

On court practice in proceedings on expulsion of foreigners or stateless persons from the Republic of Kazakhstan

Unofficial translation

Normative Decree of the Supreme Court of the Republic of Kazakhstan dated December 13, 2013 No. 4

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Issuing from court practice generalization, for the purpose of a uniform interpretation and administration of the legislation on expulsion of foreigners or stateless persons from the Republic of Kazakhstan, the plenary session of the Supreme Court of the Republic of Kazakhstan

resolves:

1. In legal proceedings of this category, courts shall bear in mind that the legislation of the Republic of Kazakhstan governing the expulsion of foreigners or stateless persons from the Republic of Kazakhstan is based on the Constitution of the Republic of Kazakhstan and scopes provisions of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter - the CPC), the Code of the Republic of Kazakhstan On Administrative Infractions (hereinafter - the Administrative Code), the Law of the Republic of Kazakhstan dated June 19, 1995 No. 2337 On the Legal Status of Foreigners (hereinafter - the Law On the legal status of foreigners), other regulatory legal acts.

Courts also need to be guided by the International Covenant on Civil and Political Rights (New York, December 16, 1966), the Convention on the Legal Status of Migrant Workers and Members of Their Families of the Member States of the Commonwealth of Independent States (Chisinau, November 14, 2008), and the Treaty on the legal status of citizens of one state permanently residing in the territory of another state (Moscow, April 28, 1998), and other international treaties ratified by the Republic of Kazakhstan.

Footnote. Paragraph 1 as amended by regulatory resolution No. 2 of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 (shall be enforced from the date of the first official publication).

2. In accordance with the Law On the Legal Status of Foreigners, foreigners in the Republic of Kazakhstan are the persons that are not citizens of the Republic of Kazakhstan and have proof of citizenship of another state. Persons that are not citizens of the Republic Kazakhstan, and do not have proof of citizenship of another state are recognized as stateless (Article 2).

Footnote. Paragraph 2 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

3. Paragraph 3 of Article 10 of the Law of the Republic of Kazakhstan dated April 6, 2016 No. 480-V On Legal Acts establishes that each of the regulatory legal acts of a lower level shall not contradict the regulatory legal acts of higher levels. In accordance with paragraph 1 of Article 12 of this Law, in the presence of contradictions in the provisions of normative acts of different levels, the provisions of an act of a higher level shall apply.

Footnote. Paragraph 3 is in the wording of the regulatory resolution No. 2 of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 (shall be enforced from the date of the first official publication).

4. In terms of content, administrative expulsion and expulsion in civil proceedings constitute the forcible or controlled by authorized bodies independent movement of foreigners or stateless persons from the Republic of Kazakhstan, carried out on the court resolution (ruling) for an administrative offense or breaking of the law.

5. In court proceedings on expulsion of foreigners and stateless persons, it is necessary to distinguish between administrative expulsion, applied in the implementation of the Administrative Infractions Code, and expulsion, carried out in the special procedure provided for by the CPC.

6. Administrative expulsion of foreigners or stateless persons from the Republic of Kazakhstan may be used as the main or additional administrative penalty imposed in the manner and on the grounds established by the special part of the CPC.

The grounds for applying expulsion are:

carrying out by foreigners, stateless persons, foreign legal entities and international organizations of activities impeding and / or promoting the nomination and election of candidates, political parties that nominated a party list, achievement of certain result in elections (Article 109 of the Administrative Infractions Code);

harassment in public places (part three of Article 449 of the Administrative Code;

violation of the legislation on religious activities and religious associations (part three of Article 490 of the Administrative Code);

submission of knowingly false information to the state bodies of the Republic of Kazakhstan upon receipt of identity documents, or upon application for a permanent residence permit in the Republic of Kazakhstan or on admission to the citizenship of the Republic of Kazakhstan or restoration of citizenship of the Republic of Kazakhstan (part two of Article 495 of the Administrative Code);

violation of the regime at checkpoints across the State border of the Republic of Kazakhstan (part two of Article 513 of the Administrative Code);

disturbance of the State border regime of the Republic of Kazakhstan (part two of Article 514 of the Administrative Code);

breaking by a foreigner or stateless person of the legislation of the Republic of Kazakhstan in the field of population migration (Article 517 of the Administrative Code);

attraction of foreign labor and labor immigrants in violation of the legislation of the Republic of Kazakhstan, illegal work by a foreigner or stateless person in the Republic of Kazakhstan (part four of Article 519 of the Administrative Code);

disobedience to the lawful order or demand of a military servant, fulfilling his duties of protecting the State border of the Republic of Kazakhstan (part two of Article 516 of the Administrative Code).

Footnote. Paragraph 6 as amended by regulatory resolutions of the Supreme Court of the Republic of Kazakhstan dated December 24, 2014 No. 3 (shall be enforced from the date of the official publication); dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

7. The case of administrative expulsion from the Republic of Kazakhstan shall be examined on the day of receipt of the protocol on an administrative offense and other case materials.

According to the second part of Article 51 of the Administrative Code, if during an administrative proceeding a person against whom administrative expulsion can be applied informs of an act committed against him, which is recognized in accordance with the Penal Code of the Republic of Kazakhstan (hereinafter - PC) as a grave or especially grave crime, then the consideration of the case is postponed until a decision is made in the manner established by the Criminal Procedure Code of the Republic of Kazakhstan.

Footnote. Paragraph 7 as amended by regulatory resolutions of the Supreme Court of the Republic of Kazakhstan dated December 12, 2014 No. 3 (shall be enforced from the date of the official publication); dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

8. In the examination an administrative offense, the commission of which entails expulsion from the Republic of Kazakhstan of a foreigner or a stateless person, the presence of a person held administratively liable shall be mandatory.

9. The decision on administrative expulsion shall indicate a reasonable period during which the named persons must leave the territory of the Republic of Kazakhstan (Part 2 of Article 822 of the Administrative Code).

By a reasonable period, the courts shall understand the period sufficient to execute the decision, taking into account the established administrative and criminal liability for non-fulfillment by the foreigner or stateless person of the decision on expulsion.

Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated December 24, 2014 No. 3 (shall be enforced from the date of the official publication).

10. Part 1 of Article 51 of the Administrative Code determines that its provisions do not extend to cases on expulsion of foreigners or stateless persons, applied in the manner prescribed by the civil procedural legislation of the Republic of Kazakhstan.

In accordance with Part 1 of Article 8 of the Administrative Code, administrative offenses, administrative sanctions, measures to support proceedings on an administrative offense and administrative measures shall be determined solely by the Administrative Infractions Code. No one may be subjected to administrative penalties, administrative-legal measures or measures to support proceedings of an administrative offense other than on the grounds and in the manner established by the Administrative Infractions Code.

From these legal provisions it follows that a breach of law, consisting in the commission of an administrative offense by a foreigner or stateless person entailing administrative expulsion as sanctions, is excluded from the grounds for expelling a person in a civil procedure.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated December 24, 2014 No. 3 (shall be enforced from the date of the official publication).

11. Examination of cases on application of the internal affairs bodies for expulsion of foreigners or stateless persons from the Republic of Kazakhstan for violation of the legislation of the Republic of Kazakhstan shall be carried out in a special procedure (Chapter 49 of the CPC).

Footnote. Paragraph 11 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

12. An application for expulsion of a foreigner or stateless person from the Republic of Kazakhstan for breaching the legislation of the Republic of Kazakhstan shall be filed by the internal affairs bodies to the court at the place of stay (actual whereabouts) of foreigners or stateless persons and (or) at the place of registration (Article 382 of the CPC).

An application for the expulsion of these persons in accordance with the third part of Article 54 of the CPC may be filed by the prosecutor.

Footnote. Paragraph 12 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

13. In keeping with Article 383 of the CPC, application for the expulsion of foreigners or stateless persons must set out the circumstances confirming violations of the legislation of the Republic of Kazakhstan.

Footnote. Paragraph 13 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

Documents shall be attached to the application for expulsion confirming violations of the law committed by these persons, which include legal acts of authorized state bodies and court judgments, rulings, sentences.

14. When passing judgment on expulsion in a civil procedure, courts must take into account offenses committed by a foreigner or stateless person.

The courts shall be guided by the relevant provisions of the Administrative Code and the Penal Code on the term for removing an administrative penalty, consequences of conviction expungement and removal of criminal record. A person shall not be considered subject to administrative sanction upon expiry of one year from the date of execution of the court order (Article 61 of the Administrative Code). The expungement or removal of a criminal record shall annul all legal consequences associated with a criminal record (part 9 of article 79 of the PC).

Footnote. Paragraph 14 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated December 12, 2014 No. 3 (shall be enforced from the date of the official publication).

15. The court shall examine the application for the expulsion of a foreigner or stateless person from the Republic of Kazakhstan within ten days from the date of the proceedings commencement with the mandatory participation of a foreigner or stateless person, and also the prosecutor.

Failure to attend court proceedings by a foreigner or stateless person in respect of whom there is no information about the notification, shall be the ground for postponing the proceedings (part two of Article 196 of the CPC).

If the actual place of stay is unknown and it is impossible to examine the application for the expulsion of the indicated persons within the term established by law, the court is obliged to put them on the wanted list (part two of Article 133 of the CPC), and it shall also be entitled to suspend the proceedings, subparagraph 8) of article 273 of the CPC).

Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

16. The term established by the court for expulsion has to be feasible.

When setting the deadline for a foreigner or stateless person to leave the territory of the Republic of Kazakhstan, specifics of the expulsion procedures financing shall be taken into account.

According to the third part of Article 384 of the CPC, legal expenses, as well as expulsion expenses of a foreigner or stateless person shall be incurred by him or by the individuals or legal entities who invited him to the Republic of Kazakhstan. In the absence or insufficiency of funds to cover the expenses in possession of these persons, expulsion shall be carried out at the budgetary funds expense.

Footnote. Paragraph 16 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

17. The court ruling on the expulsion of a foreigner or stateless person from the Republic of Kazakhstan shall be enforced from the day of its adoption and serve as the ground for the expulsion of a foreigner or stateless person from the Republic of Kazakhstan (Article 385 of the CPC).

Footnote. Paragraph 17 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication).

18. On requirements of Article 401 of the CPC, a court ruling on the expulsion of a foreigner or stateless person from the Republic of Kazakhstan is not subject to appeal and review at the request of the prosecutor in appellate procedure, but can be reviewed in cassation proceedings.

The possibility of such a review without observing the appellate procedure is related to the provisions of Article 13 of the International Covenant on Civil and Political Rights (New York, December 16, 1966, ratified by the Law of the Republic of Kazakhstan dated November 28, 2005 No. 91-III, enforced for the Republic of Kazakhstan April 24, 2006).

Courts shall be explained that when passing a judgment on expulsion, the right to appeal the judicial act in cassation proceedings must be indicated in the operative part of the judgment.

The decision declining the application for the expulsion of a foreigner or stateless person from the Republic of Kazakhstan shall take effect in accordance with the rules of Article 240 of the CPC and may be appealed against in the appellate review in the manner provided for in article 403 of the CPC.

In the event of a complaint or protest that is lodged no later than the deadline set for expulsion, a court ruling on the expulsion of a foreigner or stateless person from the Republic of Kazakhstan shall be suspended pending the resolution of the cassation instance (Article 386 of the CPC). Issuance of a separate judicial act in this case is not required. When upholding the court ruling on expulsion, the resolution of the cassation instance shall set the new deadline for the foreigner or stateless person to leave the territory of the Republic of Kazakhstan.

Footnote. Paragraph 18 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 No. 2 (shall be enforced from the date of the first official publication); as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated April 20, 2018 No. 7 (shall be enforced from the date of the first official publication).

19. In accordance with article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution shall be incorporated in the current law, shall be generally binding and enforced from the date of the first official publication.

Chairman

of the Supreme Court

of the Republic of Kazakhstan

K. MAMI

Judge

of the Supreme Court

of the Republic of Kazakhstan,

secretary of the plenary session

D. Nuralin