

On the application by Courts of law in the consideration of cases related to the identification of the child's origin

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 16 dated November 29, 2018.

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Footnote. Throughout the text, the words "claim", "of the claim" shall be replaced by the words "lawsuit", "of the lawsuit"; in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

In order to ensure the uniform application of Legislation by courts in the consideration of cases related to the child's origin, the Plenary Session of the Supreme Court of the Republic of Kazakhstan decides to provide the following clarifications.

1. The child's origin, certified in accordance with the law of the Republic of Kazakhstan, is the basis for the emergence of the rights and duties of parents and children (paragraph 2 of Article 46 of the Code of the Republic of Kazakhstan “On Marriage (Matrimony) and Family” (hereinafter - the Code)).

In the event of a dispute on the issues of paternity (motherhood) of the child, the question of the child's origin, in particular, disputes about the establishment of paternity; on contesting paternity (maternity) and exclusion of information about the father (mother) of a child from the birth record shall be resolved by the specialized interdistrict juvenile court for in accordance with the procedure of action proceedings in compliance with the requirements of Chapter 14 of the Civil Procedural Code of the Republic of Kazakhstan (hereinafter referred to as CPC).

The question of the child's origin, the establishment of the fact of the birth of the child by a particular woman, the establishment of the fact of recognition of paternity or the fact of paternity is resolved by the specialized interdistrict juvenile court in a special proceeding according to the rules established by Chapter 32 of the CPC.

The question of the child's origin, the establishment of the fact of the birth of the child by a particular woman, the establishment of the fact of recognition of paternity or the fact of paternity is resolved by the district court in special order according to the rules established by chapter 32 of the Code of Civil Procedure.

Footnote. Paragraph 1 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

2. Courts should take into account that disputes related to the identification of the origin of children can be resolved by the court only after the birth of the child.

In the event that a statement relating to the establishment of the child's origin is submitted before the child is born (for example, challenging paternity), the judge refuses to accept it on the basis of subparagraph 1) of the first part of Article 151 of the Code of Civil Procedure. Such a refusal does not prevent the re-application to the court with the said application after the birth of the child.

Since the law does not establish a limitation period in cases of this category, the paternity (maternity) may be established by the court at any time after the birth of the child (clause 8 of Article 8 of the Code).

3. By virtue of Part three of Article 27 of the CPC, the cases on establishing paternity and recovery of alimony are assigned to the jurisdiction of a specialized interdistrict juvenile court . This rule also applies in the case of a separate claim for paternity.

At the request of the legal representatives of a minor, claims to establish paternity and to collect alimony may be considered or may be transferred to the district (city) court at the place of residence (location) of the child, with the exception of cases within the jurisdiction of district (city) courts located within cities of republican significance and the capital, regional centers.

In accordance with Article 307 of the Code of Civil Procedure, cases related to determining the child's origin, to be considered in accordance with the procedure provided for by Chapter 32 of the Code of Civil Procedure, are considered by the court at the place of residence of the applicant.

If the actual place of residence of the defendant is unknown, the court proceeds to the consideration of the case in compliance with the requirements of the first part of Article 133 of the Code of Civil Procedure.

Footnote. Paragraph 3 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

4. In the event that the defendant in the case of establishing paternity and recovery of alimony is a foreign citizen residing in a foreign state, by virtue of subparagraph 3) of the second part of Article 466 of the Code of Civil Procedure, the case may be considered by the Court of the Republic of Kazakhstan provided that the place of residence the claimant is the Republic of Kazakhstan (unless other rules for determining the jurisdiction of the said dispute are not established by an international treaty ratified by the Republic of Kazakhstan).

5. When dealing with cases involving the identification of the origin 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 dated June 8, 1994 "On Ratification of the Convention on the Rights of the Child child (hereinafter referred to as the Convention on the Rights of the Child)) and

Article 62 of the Code, according to which a child, regardless of age, has the right to freely express his or her opinion when resolving any issue affecting his family in the family, as well as to be heard in any Court Foot or administrative proceedings. In this regard, in the case of establishing the fact of recognition of paternity in a child who has reached the age of ten years , there is a right to be heard during the trial in circumstances that are relevant for the proper resolution of the case.

6. In accordance with Article 48 of the Code, in the case of birth of a child from parents who are not married (married) to each other, and in the absence of a joint statement of the parents or the statement of the father of the child, the question of the child's origin from a particular person (paternity) is resolved by the court in accordance with the procedure proceedings at the request of one of the parents, guardian or custodian of the child, or at the request of a person dependent on which the child is, or at the request of the child himself at the age of majority.

7. The court may, by way of proceedings, establish paternity upon the application of the father of the child who is not married (marriage) to the mother of the child, in the event of the mother's death, deprivation of parental rights, declaring it incapable or not establishing its location, if the body performing the functions on guardianship or trusteeship, did not consent to the establishment of paternity in an extrajudicial manner (clause 5 of Article 47 of the Code).

In this regard, the judge, when accepting the claim, should check whether the claimant applied to the body that performs the guardianship or trusteeship function for obtaining consent to establish his paternity by state registration of civil status acts.

If it is established that the claimant did not apply for such consent, the judge, on the basis of subparagraph 1) of the first part of Article 152 of the Code of Civil Procedure, returns the statement of claim, and if the case is initiated, leaves the statement of claim without consideration on the basis of subparagraph 1) of Section 279 of the Code of Civil Procedure and explains it to the claimant the right to apply on the specified issue to the relevant body that performs the functions of guardianship or trusteeship.

8. Courts should keep in mind that if a child is born within two hundred and eighty days from the dissolution of the marriage (marriage), its recognition invalid or from the death of the spouse of the child's mother, the former spouse of the mother can be recognized as the father of the child, if other not proved (clause 3 of Article 47 of the Code).

The paternity of the spouse of the mother of the child is made on the basis of the marriage certificate. In the case of a joint application for establishing the paternity of another person (actual father) and the child's mother, and if the state registration of civil status authorities refused to register him as the child's father, the issue of paternity of the person is resolved by the court in the procedure of claim proceedings after birth registration of a child in the manner prescribed by law.

9. When considering a lawsuit for paternity, evidence should be taken into account, with certainty confirming the child's descent from a particular person. Such evidence can be attributed, in accordance with the second part of Article 63 of the CPC, explanations of the parties and third parties, testimony of witnesses, expert opinions, material evidence, records of proceedings, transcripts of court hearings, audio, video recordings, data obtained through the use of systems video conferencing, reflecting the course and results of proceedings, and other sources.

10. One of the evidence that reliably confirms the child's descent from a particular person is an expert opinion (molecular genetic examination).

Obtaining blood samples and (or) epithelium from the alleged father and child is carried out in accordance with Articles 83, 84 of the Code of Civil Procedure on the basis of a court decision, which specifies information about the samples, their quantity, information about the persons who are sampled, about the subject, carrying out their selection, time and place of sampling and information about the person to whom the samples should be submitted after they are received.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

11. The question of the application of the eighth article 82 of the Code of Civil Procedure Code by the court in each specific case, depending on which of the parties, for what reasons did not appear for examination or did not present the necessary research items to the expert (experts), as well as the significance for the party expert opinion, based on the evidence on the case in total. To this end, the court should check whether there were circumstances that objectively prevented the parent from attending the child, the alleged father for examination, whether the provisions of the eighth part of Article 82 of the Code of Civil Procedure were explained to this person, whether the new term was appointed for examination, what other evidence was presented by the parties to the court for confirmation (refusal) of the stated requirement, whether there is evidence proving doubts about paternity (in cases of challenging paternity).

12. Courts should distinguish between the paternity requirement and the paternity recognition and paternity requirements, which are subject to special proceedings, provided there is no dispute over the law.

In the event of the death of a person who recognized himself as the father of the child and the child was dependent on the person at the time of his death or earlier, but was not married to the mother of the child, the court has the right to establish the fact of recognition of paternity.

The fact of recognition of paternity can also be established in relation to a child born after the death of a person who, during the pregnancy of the mother, recognized himself as the father of the unborn child.

The fact of recognition of paternity can be established if there is evidence to confirm that the child was dependent on the deceased, the child was recognized both during pregnancy and after birth, or if the person died at the time of the child's birth, then if there is evidence that he or she has recognized the child during mother's pregnancy (cohabitation, caring for a pregnant woman, etc.).

In the event of the death of a person who did not recognize himself as the father of the child or did not know about the conception and birth of this child, the court has the right to establish the fact of fatherhood, that is, the fact of the child's origin from this person. This fact can be established only if there is reliable evidence to support the child's descent from the deceased. To this end, the courts are entitled to involve the relatives of the alleged father for the purpose of conducting a genetic examination.

13. Courts must take into account that the evidence on this category of disputes cannot be considered sufficient without a preliminary survey of the parties, clarification of their legal positions in the case. In order to establish the child's origin from a specific person, the judge should prepare the case for the trial with the mandatory notification of the parties to the preliminary court hearing.

In preparing for the trial of cases on the recognition of paternity or the fact of paternity, the judge should find out why the applicant needs to establish the fact of which persons and organizations may be interested in resolving this case, or the decision may affect their rights and interests, and should be called to judicial sitting.

14. According to clause 1 of Article 51 of the Code, the record of parents in the book of birth certificates can be challenged only in a court of law by a person who is recorded as the father or mother of a child, a person who is in fact the father or mother of a child, a child upon reaching the age of majority, a guardian or the custodian of the child, the guardian of the parent recognized by the court as incapable. This right also belongs to a child who has not attained the age of eighteen years, who has acquired full legal capacity as a result of emancipation or marriage.

Marital and Family law is based on the inadmissibility of arbitrary interference by anyone in the affairs of the family, in connection with which the list of persons is exhaustive and is not subject to broad interpretation.

If the lawsuit about contesting the record of child's father (mother) in the register of birth records is filed by a person who does not belong to the list of persons specified in Paragraph 1 of Article 51 of the Code, the judge shall refuse to accept the lawsuit.

Footnote. Paragraph 14 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

15. In accordance with paragraph 2 of Article 51 of the Code, the requirement of a person recorded as the father of a child on the basis of a joint application of the father and mother, at the request of the father of the child or according to a court decision on the abolition of

paternity, cannot be satisfied if at the time of recording that person was aware that he is, in fact, not the father of the child.

When considering such cases, courts should bear in mind that the plaintiff has the right to challenge the recording made on the grounds of violation of the will (under the influence of threats, violence or in a state where the plaintiff was not able to understand the significance of his actions or direct them). In the case of the submission of evidence showing a violation of the will, the requirement shall be satisfied.

16. The court's decision to satisfy the claim in cases of challenging paternity cannot be based solely on the recognition of the lawsuit by the child's mother or guardian (custodian), as this may entail abuse by the parents or other legal representatives, violation of the rights and legal interests of the minor, including the right to know his/her parents, the right to their care (part two of Article 171 of the CPC, Article 60, paragraphs 1 and 2 of Article 67 of the Code). The court is obliged to investigate all the evidence presented for the correct resolution of the dispute.

17. Courts should be aware that conciliation procedures are possible only in cases of claim proceedings (third part of Article 174 of the Code of Civil Procedure).

At the same time, on the basis of the subject of the dispute, in cases of contesting paternity, where the minor child is the subject of the relationship, the court approves the settlement agreement, the agreement on the settlement of the dispute through mediation, the agreement on the settlement of the dispute in the order of the participatory procedure is unacceptable.

18. If during the course of the trial it is determined that the person recorded as the father (mother) of the child is not his/her biological parent, the court shall decide on the satisfaction of the lawsuit challenging the record about the father (mother) of the child in the birth record of the child.

The decision of the court to satisfy the lawsuit challenging the record of the father (mother) of the child shall be the grounds for annulment of the information about the father (mother) of the child in the record of the birth record of the child.

In exceptional cases, based on the priority protection of the rights and interests of the child, established by Article 3 of the Convention on the Rights of the Child, and also taking into account the objective circumstances of the case, the court may refuse to satisfy the lawsuit to contest paternity, if the mother or guardian (custodian) of the child has not simultaneously made a demand on the establishment of paternity in relation to the child's biological father (or such a demand has not been made by the child's biological father), and the person registered as the child's father objects to the lawsuit.

19. A court decision to establish paternity or to establish the fact of recognition of paternity, the fact of paternity, which has entered into legal force, shall be the basis for making changes and additions to the act record of state registration of birth in connection with the establishment of paternity.

The introduction of information about the father, as well as the change of the child's last name, first name and patronymic, are carried out in accordance with the data specified in the court decision.

When satisfying the requirement to establish paternity or to establish the fact of paternity recognition or paternity, to challenge the child's father's record in the birth certificate in the operative part of the court's decision, the information necessary to record paternity in the civil registration authority and (or) entry in the record of the civil status of the relevant changes.

Changes and additions to the act record of the state registration of the birth of a child when establishing paternity are made on the basis of a court decision to establish paternity, as well as establishing the fact of recognition of paternity and the fact of paternity (subparagraph 3) of Paragraph 1 of Article 192-1 of the Code).

If there is a dispute between the parents, the court resolves it based on the interests of the child with the involvement of the authorities performing the functions of guardianship and trusteeship in the case. Changing the first name, patronymic (if any) and (or) last name of a child who has reached the age of ten years can be made only with his/her consent.

Footnote. Paragraph 19 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

20. The operative part of the court decision to satisfy the requirement to challenge paternity shall indicate that appropriate changes have been made to the child's birth record (excluding information about the child's father from the birth record).

Footnote. Paragraph 20 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 No. 4 (shall be enforced upon its first official publication).

21. To recognize as invalid:

1) Regulatory Resolution No. 7 of the Supreme Court of the Republic of Kazakhstan of September 30, 1971 "On Judicial Practice in Cases of Establishing Paternity and the Fact of Paternity Recognition";

2) Resolution No. 3 of the Plenum of the Supreme Court of the Kazakh SSR of March 29, 1983,;

3) Regulatory Resolution No. 6 and 7 of the Supreme Court of the Republic of Kazakhstan dated June 18, 2004 "On Amendments and Addenda to the Resolution of the Plenum of the Supreme Court of the Kazakh SSR dated September 30, 1971 "On Judicial Practice in Cases of Establishing Paternity";

4) Clause 1 of the Normative Resolution No. 2 of the Supreme Court of the Republic of Kazakhstan dated May 31, 2012 "On introducing amendments and adjustments to some Regulatory Resolutions of the Supreme Court of the Republic of Kazakhstan";

5) Clause 2 of the Normative Resolution No. 2 of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 "On introduction of amendments and additions to some

regulatory resolutions of the Supreme Court of the Republic of Kazakhstan on civil and civil procedural legislation”.

22. 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
Judge of the Supreme Court of the
Republic of Kazakhstan,
Secretary of the Plenary Session*

Zh. Assanov

G. Almagambetova