

On the application by courts of law in resolving disputes related to the upbringing of children

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 15 dated November 29, 2018.

Unofficial translation

Footnote. Throughout the text, replace the words "of statement of the claim," to "statement of the claim" with the words "of the claim," "the claim," respectively; in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

In order to ensure the protection of the rights and legally protected interests of minors when courts resolve disputes relating to the upbringing of children, as well as the correct and uniform application of the norms of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" (hereinafter - the Code) Plenary Session of the Supreme Court of the Republic of Kazakhstan decides to provide the following clarifications.

1. When considering disputes relating to the upbringing of children, the courts should be guided by the Code and other regulatory legal acts. In cases where international treaties ratified by the Republic of Kazakhstan establish other rules than those contained in regulatory legal acts, they should be guided by them.

2. When deciding whether to take a claim for proceedings in disputes related to the upbringing of children, it should be borne in mind that, in accordance with subparagraph 8) of Article 1, paragraph 1, of the Code, a child shall be recognized as an individual under the age of eighteen (majority).

If the child has reached the age of eighteen years or acquired full capacity before reaching the specified age as a result of emancipation or marriage (Article 17. 22-1 of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Code)), a judge, taking into account the provisions of paragraph 2 of Article 68 of the Code, refuses to accept a claim on the basis of subparagraph 1) of part one of Article 151 of the Code of Civil Procedure of the Republic of Kazakhstan (hereinafter referred to as the CCP), and if proceedings are initiated, they shall be terminated in accordance with paragraph 1) of Article 277 of the CCP.

In preparing the case for trial, the judge should correctly determine the circumstances relevant to the resolution of the dispute and subject to proof by the parties, paying special attention to those that characterize the personal qualities of the parents or other individuals raising the child, as well as the existing relationship between these individuals and the child.

Consideration of cases on determining the place of residence of the child, including when the child leaves the republic for permanent residence with one of the parents; determining the

procedure for communication of a parent, close relatives with a child living separately from them; the removal of a child held by other individuals is not based on the Law; on the deprivation (restriction) and restoration (abolition of restrictions) of parental rights, shall be carried out by the court with the participation of bodies performing functions of custody or guardianship, and consideration of cases of deprivation of parental rights, in addition, with the participation of the prosecutor (paragraph 2 of Article 76 of the Code).

The bodies performing the functions of custody or guardianship shall be obliged, on the basis of the court's decision, to conduct an examination of the living conditions of the child and the individual (s) applying for his upbringing, as well as to submit to the court an act of examination and a conclusion based on it on the merits of the dispute.

The question of conducting an examination must be resolved at the stage of preparing the case for trial.

The court shall assess the opinion of the body in conjunction with other evidence in the case. Disagreement with the conclusion should be motivated in the decision made in the case.

Footnote. Paragraph 2 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

3. In resolving a dispute relating to the upbringing of children, the courts should take into account the provisions of Article 12 of the Convention on the Rights of the Child (New York, November 20, 1989, Resolution of the Supreme Council of the Republic of Kazakhstan of June 8, 1994 "On Ratification of the Convention on the Rights of the Child ") and Article 62 of the Code, in accordance with which a child, regardless of age, has the right to freely express his opinion on all matters affecting his/her interests, as well as to be heard in the course of any judicial or administrative proceeding.

The assessment should be carried out taking into account the age and development of the child in the presence of a teacher and (or) a psychologist, in an environment that excludes the influence of interested persons on him/her. At the same time, it is necessary to find out whether the child's opinion is not a consequence of the impact of one of the parents or other interested persons, whether he/she is aware of his/her own interests in expressing this opinion and how he/she justifies it.

The presence of the representative of the bodies responsible for the guardianship or custody of the child during the interview does not exempt the court from fulfilling the requirements of the fifth part of Article 77 of the Code of Civil Procedure Code on compulsory participation in clarifying the opinion of the child of the teacher and/or psychologist.

4. In accordance with paragraph 3 of Article 73 of the Code, parents have the right to conclude in writing an agreement on the procedure for the exercise of parental rights by a parent who lives separately from the child. If the parents cannot come to an agreement, the dispute shall be resolved by the body that performs the guardianship or trusteeship function,

and in case of disagreement with its decision, by mediation or court with the participation of this body and the parents of the child. In this regard, the courts should keep in mind that the claimant must comply with the procedure established by law for this category of cases of prior pre-trial dispute resolution.

In case of non-compliance with the procedure for the preliminary pre-trial or out-of-court resolution of the dispute and if the possibility of applying this procedure has not been lost, the judge should, in accordance with subparagraph 1) of part one of Article 152 of the Code of Civil Procedure, return the statement of claim and explain the need to apply to the bodies exercising the functions of guardianship or trusteeship.

According to Article 61 of the Code, a child has the right to communicate with both parents, grandparents, brothers, sisters and other relatives.

Based on the right of the parent living separately from the child to communicate with him, as well as the need to protect the rights and interests of the minor when communicating with this parent, the court, taking into account the circumstances of each particular case, shall determine the order of such communication (time, place, duration of communication, etc.) and sets it in the operative part of the decision.

In determining the order of communication of a parent with a child, his age, state of health, attachment to each parent and other circumstances that can affect the child's physical and mental health and moral development shall be taken into account.

In exceptional cases, when communication with a single resident parent may harm the child, the court, based on clause 1 of Article 73 of the Code, which does not allow the exercise of parental rights to the detriment of the child's physical and mental health and moral development, denies the claim the order of his participation in raising a child, stating the reasons for the decision.

Similarly, the requirements to remove obstacles to parents who are not deprived of parental rights in raising children from other persons under the law or a court decision should be resolved.

Having determined the procedure for the participation of a separately resident parent in raising a child, the court warns the other parent about the application of measures provided for by the law when the court decision is not executed. In case of malicious non-execution of a court decision at the request of a parent living separately from the child, the court may decide to transfer the child to him, based on the interests of the child and taking into account the child's opinion (clause 4 of Article 73 of the Code).

The procedure established by the court for the participation of a separately resident parent in raising a child may be reviewed by a court at the suit of one of the parents if the actual circumstances and conditions for raising a child change.

When resolving disputes related to determining the order of communication of relatives with a child (grandparents, etc.), it should be borne in mind that since the child has the right to communicate with grandparents, brothers, sisters and other relatives, they are accordingly

endowed with such a right. If the specified relatives cannot come to an agreement with the parents or one of them, the dispute shall be resolved by the body exercising custody or guardianship, and in case of disagreement with its decision, by mediation or court involving this body, the parents and relatives of the child.

Footnote. Paragraph 4 as amended by the normative resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 № 1 (shall be enforced from the date of the first official publication).

5. When resolving a dispute between separated parents about the minor's residence (regardless of whether they are married (not married), the court, based on the equality of parents' rights established by Article 68, shall make a decision that would be in the best interests of the child.

The court takes into account the child's attachment to each of the parents, brothers and sisters, his age, moral and other personal qualities of the parents, the relationship that exists between each of the parents and the child, the possibility of creating conditions for development and education (type of activity, mode of operation of parents, their financial and family situation, etc.), as well as other circumstances characterizing the situation that has developed in the place of residence of each of the parents. The advantage in the material and living situation of one of the parents is not an unconditional basis for satisfying the requirements of that parent.

In cases where the child lived with one of the parents, and his place of residence was determined with the other parent by the Court decision, the resolution part of the decision should indicate the obligation of the parent with whom the child lives to transfer it to the other parent.

Disputes about the place of residence of children can be considered several times and if the parents filed a lawsuit to determine (change) the child's place of residence for other reasons, indicating a change in the actual circumstances and conditions of raising children, the judge does not have the right to refuse to accept the claim on the basis of subparagraph 2) of the first part of Article 151 of the Code or the Court (judge) is not entitled to terminate the proceedings on the basis of subparagraph 2) of Article 277 of the Code.

6. According to sub-clause 6) of clause 7 of the Rules for Executing Documents for traveling out of the Republic of Kazakhstan for Permanent Residence, approved by Government Decree № 361 of the Republic of Kazakhstan dated March 28, 2012 (hereinafter referred to as the Rules for Executing Documents for Traveling) when leaving for permanent residence citizens of the Republic of Kazakhstan under the age of eighteen, together with one of the parents (guardian, custodian), must have the notary verified Consent of the other parent residing in the territory of the Republic of Kazakhstan. In the absence of consent, the issue of the departure of a minor can be considered in a court of law by filing a claim on the determination of the place of residence.

Part three of Article 27 of the Code of Civil Procedure provides for the consideration of disputes by specialized inter-district juvenile courts on the determination of the child's place of residence when a child leaves one of the parents outside the Republic for permanent residence (hereinafter referred to as permanent residence).

Determining the place of residence of the child when leaving with one of the parents outside the Republic for permanent residence means permission of his departure.

When the plaintiff filed claims for permission to leave the child, the court should clarify to the plaintiff the right to change the subject of the claim to a claim on determining a place of residence when leaving the child with one of the parents outside the Republic for permanent residence in order to prepare the case for trial.

When resolving a dispute about determining the child's place of residence when leaving with one of the parents outside the Republic for permanent residence, the courts should keep in mind that a previous decision of the court to determine the place of residence of the child with one of the parents cannot apply to the limits of the Republic of Kazakhstan, as it was taken taking into account other living conditions.

The exercise of parental rights should not violate the rights and legally protected interests of children and cannot be made dependent on the parents' desire or unwillingness to allow the departure of the child outside the Republic or the contradictions between parents.

When making a decision, the court takes into account the child's attachment to each of the parents, brothers and sisters, his age, moral and other personal qualities of the parents, the relationship existing between the parents and the child, the ability of the parents to create conditions for the development and upbringing of the child (occupation, mode of operation their financial and marital status, etc.), the conditions in which the child will be raised at the place of departure (the presence of a permanent dwelling, permanent work and the salary level/amount of payment for work, the marital status of the parents and other circumstances), as well as the opinion of the child and the conclusion of the body that performs the functions of custody or guardianship.

7. Parents have a preferential right over all other persons to raise their child (clause 2 of article 70 of the Code) and have the right to demand the return of the child from any person who keeps him/her not in accordance with the Law or a Court decision (clause 1 of article 74 of the Code).

When considering the claims of parents for the transfer of children to them by persons with whom they are on the basis of the law or a court decision (guardians, custodians, foster parents, childcare facilities, etc.), the courts should determine whether the circumstances that the reason for the transfer of children to these persons or institutions, whether it is in the interests of the children to return them to their parents.

When considering the claim of one of the parents to transfer children to him by persons with whom they are not based on Law or a Court decision (grandmother, grandfather, aunt, uncle and other relatives) after the death of the parent with whom the children lived, the

courts should find out in connection with what circumstances the children lived with the parent before his death, whether the other parent was involved in the upbringing and maintenance of the children, the reasons that prompted the claim for the transfer of the children, whether the interests of the children were their return to the parent.

In particular, the court takes into account the real ability of the parent to ensure the proper upbringing of the child, the nature of the parent's relationship with the child, the child's attachment to the persons he has and other specific circumstances affecting the creation of normal living conditions and upbringing of the child by the parent, in which the child actually lives and is brought up.

The court may, taking into account the views of the child, refuse to satisfy the claim of the parents (parent) if it comes to the conclusion that the transfer of the child to the parents (parent) is not in the interests of the child. The opinion of the child is taken into account by the court in accordance with the requirements of Article 62 of the Code.

If during the trial it is established that neither the parents nor the person who has the child is not able to ensure its proper upbringing and development, the court refuses to satisfy the claim and transfers the child to the care of the body that performs the guardianship or trusteeship functions, the purpose of taking measures to protect the rights and interests of the child and choosing the most appropriate way to arrange his future fate (Article 74 of the Code).

8. In order to protect the rights of the child and taking into account his interests, parents may be limited by the court in parental rights (Article 79 of the Code).

Restriction of parental rights is allowed if leaving a child with parents is dangerous for him due to circumstances beyond his parents's control (mental disorder or other chronic illness, difficult circumstances). At the same time, the law does not connect the possibility of restriction in parental rights with the recognition of parents as incapable or partially capable.

The court may also decide to limit parental rights if leaving the child with the parents because of their behavior is dangerous for the child, but there are not sufficient grounds for depriving the parents of parental rights.

When deciding on the restriction of parental rights, the court should proceed from the nature and degree of danger, as well as the possible consequences for the child's life or health if left with the parents, and take into account other circumstances. When parents are guilty of behavior that creates a danger to the child, it is necessary to find out whether the parents are aware of the guilt of their behavior and whether they have a firm intention to change it for the better, what specific measures they intend to take or have taken in order to correct their behavior.

By virtue of Article 79 of the Code, cases on the restriction of parental rights shall be considered in claims of close relatives of the child, organizations performing functions to

protect the rights of the child (orphanages, boarding organizations, family-type children's villages, youth homes, support centers for children in need of special social services, juvenile adaptation centers), as well as at the claim of the prosecutor.

The legislation does not set a period for which parents (one of them) may be limited in parental rights, such a period cannot be objectively established due to the uncertainty of the date by which circumstances will not disappear, necessitating the restriction of parental rights, in connection with which the court rules without specifying the period of restriction of parental rights.

Satisfying a lawsuit for restricting parental rights in connection with the guilty behavior of the parents (one of them), the court should explain to the parents (one of them) that if they do not change their behavior, the body that performs the guardianship or trusteeship functions must sue them on deprivation of parental rights in the manner and within the time provided for by paragraph 2 of Article 79 of the Code.

This obligation applies to cases where parents are limited in parental rights due to their guilty behavior.

A claim for deprivation of parental rights of a person who has been limited in parental rights due to circumstances beyond his control (mental disorder or other chronic illness, a confluence of difficult circumstances) is not subject to satisfaction.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

9. Parental rights, which parents may be deprived of, should be understood as the rights granted to them until the majority of children: to be raised, to care for health, to be represented and to protect their interests, to seek children from other persons, to consent or refusal to give consent to transfer the child for adoption (adoption), to give consent for minors aged fourteen to eighteen years to make transfer, with the exception of the transfers referred to in paragraph 2 of article 22 of the Civil Code, to submit an application to the court for limitation or minors to independently manage their earnings, scholarships, other incomes and objects of intellectual property rights created by them, etc.

Making a decision on deprivation of parental rights entails the loss by parents (one of them) of not only the above, but also of other rights based on the fact of kinship with the child arising from both family and other legal relations (to receive the content provided for in Article 145 of the Code, on benefits and state benefits established for citizens with children, inheritance under the law, etc.).

10. In accordance with Article 76 of the Code, cases of deprivation of parental rights shall be considered at the request of one of the parents or other legal representatives of the child, bodies or organizations charged with protecting the rights of minor children (bodies exercising guardianship or guardianship functions, juvenile commissions, institutions for orphans and children left without parental care, in particular, orphanages, boarding schools,

orphanages, support centers for children in need of special social services, homes for the disabled, boarding schools for children with physical disabilities and others), as well as at the claim of the prosecutor.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

11. In preparing for the trial of the case of deprivation or restriction of parental rights of one of the parents, the judge must inform the parent about the time to protect the rights of the minor and ensure the proper conditions for his further upbringing, as well as protection of the rights of the parent who does not live with the child and the place of the trial, to clarify that he has the right to make a requirement to transfer the child to him for upbringing.

12. Parents may be deprived by the court of parental rights on the grounds provided for in Article 75 of the Code, only in the case of their guilty behavior.

Evasion of parents from fulfilling their responsibilities for raising children can be expressed in the absence of concern for their moral and physical development, education, preparation for socially useful work, and malignant evasion from paying alimony.

Solving the question of whether there is a malicious evasion of the parent from paying alimony, it is necessary, in particular, to take into account the duration and the reasons for their non-payment.

The malignant nature of evasion from paying alimony may indicate, for example, the existence of arrears in alimony resulting from the fault of the alimony payer, paid by him on the basis of a notarized agreement on alimony payment or a judicial act for the recovery of alimony; concealment by him of the actual amount of earnings and (or) other income from which retention of alimony must be made; search for a parent who is obliged to pay alimony, in view of hiding his whereabouts; bringing a parent to administrative or criminal liability for failure to fulfill obligations to pay funds for the maintenance of children (Article 669 of the Code of the Republic of Kazakhstan on Administrative Offenses, Article 139 of the Criminal Code of the Republic of Kazakhstan).

When considering a claim for deprivation of parental rights in connection with the refusal, without good reason, to take your child from the maternity hospital (department), from organizations for orphans, children left without parental care, and other organizations, the court should check: the reasons were due to such a refusal and whether they are valid; do parents maintain relationships with the child; whether the parents took any measures to overcome the circumstances that led to the refusal to take the child, and (or) whether these circumstances changed.

The abuse of parental rights should be understood as the use of these rights to the detriment of the interests of children, for example, creating obstacles in teaching, inducing to begging, stealing, prostitution, drinking alcohol or narcotic drugs, psychotropic substances and (or) their analogues, etc.

Abuse of children can manifest itself not only in the physical or mental violence inflicted on them by parents or in the attempt on sexual integrity, but also in the use of unacceptable methods of education (rude, derogatory, degrading treatment of children, insulting or exploiting children).

The fact of committing a deliberate criminal offense against the life or health of your child, spouse or other family members must be confirmed by a valid court conviction or a court order or by a decision of the pre-trial investigation body to terminate the criminal case on a non-rehabilitating basis.

13. Deprivation of parental rights is an extreme measure, therefore, in exceptional cases, if the parent's guilty behavior is proven, the court, taking into account the nature of its behavior, personality and other specific circumstances, has the right to refuse to satisfy the claim on deprivation of parental rights and warn the defendant about the need to change his attitude to raising children, by entrusting the guardianship or trusteeship bodies with control over the fulfillment of parental responsibilities.

Courts should keep in mind that regardless of the grounds provided for by paragraph 1 of Article 75 of the Code, persons who do not fulfill their parental duties due to circumstances beyond their control cannot be deprived of their parental rights (other mental illness or other chronic illness).

In these cases, and also when during the consideration of the case, there are no sufficient grounds for depriving the parents (one of them) of parental rights, the court may decide to limit parental rights by selecting the child and transferring him to the custody, provided that leaving the child with his parents is dangerous for him (Article 79 of the Code).

According to Article 48 of the Code of Civil Procedure, the recognition of the claim is the right of the defendant. At the same time, in accordance with the second part of Article 48 of the Code of Civil Procedure, the court does not accept the recognition of the claim by the respondent if these actions contradict the law or violate anyone's rights, freedoms or legitimate interests. The court's decision on the satisfaction of a claim for deprivation of parental rights cannot be based solely on the defendant's recognition of the claim, since the parent's desire to lose parental rights in relation to his child in the absence of grounds provided for in Article 75 of the Code is not grounds for depriving the parental rights.

14. In accordance with paragraph 2 of Article 77, paragraph 2 of Article 80 of the Code, deprivation or restriction of parental rights does not relieve parents of the obligation to maintain their child, therefore the court, when considering a case on deprivation or restriction of parental rights, decides on the recovery of child support, regardless of whether such a claim was made.

The claimant's refusal to collect maintenance for the child is against the law and violates the rights of the child, and therefore, according to Article 48, second part, of the Code of Civil Procedure, such a refusal cannot be accepted by the court.

If one parent is deprived or restricted of parental rights and the child is transferred to another parent, guardian or custodian or foster parents, alimony is collected and paid to these persons.

If children have already been placed in organizations for orphans and children left without parental care before deciding whether to deprive or restrict parental rights, and also deprive or restrict the parental rights of both parents or one of them when the transfer of the child to the other parent is impossible and the child is placed in organizations for orphans and children left without parental care, alimony collected from parents for such children in educational, medical and other institutions are credited to the accounts of children, placed in the institutions for orphans and children left without parental care. Heads of organizations for orphans and children left without parental care are not eligible to withdraw funds from alimony, allowances and other social benefits from pupils' bank accounts.

Amounts of alimony payments for children transferred under guardianship or guardianship to foster parents are credited to the deposit accounts of these children opened in second-tier banks (Article 142 of the Code).

15. The court's decision on deprivation or restriction of parental rights should indicate the subject to whom the child is being brought up: the other parent, the body exercising custody or guardianship, or guardian (custodian), if he has already been appointed in the prescribed manner. The transfer of a child to be brought up by relatives and other persons is allowed only in the case when these persons are appointed as its guardians and curators.

If it is impossible to transfer the child to the other parent, depriving or restricting the parental rights of both parents, when the guardian (custodian) is not yet appointed, the child is transferred to the custody of the guardianship or trusteeship bodies. The courts do not determine the specific order of the child's placement (placement in a children's institution, a boarding school, the appointment of a guardian, etc.), since this matter falls within the exclusive competence of the said authorities.

The extract from the court decision on deprivation of parental rights within three days from the date of its entry into force in accordance with paragraph 5 of Article 76 of the Code should be sent by the court to the registering authority at the place of state registration of the birth of a child and to the authority performing guardianship at the place of residence of the child.

Considering that a person deprived of parental rights loses the right to receive pensions, benefits, other payments, as well as alimony paid to the child (clause 1 of Article 77 of the Code), and the person who is limited in parental rights loses the right to benefits and state benefits established for citizens with children (subparagraph 2) of paragraph 2 Article 79 of the Code), the court, after the decision on deprivation or restriction of parental rights enters into legal force, must be sent a copy also to the authority making the specified payments, or to the court where the decision was made (issuing an order) or to the territorial body for the execution of judicial acts for consideration the issue of transferring payments to the accounts

of children in organizations for orphans and children left without parental care and placed under guardianship or trusteeship for foster care.

16. In accordance with paragraph 2 of Article 78 of the Code, the question of the restoration of parental rights is decided by the court at the request of a parent deprived of parental rights. Such a requirement is made to the other parent or guardian (custodian), foster carer or child care institution, depending on whose care the child is.

When considering claims for the restoration of parental rights, the courts must find out whether the behavior and lifestyle of parents and their attitude to the upbringing of children have changed. The claim is not subject to satisfaction if the restoration of rights is contrary to the interests of the child, as well as in cases where the child has already been adopted and the adoption has not been canceled or is not considered invalid; a child who has reached the age of ten years objects to this, regardless of the motives for which he does not agree to the restoration of parental rights (clause 3 of Article 78 of the Code).

Simultaneously with the claim for restoration of parental rights, the claim of the same person for the transfer of the child to him can be considered. If the court concludes that returning the child to the parent (s) is not in the child's best interests, the court has the right to refuse to meet this requirement, including in the case of satisfaction of the claim in terms of restoration of parental rights.

By analogy with paragraph 5 of Article 76 of the Code, an extract from a court decision on the restoration of parental rights within three days from the date the decision enters into legal force should be sent by the court to the registering authority at the place of state registration of the child's birth and to the body performing guardianship or guardianship at the place of residence of the child.

17. In accordance with paragraph 1 of Article 81 of the Code, the abolition of the consequences of the restriction of parental rights is made by the court at the suit of parents with restricted parental rights. Such a requirement is made to the person in charge of the child

The court may decide to return the child to the parents and cancel the consequences of the restriction of parental rights, if the grounds by which the parents were limited in parental rights have disappeared and the return of the child to the parents is in the interests of the child

The court refuses to satisfy the claim if, taking into account the opinion of the child, it comes to the conclusion that the return of the child to the parents is contrary to his interests.

Satisfying the lawsuit on the abolition of the restriction of parental rights or on the restoration of parental rights and on the return of the child to parents, the court resolves the issue of the termination of the collection of alimony for the child from these parents.

18. Claims for deprivation of parental rights cannot be brought against adoptive parents and persons actually raising a child, but not listed as parents in the birth certificate, since they have rights and obligations that do not arise from their children's origin.

Evasion of the adopter from the performance of duties, abuse of parental rights, ill-treatment of the adopted are grounds for cancellation of adoption, but not deprivation of parental rights.

19. In cases of inadequate performance by the guardian (custodian) of the duties assigned to him, including using his guardianship or guardianship for personal gain or leaving the ward without supervision and necessary assistance, the said person may be removed from the duties of the guardian (guardian), and not deprived of parental rights. The issue of the removal of the guardian (custodian) from his duties is decided by the bodies performing the functions of guardianship or trusteeship. If a person discharged from custody (guardianship) duties refuses to hand over the child, a claim may be filed against him for his or her taking.

20. Where necessary, the courts in cases of the selection of children should determine the order of execution of decisions, providing for the application of measures to facilitate the transition of the child from one person to another. If it is impossible to execute a court decision on the transfer of a child without prejudice to his interests, the child may, by court decision, in accordance with Article 238 of the Code of Civil Procedure, be temporarily placed in an educational, medical or other institution.

21. The court (judge), approving a mediation agreement, a settlement agreement, or an agreement on the settlement of a dispute in the manner of a participatory procedure on a dispute related to the upbringing of children, must make sure that its terms do not contradict the law and do not violate the rights of a child (part four of Article 177 of the Code of Civil Procedure, part two of Article 180 of the Code of Civil Procedure, part two of the Article 182 Code of Civil Procedure). Before approving the agreement, the court must examine the living conditions of the child and the person claiming to raise him/her, as well as, in compliance with the requirements of Article 62 of the Code, find out the child's opinion on the terms of the agreement.

Footnote. Paragraph 21 as amended by the normative resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 № 1 (shall be enforced from the date of the first official publication).

22. According to the facts of untimely acceptance by the body performing guardianship or guardianship measures to protect the rights and legally protected interests of minors, unlawful actions by other persons involving violations of the rights of children, the courts should issue private decisions to the relevant organizations. or officials.

23. To declare invalid:

1) Regulatory Resolution № 4 of the Supreme Court of the Republic of Kazakhstan dated April 28, 2000 “On the application by courts of law in resolving disputes related to the upbringing of children”;

2) the Normative Resolution № 12 of the Supreme Court of the Republic of Kazakhstan dated December 22, 2008 “On Amendments to the Resolution of the Plenum of the Supreme

Court of the Republic of Kazakhstan dated April 28, 2000 № 4“ On the application by courts of law in resolving disputes relating to the upbringing of children”;

3) Clause 2 of the Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated May 31, 2012 “On introducing amendments and addenda to some regulatory resolutions of the Supreme Court of the Republic of Kazakhstan”;

4) Clause 8 of the Normative Resolution № 2 of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 “On introducing amendments and addenda to some regulatory decisions of the Supreme Court of the Republic of Kazakhstan on civil and civil procedural legislation”;

5) Clause 5 of the Normative Resolution № 7 of the Supreme Court of the Republic of Kazakhstan dated April 20, 2018 “On introducing amendments and adjustments to some regulatory decisions of the Supreme Court of the Republic of Kazakhstan on civil and civil procedural legislation”.

24. According to Article 4 of the Constitution of the Republic of Kazakhstan, this regulatory Decree is included in the composition of the law in force, is generally binding and shall enter into force from the date of the first official publication.

Chairman of the Supreme Court of the

Republic of Kazakhstan

Z. Assanov

Judge of the Supreme Court of the

Republic of Kazakhstan, Secretary

of the Plenary Session

G. Almagambetova