

On application by courts of the legislation in consideration of cases regarding recovery of alimony

Unofficial translation

Regulatory Resolution No. 6 of the Supreme Court of the Republic of Kazakhstan dated November 29, 2019.

Unofficial translation

Footnote. throughout the text:

replace the words "of statement of claim," "statement of claim" with the words "claim," "of claim" respectively;

delete the words "notarized," "of notarized"; in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan of 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

For the purpose of uniform application of legislation by courts of the legislation in consideration of cases regarding recovery of alimony, the plenary session of the Supreme Court of the Republic of Kazakhstan hereby resolves to provide the following clarifications.

1. In considering disputes relating to the recovery of alimony, the courts must be governed by the Constitution of the Republic of Kazakhstan (hereinafter, the Constitution), the Code of the Republic of Kazakhstan “On Marriage (Matrimony) and Family” (hereinafter, the Code), the Code of Civil Procedure of the Republic of Kazakhstan (hereinafter, the CCP), the Code of Administrative Procedure of the Republic of Kazakhstan (hereinafter, the CAP) and other regulatory legal acts. Where an international treaty ratified by the Republic of Kazakhstan sets out rules other than those contained in the Code, the rules of the international treaty shall apply.

The grounds for the emergence and termination of alimony obligations, as well as the list of persons entitled to alimony and persons obliged to pay them, the procedure for the payment and collection of alimony and other relations regarding the establishment and fulfillment of alimony obligations are regulated by Section 5 of the Code.

Footnote. Paragraph 1 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be put into effect from the date of its first official publication).

2. In accordance with the third part of Article 27 of the Code of Civil Procedure, claims for the recovery of alimony, on the change in the amount of alimony, on exemption from the payment of alimony, from the payment of alimony arrears, recovered for the maintenance of

minor children, other claims related to the collection of alimony, including claims for amendment, termination or invalidation of agreements on the payment of alimony shall be subject to consideration and resolution in specialized inter-district juvenile courts.

In accordance with part four of Article 30 of the Code of Civil Procedure, claims for the recovery of alimony can be brought by the plaintiff at his place of residence, with the exception of claims in cases, to the judicial district (city) courts located within the cities of republican significance and the capital, regional centres.

Since claims for an increase in the amount of alimony, for the recovery of a penalty in connection with the untimely payment of alimony arise from the rights of the claimant to receive alimony, such claims can also be brought at the choice of the plaintiff either at his place of residence or at the place of residence of the defendant, in compliance with the requirements of part three of Article 27 of the Code of Civil Procedure.

Claims of individuals obliged to pay alimony, on exemption from the payment of alimony or from the payment of alimony arrears shall be subject to consideration at the place of residence of the defendant, with the exception of claims in cases, judicial district (city) courts located within the cities of republican significance and the capital, regional centres.

Footnote. Paragraph 2 - in the wording of 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).

3. Persons who have the right to claim for the recovery of alimony for minor children may be: one of the parents with whom the child lives, the child's guardian (custodian), foster caregiver, foster parents, heads of organizations for orphans, children left without parental care, the body exercising guardianship or custodianship functions, the adoptive parent, if the adoption is made by one person while retaining the child's personal non-property and property rights and obligations with the other parent.

4. The individual obliged to pay alimony and the recipient of alimony shall be entitled to enter into a written agreement on the payment of alimony. In the event of the incapacity of an individual obliged to pay alimony and/or the recipient of alimony, the agreement shall be entered into between their legal representatives.

In the absence of a notarized agreement on the payment of alimony, the person entitled to alimony shall have the right to apply to the court with alimony claim.

Voluntary payment of alimony in the absence of a notarized agreement on their payment shall not prevent the claimant from applying to court with alimony claim.

Footnote. Paragraph 4 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).

5. Claims on alimony for minor children shall be resolved by the court in the order of writ or claim proceedings.

Claims for maintenance for minor children not involving the establishment of paternity (maternity) or the involvement of third parties shall be heard by the courts using a court-ordered procedure as set out in sub-paragraph 4) of Article 135 of the Code of Civil Procedure, regardless of the type of proceeding indicated in the application.

On the basis of court writs, alimony shall be collected in the amount established by Article 139 of the Code, in equity proportion to the earnings and (or) other income of the parents.

By virtue of Article 136 of the Code of Civil Procedure, the application for the issuance of a court order should indicate the circumstances on which the requirement shall be based and the list of attached documents confirming the stated requirement: evidence confirming that the person from whom alimony shall be subject to collection is the parent of the child (child's birth certificate, marriage (marriage) or divorce (marriage) certificate, and in case the child is born outside of marriage (matrimony) before November 25, 2019 - paternity certificate); evidence supporting the child's residence with the applicant.

In accordance with the first part of Article 138 of the CPC, the judge shall reject or return an application for the issuance of a court writ on the grounds provided for in Articles 151, 152 of the CPC, and also if the stated claim is not provided for by Article 135 of the CPC; the debtor's residence place is outside the Republic of Kazakhstan; the documents confirming the stated claim have not been submitted; suspected dispute about entitlement, which is subject to consideration in the order of claim proceedings; the form and content of the application do not meet the requirements of Article 136 of the CPC.

In writ proceedings, alimony for the support of minor children for the past period within a three-year term, as well as in a fixed sum, cannot be collected, since the fact of the debtor's evasion from paying alimony must be established in court proceedings with the summons of the parties and presentation of relevant evidence, and recovery of alimony in a fixed sum requires verification of the presence or absence of the circumstances specified in Article 141 of the Code.

Footnote. Paragraph 5 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be brought into force from the date of its first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

6. Pursuant to part one of Article 142 of the Code of Civil Procedure, the judge shall quash a court order if the debtor files an objection to the claim or if another person, whose rights and obligations are affected by the court order, claims that the court order issued does not comply with the law within the prescribed time limit.

In the ruling to set aside the order, the judge shall clarify that the claim submitted by the claimant may be pursued by way of an action.

By virtue of part three of Article 141 of the Code of Civil Procedure, the debtor's objection must be confirmed by appropriate evidence of the existence of the subject matter of

the dispute referred to in the application for a court order (e.g. enforceable judicial decisions disputing paternity or exclusion of paternity).

Otherwise, where the debtor only objects to the order and does not provide evidence of the existence of the subject matter of the dispute, the courts must dismiss such objections under part five of Article 141 of the Code of Civil Procedure.

Footnote. Paragraph 6 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be enacted from the date of first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

7. In the existence of a notarized written agreement on the payment of alimony between the person obliged to pay alimony and its recipient, the claim for the recovery of alimony can be considered by the court only if concurrent to the specified demand, a claim is made to terminate the agreement on the payment of alimony and the plaintiff presented evidence confirming observance of the pre-action dispute resolution procedure (paragraph 3 of Article 159 of the Code, paragraph 2 of Article 402 of the Civil Code of the Republic of Kazakhstan (hereinafter - the CC)), or a claim has been made to recognize the agreement on the alimony payment as invalid.

If the plaintiff on the claim for termination of the alimony agreement does not provide evidence confirming compliance with the pre-action dispute resolving procedure, the judge, on the basis of subparagraph 1) of the first part of Article 152 of the CPC, shall return the statement of claim, and if the case is initiated, leave the statement of claim without consideration on the basis of subparagraph 1) Article 279 of the CPC and explain to the plaintiff his right to apply on this issue to the party to the agreement on alimony payment.

8. In accordance with subparagraph 4) of Article 616 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget (Tax Code)" plaintiffs in claims for the alimony recovery shall be exempted from paying the state duty in the courts.

Given that that claims for increasing the alimony amount, for recovering a forfeit for delayed alimony payment arise from the claimant's rights to receive alimony, in such claims the plaintiffs shall be exempted from paying the state duty.

In accordance with the first part of Article 117 of the CPC, the state duty, from which the plaintiff was exempted, shall be recovered from the defendant, who is not exempted from payment of court expenses, to the state revenue of completely or proportionally satisfied part of the claim.

The state duty to be collected from the defendant in the event of satisfaction of these claims shall be calculated in accordance with subparagraph 1) of paragraph 1 of Article 610 of the Tax Code as for a property-related statement of claim subject to assessment.

The same rules for calculating the size of the state duty shall apply to claims of persons obliged to pay alimony, for a decrease in the amount of alimony, for exemption from the payment of alimony or from the payment of alimony arrears.

By virtue of subparagraph 5) of the first part of Article 104 of the CPC, the claim cost shall be determined in claims for alimony payments - by total payment for one year; subparagraph 8) of the first part of Article 104 of the CPC in claims for a decrease or increase in payments or deliveries - total amount, which the applicant seeks to decrease or increase, but not more than per one year; subparagraph 9) of the first part of Article 104 of the CPC in claims for suspension of payments and deliveries - the totality of remaining payments or deliveries, but not more than per one year.

The price of the claim shall be fixed by the court based on the debtor's income (e.g. average earnings certificate, details from public revenue authorities, etc.). Where there is no proof of the debtor's income, the amount of aggregate payments for the year shall be based on the average monthly wage in the Republic of Kazakhstan as at the date of the claim.

The statement of claims by persons obliged to pay alimony for decrease of alimony amount, exemption from the payment of alimony or from the payment of alimony arrears are not related to infringement on their rights by the claimants, and therefore the court costs incurred by the applicants on such claims shall not be subject to compensation.

Footnote. Paragraph 8 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be promulgated as of the date of first official publication).

9. When preparing alimony recovery cases for court proceedings, the courts shall correctly determine the circumstances that are relevant for resolving the arisen dispute and are subject to proof by the parties, decide on the composition of the parties.

If it is established that the defendant pays alimony to other persons on the basis of executive documents, then these persons shall be involved in the case as third parties who do not state independent claims on the subject of dispute.

Other persons who do not state independent claims on the subject of the dispute may be involved in the case as third parties who are obliged to pay alimony on which claims have not been made.

In preparation of the case for proceedings, the judge shall obligate the parties to present evidence proving their financial and marital status.

By virtue of subparagraph 24) of paragraph 1 of Article 1 of the Code, the financial situation shall be understood as the presence or absence of wages, pensions, and other income ; their size; availability of property; receiving or not receiving financial assistance from other family members.

When determining the financial situation of the parties, the courts shall take into account all types of their income (wages, income from entrepreneurial activity, from the use of intellectual activity results, pensions, benefits, compensations for harm to health and other payments), as well as any property belonging to them (including in securities, shares, deposits made to credit institutions, shares in the authorized capital of a limited liability company).

When deciding whether a person claiming alimony is in need of assistance, it shall be ascertained whether the financial situation of this person is sufficient to meet his vital needs, taking into account his age, health condition and other circumstances (expenses on buying necessary food staples, clothes, medicines, payment for housing and utilities, etc.), whether the pension and other state social assistance is sufficient to meet these needs, what other income the plaintiff has.

Marital status shall be understood as the conclusion or dissolution of marriage (matrimony), widowhood, existence or absence of children or other family members.

The court shall have the right to obligate a parent receiving child support to submit a monthly written report on the expenditure of the child support to the parent paying the child support. The court decision to satisfy the above requirement is possible in the event of unfair fulfillment by the parent receiving the alimony of the obligation to spend the received alimony for the maintenance, upbringing and education of the child.

Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (effective from the date of its first official publication).

10. Alimony claim for a minor child shall be subject to satisfaction by the court regardless of the parents' ability to work, as well as the child's need for alimony.

When determining the alimony amount in proportion to the earnings and (or) other income of the parents, the court shall proceed from the provisions of paragraph 1 of Article 139 of the Code, according to which alimony for minor children shall be collected by the court from their parents monthly in the amount of: one child - one quarter, two children - one third, for three or more children - half of the earnings and (or) other income of the parents.

The size of these shares may be decreased or increased by the court, taking into account the material or marital status of the parties and other noteworthy circumstances.

If a claim for alimony recovery for a minor child is made to both parents of the child, the court shall determine the alimony amount to be collected from each of the parents.

11. The court shall have the right to determine the amount of alimony collected on a monthly basis in a fixed sum or simultaneously in shares and in a fixed sum if the parent who is obliged to pay the alimony has irregular, changing earnings and (or) other income, or this parent receives earnings and (or) other income in whole or in part in kind or in foreign currency, or has no earnings and (or) other income, and also in other cases when the collection of alimony in proportion to the parent's earnings and (or) other income is impossible, difficult or materially violates the interests of one of the parties.

If children remain with each of the parents, the court shall determine the amount of alimony in a fixed sum to be paid monthly and collect it from one parent in favor of the other, less well-off (paragraph 4 of Article 141 of the Code).

The high income level of a parent who is obliged to pay alimony is not in itself applicable to the circumstances established by Article 141 of the Code, in which it is possible to collect

alimony in a fixed sum, and not in proportion to earnings. Alongside this, if the court establishes that the collection of alimony in proportion to the parent's earnings and (or) other income significantly violates the interests of one of the parties, the alimony may be collected in a fixed sum.

By virtue of the provisions of Article 72 of the CPC, the burden of proving the circumstances regarding the possibility of collecting alimony on a minor child in a fixed sum in connection with violation of the alimony payer's interests shall be borne by the person obliged to pay the alimony.

12. The courts shall bear in mind that collecting alimony and exemption from their payment in the event of a dispute shall be considered by the court in action proceedings.

If the parent paying alimony took the child over for raising and maintenance and the claimant accepted the alimony, then exemption from alimony payment, and also from alimony arrears, shall be made not in the order of execution of enforcement documents, but by stating the corresponding claim by this parent.

In accordance with subparagraph 2) of paragraph 2 of Article 176 of the Code, the payment of alimony levied by court shall be terminated upon adoption of a child for whose maintenance the alimony was levied.

If, at the time of the court ruling enforcement on the adoption, the parent of the adopted child who is obliged to pay alimony has alimony arrears, the exemption from the arrears payment or the debt decrease shall be resolved by the court upon the claim of the said parent, pursuant to the provisions of paragraph 2 of Article 170 of the Code.

The decision of the court on adoption shall not exempt the parent from whom alimony was recovered in court from their further payment, if personal non-property and property rights and obligations have retained for this parent in accordance with paragraph 5 of Article 100 of the Code. In this case, all issues related to a change in the amount of alimony collected, exemption from their payment, should be considered by the court in the procedure of litigation on the claims of individuals paying alimony.

Footnote. Paragraph 12 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).

13. Paragraph 4 of Article 109 of the Code gives the court the right, when the adoption is canceled, in the child's interests, to obligate the former adoptive parent to pay funds for the maintenance of the child in the amount established by Articles 139 and 141 of the Code.

Issues related to determination of the amount of funds for the child's maintenance to be collected from the former adoptive parents, change in the amount of these funds or exemption from their payment, and also other issues arising from fulfillment by the former adoptive parents of the obligation to pay alimony for the maintenance of the child, shall be resolved by the court on the same rules, as in the case of collecting child support from their parents.

14. Claims for the recovery of alimony for adult children studying in the system of general secondary, technical and vocational, post-secondary education, in the system of higher education in full-time education at the age under twenty-one (paragraph 2 of Article 138 of the Code) shall be stated by the adult children themselves.

For this category of cases, the court must engage as third parties, without declaring independent claims, the parent with whom the adult child lives.

The amount of alimony to be collected for children in this case shall be established by the court in accordance with paragraph 2 of Article 141 of the Code in a fixed amount, based on the size of the monthly calculation index (hereinafter - MCI), in the amount of the maximum possible preservation of the child's previous support level, taking into account the material and the marital status of the parties and other noteworthy circumstances.

In this event, the expenses required for clothing, food, tuition of a paid education, the cost of rented accommodation, etc. shall be taken into account.

In each case, the court must proceed from the necessity of these costs.

Footnote. Paragraph 14 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be brought into force from the date of its first official publication).

15. Disabled adults entitled to alimony (Articles 143, 145, 147, 148, 153, 154, 155 of the Code) should be understood as individuals recognized in accordance with the established procedure as individuals with disabilities of group I or II, as well as individuals who have reached the generally established retirement age.

By virtue of paragraph 2 of Article 143 of the Code, the alimony amount for disabled adult children shall be set by the court in multiples of the MCI established by law at the alimony payment time, issuing from the material and family status and other noteworthy interests of the parties.

With regard to the circumstances of the case, the court can collect alimony by setting the term within which it is subject to recovery (for example, for the period of establishing the disability of the plaintiff, if the period for re-examination by the institution of medical and social expertise is set) and indicate the date before which the alimony is subject to recovery from the defendant monthly.

Footnote. Paragraph 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).

16. In accordance with paragraph 1 of Article 145 of the Code, disabled parents in need of assistance shall have the right for claiming maintenance by their able-bodied adult children.

Courts should ascertain whether the parents have other able-bodied adult children, which of them, and in what form and in what amount, is helping them. The court shall have the right

, pursuant to paragraph 4 of Article 145 of the Code, to determine the alimony amount, including with consideration to the above circumstances, regardless of whether the parents stated a claim for all children, for one or several of them.

If the court finds that the plaintiffs have been deprived of parental rights in relation to the defendant, it shall reject the claim for the alimony recovery. If circumstances are established confirming that the plaintiffs avoided fulfilling their parental duties, the court may reject the claim for the alimony receipt. Parents' evasion from fulfilling their responsibilities of raising and maintaining children shall be understood as a lack of concern for their cultural and physical development, education, preparation for socially useful work, and malicious evasion from the alimony payment.

The responsibilities of adopted children who have reached the age of majority, in terms of supporting the adoptive parents, shall be determined in the same way as the responsibilities of children to their parents.

17. Other family members entitled to alimony shall include: minor brothers and sisters, minor grandchildren, disabled grandparents, disabled needy persons who actually raised and maintained minor children, disabled stepfather and stepmother (Articles 151, 152, 153, 154, 155 of the Code).

When the courts are considering claims of other family members for the alimony recovery, it shall be borne in mind that the right to receive alimony from family members named in Articles 151, 152, 153, 154, 155 of the Code arises on the condition of incapacity for work and the need of the plaintiffs for help and impossibility of obtaining their maintenance from parents, able-bodied adult children, grandchildren or spouses (former spouses). When deciding whether it is possible to receive support from family members, the court needs to find out whether they are able to work, and also the reasons why support cannot be obtained from them.

Obligation of able-bodied brothers and sisters, provided for by Article 151 of the Code, to support their minor family members, and also disabled family members of adult brothers and sisters in need of assistance, shall apply to both siblings and half-brothers and sisters.

18. Persons who actually raised and maintained minor children, for the maintenance of which these children are responsible (Article 154 of the Code), shall be understood to be both the child's relatives and persons unrelated to him, who were raising and maintaining the child, while not being an adoptive parent, guardian (custodian), foster parent or foster carer of the child.

In accordance with paragraph 2 of Article 154 of the Code, the court shall have the right to release the children from the obligation to maintain the persons who actually raised them, if the latter maintained and raised them for less than five years, if they maintained and raised their children unduly. The legally significant circumstances to be established when resolving the claims of persons who actually raised them for the recovery of alimony shall include: the time of the actual raising and maintenance of the children, the reasons why the caregivers

stopped their raising and maintenance (for example, due to illness of the actual caregiver, the return of children to their parents, reaching the age of eighteen by the children), and also whether the raising and maintenance of the children was carried out in good faith.

19. The court shall have the right to recover alimony from stepsons and stepdaughters for disabled stepfather and stepmother in need of help who raised and supported them for at least five years (if these duties were duly performed by them), including in the case when a parent living separately from a child, during the specified period took part in the maintenance and raising of the child.

If the marriage (matrimony) between the stepfather (stepmother) and the parent of the stepson (stepdaughter) was terminated due to the death or announcement of the parent of the stepson (stepdaughter) as deceased, then this circumstance cannot serve as a ground for rejecting the claim of the stepfather (stepmother) to recover alimony from the stepson (stepdaughter).

20. Proceeding from the provisions of paragraph 3 of Article 156 of the Code, if a claim for alimony recovery for a family member specified in Articles 151, 152, 153, 154, 155 of the Code is brought to all persons obliged to maintain him at the same time, the court shall determine the amount of alimony subject to payment by each of the obligated persons, taking into account their material, family status, as well as other noteworthy circumstances. In the event of a claim to one or more of the obliged persons, the court may take into account all persons who are obliged to support the plaintiff and determine the amount of alimony to be collected, taking into account these persons.

21. When resolving the claim of one of the spouses to the other spouse for alimony recovery, it is necessary to keep in mind that the rights and obligations of the spouses, including the obligation to financially support each other, arise from the date of state registration of marriage (matrimony).

The scope of persons who have the right to claim alimony in court from another spouse (ex-spouse) who has the necessary means for this is established by the Code (paragraph 2 of Article 147, paragraph 1 of Article 148 of the Code).

If the marriage (matrimony) is declared invalid, a bona fide spouse shall have the right to apply to court with a claim to the former spouse for the recovery of alimony (paragraph 4 of Article 28 of the Code).

Since, in accordance with paragraph 2 of Article 147 and paragraph 1 of Article 148 of the Code, a spouse has the right to claim alimony only from a spouse (ex-spouse) who has the necessary means for this, a claim for the recovery of alimony from a spouse (ex-spouse) can be satisfied by the court if the recovery of alimony from the defendant does not lead to the impossibility of satisfying the vital needs of this person and his family members, whom he is legally obliged to support, at the expense of the funds remaining after the paid alimony.

22. In accordance with subparagraph 2) of paragraph 2 of Article 147 and subparagraph 1) of paragraph 1 of Article 148 of the Code, the spouse (ex-spouse) shall have the right to

demand the provision of maintenance from the spouse (ex-spouse) during pregnancy and within three years from the date of birth of a common child.

The plaintiff's having earnings in the indicated periods or other income may be taken into account by the court when determining the amount of alimony to be collected from the defendant.

In the event that the father of the child is caring for the common child of the spouses before he reaches the age of three years, and the mother of the child withdrew from his raising and maintenance, then based on the analogy of the law (paragraph 2 of Article 5 of the Code), the said spouse (former spouse) shall have the right to go to court with a claim against the spouse (ex-spouse) for the provision of maintenance until the child reaches the age of three.

23. In applying the provisions of Article 150 of the Code, establishing the grounds on which the court may relieve a spouse from the obligation to maintain another spouse with a disability in need of assistance or limit this obligation to a certain period both during the marriage (matrimony) and after its dissolution, it must be taken into account that the occurrence of disability of the spouse due to abuse of gambling, betting, alcohol, narcotic drugs, psychotropic substances, their analogues must be confirmed by the relevant medical documents, and the fact that the spouse has committed an intentional criminal offence, as a result of which he or she has become incapable of work, by an enforceable court conviction or a court order or an order of a criminal prosecution authority to terminate criminal proceedings on non-rehabilitative grounds.

The court may relieve a spouse of the obligation to support the other spouse due to a brief period (up to five years) of their marriage (matrimony) and when it has been established that the spouse claiming maintenance has behaved unworthily in the family.

The plaintiff's abuse of gambling, betting, alcohol, narcotic drugs, psychotropic substances, their analogues and other behaviour contrary to the interests of the family may be regarded as misconduct.

In this category of cases, it shall be considered when the criminal offence or family misconduct occurred, the nature, severity and consequences thereof, and the plaintiff's subsequent conduct.

The Rules under Article 150 of the Code may be applied by the court if a claim for maintenance is made by an incapacitated former spouse in need of assistance.

Footnote. Paragraph 23 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 1 of 15.04.2021 (shall enter into force from the date of its first official publication).

24. The courts shall bear in mind that, by virtue of paragraph 5 of Article 47 of the Code, a different procedure is provided for maintaining the child's mother who is not in marriage (matrimonial) relationship with the defendant in respect of whom paternity was established.

The amount of funds and periodicity of payments shall be determined by the court based on the material and marital status and other noteworthy interests of the parties in a multiple ratio to the MCI established by law at the time of the funds payment.

25. An out-of-court alimony agreement shall be in writing in the form of:

agreements on the payment of alimony by a notary;

settlement agreement (conflict) - mediator;

agreements on the settlement of the dispute on the payment of alimony in a participatory manner - lawyers, individuals who are members of the Chamber of legal advisers (Article 158 of the Code)

The agreement on the payment of alimony must contain the amount, method and procedure for paying alimony.

According to the alimony agreement, alimony can be paid in the following way:

as a share of earnings and/or other income of an individual obliged to pay alimony;

in a fixed amount of money payable periodically;

in a fixed amount of money paid in a lump sum;

by providing property;

other methods for which an agreement has been reached (performance of works, provision of services, etc.).

The alimony agreement may provide for a combination of different ways to pay alimony.

By virtue of paragraph 1 of Article 159 of the Code, the rules of the Civil Code governing the conclusion, execution, amendment, termination and invalidation of civil transactions apply to the conclusion, execution, termination and invalidation of an agreement on the payment of alimony.

The legal relations on the amendment and termination of the agreement on the payment of alimony shall be subject to the application of the standard of paragraph 2 of Article 401 of the Civil Code, according to which, at the request of one of the parties, the contract can be amended or terminated by a court decision only:

1) in case of a material breach of the contract by the other party;

2) in other cases, provided for by the Civil Code, other legislative acts or agreement.

The courts should bear in mind that other cases provided for by law shall include the provisions of paragraph 3 of Article 159 of the Code.

Thus, in the event of a significant amendment in the material or marital status of the parties and if an agreement on the amendment or termination of the agreement on the payment of alimony shall not be reached, the interested party has the right to file a lawsuit with the court to amend or terminate this agreement.

Footnote. Paragraph 25 - in the wording of 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).

26. By virtue of paragraph 1 of Article 159 of the Code, an alimony payment may be recognized by the court as invalid on the grounds provided for by the CC, which, in particular, include: conclusion of an agreement with a person recognized as incapable, conclusion of an agreement under the influence of deception, violence, threat or unfavorable circumstances, imaginary and feigned agreements (Articles 159, 160 of the CC).

In accordance with Article 160 of the Code, the court shall have the right, at the request of the legal representative of a minor child or an adult incapacitated family member, as well as a body exercising guardianship or custodianship functions, or a prosecutor, to invalidate the notarized agreement on the alimony payment, if the conditions of the agreement for providing maintenance to a minor child or an incapacitated adult family member substantially violate their interests, in particular, when the alimony amount established by the agreement for a minor child is lower than the alimony amount that he could receive through court (paragraph 2 of Article 161 of the Code).

27. The courts shall bear in mind that the agreement on alimony payment is not included in the list of enforcement documents on which enforcement proceedings are initiated (Article 9 of the Law of the Republic of Kazakhstan dated April 2, 2010 № 261-IV On Enforcement Proceedings and the Status of Bailiffs (hereinafter referred to as the Law on Enforcement Proceedings)), in connection with which, in order to turn an agreement on the payment of alimony to compulsory execution, the claimant shall have the right to apply to a notary, who makes a writ of execution on the agreement, which is an executive document.

The claimant shall have the right to present a writ of execution to the bailiff for compulsory execution, who determines the alimony debt on the basis of the alimony payment agreement (paragraph 3 of Article 169 of the Code).

28. By virtue of part seven of Article 240 of the CPC, if, after enforcement of the decision, on which periodic payments are to be collected from the defendant, the circumstances affecting determination of the payments amount or their duration change, each party shall have the right, by making a new claim, to demand a change in the amount and terms of periodic payments.

The recovery of alimony for a minor child by a court resolution (court order) in proportion to the earnings and (or) other income of the alimony payer shall not prevent the alimony recipient, if there are grounds provided for by law (Article 141 of the Code), to demand the recovery of alimony in a fixed amount and (or) simultaneously in shares and in a fixed amount.

This requirement shall be considered by the court in the course of action proceedings, and not on the rules provided for by Article 246 of the CPC, since in this case the issue on changing the alimony amount must be resolved, and not on changing the way and procedure for executing the court decision.

29. According to paragraph 1 of Article 175 of the Code, if in the absence of an agreement on the alimony payment after establishment of the alimony amount in court, the

financial or marital status of one of the parties changed, the court shall have the right, upon request of either of the parties, to change the established alimony amount. When changing the alimony amount, the court shall have the right to take into account other noteworthy interests of the parties too.

When resolving the claim of a parent paying alimony for a minor child to reduce the alimony amount, it should be remembered that a change in the parent's financial or marital status shall not be an unconditional ground for satisfying the claim, since it must be ascertained that such changes make it impossible for him to continue paying the alimony in the previous size.

Where a debtor pays maintenance to more than one recoverer, in which case the proportion of shares envisaged in paragraph 1 of Article 139 of the Code is not maintained, for instance, the debtor pays maintenance to one recoverer for the maintenance of one child in the amount of one quarter of the parents' earnings and/or other income and to another recoverer for the maintenance of one child in the amount of one quarter, and the debtor shall bring a claim for reduction of maintenance on the sole ground that for two children he/she is required to pay one third of the maintenance, without pointing to a change in his/her financial or family situation, the amount of maintenance shall not be reduced.

Where the court finds that the claim has been brought for the purpose of unreasonably reducing the amount of maintenance for the children, the court shall dismiss the claim.

When the amount of alimony for children and other family members previously established by the court changes, its recovery in the newly established amount shall start from the date of the court decision enforcement on it.

The court, which changed the amount of the levied maintenance payments, shall be obliged to send a copy of the decision to the court that made the decision on the alimony recovery.

When revoking an executive document on the recovery of alimony in the amount previously established, the court shall concurrently indicate that if there is a debt under the said executive document, the bailiff shall notify the court about this and continue the execution of the executive document until the debt is paid off. After collecting the debt in full, the executive document shall be returned to the court that revoked it.

Footnote. Paragraph 29 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall become effective on the date of its first official publication).

30. When there is evidence of a deterioration in the debtor's financial situation and/or a change in his or her family situation, the court may decide to grant his or her claim for full or partial exemption from alimony arrears, if it is found that the non-payment of maintenance is due to valid reasons and changes in the debtor's material and/or family situation have made it impossible to pay the arrears of maintenance that have accrued.

When considering such cases, the courts shall find out the validity of the reasons for which the debt has formed affecting his financial situation, for example, illness of a person obliged to pay the alimony, a decrease in earnings or other income for reasons beyond the debtor's control, or loss of work due to illness, an increase the number of persons to whom he is legally obliged to provide maintenance and other, in which he has no opportunity to pay off the debt.

It should be remembered that release of a person who is obliged to pay alimony from paying a debt, shall require a combination of two circumstances: formation of a debt for reasons recognized by the court as valid, and inability to pay off the resulting debt due to a difficult financial and marital situation. The presence of only one of these circumstances shall prevent the release from debt payment.

If adult persons receiving alimony are provided with social services in a stationary form in social service organizations free of charge (for example, when they live in boarding houses for the elderly and disabled, war and labor veterans, in other institutions providing stationary social services) or such persons are transferred to the provision (care) of public or other organizations or citizens (in particular, in the case of concluding contracts of lifelong maintenance with them), then these circumstances may be grounds for exempting the payer of alimony from paying it, unless there are exceptional circumstances entailing additional costs (special care, treatment, food, etc.), since by virtue of subparagraph 3) of paragraph 2 of Article 176 of the Code, the right to receive monetary support is forfeited if the need for assistance of the alimony recipient ceases.

Release by the court of the alimony payer in whole or in part from alimony arrears payment on the basis of paragraph 2 of Article 170 of the Code shall not entail recognition of the bailiff's decision to determine the alimony arrears unlawful.

Footnote. Paragraph 30 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be enacted from the date of first official publication).

31. The amount of alimony arrears payable to minor children in accordance with Article 139 of the Code shall be determined by the bailiff based on the salary and other income of the individual obliged to pay alimony for the period during which no alimony has recovered. If a person obliged to pay alimony did not work during this period or if documents confirming his salary and other income were not submitted, monthly payments and/or alimony arrears shall be determined in accordance with paragraph 3 of Article 99 of the Law on enforcement proceedings from the average monthly salary in the Republic of Kazakhstan at the time of debt collection. For debtors who are individuals with disabilities, monthly payments or alimony arrears are determined from their monthly salary and other income, and if they do not work, from monthly benefits and (or) social benefits paid from budget funds and (or) the State social insurance fund.

Concerning persons serving sentences in liberty deprivation places, if the debtor did not work during this term, the alimony debt shall be determined in the amount of one MCI.

In the event that any of the parties disagrees with the calculation of the alimony arrears based on the provisions of paragraph 4 of Article 169 of the Code, they may appeal against the actions of the bailiff pursuant to the procedure prescribed by the laws of the Republic of Kazakhstan (paragraph 4 of Article 136 of the CAP, Article 127 of the Law on Enforcement Proceedings).

Footnote. Paragraph 31 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall take effect from the date of its first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

32. In accordance with Article 171 of the Code, when a debt arises through the fault of the person obliged to pay alimony under an alimony payment agreement, and (or) the person obliged to pay alimony by the court decision, the guilty person shall pay alimony forfeit to the recipient in the amount of one tenth of percent of the unpaid alimony amount for each day of delay. The alimony recipient shall also have the right to recover from the person guilty of late alimony payment all the losses caused by the delay in fulfilling the obligation to pay alimony in the part not covered by the forfeit.

When considering cases of this category, it shall be ascertained why the person obliged to pay alimony does not pay it, what measures were taken by bailiffs to execute the judicial act, whether the person obliged to pay alimony evaded paying it.

The debtor's fault in the alimony debt formation shall be a mandatory condition for collecting penalties and losses from him.

Such responsibility cannot be imposed on the payer if the alimony arrears have arisen through the fault of other persons, in particular, due to late payment of wages, delay or incorrect transfer of alimony amounts, etc.

The penalty established by Article 171 of the Code shall be a special measure of family and legal liability, guaranteeing the exercise of the rights of needy family members to receive detention, and shall be recovered in the amount of one tenth of a percent of the amount of unpaid alimony for each day of delay. Reduction of the penalty for late payment of alimony on the basis of Article 297 of the Civil Code shall not be allowed.

When calculating the forfeit, it is necessary to take into account that the obligation to pay alimony is monthly and, therefore, the forfeit for non-payment of alimony must be determined for each overdue monthly payment, based on the amount of this payment and the number of days of its delay, determined on the day of the court decision on the forfeit recovery.

Footnote. Paragraph 32 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter force from the day of its first official publication).

33. By virtue of paragraph 2 of Article 164 of the Code, alimony shall be awarded from the moment of applying to the court. Alimony for the past period can be recovered within a three-year term from the moment of applying to the court, if the court establishes that, before going to court, measures were taken to receive funds for maintenance, but the alimony was not received due to evasion of the person obliged to pay alimony from paying it.

Measures taken to obtain alimony may be evidenced, in particular, by the plaintiff's contacting the defendant for it (for example, by sending telegrams, registered letters with notification or e-mails) with a demand for the alimony payment or with an offer to make an agreement on the alimony payment, an appeal with an application for issuance of a court order for the recovery of alimony for a minor child (if the court order was subsequently overturned).

In return, the defendant shall be obliged to produce proof refuting the plaintiff's allegations of alimony evasion and confirming that he or she made alimony payments during the period in question.

According to paragraph 2 of Article 169 of the Code, in cases where the alimony was not deducted on the basis of a writ of execution or on the basis of a notarized agreement in connection with the search for a person obliged to pay alimony, the alimony shall be collected for the entire term, regardless of the three-year term preceding the presentation of the executive document, and reaching the age of majority by the person for whose maintenance the alimony was awarded.

When considering claims for the recovery of alimony filed together with a claim for establishing paternity, the claim for collecting alimony for the past period in accordance with paragraph 2 of Article 164 of the Code shall not be subject to satisfaction, since before the claim for establishing paternity was satisfied, the defendant was not recognized as the child's father in the prescribed procedure. In this regard, the beginning of the term for the alimony recovery shall be determined from the date of taking the actions in court.

Footnote. Paragraph 33 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall come into force as of the date of its first official publication).

34. Subject to the requirements of paragraph 1 of Article 144 of the Code, in the absence of an agreement on the payment of alimony, each of the parents may be involved by the court in incurring additional costs caused by exceptional circumstances.

Such circumstances include, for example, a serious illness, injury of minor children or disabled adult children in need of assistance, children requiring, in particular, payment for outside care, other expenses necessary to cure or support the health of the children, and also for their social adaptation and integration into society (expenses for prosthetics, for the purchase of medicines, special means for care, transportation or training, etc.).

The procedure for the parents' participation in additional expenses and the amount of these expenses shall be determined by the court based on the material and marital status of the

parents, other children and the interests of the parties deserving attention in multiples of the MCI established by law at the time of payment of alimony subject to monthly payments (paragraph 2 of Article 144 of the Code).

Given the specific circumstances of the case, additional costs can be recovered from the defendant in a single sum (for example, in the case when the plaintiff has filed a claim to recover the expenses actually incurred by him).

Footnote. Paragraph 34 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).

35. By virtue of the second part of Article 140 of the CPC, in a court order on the recovery of alimony for minor children, it is necessary to indicate the name and date of birth of each child for whose maintenance the alimony was awarded, the amount of payments collected from the debtor on a monthly basis and the term for their collection. The same information is subject to indication in the operative part of the decision.

In the event of alimony recovery on the basis of paragraph 1 of Article 139 of the Code in proportion to the earnings and (or) other income of the parents for two or more children, the court shall indicate in the operative part of the decision (in the court order) the amount of the recovered share, as well as the subsequent change in this share and terms for the recovery of alimony in a new amount, depending on the achievement of the age of majority by each of the children.

By virtue of Article 173 of the Code, indexation of alimony recovered by a court decision in a firm amount of money shall be carried out by the administration of the organization at the place of alimony retention in proportion to the size of the MCI. The operative part of the court decision, which satisfied the requirement to recover alimony in a solid amount of money, should, among other things, contain information on the amount of the solid amount of alimony in numbers and words.

Footnote. Paragraph 35 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).

36. 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

