the legality of the preliminary investigation and the initial inquiry. Violations of the applicant's rights, freedoms and legitimate interests during the issuance of the indicated orders shall be eliminated.

Footnote. Paragraph 23 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

24. In cases where it will be established at the court hearing that after the applicant's complaint to the prosecutor, he shall have not received a response from the latter and the 15-day period since its submission shall have not yet expired, or when the applicant shall have missed the period specified in part 5 of Article 106, of the Criminal Procedure Code for applying to the court, the judge shall order the return of the complaint without consideration and with the relevant grounds. A similar decision shall be issued by the judge when the complaint shall be filed against the action (omission) or decision of the relevant officials, the prosecutor, whose appeal shall be provided for in a different manner, or when the inquiry or preliminary investigation have been completed and the case have been referred to the court.

It shall not be provided by law for the court, when considering complaints under Article 106 of the Criminal Procedure Code, to issue other orders, for example, to refer it to other bodies or officials.

25. The court decision issued following the examination of the complaint must be lawful and justified. The introductory clause of the resolution shall state: time and place; the name of the court that issued the resolution; presiding officer, secretary of the court hearing, participants of the processing, their representatives, interpreter; first name, surname, patronymic name of the applicant of the complaint, the name of the act to be considered, the indication of the body, the action (omission) whose decisions shall have been appealed. The descriptive and motivational part of the resolution should clearly state whether, in the course of an appealed procedural action (omission), the adoption of a decision of the standard of the law shall have been violated and what exactly, whether these violations affect the individual rights and legitimate interests of the applicant, and what decision should be taken by the court on the complaint in order to eliminate these violations and shall give the relevant reasons. In the operative part of the decision on satisfaction of the complaint, recognition of the appealed procedural action (omission), the decision must indicate the name of the appealed act, by whom, when, against whom or for what reason it shall have committed (not committed) or

made, as well as the decision on its annulment or the order obliging the relevant official to eliminate the committed violation of the rights and legitimate interests of the citizen or organization.

When issuing a decision on the satisfaction of a complaint, with the obligation on the relevant official or prosecutor to eliminate violations of the rights and legitimate interests of a citizen or organization, the decision must clearly state which violations of the law should be eliminated.

Footnote. Paragraph 25 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

26. A copy of the court's resolution after the announcement on the same day should be handed over to the applicant and the prosecutor, and if they did not participate in the court hearing, they should be sent to them using accessible means of communication. Compliance with the time limit provided for in Article 107, paragraph 2, of the Criminal Procedure Code for filing a private complaint/application for a court order by the applicant, the prosecutor, the sanction of the investigating judge shall not be related to the time when they received a copy of the resolution, this period shall be calculated from the moment it was announced. If the time limit for appealing a court order is exceeded, it may be reinstated in accordance with the rules of Article 50 of the Criminal Procedure Code.

Upon receipt of a private complaint/petition, the investigating judge shall send copies of them to the parties, and after three days after the announcement of the resolution, shall send the case to a higher court, which notifies the applicant and the prosecutor. Objections to a private complaint/protest by the parties may be submitted in writing to a higher court or presented orally when the case is heard by a judge of that court.

Footnote. Paragraph 26 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

27. A private complaint/petition shall be considered by the judge of the regional or equivalent court alone in a closed court hearing within three days from the moment of receipt. The appellant and the public prosecutor may participate in the hearing, who may explain the merits of the complaint and the resolution of the court, as well as present their objections to the complaint/petition of the opposite party, but their failure to appear does not prevent the consideration of the private complaint/petition, nor may they be regarded as withdrawing the complaint, leave the complaint unresolved or serve as grounds for dismissing the complaint. In accordance with Article 430 of the Criminal Procedure Code, a judge of an appellate court may, at the request of the parties or on his own initiative, request additional materials necessary to resolve a complaint. When considering complaints, protests against court resolutions, in addition to verify the arguments cited in them, the regional courts should pay

due attention to the issues of compliance by the prosecutor, the investigating authorities, the inquiry of the requirements of the law prohibiting the arbitrary restriction of the rights and freedoms of citizens, and also pay attention to the compliance of the courts with the requirements of the law when considering a complaint.

As a result of the consideration of a private complaint/petition, the judge of the regional or equivalent court in the deliberation room issues a resolution that must indicate the satisfaction of the complaint/petition or the refusal to satisfy them. When a complaint/petition is granted, the order must simultaneously state the annulment of the appealed resolution of the investigating judge and present a new resolution on the merits of the complaint. Resolutions not provided for in Article 106 of the Criminal Procedure Code, in particular on the annulment of the resolution of the investigating judge to send the case for re-examination of the complaint to the same court, on amending the resolution of the investigating judge, on the transfer of the complaint for consideration to other bodies or officials, shall not be allowed.

The resolution of the judge of the regional court shall enter into legal force immediately upon announcement, shall be final, excludes further proceedings to consider this complaint of the applicant in accordance with the procedure provided for in Article 106 of the Criminal Procedure Code, as well as in cassation.

Footnote. Paragraph 27 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication); dated 11.12.2020 № 6 (shall be enforced after the day of its first official publication).

28. Upon the entry into force of the resolution, by which the applicant's complaint shall have been granted and decided on the annulment of the appealed procedural action (omission), the decision or the obligation shall be placed on the relevant official, the prosecutor to eliminate the violation of the rights and legitimate interests of the individual or organization, on the order of the investigating judge shall be sent for immediate execution to the relevant body, official, prosecutor, who shall be obliged to inform the court of the execution of the decision. Persons guilty of failure to comply with a court order may be prosecuted under the law

Footnote. Paragraph 28 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 31.03.2017 № 3 (shall be enforced from the date of its first official publication)

29. When establishing the fact of illegality of actions (inaction) and (or) decisions of the prosecutor, criminal prosecution bodies that entailed illegal restriction or other violations of human rights and freedoms, legally protected interests of organizations, the investigating judge, following the results of consideration of the complaint, shall be obliged, in accordance with part six of Article 56 of the Code of Criminal Procedure, to make a private decision to resolve the issue of liability of persons who have committed violations of the law.

In the event of non-execution of the judicial act of the investigating judge, which has entered into legal force or is subject to immediate execution, issued as a result of consideration of the complaint in accordance with Article 106 of the Code of Criminal Procedure, the official who is entrusted with the elimination of violations of the law shall be subject to liability under the law.

Footnote. Paragraph 29 is in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 22.12.2022 No. 10 (shall be enforced from the date of the first official publication).

30. 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 put into effect from the date of its official publication.

Chairman of the Supreme Court

of the Republic of Kazakhstan

Judge of the Supreme Court

of the Republic of Kazakhstan,

Secretary of the Plenary Session

B. Beknazarov

D. Nuralin