

On some issues of the revision of judicial acts in criminal cases on newly discovered circumstances

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 9 dated June 29, 2018.

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For the purposes of correct and uniform application in judicial practice the legislation governing the resumption of criminal proceedings on newly discovered circumstances, the plenary session of the Supreme Court of the Republic of Kazakhstan resolves to provide the following explanations.

1. Proceedings for the revision of judicial acts in criminal cases on newly discovered circumstances, stipulated by chapter 53 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC), is a stage of the criminal process when the question of the presence or absence of legal grounds for the revision of the judicial acts that have entered into force is decided, when these circumstances were not known to the court while making the decision.

Entered into force sentence, a court order, including a resolution made in accordance with chapter 71 of CPC, may be revised by the court on newly discovered circumstances. The grounds for the revision of judicial acts are circumstances that refute the conclusions of the court, contained in the resolution that entered into force. These bases are listed in the second part of article 499 of the CPC, they are exhaustive and are not subject to broad interpretation.

Newly discovered circumstances are determined by a court verdict that has taken legal effect and evidence of deliberate falsity of the testimony of the victim, a witness, expert opinion, about falseness of material evidence, protocols of investigative and judicial actions, other documents, deliberate incorrect translation, about the illegal actions of the inquirer, investigator, prosecutor, judge, resulting in illegal and unjustified sentence or resolution.

These circumstances, apart from the sentence, may be established by decision of the court, prosecutor, investigator or inquirer on the termination of criminal proceedings on non-rehabilitating grounds specified in part three of article 499 of the CPC.

Other circumstances identified as a result of the verification or investigation under part two of Article 502 of the Code of Criminal Procedure and set out in the prosecutor's application shall also be grounds for reopening the proceedings. Other circumstances shall mean circumstances that have not been established in the pre-trial proceedings and have not been alleged in the main court proceedings, which individually or in conjunction with previously established circumstances indicate the innocence of the convicted person or the

commission of a more or less serious criminal offence or the guilt of the acquitted person or the person against whom proceedings have been terminated. For instance: evidence that another person committed the crime; the declaration of the victim, who was presumed dead, alive; facts establishing the defendant's involvement or non-involvement in the crime, etc.

To the newly discovered evidence in accordance with paragraph 7), of the second part of article 499 of the CPC should be classified the cases, when the convicted person, who is outside the Republic of Kazakhstan and evading court, after consideration of the criminal case in their absence and sentencing, appeared and filed a petition for revision of the criminal case with their participation.

Footnote. Paragraph 1 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall be enacted from the date of first official publication).

2. On newly discovered evidence may only be revised sentence (both accusing and acquittal), order to terminate the case of a district court and a court equal to it, of appeal or cassation instances, order on the confiscation of property obtained by illegal means, before sentencing. Petitions on the grounds referred to in paragraphs 1), 2), 3), 5), 6) and 7) of part two of Article 499 of the Code of Criminal Procedure shall be filed with the court which issued the sentence or ruling. The petition for commencement of proceedings on newly discovered circumstances shall be submitted to the court of appeal or cassation instance in case of revision of the judicial act on the merits with the adoption of a procedural decision. If judicial acts were the subject of consideration by the previous cassation boards of regional and equal courts, the petition is considered collectively by the appeals instances of these courts.

Applications, notifications of the reopening of proceedings under paragraph 4) of part two of Article 499 of the Code of Criminal Procedure shall be filed with the prosecutor.

Footnote. Paragraph 2 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall be put into effect from the date of its first official publication).

3. Revision of a conviction or order for confiscation of property obtained by illegal means , prior to the sentence of the court and the renewal of proceedings in favor of the convicted or the acquitted person is not limited in time. The revision of the acquittal, the decision to dismiss the case or the conviction on the grounds aggravating the situation of the convicted person is allowed provided that the following two conditions are met: if not expired the statute of limitations for criminal responsibility stipulated by the article 71 of the Criminal Code of the Republic of Kazakhstan, and since the revelation of the new circumstances one year has not passed. The calculation of the beginning of the period of new circumstances revelation is regulated by the fourth part of article 501 of the CPC.

4. The right to submit a petition to initiate proceedings on newly discovered circumstances is gained by the convict, acquitted, the person in respect of whom the case was

terminated, their defense lawyers and legal representatives, the victim, the representatives of the victim, as well as the prosecutor, on the grounds of the information they received from the statements of citizens, including participants in the case, reports of officials of organizations, data obtained during the investigation and consideration of other criminal cases.

The death of the convicted person is not an obstacle to the renewal of the proceedings on newly discovered circumstances, if the petition is submitted by close relatives for the purpose of his rehabilitation.

Footnote. Paragraph 4 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall become effective on the date of its first official publication).

5. The reopening of proceedings to review a judicial act under newly discovered circumstances shall comprise two stages: the initiation of the proceedings and the examination of the petition under newly discovered circumstances.

When a judge receives an application to initiate proceedings on newly discovered facts, within ten days he/she must verify whether the petition meets the requirements of Article 499 of the Code of Criminal Procedure and take one of the decisions referred to in paragraphs 1) and 2) of part one of Article 504 of the Code of Criminal Procedure.

In appeal and cassation courts, the judge of the relevant court shall alone verify whether the petition meets the requirements of Article 499 of the Code of Criminal Procedure.

When the judge issues a ruling on the admissibility of a petition and the reopening of proceedings under newly discovered circumstances, the judge shall request the criminal case file and, upon receipt, forward it with the ruling for consideration by the court. A copy of the ruling shall be forwarded to the petitioner.

The petition accompanied by the documents shall be returned without consideration to the person who submitted it, if:

it does not comply with the requirements of Article 499 of the Code of Criminal Procedure or the evidence referred to in the sentence is challenged;

it is not accompanied by judicial or other acts confirming the grounds referred to in paragraphs 1), 2), 3), 5), 6) and 7) of part two of Article 499 of the Code of Criminal Procedure;

it raises the issue of review of judicial decisions not referred to in Article 500 of the Code of Criminal Procedure and not subject to revision on newly discovered circumstances;

it is submitted by the same party on the same grounds for which it has already been rejected.

The petition shall be returned by a letter from the judge.

Once the obstacles that led to the return of the petition have been removed, a person may reapply to the court for a review of the same judicial act on newly discovered facts on the same grounds.

Footnote. Paragraph 5 - as reworded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall be promulgated from the date of its first official publication).

6. When a judge decides to reopen proceedings under newly discovered circumstances, with the documents attached thereto and the criminal case file, the court must consider the petition in open court within thirty days of the reopening of the proceedings or the receipt of the prosecutor's petition.

The applicant, her/his representative, defence counsel, the prosecutor, other parties to the proceedings and the persons summoned by the court to appear in the hearing shall take part in the hearing. Failure to appear by the above persons, who had been duly notified of the time and place of the hearing, shall not preclude examination of the petition.

If required, the court may declare the appearance of the individual(s) compulsory and issue an order to that effect.

The convicted person may take part in the proceedings either in person or by video link.

After consideration of the challenges and motions, the first to address the court shall be the applicant, who shall set out the grounds for review of the judicial act on newly discovered circumstances, or the prosecutor, when the court has made the relevant application, then the court shall hear statements by other persons who have appeared before the court, examine the materials provided by the applicant, the prosecutor on the results of the inspection or investigation.

Trial proceedings shall be conducted by drawing up a protocol under the procedure set out in Article 347 of the Code of Criminal Procedure or by recording it by audio or video recording and drawing up a written summary record. Observations on the record and their consideration shall be made under the rules stipulated in Articles 348, 348-1 and 349 of the Code of Criminal Procedure.

Footnote. Paragraph 6 - as reworded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall enter into force from the date of its first official publication).

7. A petition for the reopening of proceedings to review a judicial act of the court of first instance on newly discovered facts shall be heard by a single judge of the same court who handed down the judgement or ruling.

Where judicial acts for which review proceedings have been initiated under newly discovered circumstances have been pronounced by appeal courts collegially, the judicial decisions shall be reviewed by a collegial panel and by a single judge in the event that the appeal court has heard the case unilaterally.

Footnote. Paragraph 7 - as reworded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall be put into effect from the date of its first official publication).

8. Excluded by Regulatory Resolution of the Supreme Court of the Republic of

Kazakhstan No. 3 of 10.03.2022 (shall be promulgated as from the date of first official publication).

9. The judge who took part in the consideration of the case in the court of first, appeal and cassation instances cannot participate in the consideration of the same case on newly discovered circumstances.

10. At the end of the trial the court shall make one of the following decisions about: satisfaction of the petition; dismissal of the petition. The court decides on the satisfaction of the petition in the event that the circumstances specified in the second part of article 499 of the CPC are established, and these circumstances are preceded or resulted in the imposition of illegal or unjustified sentence, resolution. In this case, the judicial act is subject to cancellation, and the case is directed, depending on the stage of the proceedings, at which the indicated circumstances are revealed, for an investigation or a new judicial review. If an investigation or a new judicial review is not required, the court, specifying the grounds, terminates the proceedings with a reasoned decision.

The ruling on the revision of judicial acts under newly discovered circumstances shall be rendered by the court in the deliberation room. Once the full text of the ruling has been signed, the court shall return to the courtroom and read it out.

Where an effective court judgement or other judicial decisions are quashed, the court hearing the case under newly discovered circumstances shall take one of the following decisions: 1) to terminate proceedings in the case; 2) to remit the criminal case to the prosecutor for a new investigation; 3) to remit the criminal case to the court of first instance or the court of appeal that handed down the sentence for a new examination of the case on the merits.

Complaints, petitions by the prosecutor or protests against decisions of the court of first instance or the court of appeal rendered following consideration of a petition for review of court decisions under newly discovered circumstances may be filed by convicted or acquitted persons, victims or their legal representatives or defence counsel, or by the prosecutor with the corresponding higher court within fifteen days of the issuance of the ruling; and by detained convicts within the same period from the date of receipt of a copy of the ruling.

Complaints, petitions by the prosecutor, protests lodged after fifteen days shall be returned without consideration.

Rulings by the court of first instance and the court of appeal rendered on the merits of an application for review of a judicial act under newly discovered circumstances shall enter into legal force fifteen days after they are rendered; if appealed and upheld by a higher court, they shall enter into force on the day the higher court hands down its ruling.

If a petition for the reopening of proceedings under newly discovered circumstances has been dismissed by a court or prosecutor and has not been overturned and entered into legal force, no proceedings shall be instituted if it is re-filed on the same grounds, albeit by a different person.

Footnote. Paragraph 10 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall be enacted from the date of the first official publication).

11. On the grounds of the renewal of proceeding on the newly discovered circumstance specified in paragraph 7) of the second part of article 499 of the CPC, the will of the convicted person, during whose absence the criminal case was considered, is not an absolute circumstance for a review of the case. The court satisfies the petition if the nature and materiality of the breach of the principles of the criminal process entail recognition of the decision as illegal.

12. Excluded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall be promulgated as from the date of first official publication).

13. Complaints, petitions by the prosecutor against decisions of the court of first instance based on a re-examination of a judicial act under newly discovered circumstances shall be submitted through the court that issued the decision. Complaints and protests by the prosecutor against the appeal court's ruling on re-examination of the judicial act under newly discovered circumstances shall be forwarded directly to the appeal court, with notification of the appeal court.

Complaints and petitions filed by a prosecutor against decisions of a court of first instance based on a re-examination of a judicial act under newly discovered circumstances shall be considered by the regional courts and courts of equivalent status, and the decision taken on the complaint or petition shall be final and not subject to further challenge or appeal.

Complaints and appeals lodged by the prosecutor against decisions of the appeal court taken under a petition for reopening of proceedings under newly discovered circumstances shall be considered by the appeal court directly, without a preliminary examination, and the criminal case file shall be reopened.

Footnote. Paragraph 13 - as reworded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall become effective on the date of its first official publication).

14. A petition filed in cassation instance involving a judge's ruling to reopen proceedings under newly discovered circumstances shall be heard collegially, and the ruling resulting from the hearing shall be final and enter into force as soon as it is pronounced and shall not be subject to further appeal or challenge.

Footnote. Paragraph 14 - as reworded by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 of 10.03.2022 (shall enter into force from the date of its first official publication).

15. Subsequent judicial proceedings after the annulment of the sentence or decision and the investigation are carried out in the general manner established by the CPC, by the court that issued the initial sentence. To the proceeding of the appeals instance, the case is

transferred for review if before the sentence was changed or cancelled by this instance, as well as if it is cancelled by the cassation instance.

A newly pronounced sentence or resolution may be appealed, revised on the petition of the prosecutor, or appealed in a general manner.

16. According to article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution is included in the composition of the law in force, is obligatory and enters into force from the date of the first official publication.

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