

On the right of access to justice and powers of the Supreme Court of the Republic of Kazakhstan in reviewing judicial acts

Unofficial translation

Normative Decree of the Supreme Court of the Republic of Kazakhstan dated January 15, 2016 No. 1.

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Noting the need to clarify issues arising in the practice of applying legislation on access to justice and powers of the Supreme Court of the Republic of Kazakhstan (hereinafter -the Supreme Court) in reviewing judicial acts and basing on results of the study of judicial practice, the plenary session of the Supreme Court

resolves:

1. When exercising the constitutional principle on the right of everyone to legal defense of his rights and freedoms, one shall proceed from clarifications of the resolutions of the Constitutional Council of the Republic of Kazakhstan (hereinafter -the Constitutional Council) № 7/2 dated March 29, 1999 and № 12 dated December 1, 2003, to the effect that:

the provision of paragraph 2 of Article 13 of the Constitution of the Republic of Kazakhstan (hereinafter - the Constitution) means the right of any person and citizen to apply to court for protection and restoration of violated rights and freedoms, exercising this right on the basis and in the manner established by law;

the principle of equality before the law, guaranteed by paragraph 1 of Article 14 of the Constitution, means that it is the laws that define specific conditions and circumstances enabling exercising of the rights and freedoms of a person and a citizen;

the right to judicial defense is a constitutional guarantee of the rights and freedoms of a person and a citizen, which belongs to a citizen of the Republic of Kazakhstan, a foreign national and a stateless person.

2. Paragraph 3 of Article 4 of the Constitution establishes that international treaties ratified by the Republic shall have precedence over its laws and shall be directly implemented except in cases, when their application requires the issuance of a law. In this regard, when applying the legislation of the Republic of Kazakhstan regulating the right of access to justice or judicial defense, the following generally recognized norms and principles of international law shall be taken into account:

everyone shall have the right to an effective remedy of rights by the competent national courts in cases of violation of his fundamental rights granted him by the constitution or by law (Article 8 of the Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the UN General Assembly of December 10, 1948);

all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial court established by law (Paragraph 1, Article 14 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 № 91-III, enforced in the Republic of Kazakhstan April 24, 2006).

3. Justice in accordance with paragraph 1 of Article 75 of the Constitution shall be exercised only by a court. The main characteristics of the legal mechanism for the exercise in courts of the constitutional right of everyone to judicial protection are given in the explanations of the Constitutional Council:

the right of everyone to judicial protection of their rights and freedoms includes the right to judicial appeal against actions and decisions that have resulted or may result in infringement (violation) of human and civil rights and freedoms (Resolutions of the Constitutional Council of March 29, 1999 № 7/2 and dated 24 January 2007 № 1);

lodging of a complaint in itself against an enforced decision does not entail its mandatory review (Resolution № 1/2 of the Constitutional Council of February 24, 1997);

everyone's right to judicial defense shall be exercised on the basis and in the manner established by law (Resolution of the Constitutional Council № 7/2 of March 29, 1999 and № 19/2 of November 1, 2000).

Footnote. Paragraph 3 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 22.12.2022 № 10 (shall be enforced from the date of the first official publication).

4. According to Article 81 of the Constitution, the Supreme Court is the highest judicial body in civil, criminal and other cases within the jurisdiction of local and other courts; in cases provided for by law it considers judicial cases within its jurisdiction and provides explanations on judicial practice matters.

By exercising the indicated constitutional powers, the Supreme Court shall ensure a uniform interpretation and application of the law in the course of legal proceedings.

Uniformity of judicial practice, characterized by uniform approaches to the interpretation and application of rules of law by courts, is achieved not only through the adoption by the Supreme Court of regulatory resolutions that clarify judicial practice issues, but also as a result of the cassation review of judicial acts of lower courts. At the same time, the activities of the Supreme Court in reviewing judicial acts, aimed at ensuring their legality, validity and fairness, are crucial for the formation of judicial practice.

Footnote. Paragraph 4 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 22.12.2022 № 10 (shall be enforced from the date of the first official publication).

5. Achieving uniformity of judicial practice is conditioned by the tasks of assuring legitimacy, protecting the constitutional rights and freedoms of man and citizen; therefore cassation review is associated with their high public significance, and also the importance for the development of law, its uniform interpretation and application.

Issuing from the indicated tasks, procedural legislation defines the following as grounds for cassation review of judicial acts:

violation of uniformity in the interpretation and application of the rules of law by the courts (subparagraph 3) part 6 of article 438 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC), subparagraph 3) of part six of article 169 of the Administrative Procedure and Process-Related Code of the Republic of Kazakhstan (hereinafter referred to as the APPC); subparagraph 3) of part five of Article 851 of the Code of the Republic of Kazakhstan on Administrative Infractions (hereinafter referred to as Administrative Infractions Code);

threat of grave irreversible consequences for life, health of people or for the economy and security of the Republic of Kazakhstan, violation of the rights and legitimate interests of an indefinite number of persons or other public interests (subparagraphs 1), 2) part 6 of Article 438 of the CPC) subparagraphs 1), 2) of part six Article 169 of the APPC; subparagraphs 1), 2) of part five of Article 851 of the Code of Administrative Infractions;

incorrect application of penal and criminal procedural laws, resulting in specific judicial errors (Part 1 of Article 485 of the Criminal Procedure Code);

encroachment on state or public interests, on state security, threat of grave irreversible consequences for the life and health of people, sentencing to life imprisonment (subparagraphs 1), 2) of part 2 of article 485 of the Criminal Procedure Code).

Thus, in order to ensure the rule of law and uniformity of judicial practice, overruling the legally binding judicial act under cassational procedure is exceptional, that is, limited to special grounds.

The possibility of cassation review of court decisions under the specified procedural conditions is an additional legal guarantee for the exercise of everyone's constitutional right to judicial protection of their rights and freedoms.

Footnote. Paragraph 5 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 22.12.2022 № 10 (shall be enforced from the date of the first official publication).

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

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of the Republic of Kazakhstan
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