

On judicial practice in cases on recognizing a citizen as missing or declaring him dead

Unofficial translation

Regulatory Resolution No. 2 of the Supreme Court of the Republic of Kazakhstan dated May 31, 2019

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For the purpose of uniform application of legislation by the courts when considering cases on recognizing a citizen as missing or declaring him dead, the plenary session of the Supreme Court of the Republic of Kazakhstan hereby resolves to give the following clarifications:

1. In accordance with Articles 28, 31 of the Civil Code of the Republic of Kazakhstan (hereinafter - CC) and part two of Article 317 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter - CPC), a case on recognizing a citizen missing or declaring him dead may be initiated at the request of his family members, the prosecutor, public associations , the guardianship and trusteeship body and other interested persons.

The applicants for this category of cases shall be family members (spouse, parents, children and others). The courts shall bear in mind that the parties of the application – individuals- shall not be limited to persons who are in family and kinship relations.

Interested parties shall be deemed to be individuals and legal entities, state bodies that, in accordance with part two of Article 8 of the CPC have the right to apply to court with an application for the protection of breached or disputed rights and freedoms or legitimate interests of other persons or an indefinite number of persons in cases provided for by law, and for which the recognition as missing or announcement of a person as deceased entails the emergence, termination or change of personal non-property and property rights.

2. The courts shall bear in mind that a statement on recognizing a citizen as missing or declaring him dead, along with compliance with the requirements of Article 148 of the CPC in form and content, must comply with the rules of Article 318 of the CPC.

The application must indicate for what purpose the applicant seeks to recognize the citizen as missing or to declare him dead, and also set out the circumstances confirming the unknown absence of the person, or the circumstances that threatened the missing person with death or gave grounds to assume his death from a certain accident. With regard to servicemen or other citizens who have gone missing in connection with hostilities, the application shall indicate the day the hostilities ended.

If the applicant fails to comply with these requirements, the application in accordance with subparagraph 3) of the first part of Article 152 of the CPC shall be returned, with an explanation of the shortcomings of the application for subsequent bringing it into line with the CPC.

Cases of this category shall be referred to the jurisdiction of the courts of general jurisdiction, considered in a special procedure. The application can be submitted at the applicant's residence place or at the last known residence place of the missing person.

3. According to the first part of Article 319 of the CPC, the judge shall be obliged to establish the scope of persons who can provide information about the absent person and the factual circumstances that are important for the correct resolution of the case.

Depending on the amount of information provided by the applicant, based on the specific circumstances of the case, the judge shall request information from the relevant organizations at the last known place of residence and place of work of the absent person, at the place of birth, residence of the parents and close relatives of the absent person.

The courts shall request information from the internal affairs bodies on the registration of persons in respect of whom claims have been made to recognize a citizen as missing or declare him dead, on the presence of fugitive cases on them; request information from the authorized body on the receipt of pensions and benefits, the availability and flow of funds in individual pension accounts; in the justice bodies - information about the change of surname, name, patronymic; in the authorized body for legal statistics of special registers – whether these persons are listed among convicts, were brought to criminal or administrative liability, put on the wanted list; in the healthcare bodies- information about treatment they were undergoing; in organizations engaged in national transportation - information on acquiring tickets; in other authorized bodies- availing of information about the absent person's contacting them a year preceding the filed application with the court for the provision of public services, as well as other information about the missing person, including about leaving the Republic of Kazakhstan, change of citizenship, death, the presence of enforcement proceeding in relation to him, etc.

Courts shall make inquiries through the automated information and analytical system (AIAS) "Torelik" to the information exchange System of law enforcement bodies and special agencies of the Republic of Kazakhstan (IES LESA).

4. Taking into account the provisions of the second part of Article 319 of the CPC on making a publication on initiation of the case in the ruling on preparation of the case for trial, the judge shall be obliged to:

indicate the applicant's obligation to make a publication at his own expense in the media (district, regional, republican level, on the Internet, on television) to initiate a case;

determine the term in which the publication should be made, listing the media to place the publication in.

Courts shall keep in mind the need for strict compliance with the following requirements of procedural legislation for publication:

the content of the publication must comply with the provisions of subparagraphs 1), 2), 3) and 4) of the second part of Article 319 of the CPC;

the publication shall be made in both Kazakh and Russian languages in periodicals that hold, in accordance with the established procedure, the right to officially publish legal acts, Internet resources that have passed the registration procedure with an authorized body, television channels, respectively, broadcasting (airing) throughout the territory of the Republic of Kazakhstan and the corresponding administrative-territorial unit at the applicant's location.

Pursuant to the judge's ruling on preparation of the case for trial, the applicant shall be obliged to make the publication within the time established by the court and submit to the court a confirmation of placing the publication no later than three working days from the date of its placement.

In the absence of evidence confirming the publication in any of the media listed by the court, the application shall be dismissed without prejudice in accordance with subparagraph 12) of Article 279 of the CPC.

If, in preparing the case for trial, the applicant applies for the appointment of a guardian for the protection and management of property, the judge shall make an appropriate ruling in accordance with the rules of Articles 155, 156 of the CPC.

5. When resolving cases on recognizing a citizen as missing or declaring him dead, the courts shall not be entitled to jointly consider other claims that are referable to civil proceedings (disputes on entitlement, statements on establishing facts of legal significance, etc.).

6. Prerequisite for recognizing a citizen as missing shall be the absence of information about him at his residence place for one year.

The period of absence of a citizen shall not be calculated from the day of his departure from the settlement, but from the moment of receiving the latest information about him.

The day of receipt of the latest information can be confirmed by a written message, telephone message, electronic message of an absent citizen or in any other way from another source, or established by the witnesses' testimony.

If it is impossible to establish the date of the latest information receipt, the beginning of the unknown absence shall be the first day of the month following the one in which the latest information was received, and if it is impossible to establish this month - January 1 of the next year (paragraph 2 of Article 28 of the CC).

7. Provisions of the Law of the Republic of Kazakhstan dated June 16, 1997 No. 126 "On state social benefits for disability and loss of breadwinner in the Republic of Kazakhstan" concerning families of the deceased, shall respectively apply to families of the missing or declared dead (paragraph 6 of Article 13 of the Law).

In accordance with article 170 of the CC, the power of attorney issued in the name of the missing person, as well as issued by him, shall be terminated.

The spouse of a citizen recognized as missing shall have the right to marriage dissolution in a simplified order through the civil registration authority (subparagraph 1) of paragraph 2

of Article 17 of the Code of the Republic of Kazakhstan On Marriage (Matrimony) and Family).

8. In the presence of data on the death of a citizen at a certain time and under certain circumstances, the courts must decide the issue of establishing the fact of death, and not declaring the citizen dead.

Establishing the fact of death shall not require the expiration of a certain period of time, absence of any information about the person's last whereabouts.

9. To declare a citizen dead shall not require prior recognition of him as missing, therefore, when considering an application for recognizing a citizen as missing, the court, subject to the conditions provided for in paragraph 1 of Article 31 of the CC, with the applicant's consent, shall have the right to declare him dead.

The conditions for declaring a citizen dead shall be:

absence of information about him at his residence place for three years, and if he went missing under the circumstances that threatened death or gave grounds to assume his death from an accident, within six months;

failure to ascertain the citizen's whereabouts within the specified timeframe and impossibility, despite the measures taken, to establish whether he is alive.

The law determines the conditions for declaring deceased a citizen who has gone missing in connection with hostilities: such a person can be declared dead no earlier than two years after the end of hostilities (paragraph 2 of Article 31 of the CC).

In accordance with paragraph 3 of Article 31 of the CC, the day of the court ruling enforcement on declaring the person dead shall be considered the date of the death of the person declared dead. In cases where a missing person is declared dead under circumstances that threaten death or give grounds to assume his death from an accident, the court may recognize the day of his alleged death as the date of this person's death.

10. In the event of appearance or finding of the whereabouts of the person recognized as missing or declared dead, the court, upon the application of the person concerned, the person recognized as missing or declared dead, or the prosecutor shall revoke its earlier decision by a new resolution. Initiation of a new case shall not be required. The application shall be considered in a court session within one month from the date of its receipt by the court.

Such a decision shall be the ground for removing custody from the property and revocation of the record of his death in the civil registration book.

The consequences of the appearance of a person declared deceased are provided for in Article 32 of the CC.

11. A person who deliberately hides or is on the wanted list in connection with committed criminal offense, with evasion of the legal obligations imposed on him, cannot be recognized as missing or dead. In this regard, the courts must clarify why this person was put on the

wanted list, left the Republic of Kazakhstan and other circumstances of his absence, while suppressing fraudulent actions of the applicants, including those aimed at obtaining benefits and other material values.

12. In the operative part of the resolution, in addition to the surname, name and patronymic of a person recognized as missing or declared deceased, it is necessary to indicate the date and place of his birth, individual identification number.

The court resolution must contain data on the beginning of the unknown absence of a person, that is, the day from which the citizen is considered missing.

Upon enforcement of the ruling on recognizing a citizen as missing, a copy of the judicial act shall be directed to the guardianship and trusteeship body at the location of the missing person's property for the appointment of custody of the property.

13. The following shall be abrogated:

1) Regulatory Resolution No. 9 of the Supreme Court of the Republic of Kazakhstan dated September 25, 1968 "On judicial practice in cases of recognizing a person as missing or declaring a person dead";

2) Regulatory Resolution No. 14 of the Supreme Court of the Republic of Kazakhstan dated June 18, 2004 "On Amendments to Resolution No. 9 of the Plenum of the Supreme Court of the Kazakh SSR dated September 25, 1968 " On Judicial Practice in Cases on Recognizing a Citizen as Missing or Declaring a Citizen Dead ";

3) paragraph 1 of Regulatory Resolution No. 6 of the Supreme Court of the Republic of Kazakhstan dated December 29, 2012 "On amendments and additions to regulatory resolutions of the Supreme Court of the Republic of Kazakhstan";

4) paragraph 1 of Regulatory Resolution No. 2 of the Supreme Court of the Republic of Kazakhstan dated March 31, 2017 "On amendments and additions to some regulatory resolutions of the Supreme Court of the Republic of Kazakhstan on civil and civil procedural legislation";

5) paragraph 1 of Regulatory Resolution No. 7 of the Supreme Court of the Republic of Kazakhstan dated April 20, 2018 "On amendments and additions to some regulatory resolutions of the Supreme Court of the Republic of Kazakhstan on civil and civil procedural legislation."

14. Proceeding from Article 4 of the Constitution of the Republic of Kazakhstan, this Regulatory Resolution is included in the current law, is generally binding and shall be enforced from the date of the first official publication.

*Chairman of the Supreme Court
of the Republic of Kazakhstan*

Zh. Asanov

*Judge of the Supreme Court of the Republic of Kazakhstan,
Secretary of the plenary session*

G. Almagambetova

