

On the court judgement in administrative cases

Unofficial translation

Normative Resolution of the Supreme Court of the Republic of Kazakhstan № 5 of November 29, 2024

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With a view to the proper and uniform application of the norms of the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (hereinafter - APPRC), regulating the issuance of judicial acts, in administrative cases, the plenary session of the Supreme Court of the Republic of Kazakhstan resolves to provide the following clarifications.

1. In line with part one of Article 18 of the APPRC, the court of first instance shall adopt judicial acts on administrative cases in the form of judgments and rulings, courts of appeal and cassation instances - in the form of resolutions and rulings.

The judicial act of the court of first instance, whereby the dispute is resolved on the merits, shall be rendered in the form of a judgement.

The requirements of Article 152 of the APPRC on the content of the judgement shall be mandatory for all types of proceedings (written or oral one). A court judgement shall consist of an introductory, descriptive, motivating and operative parts.

2. Pursuant to the first part of Article 151 of the APPRC, a judgement may be rendered in summary form.

Pursuant to Article 153 of the APPRC, a summary judgement shall consist of an introductory part, a motivating part and an operative part.

Within ten working days of service of the summary judgment, the parties may apply for production of the full judgment, which shall be produced by the court within ten working days of receipt of such petition.

3. By virtue of part three of Article 1 of the APPRC, the provisions of the Civil Procedural Code of the Republic of Kazakhstan (hereinafter - CPC) shall be applied in administrative proceedings, except as otherwise envisaged by the APPRC.

Articles 27-1 and 28-1 of the CPC establish the right of a regional court or equivalent court or the Supreme Court of the Republic of Kazakhstan to claim, accept for its own proceedings, consider and resolve under the rules of a court of first instance one of the homogeneous cases (similar in subject matter and grounds of claim, in subject composition) pending before lower courts.

This procedure is not regulated by the APPRC, and therefore the rules of the Civil Procedural Code shall be applied.

For a case to be reclaimed and heard by a higher court following the rules of the court of first instance, the court in whose proceedings the case is pending must obtain the written consent of the parties. If there is no consent of one of the parties, the case cannot be reclaimed by the court.

The issue of reclamation and consideration of one of the homogeneous cases may be initiated by a higher court, the court in whose proceedings the case is pending, as well as by the parties or one of the parties.

A judgement rendered in one of the homogeneous cases may be used by the courts pursuant to part 5-1 of Article 226 of the CPC.

Subject to the provisions of part, one of Article 24 of the APPRC and part 3-1 of Article 35 of the CPC, examination and judgement of administrative cases under the jurisdiction envisaged in Articles 27-1 and 28-1 of the CPC in higher courts shall be exercised by a judge alone.

A judgement of a regional or equivalent court or the Supreme Court of the Republic of Kazakhstan rendered in cases heard under the rules of the court of first instance must comply with the requirements of Article 152 of the APPRC and Article 226 of the CPC.

4. The judgement shall be rendered in the name of the Republic of Kazakhstan in strict compliance with the law and the facts established by the court in a particular case.

The following shall be prohibited in the text of the judgement: excessive detailing of events and circumstances; citation of legal norms not relevant to the dispute; use of unaccepted abbreviations and words not used in official documents; making corrections not specified by the court. The use of abbreviations in the text of the judgement may be possible on condition that the abbreviation is disclosed when first mentioned.

The court judgement shall be taken in an environment that prevents the presence of unauthorized persons and the disclosure of the secrecy of the meeting.

5. The judgement shall be in writing and shall normally be computer-generated in a single copy.

The judgement may be handwritten or typewritten. In this case, a copy of the judgement shall be produced using a computerized method.

A computer-generated judgement shall be drawn up in conformity with the documents regulating the issues of legal technique and parameters of drafting judicial acts, approved by the Chairman of the Supreme Court of the Republic of Kazakhstan.

6. Pursuant to Article 154 of the APPRC, a court judgement must be lawful and well-founded.

The judgement shall be lawful if it is rendered in compliance with the rules of procedural law and in full conformity with the rules of substantive law to be applied to the legal relationship in question, or is based on the application, where appropriate, of the law

governing a similar relationship, or is based on the general principles and meaning of the law and the requirements of good faith, reasonableness and fairness (Articles 7 and 8 of the APPRC).

A reasoned judgement shall be considered to reflect the facts relevant to the case, confirmed by the evidence examined by the court, which fulfils the requirements of the law on their relevance, admissibility and reliability, or which are common knowledge circumstances that do not need to be proved, and in the aggregate are sufficient to resolve the dispute.

At the stage of checking the admissibility of the claim, the court shall examine the claimant's compliance with the APPRC rules on competence, jurisdiction of the dispute, requirements to the form and content of the claim depending on its type, fulfilment of mandatory out-of-court procedures and other issues to be resolved prior to checking the validity of the claim.

Clarifying the issue of resolving the dispute in administrative proceedings, courts shall have regard to regulatory resolution of the Constitutional Court of the Republic of Kazakhstan No. 16-NP of May 22 2023 “On Consideration of the Compliance with the Constitution of the Republic of Kazakhstan of Part Two of Article 102 of the Administrative Procedural Code of the Republic of Kazakhstan of June 29, 2020”.

The court shall state information on the admissibility of the claim in the descriptive part of the judgement if the admissibility of the claim is disputed by the parties to the proceedings.

7. Judicial acts in the form of a judgement shall be rendered when the case is considered on the merits. Inclusion in the operative part of the judgement of the conclusions of the court on that part of the claims, which have not been examined on the merits, shall be inadmissible. The conclusions of the court on these claims shall be set out in a separate judicial act from the judgement in the form of a ruling.

Pursuant to part three of Article 152 of the APPRC, the content of the introductory, descriptive and operative parts of the court judgement, as well as the procedure for correcting obvious misprints and arithmetical errors therein, and for rendering an additional judgement shall be decided in compliance with the requirements of the CPC, except for the issue of clarification of the court judgement.

In view of this norm, the content of the introductory, descriptive and operative parts must meet the requirements envisaged by Article 226 of the Civil Procedural Code.

8. When drafting the introductory part, it is essential to be guided by part three of Article 226 of the Civil Procedural Code.

The identity of a physical person shall be certified on the ground of the documents mentioned in paragraph 1 of Article 6 of the Law of the Republic of Kazakhstan No. 73-V of January 29, 2013 “On Identity Documents”.

Personal data of a natural person - surname, first name, patronymic (if any) shall be specified in compliance with the entry in the official identity document.

Where the proceedings are conducted in the Russian language and the surname, first name, patronymic (if any) of the person mentioned in the identity documents is in the state language, the judgement shall specify the personal data of the person without declination, in exact conformity with the entry in the official identity document.

The surname, first name and patronymic of a foreign person in a court judgement shall be mentioned in the transcription indicated in the identity document and, for the purpose of correct pronunciation, may be reproduced in the language of the proceedings, in conformity with the rules of transliteration.

Should the party be a legal entity, its name shall be specified in line with the documents on state registration with full indication of its legal form.

The name of a foreign legal entity shall be specified in line with the documents on its state registration and their translation into the language of proceedings, and for the purpose of correct pronunciation may be reproduced in the language of proceedings pursuant to the rules of transliteration. For example, London Great Britain Europe B.V. private Limited Liability Company.

If the claimant makes several claims, each of them shall be numbered. In the judgement, with the exception of the operative part, it shall be permissible not to give the full text of the claimed claims, but to specify the number of the claim - claim No. 1, claim No. 2, etc.

The introductory part of the judgement shall specify information on participants of the administrative process and their representatives, who participated in the court session, at which the court judgement has been made. Information on persons duly notified of the hearing of the case, recognition of the reasons for their failure to appear unexcused and the conclusions of the court on consideration of the case in their absence shall be set out in the descriptive part of the judgement of the court.

9. The descriptive part, in addition to the requirements of part four of Article 226 of the Civil Procedural Code, shall summarize the undisputed facts that preceded the dispute and are directly related thereto. However, full reproduction and copying of the claim and the statement of defence shall not be permitted.

Courts must specify in the descriptive part of the judgement the arguments of the participants in the administrative proceedings and the evidence on which they are based.

Pursuant to part three of Article 129 of the APPRC, the defendant's arguments not mentioned by him/her in the administrative act may not form the grounds for a court judgement, unless they can be used as evidence of the fact of relevant violations in the course of administrative procedures and the guilt of the persons who committed them. Such arguments cannot be used to justify the legality of the administrative act itself or the actions of the administrative body.

10. The content of the stated claims, including if the claimant has changed the grounds or subject matter of the claim, reduced or increased the claims, must be reflected in the descriptive part of the judgement.

The subject of the claim shall be based on the specific requirements of the claimant and shall be defined as a substantive legal claim specifying the essence of the violation or threat of violation of public rights, freedoms or legitimate interests of the applicant.

An increase or decrease in the amount of the claim cannot be regarded as a change in the subject matter of the claim, as it is a clarification of the scope of the claim.

The cause of action shall be understood as the legal facts specified by the claimant, which establish the emergence, change or termination of the material legal relationship that is the subject of the claim.

Pursuant to Article 116 of the APPRC, when deciding on the subject matter of the claim, the court shall not be bound by the wording of the claim, the text of the claim and the documents enclosed to it or submitted later, as well as the stated grounds of the claim. The court may not go beyond the scope of the claim and change the subject matter of the claim on its own initiative.

Implementing the principle of the court's active role under Article 16 of the APPRC, the court must also assist the claimant in adjusting the claims, if there are grounds to do so.

11. Courts should be aware of the specifics of the procedure for replacing an improper defendant with an appropriate one in an administrative case.

The replacement of a defendant shall be allowed prior to the commencement of consideration and resolution of the administrative case on the merits, which means that an improper defendant may be replaced at any stage of consideration of the administrative case.

Upon finding that the action has been brought against the wrong person, the court shall summon the claimant, clarify the consequences of bringing an action against an improper defendant, and only with the consent of the claimant shall allow the substitution of an improper defendant with a proper defendant. The claimant's consent to the replacement of the defendant must be in writing or expressed orally and reflected in the minutes of the court session, confirmed by audio-video recording of the court session.

Upon replacement of an improper respondent, the preliminary hearing and consideration of the administrative case in a court session shall be conducted from the very beginning, therefore, the court shall fulfil all the requirements of the APPRC on clarification of the rights and obligations of the respondent, ensure the possibility for the respondent to provide a written response to the claim and exercise other rights of a participant in administrative proceedings. Where the claimant does not agree to the replacement of the defendant by another person, the court may, without the consent of the claimant, bring that person as a second defendant. It shall be noted that it is a right, not an obligation, of the court to appoint a person as a co-defendant without the consent of the claimant.

Similarly, the issue of the need to involve several defendants shall be resolved. The court shall clarify to the claimant the right to engage other persons as defendants, explain the consequences of failure to do so, and resolve the issue of engaging other defendants, in the absence of the claimant's consent.

12. The descriptive part of the judgement shall contain the respondent's objections and clarifications of other participants in the administrative process.

Clarifications of participants in the administrative process and other persons participating in the case shall be given in the judgement from the third party, briefly, on the merits of the dispute.

However, it shall be allowed to make references to audio-, video-recording with precise specification of the time period, materials of the administrative case with indication of the volume number, sheet of the case file.

The descriptive part of the judgement shall also contain the petitions filed, which are subject to the court's judgement (on requesting immediate execution of the judgement and others), the claimant's compliance with the pre-trial procedure of dispute resolution (if any) with a summary of the judgement taken by the higher administrative body and data on the official who took it; a summary of the motivated position of the head of the higher administrative body, if compliance with the pre-trial procedure is not required, with data on the official who signed the judgement; a summary of the reasoned position of the head of the higher administrative body, if compliance with the pre-trial procedure is not required, and data on the official who signed the judgement.

13. Article 136 of the APPRC establishes the time limit for filing a lawsuit depending on the type of lawsuit, the subject matter of the lawsuit and the procedure for calculating them.

The grounds for missing the deadline for filing a claim with the court and its importance for the correct resolution of the administrative case shall be clarified by the court in the preliminary hearing.

The obligation to prove compliance with the deadline for filing a lawsuit and to provide evidence of a valid reason for missing the deadline for filing a lawsuit shall be imposed on the claimant.

The time limit for filing a lawsuit missed for a valid reason may be restored by the court pursuant to the rules of the Civil Procedural Code, which the court must specify in the descriptive part of the judgement.

Missing the deadline for filing a lawsuit with the court without a valid reason, as well as the impossibility of restoring the missed deadline for filing a lawsuit with the court shall be grounds for returning the lawsuit to the court.

Where the trial court has ruled but has not addressed the issue of reinstatement of the filing deadline, the appellate instance shall not enter into the discussion of this issue and shall consider the appeal on the merits.

Should the claim have been previously returned due to its withdrawal by the claimant, when the claim is subsequently accepted by the court, the court of first instance must assess and consider the issue of restoration of the time limit, even if the court has allowed the issue of restoration of the time limit in the earlier claim when it was returned to it.

Upon a new trial under the rules of the first instance court after the cassation instance has cancelled the judicial acts, the court of appeal instance shall not investigate the issue of restoration of the time limit for filing a claim.

14. The content of the motivating part of the judgement must comply with the requirements of part four of Article 152 of the APPRC.

The motivating part of the judgement shall specify the factual circumstances of the case established by the court, their correlation with the applicable law, the legal position of the court on the merits of the dispute and the evidence on which the conclusions of the court are based, with an exact specification of the time interval on the audio-, video-recording of the trial and/or indicating the number of the volume, sheet of the administrative case, as well as the arguments on which the court rejects this or that evidence.

Pursuant to Article 155 of the APPRC, the evaluation of the evidence presented enables the court to determine the range of circumstances relevant to the case and to conclude which of them have been established and which have not been established.

It shall be prohibited to state unilaterally in the judgement the arguments and evidence submitted by the parties. The court shall be obliged to specify on what grounds it has not accepted the arguments of the parties, the evidence submitted and has not applied the rules of substantive law referred to by the parties.

Should there be several claims in an administrative case, the court shall rule on all claims and give reasons for each of the parties' arguments in the descriptive part of the judgement.

15. Pursuant to Article 128 of the APPRC, the procedure for the legal regulation of evidence, factual data not admissible as evidence, the subject of proof and sources of evidence, as well as the collection, examination, evaluation and use of evidence (proof) and other provisions on evidence and proof shall be governed by the rules of the Civil Procedural Code, except for the specifics established by the APPRC.

When considering an administrative case, the court must consider the distribution of the burden of proof depending on the type of claim and the possibility of derogation from the rules of distribution of the burden of proof, as well as other specifics of proof envisaged by Article 130 of the APPRC.

A judgement may not be based on assumptions of the circumstances of the case. The court may refer in the judgement only to the evidence which it has examined in written or oral proceedings, excluding documents containing state secrets or other secrets protected by law.

Should the evidence in the case contain information containing state secrets or other secrets protected by law, it shall be heard in a closed court session, subject to the requirements of part three of Article 75 of the APPRC and part six of Article 130 of the APPRC.

The court shall not disclose in the motivating part of the judgement the content of such evidence, but shall only evaluate it in the light of the circumstances established in the case.

Participation in a court session through the use of technical means of communication (online) implies that the participant of the administrative process took part in the study of evidence in the case, excluding cases when he/she applied for personal familiarization with original documents, written and material evidence.

When disagreeing with the claimant's arguments or rejecting the evidence submitted by the claimant, the court may only refer to the pretrial judgement if it considers the reasons set out therein to be exhaustive.

16. With a view to assisting in the collection, examination and evaluation of evidence, the court may involve a specialist in the case to give advice (explanations) and assistance in the application of scientific and technical means.

A specialist may be an adult person not interested in the outcome of an administrative case, who has special knowledge in the relevant area and (or) skills, including in certain branches of law (antimonopoly, land, tax, customs and others) envisaged by the legislation.

The court may engage experts on its own initiative or at the request of participants in administrative proceedings, who may request the involvement as an expert of a specific person who has special knowledge and (or) skills.

The court's ruling to engage a specialist may be sent for execution to an expert or other organization that has experts of the relevant profile at its disposal.

For example, when hearing investment disputes, the court has the right to request the opinion of experts of the International Council under the Supreme Court of the Republic of Kazakhstan (part eight of Article 77 of the Civil Procedural Code).

The expert's opinion on all the issues raised must be filed with the court in writing or in the form of an electronic document and shall be evaluated in conjunction with the evidence available in the case file.

Participation in administrative proceedings of public authorities and local self-government bodies to give an opinion on the case shall be carried out pursuant to the rules and in cases established by Article 56 of the Civil Procedural Code.

17. Prior to the court's removal for judgment, the defendant may admit the claim in whole or in part by filing a written statement.

Prior to accepting the defendant's recognition of the claim, the court shall explain the procedural consequences to the parties. The court shall accept the recognition of the claim by the defendant, if these actions are not contrary to the law and do not violate anyone's rights, freedoms or legitimate interests.

Recognition of the claim by the defendant relieves the court of the obligation to investigate the evidence, so in the motivating part of the judgement may be specified only the recognition of the claim by the defendant and its acceptance by the court.

In case of partial recognition of the claim, the examination of evidence shall be made only in the part in which the claim is not recognized by the defendant, and shall be resolved when making a judgement on the merits of the dispute.

18. Should the court, having evaluated the evidence each separately and in their totality, establish that some submitted materials, witnesses' testimonies, other factual data do not confirm the circumstances to which the parties have referred as the basis for their claims and objections, and it shall be obliged to substantiate the conclusions thereon in the motivation part of the judgment.

Should, after the examination of all the evidence, any fact conditioning the outcome of the administrative case remain unproven, the negative consequences of the results of consideration and resolution of the administrative case shall be imposed on the party bearing the burden of proving this fact pursuant to paragraphs one and two of Article 129 of the APPRC.

When establishing in court session the fact that a party withholds and fails to submit at the request of the court evidence relevant for the correct resolution of the dispute, based on the totality of evidence, the court in the motivation part of the judgement shall evaluate the information contained in this evidence, with due regard to the requirements prescribed in part nine of Article 73 of the Civil Procedural Code.

For instance, in the course of the court's consideration of a lawsuit to compel the adoption of an administrative act to maintain the waiting list for housing, the defendant refused to grant access to the log of incoming correspondence, due to its loss. However, the defendant has not provided evidence of its loss or destruction due to the expiry of the storage period. Meanwhile, the requirements of part four of Article 69 of the APPRC establish personal responsibility of the heads of public authorities for the organization of work with appeals of individuals and legal entities, the state of case management. Since the information contained in the document is directed against the interests of that party, it shall be deemed to be admitted by it.

19. In line with part two of Article 116 of the APPRC, when resolving a dispute, the court must examine the proportionality of the administrative act, administrative action (inaction), whether the administrative body, official has not exceeded the limits established by the legislation of the Republic of Kazakhstan in the exercise of administrative discretion and whether it corresponds (is proportionate) to the objectives of this authority.

Courts shall note that failure to prove the circumstances specified in the contested administrative act and served as a basis for its adoption, shall not entail a refusal to satisfy the claim, including if the court will establish other grounds for the adoption of such administrative act.

Pursuant to part two of Article 157 of the APPRC, the court shall not carry out a review of the expediency of a contested administrative act adopted within the limits of administrative discretion and in compliance with the competence granted by law. This means that issues of expediency shall remain within the competence of the administrative authority, which limits the court's interference in the scope of administrative discretion, unless there is disproportionality.

20. The resolute part of the judgement shall contain the court's conclusion on satisfaction of the claim or dismissal of the claim in full or in part, arising from the factual circumstances established in the motivation part of the judgement.

The court shall state the operative part of the judgement clearly and understandably so that there are no ambiguities and disputes in the execution of the judgement.

The judgement shall be pronounced on all claims made by the claimant.

Should the claimant bring or join several claims in a single proceeding, the operative part of the judgment must state what the court has ruled on each claim, who, what specific actions and in whose favor must be performed, for which party the disputed right has been recognized

The court may not resolve the issue of rights and obligations of persons not involved in the case.

Other issues specified in the law must also be resolved, namely: the distribution of court costs, the procedure and term for appealing against the court judgement, the term for calling the judgement to execution and the measures adopted to ensure and enforce it.

The operative part of the judgement shall contain the term within which the defendant is obliged to execute the judgement and notify the court in writing of its execution, as well as the legal consequences of its non-execution. Data on the term of execution of the court judgement may be specified by a calendar date, for example: "within January 1, 2025", or calculated in days, months with indication of the commencement of the term. For instance, "within 30 days from the date of entry of the judgement into legal force".

In making a judgement to dismiss a claim in full or in part, it shall specify details of the claimant to whom the claim has been dismissed, the defendant against whom the claim has been brought, and the claims that have been dismissed.

21. The court's judgement on a challenge must be in conformity with the provisions of Articles 84, 132, 155 and 156 of the APPRC.

Courts shall note that a claimant may challenge an encumbering administrative act, as described in subparagraph 3) of part one of Article 4 of the APPRC.

When satisfying a challenge claim, the court must decide on the legal consequences of recognizing an administrative act as unlawful.

Should the court recognize an encumbering administrative act as unlawful, it shall annul it in whole or in part. However, an administrative act may be recognized as invalid both from the moment of its adoption and from the moment of its recognition as unlawful.

Pursuant to part two of Article 156 of the APPRC, the execution of an administrative act shall not prevent its challenge. The court may declare such an administrative act unlawful, compel the defendant to cancel the execution and require actions to return the claimant to the original position. In this case, the court judgement needs to be directly enforced by the defendant, all the consequences of the administrative act are cancelled and the previous state of legal relations is restored.

22. The court shall decide on the claim of coercion pursuant to Articles 133, 155 and 157 of the APPRC.

The claimant may claim to impose on the defendant the obligation to adopt a favourable administrative act, if he or she has been unlawfully denied a favourable administrative act or it has not been adopted due to unlawful omission of the defendant.

In such instances, a separate claim to challenge the refusal is not required.

In a claim for coercion, the court shall verify the legality of the defendant's refusal to adopt a favorable administrative act and, if there are grounds, shall declare such refusal unlawful.

Should the refusal to issue an administrative act or the inaction of the defendant contradict the law or cause a breach of the rights, freedoms and legitimate interests of the claimant, the court shall impose on the defendant the obligation to adopt an administrative act in the operative part of the judgement.

In the operative part of the judgement, the court may specify the content and term of the favorable administrative act, as well as other circumstances essential to the administrative case, excluding the resolution of questions of expediency. Such judgement shall supersede the administrative act prior to its adoption.

Where a refusal to adopt a favorable administrative act is wrongful, a court judgement may impose an obligation on the defendant to adopt an administrative act in favor of the claimant, bearing in mind the legal position of the court in the exercise of administrative discretion.

Upon request of the claimant, the court may also impose an obligation on the defendant not to adopt an encumbering administrative act.

23. In deciding on a claim for an action, courts shall be guided by the provisions of Articles 134, 155 and 158 of the APPRC.

The claimant may request to impose on the defendant the obligation to perform certain actions that are not aimed at the adoption of an administrative act, or to refrain from such actions, as well as to recognize the actual action of the administrative body as unlawful one.

When satisfying a claim for an action in the operative part of the judgement, the court shall impose on the defendant the obligation to perform specific actions not related to the adoption of an administrative act and shall set a time limit for their performance. For instance, if the documents claimed by the claimant are of a public nature, and the court found that there have been no legal grounds for restricting the rights to receive and access to information by virtue of Article 5 of the Law of the Republic of Kazakhstan No. 401-V of November 16, 2015 “On Access to Information”, then in such a case the court has the right to order the defendant to provide the claimant with certified copies of the relevant documents, to establish the form, procedure and deadline for granting the documents.

In granting a claim for prohibition of actions, the court must state in the operative part of the judgement what specific actions, not related to the adoption of an administrative act, the

defendant is prohibited from doing in the future, or what specific actions within its powers it must refrain from doing. As a rule, the purpose of such a claim is to stop an ongoing violation or when an administrative action may occur in the future and the claimant demands that it be stopped. These may include cases of planned and unplanned issuance, statements by officials in the media of inappropriate information, press releases.

24. Under the provisions of Article 135 of the APPRC, an action to recognize the existence or non-existence of a legal relationship of a public law nature is a subsidiary action and shall be filed when none of the other types of actions envisaged in Articles 132, 133 and 134 of the APPRC can be filed.

In doing so, the claimant must prove not only the existence of facts confirming the existence or absence of any legal relationship, but also substantiate its legal, material or moral interest.

For example, the claimant's legal interest may be to establish whether he or she needs a permit (license) to perform certain activities.

Material interest of the claimant may be conditioned by the intention to receive compensation for losses that are causally related to the administrative act.

Moral interest may be justified by the claimant's desire to restore the violated rights and legitimate interests, to receive compensation for moral harm, etc.

Pursuant to parts two and three of Article 159 of the APPRC, if it is essential for the restoration of the infringed rights, the claimant may request that an encumbering administrative act that no longer has legal force be declared unlawful, or if it has already been cancelled or otherwise invalidated, including in any part thereof, be declared illegal.

The court judgement taken on the recognition claim shall not cancel the execution of the administrative act and shall not put the claimant in the original position, but shall create prerequisites for the emergence of legal relations that give rise to the interest in the claim.

Upon the claimant's request, the court shall also have the right, in the operative part of the judgement, to declare unlawful in full or in part the administrative act burdening the claimant, and in the motivating part to indicate that there is no need to cancel the administrative act or its part, due to its cancellation or loss of its effect in any other way.

25. Article 160 of the APPRC entitles the claimant to bring, simultaneously with the claims referred to in Articles 132, 133, 134 and 135 of the APPRC, a claim for damages causally related to those claims.

In assessing the loss to be reimbursed, the provisions of Article 9 of the Civil Code of the Republic of Kazakhstan must be followed.

By virtue of part one of Article 129 of the APPRC, the burden of proving the amount of loss suffered shall be on the claimant irrespective of the type of claim filed.

If the claim for damages is satisfied, the court shall decide on the amount of damages and specify in the operative part of the judgement the amount of the recovered sum in figures and words in the monetary unit of the Republic of Kazakhstan - tenge.

Courts shall have regard to the fact that the claim for compensation for moral damage shall be returned on the grounds of sub-paragraph 11) of paragraph two of Article 138 of the APPRC, since, pursuant to part four of Article 107 of the APPRC, the claim shall be considered by civil proceedings.

26. Chapters 25 and 26 of the APPRC set out the specifics of proceedings in administrative cases on the protection of the electoral rights of citizens and public associations participating in elections and national referendums, and on challenging judgments, actions (inaction) of local executive bodies that violate the rights of citizens to participate in criminal proceedings as a juror.

Paragraph 9 of Article 20 of the Constitutional Law of the Republic of Kazakhstan No. 2464 of September 28, 1995 “On Elections in the Republic of Kazakhstan” envisages that after the expiry of the terms specified therein (ten days from the date of taking a judgement or committing an action (inaction), an application for a judgement and actions (inaction) of an election commission shall not be considered.

These time limits shall not be reinstated and shall be time-barred, and their omission shall be grounds for the return of the claim in compliance with part eight of Article 136 of the APPRC.

Since the Constitutional Law of the Republic of Kazakhstan No. 2592 of November 2, 1995 “On the Republican Referendum” does not stipulate otherwise, the omission of these deadlines shall also result in the return of lawsuits challenging judgments and actions of referendum commissions.

For this category of cases, there are shortened time limits for consideration and appeals.

27. Pursuant to Article 122 of the APPRC, the allocation of court costs shall be dealt with under the rules of the Civil Procedural Code.

While estimating the amount of state duty, the court shall be guided by the norms of the Code of the Republic of Kazakhstan “On Taxes and Other Mandatory Payments to the Budget (Tax Code)”, and on the issues of distribution of court expenses - by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan No. 9 of December 25, 2006 “On Application by the Courts of the Republic of Kazakhstan of the Legislation on Court Expenses in Civil Cases” in the part not regulated by the APPRC and the Civil Procedural Code.

Court costs shall not be reimbursed in cases where the claim is returned on the grounds envisaged in sub-paragraphs 5), 6), 12), 13), 14) and 15) of part two of Article 138 of the APPRC.

Should the claim be returned on the claimant's application, received prior to the preliminary hearing, without summoning the participants of the administrative process, the state fee shall be refunded in compliance with part two of Article 142 of the APPRC.

28. Upon the adoption and signing of the judgement, the judge shall announce the operative part of the judgement. The announced operative part of the judgement shall be signed by the judge and appended to the case file.

Upon announcing the operative part of the judgement, the presiding officer shall clarify the legal grounds and consequences of its adoption, the procedure and terms for appealing the judgement, announce the date of finalization of the judgement and when the persons participating in the administrative case may receive a copy of it.

Having clarified the legal grounds and consequences of the judgement, the judge shall ask the parties whether the content of the judicial act is clear to them and shall give them the opportunity to ask clarifying questions, a note thereof being made in the minutes of the court session.

A judicial judgement shall not constitute a court judgement if it is not in writing and not signed by the judge.

Pursuant to part two of Article 151 of the APPRC, the judgement shall be rendered after the hearing of the administrative case and shall be issued not later than ten working days from the day of the end of the oral hearing. In exceptional cases, in view of the complexity of the administrative case (category of dispute, type of claim and other circumstances), the judgement shall be issued not later than one month from the end of the oral proceedings.

The date of production of the judgement in a case considered by way of written proceedings shall coincide with the date of posting in the court's automated information system.

Pursuant to part five of Article 18 of the APPRC, judicial acts shall be sent by the court to the parties to the administrative proceedings within three working days from the date of final production, using means of communication that ensure that their receiving is recorded.

29. Upon revealing cases of breach of legality, pursuant to Article 270 of the Civil Procedural Code, the court shall issue a private ruling and forward it to the relevant organizations, officials or other persons performing managerial functions, who are obliged to report on the measures they have taken within a month.

The motivating part of the private ruling shall set out the arguments on which the court has come to the conclusion on the breaches of legality, disclose the essence of the breaches, specify the normative legal acts, the requirements thereof, as well as the persons whose actions (inaction) led to the breach of legality.

Failure to take appropriate action on a private ruling or to report on the action taken on it will result in the application of procedural coercive measures envisaged by the APPRC and liability prescribed by the law.

The imposition of a pecuniary penalty shall not exempt the persons concerned from the obligation to inform the court of the measures taken on the private ruling, as well as from the liability established by law.

Should the court fail to execute the ruling on the imposition of a pecuniary penalty within the term established by law, the court may impose the pecuniary penalty again in conformity with part nine of Article 127 of the APPRC.

Should the court of first instance fail to issue a private ruling, despite the existence and sufficiency of grounds for its issuance, a higher court, verifying the legality of a judicial act, shall be entitled to issue a private ruling in the above order.

30. Pursuant to Article 171 of the APPRC, a court judgement, once it enters into legal force, shall be forwarded by the court to the defendant for execution within three working days. The defendant shall be obliged to execute the court judgement in an administrative case within one month from the date of its entry into legal force, save for other deadlines set by the court, of which it shall notify the court. A writ of execution in an administrative case shall be subject to discharge for judgments on recovery of a sum of money (losses).

A judgement shall be enforced upon its entry into legal force, unless it is immediately enforced.

Pursuant to Article 173 of the APPRC, the court may order a court judgement to be immediately enforced upon a reasoned request of the participants in administrative proceedings or on its own initiative.

Findings of the court on the need to call the judgement to immediate execution must be substantiated in the motivating part of the judgement by reliable and sufficient data on the presence of special circumstances, due to which later execution may cause significant harm to the rights of a participant of administrative process or make it difficult or impossible to execute it. The rights of other participants of administrative proceedings and public interests must be considered in this case.

The appeal for immediate execution of the judgement shall be specified in its operative part.

An application of a participant of administrative proceedings for immediate execution of the judgement may be considered even after the judgement has been rendered pursuant to the rules of Article 244 of the CPC.

A petition of a participant in administrative proceedings to suspend the execution of a judgement, which is subject to immediate execution, shall be heard by the court (of first, appellate or cassation instance), in whose proceedings the administrative case is pending at the time of receipt of the petition.

31. Under Article 235 of the Civil Procedural Code, the court, which has handed down the judgement may, on its own initiative or at the request of the persons participating in the case, correct mistakes or obvious arithmetical errors made in the judgement. The issue of correction may be resolved by the court irrespective of whether the judgement has been enforced, but within the time limit established by law within which it may be brought for compulsory enforcement.

The court may, at its discretion, examine the application for correction of erroneous and obvious arithmetical errors in the judgement without summoning the persons participating in the case, or appoint a court hearing. Failure to appear of the persons participating in the case, duly notified of the time and place of the court hearing, shall not be an obstacle to consideration of the application.

An additional judgement may be rendered by the court in the cases mentioned in Article 236 of the Civil Procedural Code and based on factual circumstances that have been established during the trial of the case within the time limit established by law for the execution of the judgement.

Should an appeal be filed against a court judgement or an appeal petition be filed and at the same time an additional judgement is requested, the court shall be obliged to resolve the issue of the additional judgement in a court hearing and then send the case to the court of appeal for consideration after the expiry of the time limit for appealing the additional judgement.

Under the guise of issuing an additional judgement, the court may not change the content of the judgement or allow new issues that have not been investigated in the court hearing.

32. The requirements for the content of the appeal judgement shall be specified with regard to the provisions of Article 426 of the Civil Procedural Code, as Article 168 of the APPRC does not stipulate otherwise.

Due to Article 169 of the APPRC and part one of Article 452 of the CPC, apart from issuing a resolution in summary form, a ruling of a court of cassation instance shall comply with the requirements for a ruling of a court of appeal instance.

For rulings of appeal and cassation courts, the descriptive part shall contain a summary of the concurrence of the appeal and cassation appeals and the data of the officials who concurred in them.

In line with part two of Article 401 of the Civil Procedural Code, a territorial unit of a public authority may appeal against a court judgement with the mandatory approval of a higher authority.

In administrative proceedings, the above provisions shall be applied with the specifics of the implementation of administrative procedures.

With regard to external administrative procedures, the notions of “public authority” and “territorial public authority” shall not be used in the APPRC.

The notion of “administrative body” enshrined in the APPRC is structured on the functional principle, whereby an administrative body is a body, person or other organization, which, in compliance with normative legal acts, is empowered to adopt an administrative act.

The administrative body shall exercise the right of appeal against a court judgement with the mandatory approval of a higher administrative body with the power to overturn or modify the judgements of the administrative body, in the manner envisaged in Chapters 13, 14, 15 of the APPRC.

Within the meaning of Article 429 of the Civil Procedural Code, a private appeal against a determination shall be filed by the persons specified in Article 401 of the Civil Procedural Code and shall be accepted and examined under the procedure established for the acceptance and examination of appeals.

Given that the APPRC does not envisage a different procedure, a private appeal by an administrative authority and a public authority, which is a person participating in administrative proceedings, against the determinations of the courts of first and appellate instances shall also be subject to agreement with the higher administrative authority.

Similar requirements regarding the need for the agreement of a higher authority shall also apply to cassation appeals against judicial acts (part 1-1 of Article 435 of the Civil Procedural Code).

33. Pursuant to Article 4 of the Constitution of the Republic of Kazakhstan, this normative decree shall be included in the current law, shall be generally binding and shall come into force from the date of its first official publication.

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

A. Mergaliyev

*Judge of the Supreme Court
of the Republic of Kazakhstan, Secretary of the Plenary Meeting*

G. Almagambetova