



**On approval of the Instruction on provision by the courts of the Republic of Kazakhstan of legal assistance and applying for legal assistance to courts of foreign states**

*Unofficial translation*

Order of the Head of the Department for Support of the Activity of the Courts under the Supreme Court of the Republic of Kazakhstan (apparatus of the Supreme Court of the Republic of Kazakhstan) dated May 11, 2016 No. 6001-16-7-6 / 196. Registered with the Ministry of Justice of the Republic of Kazakhstan on June 17, 2016 No. 13794

*Unofficial translation*

In accordance with part six of Article 476 of the Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 **I HEREBY ORDER AS FOLLOWS:**

Footnote. Preamble is in the wording of the Acting Head of the Department for Support of the Activity of the Courts under the Supreme Court of the Republic of Kazakhstan (apparatus of the Supreme Court of the Republic of Kazakhstan) dated 24.04.2019 No. 3 (shall be enforced upon expiry of ten calendar days after the day its first official publication).

1. Approve the attached Instruction on provision by the courts of the Republic of Kazakhstan of legal assistance and applying for legal assistance to courts of foreign states.

2. The Department of International Relations and the Protocol of the Department for Support of the Activity of the Courts under the Supreme Court of the Republic of Kazakhstan (apparatus of the Supreme Court of the Republic of Kazakhstan) shall ensure:

1) State Registration of this Order with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days after State Registration, the direction of this Order for official publication in periodicals and in the Legal Information System "Adilet";

3) within five working days from the date of receipt of the registered this Order, sending it to the Republican State Enterprise on the Basis of Economic Use "Republican Legal Information Center of the Ministry of Justice of the Republic of Kazakhstan" for inclusion in the Reference Control Bank of Regulatory Legal Acts of the Republic of Kazakhstan;

4) placement of this Order on the Internet resource of the Supreme Court of the Republic of Kazakhstan.

3. The control over execution of this Order shall be assigned to the Deputy Head of the Department for Support of the Activity of the Courts under the Supreme Court of the Republic of Kazakhstan (apparatus of the Supreme Court of the Republic of Kazakhstan) V.D . Fedotov.

4. This Order shall be enforced upon expiry of ten calendar days after the day its first official publication.

*The Head of the Department  
for Support of the Activity  
of the Courts under the Supreme Court  
of the Republic of Kazakhstan (apparatus  
of the Supreme Court of the Republic of Kazakhstan)*

*I. Ispanov*

Approved  
by Order of the Head of the  
Department for Support of the  
Activity of the Courts under the  
Supreme Court of the Republic of  
Kazakhstan (apparatus of the Supreme Court  
of the Republic of Kazakhstan)  
dated May 11, 2016 No. 6001-16-7-6/196

## **Instruction on provision by the courts of the Republic of Kazakhstan of legal assistance and applying for legal assistance to courts of foreign states**

**Footnote.** Instruction is in the wording of the Order of the Acting Head of the Department for Support of the Activity of the Courts under the Supreme Court of the Republic of Kazakhstan (apparatus of the Supreme Court of the Republic of Kazakhstan) dated 24.04.2019 No. 3 (shall be enforced upon expiry of ten calendar days after the day its first official publication).

### **Chapter 1. General Provisions**

1. This Instruction on provision by the courts of the Republic of Kazakhstan of legal assistance and applying for legal assistance to the courts of foreign states (hereinafter referred to as the Instruction) details the provision by the courts of the Republic of Kazakhstan of legal assistance and appeal for legal assistance to the courts of foreign states in the field of international legal cooperation.

2. The concepts contained in this Instruction have the following meanings:

1) competent authority - a state institution or a court of the Republic of Kazakhstan or a foreign state authorized to conduct relations on provision of legal assistance in civil, family and criminal matters, as well as cases of administrative offenses in accordance with an international treaty or the national legislation of the relevant state;

2) an international agreement of the Republic of Kazakhstan - an international agreement concluded by the Republic of Kazakhstan with a foreign state (or states) or with an international organization in writing and governed by international law, regardless of whether such an agreement is contained in one document or in several related documents, and also regardless of its specific name;

3) legal assistance - the conduct by a court of one state, on behalf or request, received from the competent authorities of another state, of procedural actions necessary for trial of a case or recognition and permission to execute a judicial act;

4) order - a judicial document on delivery of documents and production of certain procedural actions in the territory of another state;

5) application - an appeal from an individual or legal entity, or a court with a request for recognition and permission to execute a judicial act in the territory of another state.

3. The courts provide legal assistance based on specific circumstances, the interests of justice and society as a whole, and in accordance with legislation and/or international treaties ratified by the Republic of Kazakhstan.

4. If an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in the legislation of the Republic of Kazakhstan, the rules of the international treaty shall apply.

In the absence of an international treaty of the Republic of Kazakhstan, legal assistance may be provided on the basis of a request from a competent authority of a foreign state or requested by a court of the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan on the principle of reciprocity.

5. Courts of the Republic of Kazakhstan cooperate with courts and other institutions of foreign states on issues of providing legal assistance in civil, family and criminal cases, as well as cases of administrative offenses through central and territorial authorities authorized to conduct relations in accordance with an international treaty or the legislation of the Republic of Kazakhstan.

6. Direct interaction of the courts of the Republic of Kazakhstan with courts and other institutions of foreign states shall be allowed only in cases provided by the international treaty ratified by the Republic of Kazakhstan.

7. Orders of courts and other institutions of foreign states shall be executed by the courts of the Republic of Kazakhstan upon receipt of them through the Department for Support of the Activities of the Courts under the Supreme Court of the Republic of Kazakhstan ( apparatus of the Supreme Court of the Republic of Kazakhstan) (hereinafter - the Department ) or its territorial authorities in the regions, capital and cities of the republican significance ( hereinafter referred to as the Administrators of the Courts), unless another procedure for sending documents shall be provided in an international treaty ratified by the Republic of Kazakhstan.

Orders of courts or other institutions of foreign states that have come to the courts in violation of the order of relations shall not be subject to execution and returned to the initiator through a central or territorial authority authorized to conduct relations in accordance with an international agreement or the legislation of the Republic of Kazakhstan.

8. In pursuance of Paragraph 2 of the Decree of the Government of the Republic of Kazakhstan dated December 31, 2004 No. 1453 “On measures to implement the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of January 22, 1993 and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of October 7, 2002”, the Administrators of the Courts shall be authorized to

comply with the provisions of these conventions on behalf of the courts of the Republic of Kazakhstan, courts of foreign states, and applications for recognition and enforcement of court decisions in civil and family cases.

When implementing these conventions, the Administrators of the Courts send orders, petitions, documents drawn up in connection with the execution of orders, as well as judicial acts on satisfaction of applications directly to the competent authorities of the states parties to the conventions, and unfulfilled orders of courts and other institutions of foreign states and judicial acts of refusal in satisfaction or return of the application - through the Department.

The term for consideration by the Administrators of the Courts of orders, petitions, as well as documents drawn up in connection with the execution of orders, or judicial acts issued as a result of consideration of petitions, shall not exceed 10 working days from the date of receipt of their originals.

## **Chapter 2. Provision of legal assistance by the courts of the Republic of Kazakhstan**

9. Orders of courts and other institutions of foreign states received by the Department, in the absence of reasons preventing their execution, shall be sent by territoriality to the Administrator of the courts to organize their execution, with notification to the competent authority of the foreign state.

10. The execution of orders of courts and other institutions of foreign states includes the delivery and forwarding of notices, other documents, as well as the performance of other procedural actions, in particular, hearing of the parties, witnesses, examination, on-site examination, other procedural actions, the implementation of which as part of the provision legal assistance shall be provided by law or an international treaty ratified by the Republic of Kazakhstan, or on the basis of reciprocity. The orders shall be executed during the trial and recorded.

11. Orders of courts and other institutions of foreign states shall be executed by the courts of the Republic of Kazakhstan within one month from the date of their receipt in the manner prescribed by the legislation of the Republic of Kazakhstan, unless otherwise provided by an international treaty ratified by the Republic of Kazakhstan.

12. In cases where the documents to be handed in shall be drawn up in a foreign language or not accompanied by a translation into the state and/or Russian languages, they shall be handed to the recipient if he agrees to accept them voluntarily.

The delivery of documents shall be certified by a confirmation containing the date of delivery, the signature of person to whom document was handed, sealed with the official stamp of court and signature of judge. In the event of the recipient's refusal to accept documents, the executor of the order draws up a refusal act indicating the reasons for refusal to receive, which is signed last and certified by official seal of court.

13. If the order cannot be executed by the court to which it was sent due to lack of jurisdiction, then the court shall forward the order by territoriality to another court within 5 business days, about which the competent authority of the Republic of Kazakhstan must be informed within 5 business days.

14. If the person to whom court documents must be handed over or for which procedural steps should be taken does not live (is not) at the address indicated in the documents, then the court executing the order takes measures to establish its place of residence (location) by sending a corresponding request to registration authorities of individuals or legal entities and/or other authorized authorities and organizations.

In the absence of information about the new place of residence (location) of the specified person or in the presence of other objective circumstances that impede the execution of the order, the court draws up in an arbitrary form an act on impossibility of execution of order, which shall be sealed by the judge's signature and official seal of court, and fills out a confirmation indicating reasons for non-execution of order.

15. The execution of orders of courts and other institutions of foreign states may be refused in whole or in part on the grounds provided by an international treaty ratified by the Republic of Kazakhstan.

In the absence of an international treaty of the Republic of Kazakhstan, the execution of orders of courts and other institutions of foreign states should be refused in the cases provided by part two of Article 476 of the Civil Procedural Code of the Republic of Kazakhstan (hereinafter referred to as the CPC), part two of Article 569 of the Criminal Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC) and part four of Article 882 of the Code of the Republic of Kazakhstan on Administrative Offenses (hereinafter referred to as the Code of Administrative Offenses).

In case of refusal to execute the order or impossibility of its execution, the court shall return the order and documents attached to the competent authority of foreign state to the competent authority of foreign state.

16. When executing orders by the court, the relevant documents (interrogation protocol, confirmation of delivery of documents, certificate of expenses, etc.) shall be affixed with judge's signature, certified by court's official seal and sent to the court administrator.

The Administrator of the Courts verifies the correctness of execution of documents drawn up in connection with the execution of instructions in accordance with the requirements of the procedural legislation, the international treaty of the Republic of Kazakhstan and this Instruction and sends the documents to the competent authority of the Republic of Kazakhstan or a foreign state or returns documents to eliminate the revealed violations or shortcomings.

17. The petition shall be considered in the manner prescribed by the legislation of the Republic of Kazakhstan, unless otherwise provided by an international treaty ratified by the Republic of Kazakhstan.

The petition shall be filed by the party in whose favor the judicial act shall be issued or by its representative by power of attorney.

Judicial acts of foreign courts in accordance with Article 501 of the Civil Procedural Code shall be presented for recognition and permission to execute within three years from the date of their entry into force. The period missed for good reason shall be restored by the court in the manner prescribed by Article 126 of the Code of Civil Procedure.

18. The petition shall be considered by the court within the time period established by the procedural legislation of the Republic of Kazakhstan.

When considering the petition, the court does not understand the validity of the judicial act, but should only be limited to establishing that the conditions provided by the legislation and the international treaty of the Republic of Kazakhstan shall be met.

19. Recognition and authorization of execution on the territory of the Republic of Kazakhstan of a judicial act of a foreign court may be refused on the grounds stipulated by an international treaty ratified by the Republic of Kazakhstan.

In the absence of an international treaty of the Republic of Kazakhstan, the recognition and authorization of execution on the territory of the Republic of Kazakhstan of a judicial act of a foreign court shall be refused in cases provided by Article 504 of the Civil Procedural Code and part seven of Article 608 of the Criminal Procedure Code.

20. After the entry into force of the judicial act on satisfaction of petition or its certified copy shall be sent to the Administrator of the Courts for further transfer to the competent authority of the Republic of Kazakhstan or a foreign state.

In case of refusal to satisfy or return the application, the relevant judicial act or its certified copy shall be sent through the Administrator of the Courts to the Department, which sends it to the competent authority of the foreign state or returns documents to eliminate the revealed violations or deficiencies.

### **Chapter 3. Apply for legal assistance to courts of foreign states**

21. The order must be signed by the judge in the process of proceedings, or by the chairman of the court and certified by official seal of the court.

The form and content of order shall be determined by the international agreement of the Republic of Kazakhstan, on the basis of which the order shall be drawn up.

In the absence of an international treaty of the Republic of Kazakhstan, the courts shall be guided by Articles 560, 565 of the Criminal Procedure Code, part three of Article 881 of the Code of Administrative Offenses and this Instruction when drawing up an order.

22. The order must indicate:

- 1) name of the requested institution of a foreign state;
- 2) name of the court from which the order comes;

3) name and number of the case in which legal assistance shall be requested, indicating the plaintiff and defendant;

4) data on an individual: surname, name, patronymic (if any), date and place of birth, place of residence, citizenship; legal entity: name, legal address or location, bank details and fiscal codes;

5) if there are representatives of the above mentioned persons, their surnames, names, patronymics (if any) and addresses;

6) content of the order, as well as other information necessary for its execution.

The order for delivery of document must also indicate the exact address of the recipient and name of the document to be handed.

23. The following documents duly executed, certified by judge's signature and the court's official seal, shall be attached to the order for delivery of documents:

1) a notice of the date and place of the trial;

2) copies of the statement of claim;

3) other documents (copies of acts of civil status, address certificates, etc.).

24. Unless otherwise provided by an international treaty ratified by the Republic of Kazakhstan, the order and the documents attached thereto (copy of the statement of claim, judicial notices, judicial acts of the courts of the Republic of Kazakhstan, etc.) shall be prepared in the state and/or Russian languages with an appendix to them a certified translation into the official language of the requested state.

25. Instructions to the courts and other institutions of foreign states should be sent to the competent authority of the Republic of Kazakhstan no later than 6 months before the day the case shall be examined.

26. Unless otherwise provided by an international treaty ratified by the Republic of Kazakhstan, an order addressed to a court or other institution of a foreign state shall be sent to the Administrator of the Courts.

The Administrator of the Courts, following the results of checking the execution of the order for compliance with the requirements of the legislation, the international treaty of the Republic of Kazakhstan and this Instruction, sends it to the competent authority of the Republic of Kazakhstan or a foreign state or returns documents to eliminate the revealed violations or deficiencies.

27. The petition shall be submitted by the party in whose favor the judicial act is issued to the competent court of a foreign state in whose territory the judicial act shall be subject to execution. It can also be filed with the court, which passed the judicial act in the first instance. Unless otherwise provided by an international treaty ratified by the Republic of Kazakhstan, this court shall send the application to the Administrator of the Courts.

The Administrator of the Courts, following the results of checking the application for compliance with the requirements of the legislation, the international treaty of the Republic of Kazakhstan and this Instruction, sends it to the competent authority of the Republic of

Kazakhstan or a foreign state or returns documents to eliminate the revealed violations or deficiencies.

28. Judicial acts of the courts of the Republic of Kazakhstan shall be presented for recognition and authorization of execution in the territory of a foreign state before the expiration of the statute of limitations provided by the legislation of the requested party. The period missed for good reason shall be restored in the manner prescribed by the legislation of the requested party.

29. The form and content of petition shall be determined by the international treaty of the Republic of Kazakhstan, on the basis of which the petition shall be compiled.

30. The court of first instance shall attach to the request of the claimant:

1) judicial act or its certified copy, as well as an official document that the judicial act has entered into legal force and shall be subject to execution or that it must be executed before it comes into legal force, if this does not follow from the judicial act itself;

2) a document from which it follows that the party against which the judicial act was passed that did not take part in the process was duly and promptly summoned to court, and in the event of its procedural incapacity, was properly presented;

3) a document confirming the partial execution of a judicial act at the time of its transfer;

4) a document confirming the agreement of the parties on matters of contract jurisdiction;

5) other documents provided by the international treaty of the Republic of Kazakhstan.

31. Unless otherwise provided by an international treaty ratified by the Republic of Kazakhstan, the application and documents attached thereto shall be prepared in the state and/or Russian languages with the addition of a certified translation into the official language of the requested state.

32. The recognition and authorization of execution of court orders in the territory of foreign states shall not be included in the scope of legal assistance provided, unless at the time of issuing the court orders the parties were living in the territory of the Republic of Kazakhstan.

According to Paragraph 2) of part 1 of Article 138 of the Civil Procedural Code, if the place of residence or location of debtor is outside the Republic of Kazakhstan, the judge shall return a statement on a court order explaining to the applicant the need to appeal to the court in a lawsuit.

33. If an unpaid state fee is subject to recovery, the court that examined the case on the merits shall apply for recognition and authorization of execution of a judicial act in the territory of a foreign state regarding the collection of the state duty in the manner prescribed by this Instruction.