

On some issues of applying the principle of the language of legal proceedings

Unofficial translation

Normative decision of the Supreme Court of the Republic of Kazakhstan dated December 22, 2016 № 13.

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In order to establish a uniform judicial practice and correct application of the legislation on the language of legal proceedings, the plenary session of the Supreme Court of the Republic of Kazakhstan

resolves:

1. In accordance with Article 7 of the Constitution of the Republic of Kazakhstan (hereinafter -the Constitution), the Kazakh language is the state language in the Republic of Kazakhstan. In state organizations and local government bodies along with Kazakh, the Russian language shall be officially used on equal grounds. The state shall promote conditions for the study and development of the languages of the people of Kazakhstan. According to Article 3 of the Law of the Republic of Kazakhstan dated July 11, 1997 No. 151 -I On Languages in the Republic of Kazakhstan, legislation on languages in the Republic of Kazakhstan is based on the Constitution, consists of this law, other regulatory legal acts regarding the use and development of languages.

2. Application of the principle of the language of legal proceedings is a legal guarantee of protection of the rights and freedoms of the persons participating in legal proceedings.

Footnote. Paragraph 2 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall be enacted from the date of its first official publication).

3. In accordance with Article 14 of the Civil Procedural Code of the Republic of Kazakhstan (hereinafter - the CPC), the language of the proceedings shall be determined by the court ruling depending on the language, in which a lawsuit (application) has been filed to the court.

At the stage of preparing the case for court hearings, the court shall find out whether the claimant (applicant) has sufficient knowledge of the language in which the claim has been filed, and whether he/she understands the essence and content of the proceedings. Upon a written petition from the claimant (applicant), the court shall make a reasoned decision to change the language of the proceedings. Given the principle of equality of rights of the parties, the court shall be obliged to find out the opinion of the defendant on this issue.

4. Article 30 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter - the Criminal Procedure Code) provides that criminal proceedings shall be conducted in the

Kazakh language, along with Kazakh, the Russian language shall be officially used equally in the proceedings, and if necessary other languages.

During the pre-trial investigation, the authority (official) in charge of the criminal proceedings must explain to the suspect (defendant) his/her rights and obligations concerning the language of the proceedings, including the right to request the services of defence counsel.

Footnote. Paragraph 4 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall be promulgated from the date of its first official publication).

5. In accordance with Article 738 of the Code of the Republic of Kazakhstan on Administrative Infractions (hereinafter - CAI), proceedings on administrative infractions shall be conducted in the state language, and if necessary, Russian shall be used equally or other languages along with the state language.

A judge, bodies (officials) authorized to consider cases of administrative infractions must explain to persons held administratively liable, their rights and obligations in relation to the language of the proceedings, and ensure that their interests are protected in the manner prescribed by law.

6. In accordance with the legislation, the participants in the case who do not speak or speak insufficiently the language in which the proceedings are conducted, shall be guaranteed the right to make a plea, give explanations and testimonies, file petitions, speak in court in their native or other language, which they speak.

It shall be borne in mind that persons who do not speak or speak insufficiently the language of the proceedings are persons who do not understand or do not sufficiently understand speech in the language of the proceedings, cannot freely express their thoughts and opinions in this language and experience other difficulties in the conversation, reading texts, giving answers to questions, in oral and (or) written speech.

7. The authorities conducting the proceedings shall ensure that the persons participating in the proceedings exercise their right to free of charge translation of the case materials they need, in accordance with the law, composed in another language, into the languages that these people speak or understand, and to avail themselves of a translator's/ interpreter's services free of charge.

In accordance with the requirements of part 1 of Article 81 of the Criminal Procedure Code, part 2 of Article 39 of the CPC and part 1 of Article 758 of the CAI, an uninterested person shall be engaged as an interpreter/ translator who is not dependent on the authorities and persons involved in the case, who is sufficiently qualified for translation and explanation of the circumstances relevant to the case.

Costs, connected with the proceedings in the language that the trial participants speak, and the engagement of an interpreter in this connection, shall not be an obstacle to the exercise of the rights of the persons participating in the case to use one or another language that they speak.

7-1. Under part five of Article 30 of the CCP, it shall be mandatory to ensure the translation of documents to be served to participants in the proceedings.

The documents which, under the Code of Criminal Procedure, must be served on a suspect or accused person at the pretrial stage shall include: a copy of the court ruling ordering authorization of remand in custody as a preventive measure (part ten of Article 148 of the Code of Criminal Procedure); a copy of the ruling declaring the person a suspect (part two of Article 202, of the Code of Criminal Procedure); a copy of the search and seizure report (part 4 of Article 256 of the Code of Criminal Procedure); a copy of the ruling to terminate the pretrial investigation (Article 288 of the Code of Criminal Procedure); an indictment (Article 304 of the Code of Criminal Procedure) and other procedural documents, the service of which is expressly stipulated in the Code of Criminal Procedure.

A defendant, convicted or acquitted person must be served with: an order to terminate criminal proceedings (Article 327 of the Code of Criminal Procedure); a copy of the judge's ruling to change the defendant's preventive measure or to amend the list of persons to be called to court; and a new formulation of the charge if the prosecutor has amended the charges in court (Article 329 of the Code of Criminal Procedure); a copy of the judgment (Article 404 of the Code of Criminal Procedure); a copy of the appeal (private) complaint and objection (part two of Article 420 of the Code of Criminal Procedure), etc.

To ensure secrecy, the original and translation of documents containing data constituting state secrets or other secrets protected by law shall be provided to parties to criminal proceedings for inspection only. Снятие копии запрещено. Once familiarisation has been completed, the original and translation of such documents shall be kept in the case file in a separate sealed envelope (bag), subject to the requirements of the laws on state secrets of the Republic of Kazakhstan.

Footnote. Regulatory Resolution has been supplemented by paragraph 7-1 in line with the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall become effective on the date of its first official publication).

8. After completion of preparation for civil proceedings, the parties that submitted documents and other materials not in the language of the proceedings shall ensure their translation on their own.

In accordance with part 2 of Article 475 of the CPC, to the documents composed in a foreign language, at the time of their submission to the courts of the Republic of Kazakhstan, not only a properly certified translation into the language of the proceedings shall be attached, but also at the request of the parties involved in the proceedings, translation into their native language or other language that they speak.

9. If the witness who has the right to defense, the suspect, the accused, the defendant, the convicted, the acquitted and the person with respect to whom the administrative case is

conducted, does not speak or speaks insufficiently the language of the proceedings, then a lawyer shall be involved in the trial. Lack of knowledge by the lawyer of the language of legal proceedings shall not be an obstacle to his participation in the trial.

9-1. The fact that a judge, prosecutor, investigator or interrogator acts as an interpreter shall constitute a substantial breach of the law on the language of court proceedings and shall be prohibited. Persons who have been prosecuted for an administrative or criminal offence or who are serving a sentence shall not be engaged as an interpreter.

Footnote. Regulatory Resolution has been supplemented by paragraph 9-1 in line with the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall be promulgated from the date of the first official publication).

10. When selecting candidates for jurors for a trial, the presiding judge shall have the right to ask a question about the degree of proficiency of the candidate for jurors in the language in which the proceedings are administered.

Persons who do not speak the language in which the proceedings are administered shall be released by the chairperson from the performance of the duties of a juror without discussion with the participants in the proceedings.

11. The procedural documents adopted in the case shall be drawn up in the language of the proceedings.

When drawing procedural documents, requirements shall be observed for their content and the language of the proceedings in terms of compliance with linguistic (language) rules.

In cases provided for by the procedural legislation, provision of copies of certified documents with translation for persons who do not speak the language of the proceedings is the responsibility of the authorized bodies administering proceedings in the case.

11-1. Upon the application of the parties to the proceedings or on its own initiative, the court may order a change in the language of the proceedings and continue the proceedings in the state (Kazakh) language.

Footnote. Regulatory Resolution has been supplemented by paragraph 11-1 in line with the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall enter into force from the date of its first official publication).

12. Participants in the trial of appealing (protesting) the procedural actions committed in the case, judicial acts issued in the case, shall comply with the requirement on the established language of proceedings.

In the event of non-compliance with this requirement, the submitted complaints (petitions, protests) shall be returned to be brought into conformity with the regulations of the procedural legislation.

13. Failure to comply with the requirements of the legislation on the language of legal proceedings is a fundamental breach of the procedural law and shall entail annulment of court rulings.

If it is established that the language of the proceedings was violated at the stage of deciding whether to admit the case to court, in compliance with the requirements of Article 323 of the Code of Criminal Procedure, the court shall return the case to the prosecutor so that the violations can be remedied.

Footnote. Paragraph 13 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall be enacted from the date of its first official publication).

14. In the procedural acts, writing of the names of codes, laws, other regulatory legal acts, names of state bodies, other organizations and institutions, the established rules for their writing shall be observed.

It should be noted that, terms, names (of legal entities, organizations, populated localities, etc.), data in other languages, shall be indicated in accordance with the rules of transliteration.

Surnames, names, patronymics of the trial participants shall be reflected in the acts in strict accordance with their identity documents.

In accordance with Article 6 of the Law of the Republic of Kazakhstan dated January 29, 2013 № 73-V "On Documents of Identification", the identity documents together with a passport and an identity card of a citizen of the Republic of Kazakhstan include their diplomatic, foreign, service passports, and a foreigner's residence permit in the Republic of Kazakhstan, identity documents of a stateless person, seafarer, refugee, certificate of return, birth certificate.

Footnote. Paragraph 14 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 6 of 11.12.2020 (shall come into force from the date of its first official publication).

15. According to article 4 of the Constitution, this regulatory resolution is included in the law in force, is generally binding and shall be enforced from the day of its first official publication.

*Chairman
of the Supreme Court
of the Republic of Kazakhstan*

K. MAMI

*Judge
of the Supreme Court
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