

On the recovery of procedural costs in criminal cases

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 10 of June 29, 2018.

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For the purposes of uniform application of judicial practice and the correct application of the norms of Chapter 22 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC), governing the recovery of procedural costs, the plenary session of the Supreme Court of the Republic of Kazakhstan resolves to provide the following explanations.

1. Procedural costs – are the costs related to the criminal proceedings, which shall be refunded from the funds of the republican budget or from the means of the suspect, accused, convicted, their legal representatives, as well as payments (remuneration) to individuals (victims, private prosecutors, witnesses, experts, interpreters, identifying witnesses, lawyers, etc.) and legal entities (expert institutions, criminal prosecution bodies, etc.) involved in criminal proceedings.

According to the paragraph 11) of article 177 of the CPC, the list of types of procedural costs is not exhaustive.

2. Other expenses related to procedural costs should be understood as expenses of the bodies of inquiry, investigation and court costs incurred during the proceedings, directly related to the collection, research and evaluation of evidence provided for by the criminal procedure law.

These include costs associated with the recovery of the value of things that have been damaged or destroyed during investigative actions, with reimbursement of the value of damaged property during investigative actions, the costs of exhumation and burial, etc.

Expenses related to the conduct of special investigative measures and secret investigative actions do not relate to procedural costs.

Costs spent on treating victims are not procedural costs, are subject to consideration of a civil suit in one proceeding with a criminal case in accordance with the first part of article 166 of the CPC.

3. The CPC does not provide for a specific form of appeal for the recovery of procedural costs.

Procedural costs associated with the remuneration of the defender who provides legal assistance for the appointment of the body leading the criminal process, the representative and the interpreter are recovered at their request.

Expenses associated with the production of forensic examinations are subject to recovery on the basis of supporting documents of forensic examinations bodies with an application for calculating the cost of the forensic expert research.

Recovery of procedural costs at the pre-trial stage of the criminal process is carried out by the investigating judge upon the submission of the prosecutor.

The statements of interested persons shall contain information confirming the grounds for recovery of procedural costs, and the amount to be recovered. The application is accompanied by the relevant documents (certificates, orders, amounts of payments, etc.).

4. The issue of the recovery of procedural costs is considered by the court in resolving the criminal case on the merits. At the same time, the court is obliged to check and examine the submitted documents confirming the reasonableness of the procedural costs.

During the court hearing, the convicted person is given the opportunity to bring to the court's attention his position regarding the amount of recovering costs and his property status. In the case of convictions of several persons, court costs shall be recovered from convicted persons in a shared order, taking into account the nature of the guilt, the degree of responsibility and the property status of each convicted persons.

In accordance with paragraph 44 of the normative resolution of the Supreme Court of the Republic of Kazakhstan dated April 20, 2018 No. 4 "On the judicial sentencing" the court's findings on the recovery of procedural costs should be motivated in the sentence. In the operative part of the sentence, it is specified in what amount and on whom procedural costs are charged or are taken at the expense of the state.

Recovery of procedural costs in a criminal case is not subject to resolution in civil proceedings.

5. Procedural costs may be imposed by the court on the suspect, the accused, the convicted person, and their legal representatives or taken at the expense of the state.

With the mandatory participation of the defense counsel appointed by the authority conducting the criminal proceedings, in the cases provided for in the first paragraph of article 67 of the CPC, procedural costs are at the expense of the state.

In other cases, the appointment of a defense counsel by the body conducting the criminal process, procedural costs shall be recovered in a general manner, taking into account the material viability of the suspect, accused person, convicted.

If the court, when deciding on the recovery of procedural costs, comes to the conclusion about the insolvency of the convicted person or their legal representative (on cases of application of compulsory medical measures, in relation to minors), then, according to the provisions of the sixth part of article 178 of the CPC, procedural costs must be recovered in full or partly from the budget funds. Whereas it should be noted that the absence of money or other property at the persons at the time of the decision is not a sufficient ground for declaring them as insolvent.

Full or partial exemption of these persons from the payment of procedural costs and their allocation to the state expenses is the right of the court. In determining the property status, the courts should carefully ascertain the presence or absence of work of the convicted person, their legal representative, their marital status, the number of persons dependent on them and other circumstances that significantly affect their financial situation.

6. The court is entitled to recover from the convicted procedural costs, except for amounts paid to interpreter.

Procedural costs are also imposed on the convicted person, released from punishment (due to the expiration of the statute of limitations for criminal prosecution, active repentance, reconciliation, the use of an amnesty).

In the case of acquittal of the defendant or the termination of the case in accordance with paragraphs 1) and 2) of article 35 of the CPC procedural costs are taken over by the state.

When justifying a defendant in a criminal case on one or more articles of the accusation or terminating a criminal case on separate episodes on rehabilitating grounds, the procedural costs associated with this charge are recovered at the expense of the state.

In cases of private prosecution in the event of acquittal of the defendant, the court has the right to recover the procedural costs in whole or in part from the person whose complaint initiated the proceedings. If the criminal case is terminated due to the reconciliation of the parties, procedural costs are recovered from the defendant.

In the event of termination of a criminal case if the private prosecutor refuses the accusation, the court has the right to recover the procedural costs in whole or in part from the person whose complaint initiated the proceeding.

7. Explain to the courts that in determining the amounts to be paid to a lawyer for the provision of legal assistance to a suspect, accused, defendant, convicted person, and also participated as a in the cases stipulated by part two of article 76 of the CPC by appointment of the body conducting the criminal proceedings, time spent on the exercise of the powers provided for in the first and second parts of article 70 of the CPC shall be taken into account, including the time spent on visiting a suspect, accused, defendant, convicted person in places of detention and imprisonment, a person against whom proceedings are being conducted on the application of compulsory medical measures, while waiting for investigative and other procedural actions, court hearing, to study the materials of the criminal case, as well as to perform other actions of a lawyer to provide legal assistance, if they are confirmed by relevant documents.

Questions about the amount of remuneration payable for the provision of legal assistance to the defender, the representative by appointment, the court decides in a separate decision, issued simultaneously with the sentence or after its pronouncement.

The resolution on the payment of legal assistance is made by the court on the grounds of a written statement by a lawyer with attachments of calculations and other documents confirming the costs of defense or representation.

The resolution is issued in accordance with the laws governing the issue of payment of legal assistance.

When calculating the working hours of defenders, representatives, the information indicated in the statements of lawyers for compliance with their actual time spent by them for participation in a criminal case should be checked by listening, viewing audio and video recording of the court session.

When making decisions on remuneration of the defender, representatives of the courts take into account the time actually spent on the provision of legal assistance, travel and other costs associated with the defense and representation. In this case, the amount to be recovered is not reflected in the resolution, but indicates the specific time spent by the defense counsel on the case, and the category of the criminal offense of which the person is suspected or accused.

8. In accordance with the first part of article 175 of the CPC, if the expert fulfilled his functions as an official task, his remuneration is recovered by the organization, where he is the part of the staff.

The amounts spent on the examination in the bodies of judicial expertise, shall be recovered in accordance with the Rules for determining the cost of production of judicial examination in the bodies of judicial examination, approved by the Order of the Minister of Justice of the Republic of Kazakhstan dated March 30, 2017 No. 325.

Shall not be recoverable as procedural costs in the production of expertise salaries of experts of judicial review bodies and personnel, social tax, social expenses, overhead costs for the implementation of relevant work in the production of forensic expertise, since this work is carried out by them in the order of official assignment and is included in the range of their official duties.

Remuneration paid to the expert for the performance of his duties during the pre-trial investigation or in court, except when these duties were performed as an official task, charged on the basis of the Rules of payment of expenses to persons incurred during the proceedings in a criminal case, approved by Resolution of the Government of the Republic of Kazakhstan № 1070 dated October 9, 2014 (hereinafter referred to as the Rules).

Courts should contemplate that only those procedural costs for producing expertise, which conclusions were important for the proper resolution of a criminal case, shall be charged to a convicted person.

In cases of appointing a pre-trial investigation body of expertise, in which there was no need, the court has the right to take response measures in relation to these bodies in order to exclude unreasonable expenditure of budgetary funds.

9. According to the third part of article 178 of the Code of Criminal Procedure, procedural costs, associated with participation in the case of the interpreter, shall be paid by the state.

If the interpreter has performed his functions in the order of service, remuneration shall be compensated by the state to the organization the organization where the interpreter is a part of the staff.

In accordance with paragraph 10 of the Rules, written and oral translations made by an interpreter during consideration of a case are subject to payment.

The decision on the remuneration of interpreters is made by the courts in the form of a resolution on the basis of the interpreter's application, which shall comply with the requirements of criminal procedure legislation and the Rules.

10. Part eighth of article 178 of the Criminal Procedure Code stipulates that in cases of criminal offenses of juvenile court may impose the payment of the procedural costs of their legal representatives.

When making a final decision on a case, the courts shall take into account the possibility of recovery the procedural costs at the expense of the juvenile's own funds in the event that he has earnings or other income, as well as to find out the financial situation of the legal representative. In the case of establishing the insolvency of a juvenile and his legal representative, procedural costs are paid by the state.

11. The calculation of the amounts spent in connection with the detection of the suspect, the accused, the defendant, hiding from the investigation or the court is governed by the Rules for calculating the amounts, spent in connection with the detection the suspect, the accused, the defendant, hiding from the investigation or the court, approved by the resolution, approved by the Resolution of the Republic of Kazakhstan № 1220 dated November 21, 2014

Procedural costs associated with the detection of the suspect, the accused, the defendant, hiding from the investigation or the court, consist of:

- travel expenses of officials of the prosecuting authority during investigative activities;
- the cost of travel of the suspect, the accused, the defendant, hiding from the investigation or the court, from the place of their detention to the place of criminal prosecution;
- daily expenses, if necessary for the residence of the suspect, accused, defendant, hiding from the investigation or the court, en route from the place of detention to the place of criminal prosecution.

Documents confirming the sum of the procedural costs are attached to the criminal case by the body conducting the criminal proceedings.

The issue of the recovery of procedural costs associated with the detention of the suspect, the person, the defendant, hiding from the investigation or the court, is considered by the court when resolving a criminal case on the merits. At the court hearing it is necessary to carefully check the reasonableness of expenses incurred in connection with the detection.

12. If the proceedings are completed at the pre-trial stage of the criminal process in cases of termination of the criminal case on non-rehabilitating grounds, then the issue of recovery

of procedural costs is resolved by the investigating judge upon the submission of the prosecutor in accordance with paragraph 5) of the second part of article 55 of the CPC.

The courts shall contemplate that according to the first part of article 178 of the CPC, the investigating judge considers matters within his competence only during pre-trial criminal proceedings, therefore, consideration of the submissions of prosecutors on recovery of procedural costs after consideration of a criminal case on the merits is not allowed.

Investigating judges, when considering submissions of prosecutors on the issue of recovery of procedural costs shall require the attachment of all necessary documents from the materials of the criminal case.

13. Explain that the procedural costs associated with summon the witnesses, victims and their representatives, identifying witnesses to the body conducting the criminal process, are refundable from the budget in accordance with the Rules.

The average salary retained in the workplace for a person summoned as a witness, a victim, their representative, identifying witness for the entire time spent by him in connection with a summon to the body conducting the criminal process, is not included in the procedural costs.

14. The expenses associated with the storage and shipment of material evidence are included in the procedural costs and shall be recovered from the budget funds on the basis of the Rules on the basis of the Rules for the seizure, registration, storage, transfer and destruction of material evidence, seized documents, money in national and foreign currency, narcotic drugs, psychotropic substances in criminal cases by the court, prosecutors, criminal prosecution and forensic examination bodies, approved by Resolution of the Government of the Republic of Kazakhstan № 1291 dated December 9, 2014.

The body conducting the pre-trial investigation is obliged to provide the court with documents confirming the indicated expenses (protocol, act on storage of physical evidence, postal delivery receipts, etc.).

15. The procedural costs also include the amounts spent in connection with the transfer of the suspect, the accused to the authority conducting the criminal proceedings, in case of their absence without serious reason, as well as the postponement of the trial due to the defendant's failure to appear without a serious excuse, or to appear in court in a state of intoxication, which are subject to recovery by the court when making a final decision.

Explain that procedural costs are recovered from the indicated persons summoned to the inquirer, investigator, prosecutor or the court in cases of postponement of the case in court or postponement of investigative action due to their absence without a serious excuse.

In each case, the authority conducting the criminal proceedings, should find out the reasons for absence of persons properly notified about the summons.

The law enforcement body responsible for enforcing the compulsory attendance is required to provide the court with information confirming its proper execution.

16. If there are procedural costs, the criminal investigating body is obliged to take measures to ensure their recovery, as provided for in article 161 of the CPC. The criminal indictment shall be attached with a statement containing information about the procedural costs.

In this regard, the court on the submitted criminal case is obliged to check whether the pre-trial investigation body complied with the requirements of part seven of article 299 of the CPC.

The absence of information on procedural costs in the materials of the criminal case does not constitute grounds for the return of the criminal case to the prosecutor in accordance with the requirements of article 323 of the CPC. At the same time, the court may make a private decision against the criminal prosecutor body and the prosecutor who approved the criminal indictment.

17. Explain that in accordance with paragraph 13) of the first part of article 390 of the CPC, when deciding the sentence, the court shall resolve the question from whom the procedural costs are recovered and in what amount.

If the issue of procedural costs was not resolved during the sentencing, then it is subject to resolve in appeal proceedings on the petitions of the interested parties.

In the cassation procedure, the issue of recovery of procedural expenses is subject to consideration in the presence of other grounds provided for in article 485 of the CPC.

The application of the convicted person on respite, installment of execution of the sentence regarding the recovery of procedural costs shall be considered in the order provided for in paragraph 16) of article 476 of the CPC.

18. According to article 4 of the Constitution of the Republic of Kazakhstan, this normative resolution is included in the current law, is generally binding and come into effect from the date of the first official publication.

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of the Republic of Kazakhstan*

Zh. Assanov

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the Republic of Kazakhstan, plenary secretary*

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