

On court sentence

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 4 of April 20, 2018.

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Court sentence - is the most important act of enforcement of law, which summarizes the whole preceding proceedings in a criminal case.

For the purposes of improvement of the judicial practice, elimination of existing deficiencies and improvement of the quality of sentences, the plenary session of the Supreme Court of the Republic of Kazakhstan hereby declares to provide the following explanations.

1. In accordance with the law a sentence is a judgment on a criminal case delivered on behalf of the Republic of Kazakhstan before the court in session by the court of original jurisdiction and of an appeal body concerning the issue of criminality or innocence of a defendant and on application or non-application to him of a criminal punishment in compliance with the principles of justice, specified in paragraph 3 of article 77 of the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution) and in chapter 2 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC).

When delivering judgments, prescribed by paragraphs 4), 5) of part one of article 431 of the CPC, the appeal body shall issue an order on cancellation of the sentence (judgment) of the court of original jurisdiction and them in compliance with the requirements of chapter 46 of the CPC a new sentence shall be delivered.

The sentence shall be mandatory for all state bodies, local governing bodies, legal entities, officials, citizens without exception, and shall be subject to rigorous execution.

The judgment on behalf of the state, its importance requires from the judges the awareness of special responsibility for its legality and validity.

2. The courts should bear in mind that the sentence is legal if it is decided by the legal composition of the court in compliance with the rules of jurisdiction, in strict accordance with the requirements of the criminal -procedural law on the procedure of the judicial proceedings based on the principle of adversarial and equal treatment of the parties. equal grounds, subject to the correct application of the law norms.

The validity of the sentence means that it is based on evidence that has been collected in compliance with the requirements of the law and is directly, comprehensively, objectively and comprehensively examined at the court session, their analysis is given and a proper assessment is given, and the court's conclusions are motivated.

3. To draw the attention of the courts to the importance of adhering to the procedural rules governing the requirements for the form and content of the sentence, that contributes to the full disclosure of the content of the decisions made by the court. It must comply both in form and content, with the requirements of articles 395, 396, 397, 398, 399, 400, 401 of the CPC.

In drawing up the sentence, one should be guided by the internal documents of the judicial system regulating the issues of legal techniques and the parameters for drawing up judicial acts.

4. The sentence shall be stated in the language of legal proceedings, in clear, understandable expressions, without unnecessary repetitions of identical within the meaning of phrases and cumbersome sentences. The sentence shall be stated consistently so that each new provision follows from the previous one and is logically connected with it. The description of the events that are not relevant to the case, the use of inaccurate formulations, unaccepted abbreviations, words and expressions that are unacceptable in official documents shall be unacceptable. The testimony of the participants in the process shall be cited from a third party and must contain a statement of only those information that relates to the case in question. At the same time, it is necessary to reflect the file number, time of interrogation of the said person in the case of recording the court session by means of audio, video.

Corrections to the sentence in accordance with part five of article 395 of the CPC can only be made in the deliberations room, specified and certified by the judge's signature on the corresponding page of the sentence. Making any corrections after its announcement shall not be allowed. All issues shall be resolved and set out in the sentence so that there are no difficulties in its execution. The full text of the sentence shall be subject to production in the deliberations room, signed by the judge and then announced in the same court session at which the proceedings ended. A copy of the sentence must be delivered to the convicted or acquitted, the defense attorney and the prosecutor within five days, and with a large volume - no later than fifteen days after its announcement. Other participants in the process shall be served a copy of the sentence in the same period from the date of receipt of the application.

After the pronouncement of the sentence, the presiding judge explains the essence of the decision, which shall be noted in the record of the court session.

At the same court session, the presiding judge should explain the time limit and the procedure for appealing the sentence, its execution, the consequences of non-execution of the sentence and other issues provided for in article 402 of the CPC.

Announcement of oral conclusions, not recorded in the written form established by law and not signed by the judge, shall not be a court sentence.

5. Explain to the courts that in each case in one trial, regardless of the number of defendants, only one sentence shall be imposed. If the defendant is charged with committing several criminal offenses, the court, if there are grounds for that, shall deliver the sentence, which by one episode of the prosecution shall justify, and by others shall condemn it.

When considering a case involving several persons, the court in one sentence, depending on the circumstances established during the judicial investigation, may decide to justify some and to convict others.

6. A judgment of conviction shall be delivered, if the court has undoubtedly established that a criminal offense has been committed, this criminal offense has been committed by the defendant, he is guilty of committing it, his guilt is confirmed by evidence collected in compliance with the law. At the same time, there should be no grounds for termination of the proceedings and grounds for referring the case to the prosecutor, prescribed by article 323 of the CPC. The guilt of a person in committing a criminal offense shall be recognized as proven only in cases where the court, guided by the presumption of innocence, examining all the evidence directly, interpreting all unavoidable doubts in favor of the defendant, in the framework of due process has provided all the answers to the issues, specified in article 390 of the CPC.

7. The judgment of conviction with the appointment of a criminal punishment to be served by a convicted person shall be decided against the person guilty of committing a criminal offense, provided that he is subject to punishment for the committed criminal offense and there are no obstacles to his appointment and serving.

8. In accordance with part six of article 393 of the CPC the judgment of conviction with the appointment of a criminal punishment and release from its serving shall be delivered, if the circumstances provided for in the law are established at the court hearing, in particular:

if by the time of its adoption an act of amnesty is issued, exempting from the application of punishment or serving, appointed to the convicted for the committed criminal offense;

when the time of the defendant's custody in the case, taking into account the rules of offset, established by article 62 of the Criminal Code, absorbs punishment imposed by court.

A judgment of conviction against a person who has committed a criminal offense, a minor or moderate crime with the appointment of a criminal punishment and exemption from serving it can be resolved in the event that the emerged extraordinary circumstances caused the occurrence of particularly serious consequences for his family members (part one of article 76 of the Criminal Code).

Mental disorder of a person, depriving him of the opportunity to be aware of the actual nature and public danger of his actions (failure to act) or to direct them, which occurred after committing a criminal offense, but before the sentence in the case that went to court with the indictment, in accordance with part one of article 75 of the Criminal Code shall also be a circumstance, является a circumstance by virtue of which a person guilty of a criminal offense cannot serve his sentence. In such cases, the court decides the conviction with the appointment of punishment and release from serving it. At the same time, the court decides on the need for the application of compulsory medical measures, provided for in article 93 of the Criminal Code.

In cases where an act prohibited by criminal law has been committed by a person in a state of insanity or a person after a sentence fell ill with a mental disorder that makes it impossible to execute the sentence, the court makes a decision based on part one of article 521 of the CPC.

9. The question of the termination by the court of a criminal case on the basis of an amnesty act shall be considered with implementation in accordance with part one of article 321 of the CPC of the preliminary hearings with participation of the defendant. In this case, the decision on the termination of the case shall be made by the court in the absence of circumstances preventing the application of the act of amnesty, which indicates the grounds for termination of the case and the defendant's consent to the application of the act of amnesty. By the consent of the defendant is understood as a full recognition of the charges and the civil claim filed. The dismissal order must meet the requirements of article 327 of the CPC and resolve issues of recovery of civil action. At the same time it should be taken into account, that according to requirements of part one of article 170 of the CPC the court must satisfy a civil claim completely. In the same court ruling, the court shall resolve the issue on the future of physical evidence in accordance with the procedure established by part three of article 118 of the CPC.

In the case when the defendant considers himself innocent or disagrees with the civil claim, the court shall appoint and conduct the main trial, which shall end, if there are grounds for that, by the decision of the judgment of conviction and the discharge of it.

If during the judicial investigation there are no circumstances that prevent the application of the amnesty act, the court, in accordance with article 343 of the CPC shall terminate the case due to the amnesty act.

The issue of the application of an amnesty act in criminal cases, where tangible evidence and criminal valuables, illegal entrepreneurship and smuggling paragraphs are recognized as material evidence, shall be decided in the main court proceedings, since in accordance with paragraph 4) of part three of article 118 of the CPC these things are subject to forfeiture to the State according to the court sentence.

10. Explain to the courts that the death of the defendant entails the termination of the proceedings at any stage of the proceedings by the order based on paragraph 11) of part one of article 35 and articles 327, 343 of the CPC. If there is a petition of the parties for the rehabilitation of the deceased or for the consideration of the case in relation to other persons who have committed a criminal offense together with him, as well as the establishment of property obtained by criminal means, money and other valuables subject to confiscation or providing compensation for the harm caused, the proceedings shall continue and shall be completed, if there are grounds for that, by the decision of the conviction of the deceased. At the same time, in the operative part of the sentence, a conclusion shall be formulated that he has been found guilty under the relevant article of the criminal law without sentencing.

A conviction without a criminal offense or with exemption from criminal liability against a minor shall be delivered if there are grounds, stipulated by article 83 of the Criminal Code. At the same time, coercive educational measures may be applied to a minor.

11. Courts need to keep in mind that in case of expiration of the statute of limitations for criminal prosecution, established by article 71 of the Criminal Code, the proceedings on the case shall be subject to termination based on paragraph 4) of part one of article 35, articles 327 and 343 of the CPC at the stage of preliminary hearings or in the main court proceedings.

If the defendant objects to the termination of the said reason, the proceeding in the case shall continue and shall be ended, if there are grounds for that, by a decision of the conviction with exemption from criminal liability for the criminal offense committed.

In the case of the establishment of the fact of expiration of the statute of limitations in the main trial, for example, in the case of retraining of a criminal offense, the court decides the conviction with the release of the perpetrator from liability to prosecution.

The issue of applying the statute of limitations to a person who has committed a criminal offense for which the death penalty or life imprisonment can be imposed, shall be resolved by the court only in the main court proceedings by delivering a sentence. At the same time, the court shall have the right to apply the statute of limitations, to decide the conviction and to release the person from criminal liability. If the court does not consider it possible to exempt a person from criminal liability in connection with the expiration of the statute of limitations, it shall deliver the judgment of conviction with sentencing in accordance with part five of article 71 of the Criminal Code.

12. In accordance with part one of article 36 of the CPC the court has the right to order to terminate the proceedings or issue a judgment of conviction with the release of the guilty person from criminal liability on non-rehabilitating grounds in connection with his active repentance, reconciliation with the victim, including through mediation, and mitigating the harm caused to him, if the limits of necessary defense are exceeded due to fear, fright or confusion caused by socially dangerous encroachment, with the minor's delay in mental development, not connected with a mental disorder, in other words in cases, provided for in part one of article 65, articles 66, 67, parts two and three of article 68, part one of article 83, part three of article 15 of the Criminal Code and according to other reasons other than exoneration for exemption from criminal liability, expressly provided for in the General Part of the Criminal Code.

The reasons other than exoneration, entailing the order of the judgment of conviction with the release from criminal liability shall also include circumstances provided for in notices to articles 125, 175, 253 (paragraph 1), 255, 261, 267, 287, 288, 296 (paragraph 2), 347, 367 (paragraph 2), 426, 442, 444, 445, 446, 447, 453 of the Criminal Code.

In all these cases subject to the absence of a dispute between the parties on existence of circumstances entailing to the release from criminal liability, the proceedings on the case shall be terminated by the order at the stage of the preliminary hearings or in the main court

proceedings based on paragraph 12) of part one of article 35, part one of article 36, articles 327 and 343 of the CPC.

The judgment of conviction with exemption from criminal liability on the above grounds shall be decided only after the completion of the main court proceedings in accordance with part five of article 393 of the CPC.

13. In accordance with part eight of article 393 of the CPC the judgment of conviction with appointment of punishment and with deferred sentence based on part one of article 74 of the Criminal Code, subject to limitations, established by this regulation, shall be delivered in respect of pregnant women and women with little children, men, raising little children alone.

The judgment of conviction with sentencing and suspension of sentence on the basis of part two of article 76 of the Criminal Code, subject to limitations, established by this regulation, shall be delivered in respect of persons who have committed a serious or especially serious crime, in the event of an especially serious consequences for members of his family as a result of extraordinary circumstances.

At the same time, the courts should take into account that the presence of at least one of the grounds, provided for in part one of article 74 or part two of article 76 of the Criminal Code, obliges them to discuss and resolve the issue of deferral of the sentence with the cast of motives.

14. The introductory part of the sentence must comply with the requirements of article 396 of the CPC and shall start from indication that it has been delivered in the name of the Republic of Kazakhstan. The date of delivery of the sentence shall be the day, month and year of its proclaiming. The venue of the sentence shall be the city or other locality where the sentence has been actually delivered and signed by the chairperson or a composition of the court in collegial consideration of a case.

In this part of the sentence, in addition, the full and exact name of the court that passed the sentence, the composition of the court indicating the positions, public prosecutor, defense counsel, court clerk, interpreter, other participants in the process, their representatives, if they participated, must be indicated. With respect to each person who is mentioned in the introductory part of the sentence, it is necessary to indicate not only the last name, but also the initials. All data about the defendant enlisted in paragraph 4) article 396 of the CPC, shall be reflected, at the same time, information about surname, name, patronymic, year, month, day and place of birth must comply with his identity document.

It shall also indicate whether the case has been considered in an open or closed court hearing, the application of audio-video recording by the court, the consideration of the case, completed in an expedited pre-trial investigation, its consideration in an abbreviated, conciliation, order proceedings or by private prosecution.

15. Explain that other information about the identity of the defendant, relevant to the case, may include data that are taken into account when sentencing, when determining the type of institution of the penitentiary system, determining the type of relapse, qualification of actions.

In particular, these are data on outstanding and not removed convictions, on the application of the act of amnesty, on the disability of the defendant and other information.

When giving information about outstanding convictions, the date of conviction, the criminal law, the type and amount of both the main and additional sentences, the serving of the sentence in places of deprivation of liberty, the basis and date of release from punishment are indicated. The name of the court to which the defendant was convicted earlier shall be indicated only if the sentence imposed is not served and a new sentence can be imposed on a combination of criminal offenses or a combination of sentences.

Removed and canceled convictions in the introductory part of the sentence shall not be indicated unless an amnesty act has been applied to the defendant, and this fact shall be important for deciding whether to apply a newly issued amnesty act to him.

In the introductory part of the sentence, it is necessary to indicate the criminal law providing for the criminal offense of which the defendant is prosecuted and for which he is committed to court (article, part, paragraph). In the event of a change in the prosecution during the preliminary hearing or in the main court proceeding, it shall be indicated in which criminal offense the final accusal has been brought against the defendant.

Footnote. Paragraph 15 as amended with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced from the day of its first publication).

16. One of the conditions for the ruling of a legal sentence is that the descriptive part of the judgment shall conform to the evidence examined at the judicial proceedings. In drawing up this part, the court must fulfill the requirements of article 397 of the CPC.

The descriptive part of the sentence must contain a description of the criminal act recognized by the court as proven, indicating the place, time, method of its commission, form of guilt, motives and consequences of the criminal offense. This description should be clear, concise. If a criminal offense is committed by a group of persons, a group of persons in a preliminary conspiracy, or an organized group, specific criminal acts committed by each of the defendants must be described.

When drafting a sentence on multi-episode criminal offenses, it is necessary to observe the chronology, the sequence of events in their relationship. Episode descriptions may be numbered 1, 2, 3 and so on..

The reasoning part reflects the attitude of the defendant to the accusation. The attitude of the defendant to the accusation must contain his specifically formulated position on the recognition of the charge in whole or in part, in which part of the charge or in what criminal qualification it admits guilt and in which part does not agree with the charge, or does not fully admit.

The reasoning part also contains the testimony of the victim, witnesses, the content of the deposited testimony, examined at the court hearing, protocols of procedural actions, case materials. Reference to the records of proceedings and other materials should contain an indication of the volume and pages of the criminal case.

in the same part, the application of regulatory legal acts, and if necessary, of international treaties ratified by the Republic of Kazakhstan, the provisions of which relate to the criminal case under consideration, shall be justified.

It also provides an analysis of evidence, the court's conclusions on the proof of the charges and the qualification of the act, the motives for which the court accepted some evidence and rejected others, an assessment of each argument of the defense and the charges, the justification of the punishment decisions and the type of recidivism, civil claim, evidence, distribution procedural costs and other matters, provided for in article 390 of the CPC in the same sequence. The reasoning part shall be the grounds for decisions cited in the operative part, and thus it must not contradict with it.

17. In the reasoning part of the conviction, an assessment shall be made of the defendant's arguments, which he has cited in support of his position.

In the event if the defendant change his testimony given by him during the pre-trial proceedings, the court should carefully examine all his testimony, find out the reasons for their change, together with other evidence, and provide objective assessment for them.

It should be taken into account that the defendant's refusal to testify shall not be the proof of his guilt. Non-recognition of guilt and refusal to give testimony by the defendant should be regarded as a way of protection from the accusation and they should not be taken into account as circumstances that negatively characterize his personality.

In accordance with sub-paragraph 9) of paragraph 3 article 77 of the Constitution, no one can be convicted solely on the basis of his own confession. In this regard, the courts should take into account that a plea of guilty to the defendant can be used as a basis for a conviction only if the guilt is confirmed by a combination of other evidence gathered in the case.

18. By virtue of the presumption of innocence and in accordance with article 19 of the CPC a judgment of conviction cannot be based on assumptions and must be supported by a sufficient body of reliable evidence.

The text of the sentence must contain a reasoned judgment on the petitions of the parties concerning additional evidence, their relevance, admissibility and reliability, if during the main court proceedings of these petitions the decision has not been taken as a separate decision.

All arising versions should be investigated in the case. Existing contradictions between evidence shall be subject to clarification and evaluation. Irremovable doubts about the guilt of the defendant, as well as doubts arising from the application of criminal and criminal procedure laws, shall be interpreted in his favor.

19. Citing evidence in the reasoning part of the sentence, the court should not limit itself to listing and citing their content, it shall be obliged to make a comprehensive analysis of them, to evaluate all the evidence, both incriminating and justifying the defendant, as confirming the findings of the court and contradicting these conclusions.

When considering cases involving several defendants, or when the defendant is accused of committing several criminal offenses, the court should analyze the evidence against each defendant and each charge. When citing evidence, it is necessary to indicate what circumstances they confirm, what circumstances they disprove, why some of the evidence are found to be reliable, while others are rejected.

When evaluating evidence, courts should be governed by the provisions, fixed in sub-paragraph 9) of paragraph 3 of article 77 of the Constitution, articles 112 and 125 of the CPC, and to take into account, that evidence obtained in violation of the law shall not have legal effect and therefore they cannot be the basis of the judgment of conviction, as well as used in providing evidence of any circumstance, specified in article 113 of the CPC. In the event that evidence obtained in violation of the law, the court must give reasons in the judgment its decision to exclude it from the body of evidence in the case, stating what has expressed the violation of the law.

20. When considering criminal cases, the courts must observe the principle of the immediacy of legal proceedings. In accordance with article 331 of the CPC the sentence should be based only on the evidence that was investigated directly in the main court proceedings. The court shall not have the right to refer to the sentence in support of its findings on the evidence, if they have not been the subject of investigation at the court session with participation of the parties.

Reading the testimony of the defendant, the victim, witnesses obtained during the pre-trial proceedings in the case, as well as reproduction of sound recordings, videotapes or filming attached to the interrogation protocol, their testimony and reference to them in the sentence shall be possible only in cases, provided for articles 368 and 372 of the CPC. The evidence contained in these testimonies can be used as a basis for the court's findings only after they have been verified, thoroughly investigated and confirmed in the main court proceedings.

Under truncated judicial procedures, the sentence may be based on the evidence obtained during the investigation and the inquest and not contested by the parties. If there is a dispute about the evidence obtained during the pre-trial investigation, they should be checked and investigated directly in court. At the same time, the court must decide on conducting the judicial investigation in full.

21. When a victim, a witness who is a spouse or a close relative of the defendant, refuses to testify, and also if the defendant or the priest himself does not give evidence, the court shall be authorized to refer to the testimony given by these persons earlier, only if during the pretrial the proceedings, before interrogation, they have been explained the provisions contained in sub-paragraph 7) of paragraph 3 article 77 of the Constitution, in articles 28 and 78 of the CPC, according to which no one is obliged to testify against himself, the spouse (s) and close relatives, as well as against persons who confided to the priest during confession.

22. Based on the fact that the trial of the case is carried out only in respect of the defendants, the court should not allow in the sentence any wording indicating the guilty of committing the criminal offense of other persons who are not brought to court.

If individual participants in a criminal offense are exempt from criminal responsibility for the reasons provided by law, the court to establish the degree of participation of the defendant in the criminal offense, the qualification of his actions and other significant circumstances of the case may give in the sentence the information about the participation of such persons in the commission of the criminal offense with the obligatory indication of the grounds termination of proceedings.

If in respect of some of the accused, the case is allocated in a separate proceeding, the sentence shall specify that the criminal offense of the defendants has been committed jointly with other persons, without mentioning their surnames.

23. If the defendant is accused of committing several criminal offenses, qualified by different articles of the criminal law (parts of the articles), and the charge of some of them has not been confirmed, the court shall be obliged to give the reasons for recognizing the defendant guilty of some criminal offenses and excuses on charges of others and in the operative part of the sentence to formulate a relevant judgment on finding the defendant guilty on one of the articles and on acquittal on other articles of the criminal law.

24. In the case when the defendant is accused of committing several criminal offenses that are qualified by one article of the criminal law (for example, several thefts or several episodes of continuing criminal activity), and his guilt in some of them has not been confirmed, the court in the reasoning part should draw a conclusion on recognition the charges in this part are unfounded with adduction of evidence, and indicate that the defendant is justified in certain episodes in the operative part.

25. If the charge is not confirmed in part (if there is no proof or lack of qualifying signs), if this entails a change in the qualifications of the offense, the court in the justification part of the sentence shall formulate a conclusion that the charge was not justified in this part, and in the operative part - shall indicate the final decision on finding the defendant guilty proven criminal offense.

In those cases where the failure to prove the charge in part does not entail a change in the qualifications of the offense (article and part of the article remain the same), then the court shall be sufficient in the reasoning part of the sentence with motivation to formulate a conclusion on the recognition of the charge in this part unreasonable.

26. If the defendant has committed one criminal offense, which is erroneously qualified by several articles of criminal law, the court only needs to specify in the reasoning part of the sentence the exception of the erroneously imputed article (or articles), citing the corresponding reasons.

27. If it is necessary to qualify a criminal offense under the article of the law, according to which the defendant has not been charged, the court should proceed from the fact that such a

change in qualification is permissible only under the condition that the actions of the defendant, qualified under the new article of the law, are imputed to him; does not contain the signs of more serious criminal offense and is not significantly different in fact from the final prosecution, supported by the public prosecutor in the main court proceedings, and will not worsen the position of the defendant and will not violate his right to defense.

At the same time, it should be taken into account that a more serious charge or different from the initial one may be brought to the defendant during the main trial by the prosecutor in accordance with part five of article 340 of the CPC by drawing up a new indictment.

The petition of the victim to bring the defendant more serious or different from the initially served charge can be satisfied only if it is supported by the prosecutor.

A charge shall be considered more serious when: a different rule of criminal law is applied (article, part of the article), the sanction of which provides for more severe punishment; the charge includes additional facts and episodes that are not imputed to the defendant, qualifying signs, aggravating circumstances, entailing a change in the qualification of the criminal offense to a law providing for more severe punishment, or increasing the amount of the charge, although not changing the legal assessment of the offense.

Any other change in circumstances and information listed in clauses 1), 2), 3) 4) of the third part of article 299 of the CPC, entailing a violation of the defendant's right to defense, should be considered a different charge from the initial one according to factual circumstances.

28. If the earlier charge is subject to retraining for the article of the criminal law, providing for responsibility for criminal offenses, the cases in which are initiated only as a result of the complaint of the victim (listed in part two and three of article 32 of the CPC), the court, where there is the victim's statement in the case or his oral appeal at the court hearing on bringing the defendant to criminal responsibility, may qualify the actions of the defendant under the specified articles of the criminal law and deliver a judgment of conviction.

In the event if the victim doesn't have a statement (complaint) about criminal proceedings against the defendant, or when he refused the charge at the judicial proceedings, or declared his reconciliation with the defendant, the court shall substantiate the conclusion that the defendant's actions need to be qualified according to the abovementioned articles of the criminal law and shall terminate the proceedings on the basis of paragraph 5) of part one of article 35 and article 343 of the CPC.

In the absence of a complaint of the victim in the case or in the event of the his refusal to prosecute the defendant, the criminal charge prosecuted in a private or private-public order, at a court hearing can be supported by the prosecutor only in the circumstances specified in part four of article 32 of the CPC. The consideration of the case in such circumstances, if there are grounds, shall be finished with a conviction sentence.

29. Recognizing the defendant guilty of committing a criminal offense on the grounds to be assessed (for example, particular cruelty, obvious disrespect for society, a significant

violation of rights, grave consequences and others), the court shall be obliged to bring the circumstances in the reasoning part of the sentence rested on the conclusion of existence of one or another qualifying attribute.

30. The grounds for recognizing the recidivism of crimes established during the main trial shall be set out in the reasoning part. Type of the recidivism shall be subject to reflection in the operative part of the sentence.

31. When drawing up a sentence in a multi-episode case, it shall be allowable to state the established circumstances of a criminal offense, taking into account the chronology of events and evidence supporting the court's findings of guilt and legal assessment of the act, for each episode or criminal offense separately. At the same time, after analyzing the evidence and the qualification of the actions of the guilty persons according to episodes, the court should substantiate in the reasoning part a generalizing conclusion about the amount of the proven charge as a whole with respect to each defendant and about the final qualification of his actions.

32. The limits of the main court proceedings are specified in article 340 of the CPC, it shall be carried out only against the defendant and to the extent of the charge for which he has been tried, unless it has been changed during the preliminary hearing or in the main court proceedings.

If the public prosecutor changed the accusation and the victim did not insist on the former, the court, when making the decision, proceeds from the new accusation, which shall be finally formulated in the course of the judicial investigation or judicial debate.

In the event of a total refusal by the public prosecutor and the victim of the prosecution, the proceedings shall be terminated by a reasoned decision.

If the public prosecutor has refused the accusation, and the victim insists on the former accusation, the court shall exempt the prosecutor from further participation in the process and shall continue the consideration of the case involving a private prosecutor or his representative, depending on the established decision of the indictment or acquittal, according to which the defendant has been put on trial.

In the event of a partial refusal by the public prosecutor and the victim of the prosecution, the court shall terminate the proceedings in this part by a separate decision, which shall be issued by the court at the same time as the sentence on the rest of the charges.

In the event of a change in the prosecution, the court must have a new, reasoned wording of the prosecution in writing, submitted by the public prosecutor. The public prosecutor's refusal of the accusation in whole or in part shall be submitted to the court also in writing with the reasons given.

33. If the defendant is charged under several articles of the criminal law and the court during the main trial finds it necessary to dismiss the case on some of them, the judgment shall be stated in a separate court ruling, and the sentence shall state that the case on charging the defendant in committing other criminal offenses is terminated.

34. Having resolved the issues of qualification of the acts of the defendant, the court in the reasoning part of the sentence with observance of the rules, specified in articles from 52 to 64, articles 81, 82, 83 of the Criminal Code, shall substantiate its conclusion on punishment of the defendant. In the case of convictions of several persons, the conclusion of the sentencing shall be formulated for each of them separately.

35. When deciding a conviction, the court shall be obliged to consider a civil lawsuit filed in a criminal case, give the floor to the parties, give their opinion in the judgment and, with reference to the material law, adopt one of the decisions, provided for in article 170 of the CPC. If the claim is satisfied in full or in part, the sentence shall establish the term for the voluntary execution.

If the court considers the case in relation to several defendants whose actions have caused material damage, the sentence with the reasons given will indicate whether a liability shall be collected in a joint or fractional form of civil liability.

When it is impossible to make a detailed settlement of a civil suit and this circumstance does not affect the qualification of the criminal offense, the court shall for a civil claimant the right to satisfy a claim with giving motives and shall transfer the question of its amount for consideration in the procedure of civil proceedings.

Considering the issue on acceptance of the renunciation of suit, the court shall verify whether these actions contravene the law, whether anyone's rights and legally protected interests are violated. Therewith one should take into account that in accordance with part three of article 169 of the CPC the renunciation of suit shall be accepted by the court with delivering the order on termination of proceedings in the case in this part in any moment of the judicial proceedings but before withdrawal of judges to conference room for delivering the sentence.

36. Based on the fact that when a civil action is brought in a criminal case, only the victim is exempt from paying the state duty, in cases where the claim is satisfied in full or in part, the court shall solve in the sentence the issues of collection of the state fee from the defendant (defendants) to the state's income in full or in proportion to the satisfied part of the claim based on part one of article 117 of the Civil Procedural Code of the Republic of Kazakhstan.

Then, the reasons of decisions on the future of physical evidence and procedural costs shall be cited, and the court proceeds from the requirements of part three of article 118, articles 177, 178 of the CPC.

Compensation for some categories of victims, as provided for in Article 173 of the Criminal Procedure Code, shall be paid by the central authorized body for the execution of the budget on the basis of a decision of the criminal prosecution body in accordance with the provisions of the Law of the Republic of Kazakhstan dated January 10, 2018 No. 131-VI "On Victim Compensation Fund" (hereinafter referred to as the Law on the Fund). The decision on the recourse to the convict for the return of the money paid as compensation to the victim from the Victim Compensation Fund (hereinafter referred to as the Fund) for the recovery of

the enforcement payments to the Fund and their amount shall also be reflected in the operative part of the conviction. The amount of forced payment shall be determined in the procedure provided for in Articles 98-1, 98-2 of the Criminal Code, the standards of which shall be enforced from July 1, 2018.

Footnote. Paragraph 36 as amended with the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced from the day of its first publication).

36-1. Enforcement of forced payment to the Fund by the court must be carried out in accordance with the standards of Articles 98-1 and 98-2 of the Criminal Code and the Fund Law.

The collection of forced payment shall be mandatory when the court convicts each conviction and from each convicted person, including when committing a criminal offense by a group of persons.

In case of a combination of criminal offenses, a forced payment corresponding to the category of the most serious criminal offense is recovered from the convicted person.

When sentencing a combination of criminal offenses under the Rules of part six of Article 58 of the Criminal Code, the court must decide to recover a single forced payment for two sentences. If in the first sentence a person had convicted of the most serious criminal offense with the recovery of the corresponding forced payment, then by the last sentence the forced payment shall not be recovered again. If a person is convicted of the most serious criminal offense by the last sentence, then the amount of forced payment corresponding to this category of criminal offense shall be recovered, with the set-off of the payment recovered under the first sentence.

The mandatory payment shall be collected by the court without any exceptions. The Criminal Law shall contain no grounds for exemption from payment of mandatory payment. The presence of the victim in the case, the presentation of a civil lawsuit or its absence, compensation for damage and other circumstances shall not be legal in order to recover the forced payment.

Forced payment shall be made for criminal offenses committed after June 30, 2018.

When determining the amount of forced payment, it should be based on the monthly calculation indicator in force at the time of the commission of the criminal act.

If the court of first instance did not recover the compulsory payment from the convicted person at the time of the conviction, the court of appeal has the right to do so at the request (protest) of the prosecutor or the complaint of the victim.

Footnote. Regulatory resolution as added with paragraph 36-1 according to the regulatory resolution of the Supreme Court of the RK dated 11.12.2020 № 6 (shall be enforced from the day of its first publication).

37. Due to the fact that all parts of the sentence together constitute a logically coherent document, the operative part of the conviction must meet the requirements of article 398 of the CPC and result from introductory and descriptive parts. The issues to be resolved in the

operative part shall be set out in the order in which they are listed in the law. The decision to convict the defendant in the operative part of the criminal law (article, part, paragraph) shall result from the wording of the charge specified in the descriptive-reasoning part of.

In addition, in the operative part of the conviction shall indicate: the type and size of the main and additional punishment imposed on the convicted person for each criminal offense for which he was found guilty; and, in appropriate cases, on the basis of aggregate criminal offenses and aggregate sentences; the decision on the abolition or preservation of probation, conditional release; on depriving a convicted person of state awards, titles, class rank, diplomatic rank, qualification class, deprivation of citizenship of the Republic of Kazakhstan; about measure of restraint, about the beginning of the calculation of punishment; about pre-trial detention; the appointment of compulsory treatment and the establishment of guardianship over the convicted person; about the type of recidivism.

If several persons are convicted under several articles of the criminal law, each of them shall be punished first for each criminal offense of which he was found guilty, then to each - by the totality of criminal offenses, if there are grounds - by the totality of sentences.

When prescribing imprisonment as the punishment, the court shall indicate in the operative part of the sentence its term (number of years in words), the type of regime of the penitentiary system in which the convicted person should serve, the beginning of the term of calculation, the offset of the time of detention in the case. The procedure of serving the sentence (in the institutions of the penitentiary system of a certain type of regime) shall be indicated only after the prescription of the final punishment.

38. When imposing a milder punishment than provided by law for this criminal offense, or non-application of the additional punishment provided for in the sanction of the article as mandatory, the resolution shall indicate that the punishment is imposed on the basis of article 55 of the Criminal Code. A person guilty of committing several criminal offenses shall be punished first using article 55 of the Criminal Code for one or for each of the criminal offenses committed, and then according to the rules of article 58 of the Criminal Code.

39. Under conditional conviction, the court shall establish the probation control for the entire term of imprisonment, and for minors for a period of six months to one year. Probation control shall include the performance of obligations by the convicted person specified in part two of article 44 of the Criminal Code. When a person commits several criminal offenses, the decision that a sentence is imposed conditionally using article 63 of the Criminal Code shall be indicated after the prescription of the final punishment.

40. Having concluded that it is necessary to release a convicted person from punishment provided for in law cases, the court, in the operative part of the conviction, shall find him guilty of committing a criminal offense, imposes a punishment, and then shall indicate the release from punishment with reference to the law.

When deciding a conviction without sentencing in the operative part, the court shall indicate the decision on conviction, that the punishment is not assigned with reference to the law, and in relation to a minor - about the appointment of compulsory educational measures.

The operative part of the conviction with the release of the person from criminal responsibility shall contain the decision on finding the defendant guilty of committing a criminal offense and on exempting him from criminal responsibility with reference to the law.

When delivering the judgment of conviction with prescription of punishment and deferral of service in the operative part, the court shall find the defendant guilty of a criminal offense, shall impose a punishment and shall formulate a decision to defer the sentence with reference to the law.

Recognizing the charge is not fully proven, the court, in the operative part of the conviction, apart from the decision on conviction for proven criminal offenses, shall formulate a decision on the justification for individual episodes of a criminal offense and articles of criminal law indicating the grounds.

41. The operative part of the judgment of conviction should always contain a court decision on the preventive measure for the defendant before the sentence enters into legal force. It should be remembered that when a judgment of conviction is passed with exemption from criminal liability, without sentencing, with exemption from punishment, with sentencing to a punishment not related to imprisonment or imprisonment and other punishments conditionally, in the operative part the sentence should contain a decision on the immediate release of the defendant from custody.

42. By imposing an additional penalty in the form of confiscation of property, the court in the operative part shall indicate the amount of property subject to confiscation. The procedure of confiscation is determined by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated June 25, 2015 no. 4 "On some issues of prescribing the criminal punishment".

43. When making a judgment on a civil suit, the court shall specify in the operative part of the sentence the decision on satisfying a civil claim in full or in part indicating the amount to be recovered, or recognizing the civil victim's right to satisfy the claim and refer the issue of its amount to civil proceedings, either to refuse to satisfy a civil action, or to leave a civil action without consideration, about the amount of the state duty to be collected from the defendant (s) in state revenue, on establishing a time limit for the voluntary execution of a sentence in a part of a civil suit.

When satisfying a civil suit brought against several defendants, the court in the operative part shall indicate what amounts exactly and from whom are to be recovered, in joint or common procedures.

44. The operative part of the judgment of conviction shall reflect the judgments of the court on the future of physical evidence and on the distribution of procedural costs. When formulating a decision on evidence, the court shall specifically specify which paragraphs are

to be destroyed, which of them are transferred to the lawful owners or interested persons and institutions at their request, which are turned into state income, which remain in business. On the issue of procedural costs in the operative part of the sentence, it shall be indicated in what amount and to whom they are charged or accepted by the state.

In the same part of the sentence, it is necessary to state the decision on the presence or absence of the need to continue the implementation of security measures in relation to the protected persons, the preservation of measures to secure a civil claim or confiscation of property, if any.

It also shall explain the procedure and the terms of the appeal or the prosecutor's application for a sentence.

45. Issues of fostering of unaccompanied minor children, elderly parents, other dependents of both the sentenced to imprisonment and the victim, as well as the protection of their property and home shall not be resolved in the sentence, but in a separate decree issued simultaneously with the sentence.

Questions about the amount of remuneration payable for the provision of legal assistance to the defender on purpose, the court shall resolve in a separate decision, issued simultaneously with the sentence or after its pronouncement on the statements of interested parties.

46. The structure and content of the judgment of conviction delivered in the procedure of the writ proceedings must be in accordance with the requirements of article 629-5 of the CPC.

47. The courts should pay attention to the fact that part two of article 394 of the CPC establishes the exhaustive list of the grounds for determination of the acquittal, which the court shall recognize and proclaim the innocence of the defendant in the criminal offense on the charge for which he has been brought to trial or on the charge amended by the prosecution during the preliminary hearing or in the main court proceedings.

An acquittal in the absence of the event of criminal offense shall be prescribed in cases where the imputed defendant's act have not been committed by the defendant, or when the specified consequences have been caused by the actions of the injured person, or regardless of someone's will, for example, as a result of the forces of nature.

An acquittal in the absence of the elements of criminal offense in the actions shall be delivered if: the act, although it has been committed by the defendant, but it is not criminalized according to the criminal law; what he has done only formally contains the signs of a criminal offense, but because of insignificance it does not constitute a public danger; there are no statutory conditions for recognizing the elements of criminal offense (repeated acts, non-occurrence of the consequences defined by law and others); the act has been committed in the state of necessary defense or extreme necessity; the person has voluntarily refused to commit a criminal offense and so on.

If the fact of a socially dangerous act and its consequences is established, but the evidence presented and examined at the court session excludes or does not confirm the commission of

the defendants, the court shall decide the acquittal due to the failure to prove the criminal offense.

48. In case of detection of the circumstances specified in paragraphs 1) and 2) of part one of article 35 of the CPC (the absence of the event of a criminal offense, the absence of the elements of criminal offense in the act) during the preliminary hearing in the absence of a dispute, the court shall order to discontinue the proceedings on the basis of article 327 of the CPC. If the same circumstances are found in the main court proceedings, the court shall bring the proceedings to the end and shall deliver the acquittal.

49. The explanatory -reasoning part of the acquittal must meet the requirements of article 399 of the CPC and contain the wording of the prosecution, supported by the prosecution in the judicial debate, a description of the circumstances of the case, as established by the court, evidence and their analysis, the reasons for which the court rejected the evidence underlying the prosecution, and summarizing the conclusion of the court that the prosecution did not find its confirmation.

The use in the acquittal of the wording, calling into question the innocence of the acquitted, shall not be allowed.

In case of delivery of an acquittal regarding a person accused of committing several criminal offenses qualified by one or several articles of criminal law, the court must formulate a conclusion on the recognition of the accusation unfounded for each article or episode of the charge indicating the grounds excuses.

In the case of the delivery of an acquittal in respect of several persons, in the descriptive-reasoning part, the court must substantiate the conclusion of justification with indication of the grounds in respect of each with an analysis of the evidence.

50. Delivering the acquittal, depending on the grounds of the acquittal, the court shall decide on a civil suit, bringing the reasons:

- refusing to satisfy a civil action if there is no event of a criminal offense or the commission of a defendant is not proven;

- leaving a civil lawsuit without consideration if the actions of the defendant lack criminal evidence.

51. Explain to the courts that they are not a criminal offense and cannot entail criminal liability for the acts specified in part four of article 10, part four of article 19, article 23, parts one of articles 26, 32, 33, 34, 35, 36, 37, 38, in the footnotes to articles 253 (paragraph 2), 366, 367 (paragraph 1), 375, 376, 378, 421, 432, 434 of the Criminal Code, as well as acts, committed by persons, specified in part one of article 16 of the Criminal Code or not attained the age, from which in accordance with article 15 of the Criminal Code the criminal liability begins.

Upon detection of these circumstances, eliminating the criminal liability, the court shall decide an acquittal for the absence of the elements of criminal offense in the act, except for cases, provided for частью второй article 391 of the CPC.

52. The issues resolved in the operative part of the acquittal shall be set out in the sequence provided for in articles 400 and 401 of the CPC.

Outlining the operative part of the acquittal, the court after the word “sentenced” shall indicate the surname, name, patronymic of the defendant, criminal law (article, part, paragraph) for which he has been held criminally liable, the decision on his innocence specifying the grounds.

When an acquittal is ordered against a person accused of committing several criminal offenses, qualified by one article of criminal law (for example, several thefts or episodes of continuing criminal offense), when the grounds for justification are different, the operative part shall specify which law grounds and in what criminal offenses he has been acquitted.

53. The operative part of the acquittal must, in addition, contain decisions: on recognition of the right to compensation for harm caused by the unlawful actions of the bodies conducting the criminal process, in accordance with article 39 of the CPC; under a civil suit; on the abolition of preventive measures, measures to ensure the confiscation of property, as well as measures to ensure reparation, if such measures were taken; on the future of physical evidence on the basis of part three of article 118 of the CPC; on the distribution of procedural expenses according to the requirements article 178 of the CPC. In the case of abandoning a civil action without consideration of remedies it shall not be canceled.

When deciding an acquittal due to the failure to prove the commission of a criminal offense, the court should specify in the operative part its decision to send the case to the prosecutor to take measures to identify the person who committed the criminal offense.

54. The sentence in cases examined by jurors shall be delivered by the presiding judge in accordance with the procedure prescribed by chapter 68 of the CPC. At the same time, the content of the sentence must meet the requirements of article 658 of the CPC.

55. To declare to be no longer in force:

1) regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated August 15, 2002 no. 19 "On court sentence";

2) regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 9 2006 no. 2 "On amendment to the regulatory resolution of the Supreme Court of the Republic of Kazakhstan no. 19 dated August 15, 2002 "On court sentence";

3) regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated June 25, 2010 no. 17 "On amendments and supplements to the regulatory resolution of the Supreme Court of the Republic of Kazakhstan no. 19 dated August 15, 2002 "On court sentence".

56. In accordance with article 4 of the Constitution this regulatory resolution shall be included into the composition of the current law, shall be obligatory and shall come be put into effect from the day of the first official publication, with the exception of paragraph three of paragraph 4, which shall be put into effect from September 1, 2018.

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*

Zh. Assanov

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