

On certain issues of imposing criminal punishment

Unofficial translation

Normative decision of the Supreme Court of the Republic of Kazakhstan dated June 25, 2015
No. 4.

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For the purposes of appropriate and consistent application of the norms of current criminal and criminal-procedural laws of the Republic of Kazakhstan regulating the issues of imposition of punishment, the plenary session of the Supreme Court of the Republic of Kazakhstan **hereby decrees:**

1. By reference to the provisions of the Constitution of the Republic of Kazakhstan on equality of everybody before the law and court, and subject to the fact that no one can be found guilty in commitment of a criminal infraction and be subjected to criminal punishment except under a judgement, which have become final, to pay attention of the courts to the fact that every criminal case notwithstanding the nature and severity of the committed criminal infraction, official and social position of the defendant, must be resolved in strict adherence to the law. In imposing criminal punishment, the courts should fully comply with the general rules of imposing punishment, specified in article 52 of the Criminal Code of the Republic of Kazakhstan (hereinafter referred to as the CC), as well as to take into account the category of severity of the criminal infraction, recidivism and its type, stage of committing criminal infraction, degree of participation of the defendant in committing criminal infraction, the importance of his actions to achieve the goal of a criminal infraction and influence on the character and the size of the inflicted or possible harm, is there a combination of criminal infractions, existence of mitigating and aggravating liability and punishment circumstances, grounds for imposition of lighter punishment than provided for this criminal infraction.

2. To pay attention of the courts to the need for mandatory discussion and application of legally provided strict measures of punishment towards persons, found to be guilty of committing criminal infractions as a member of criminal groups, corruption-related, terroristic, extremist crimes, as well as crimes against the sexual integrity of minors and previously convicted, not wanting to take the path of correction.

In determining the level of public danger of the committed criminal infraction, the courts should take into account its severity, stipulated by article 11 of the CC, and the combination of circumstances, under which it was committed (the method of commitment, form of guilt, motives and goals, stages of accomplishment of a deed, the level of public danger of occurred consequences etc.).

3. The courts must analyze, comprehensively, fully and impartially, data on personality of the defendant, bearing in mind their significant influence in determining the type and amount of punishment. In particular, it is necessary to investigate the health condition, capacity to work, attitude to labour, study, information about previous record of conviction and marital status of the defendant. The courts should, in accordance with part three of article 52 of the CC when imposing punishment, take into account the influence of the imposed punishment to the living conditions of the family of the defendant and his dependents.

4. The list of circumstances aggravating the liability and punishment, specified in part one of article 54 of the CC, shall be limiting, in which connection, other circumstances, under which the criminal infraction was committed established by the court, or characterizing the defendant (alcohol abuse, violation of the rules of conduct in a public place, attitude to the family, work, study, etc.) may be taken into account when imposing the punishment, but may not be recognized as circumstances aggravating the liability and punishment.

In pursuance of paragraph 12) of part one of Article 54 of the Penal Code, the court shall be entitled, depending on the nature of the criminal infraction, not to recognize the commission of a crime while intoxicated as a circumstance aggravating liability and punishment. When resolving on this issue, the courts must take into account whether the commission of a criminal act was, by its nature, associated with the intoxication of the perpetrator, and also the conditions under which the person found himself in such a state. In particular, the state of intoxication of a minor at the time of committing a criminal offense shall not be considered as a circumstance aggravating liability and punishment if it is associated with his involvement by an adult criminal offense accomplice in the use of alcohol, narcotic or intoxicating substances.

In cases when a circumstance, stipulated by article 53 or article 54 of the CC, is specified in disposition of article of the Special Part of the Criminal Code of the Republic of Kazakhstan (hereinafter referred to as the Special Part of the CC) in capacity of one of qualifying essential elements of offence, it may not be recognized by the court as a circumstance, mitigating or aggravating the liability and punishment for committing this criminal infraction. Furthermore, a particularly active role in the commission of a criminal offence may not be considered an aggravating circumstance if the person is recognised as the organiser of the act.

The scope of the trial shall be limited to the charge laid, which shall be formulated when preparing the bill of indictment, the accelerated pre-trial investigation report, the charge sheet. Circumstances mitigating and aggravating liability and punishment shall comprise the content of the charge (paragraph 4 of part three of Article 299 of the Code of Criminal Procedure of the Republic of Kazakhstan (hereinafter the CCP). Consequently, given the requirements of Article 340 of the Code of Criminal Procedure, a finding by the court of aggravating circumstances not listed in the indictment aggravates the defendant's situation and breaches the limits of judicial proceedings. However, the determination of mitigating circumstances

shall not be limited to the scope of the prosecution and shall be based on the facts of the case established in the main trial.

In accordance with the second part of Article 17 of the Penal Code, a mental disorder that does not exclude sanity must be taken into account by the court when imposing a punishment as a circumstance mitigating criminal liability and punishment.

The presence of minor children may not be recognized in accordance with paragraph 4) of part one of Article 53 of the Penal Code as a circumstance mitigating criminal liability and punishment of the guilty person if the act he committed was directed against his own minor children or their other parent (mother or father) or if minor children are not dependent on the defendant or if he (she) has been deprived of parental rights.

During the main court hearing, the prosecutor may, subject to the rules set out in Article 340, part five, of the Code of Criminal Procedure, by preparing a new indictment, an accelerated pre-trial investigation report, or a charge sheet, supplement the charges with an indication of the existence of circumstances aggravating criminal liability and punishment of the defendant.

Footnote. Paragraph 4 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); dated 11.12.2020 № 6 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall be promulgated with effect from the date of first official publication); № 10 of 22.12.2022 (shall become effective on the date of first official publication); dated 28.09.2023 № 1 (effective from the date of the first official publication).

5. The Court when imposing the punishment shall specify, in the obligatory manner, in a sentence in relation of each defendant circumstances, mitigating and aggravating his liability and punishment.

The presence of repeated criminal offenses as a circumstance aggravating criminal liability and punishment provided for in paragraph 1) of part one of Article 54 of the Penal Code shall be determined in accordance with the concept of repeated crime enshrined in part one of Article 12 of the Penal Code.

A person who by a court verdict was found guilty of committing two or more crimes (if they are repeated or in real aggregate) cannot be recognized as a person who has committed a crime for the first time.

Footnote. Paragraph 5 was amended in Kazakh language, the text in the Russian language shall not be amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); as amended by regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020

6. If the sanction of the article of the CC, according to which a person has been recognized guilty, provides for alternative types of punishments, the courts should discuss the

issue on possibility of imposition of less severe of them, bearing in mind that in accordance with part two of article 52 of the CC more severe punishment is imposed only to the extent that its less severe type cannot ensure the achievement of the purposes of the punishment. The court's rule must be motivated in the sentence.

If in accordance with the provisions of the General Part of the Penal Code, a person cannot be sentenced to any of the punishments provided for by the corresponding article of the Special Part of the Penal Code, then the court, without reference to part four of Article 55 of the Penal Code, shall set a more lenient penalty provided for in Articles 40 or 81 of the Penal Code. The reason for the court judgment shall be set out in the rationale of the verdict, with reference to the relevant provision of the General Part of the Penal Code, establishing a ban on the application of one or another type of punishment. Nor may a prohibited penalty be imposed on a person when the question of commuting a sentence imposed by a court has been decided in case of evasion from serving it.

Footnote. Paragraph 6 as amended by regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall be effective as of the date of first official publication).

7. Part two and part three of article 55 of the CC are the independent grounds for mitigation of punishment and their simultaneous application shall be impossible. In case of rivalry of these norms of the law, part three of article 55 of the CC shall apply when imposing the punishment. In this case, the rules of part two of article 55 of the CC shall be neglected.

In accordance with article 55 of the CC, imposition of a punishment of a lower limit established by a corresponding article for commitment of a criminal infraction, or imposition of a lesser sentence, not stipulated in the sanction of the article of the CC, according to which the criminal infraction is qualified, or non-application of an additional punishment, stipulated as mandatory, shall be allowed only in case of establishment of extraordinary circumstances, which significantly reduce the degree of public danger of the criminal infraction, as well as in active assistance of an accomplice of a gang offence in disclosure of crimes committed by a group of persons.

The exceptional circumstances may be recognized both separate mitigating circumstances and their aggregate, and other circumstances, both related to committed act and to the personality of the convicted person, which indicate a lesser degree of public danger of a committed act and a positive socio-moral appearance of the defendant.

The court shall be obliged to indicate in the sentence in relation to each of the convicted person, which particular circumstances, established in the case, it recognizes as exceptional and in combination with which data on personality of the convicted person it takes as the basis in application of article 55 of the CC.

The commission of a grave or especially grave crime in exceptional circumstances on itself shall not constitute an obstacle to imposing a punishment on a person below the lower limit.

The application of the rules of part four of Article 55 of the Criminal Code to the enforcement of a sentence, including the commutation of an unpaid fine to imprisonment shall not be permissible.

Courts shall note that when imposing a sentence of deprivation of liberty for a particularly grave crime, if the sanction of the article envisages life imprisonment in addition to imprisonment, the rules of paragraph 3) of part two of Article 55 of the Criminal Code shall be applied. These rules shall not apply if in imposing sentence the court decides that the defendant should be sentenced to life imprisonment.

The size of the punishment, determined by the court with application of article 55 of the CC, in any case may not be lower than a minimum limit established by the law for the given type of punishment.

In the presence of the circumstances referred to in parts two or three of Article 55 of the Penal Code, the punishment may be imposed below the lower limit provided for by the sanction of the corresponding article of the Special Part of the Penal Code. In sentencing for preparation to commit a crime or attempted crime, the limits specified in parts two and three of Article 55 of the Penal Code shall be determined taking into account the provisions of Article 56 of the Penal Code. When appointing punishment to a minor under the rules of Articles 55 and 56 of the Penal Code in the form of a fine, correctional labor, community service or restriction of freedom, the courts shall proceed from the provisions of Article 81 of the Penal Code on the maximum and minimum limits of the term or the size of the corresponding type of punishment.

When imposing the punishment in the case considered in the conciliatory proceedings, the court shall be entitled to impose a lesser sentence (type, term, size), which is mentioned in the procedural agreement, but shall not be entitled to impose a greater sentence.

Footnote. Paragraph 7 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); dated 11.12.2020 № 6 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall become effective on the date of first official publication); № 10 of 22.12.2022 (shall be made effective on the date of first official publication).

8. When sentencing persons who committed a criminal offence when they were under the age of eighteen, women and men aged sixty-three or over, the courts must consider the exceptions laid down in Articles 46 and 56 of the Criminal Code concerning the duration of deprivation of liberty. Women, regardless of the age at which they committed the offence, shall not be sentenced to life imprisonment.

Footnote. Paragraph 8 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 10 of 22.12.2022 (shall be enacted from the date of the first official publication).

9. When discussing the issue on imposition of punishment to the minors, the courts must bear in mind that they may be applied only those types of criminal punishment, which are specified in article 81 of the CC, terms and sizes of which cannot exceed the limits established by this article. At the same time, it should be additionally consider circumstances, indicated in articles 82 and 83 of the CC, and discuss in each particular case subject to circumstances of the case and personality of a minor, the possibility of applying compulsory educational measures to him.

For the minors, when imposing the punishment in the form of imprisonment, the term of deprivation both for one criminal infraction and for their aggregate, as well as in the aggregate of sentences, may not exceed ten years. Deprivation of liberty over a specified period by minors may only be imposed for murder committed under aggravating circumstances, or an act of terrorism, or the aggregate of criminal infractions, one of which is murder under aggravated circumstances, or an act of terrorism. In this case, the term of imprisonment imposed on the aggregate of crimes and the aggregate of sentences cannot be more than twelve years.

If a minor is imposed the punishment in form of imprisonment subject to the rules provided for in parts two, three of article 56 of the CC, then half or three quarters of the term or amount of the most severe type of punishment should be calculated from ten or twelve years of imprisonment, respectively, which may be imposed to a minor for a completed criminal offense. Similar rules on calculation of the terms of punishment for a miner shall be taken into account when imposing the punishment under the requirements of part two or three of article 55 of the CC.

Footnote. Paragraph 9 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

9-1. The term of criminal punishment under the rules of part three of Article 62 of the Penal Code shall include only the time a person is held in custody until the sentence on a criminal case comes into legal force, including the time of a person's detention on suspicion of committing a criminal offense under Article 131 of the Criminal Procedure Code. The time a person is in custody after the judgment enters into legal force (in connection with the arrest of a wanted convict and his transfer, replacement of punishment, etc.) shall be counted in the term of criminal punishment without applying the rules of part three of Article 62 of the Penal Code.

When a person is conditionally sentenced to deprivation of liberty under Article 63 of the Criminal Code, the time spent in custody or under house arrest before the sentence becomes enforceable shall be counted as part of the sentence to be served under the rules of parts three

and four of Article 62 of the Code, subject to the type of penal institution in which the person was to serve her/his sentence if sentenced to imprisonment.

Footnote. The regulatory resolution supplemented with paragraph 9-1 in accordance with regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication); as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 3 of 08.12.2021 (shall take effect from the date of its first official publication).

10. In summary probation, the court shall explain to the convicted person, his legitimate representatives about possible consequences for him in case of failure to perform liabilities, imposed by the court, committing any administrative or criminal infractions.

In case of committing by a person, who has been applied the release on parole, except for the cases indicated in paragraph 2) of part seven of article 72 of the CC, of a new deliberate offense during the remaining unserved punishment, the court, not cancelling the remaining unserved punishment, shall impose him the punishment on the aggregate of sentences.

In the case of cumulative sentencing, where the first sentence was suspended, the court must credit the time spent in custody, house arrest as a preventive measure and detention, if applied in both the first and second cases, to the final sentence of the cumulative sentence, which should be stated in the operative part of the conviction.

Footnote. Paragraph 10 as amended by Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 3 of 08.12.2021 (shall become effective on the date of its first official publication).

10-1. By the meaning of Article 44 of the CC, the punishment of restriction of liberty shall be the establishment and implementation of probationary supervision. Accordingly, the duration of probationary supervision must coincide with the duration of the sentence imposed.

Article 44 of the Criminal Code shall also set a time limit of one hundred hours of forced labour annually. This time limit may not be increased or decreased.

Where restriction of liberty is imposed for less than one year or fewer than a full number of years, the time of forced labour shall be calculated in proportion to the length of the sentence in relation to the annual period of engagement to work (one hundred hours).

Footnote. Regulatory Resolution has been supplemented by paragraph 10-1, in line with Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 3 of 08.12.2021 (shall be promulgated from the date of its first official publication).

11. In relation of persons committed a criminal infraction or for committed a crime for the first time, the courts should discuss an issue on possibility of their corrections without applying criminal penalties and, subject to the grounds specified in articles 65, 66, 67, 68, 69.70 of the CC, exempt such persons from criminal liability and punishment. The court's conclusion on the possibility of correcting a person without applying criminal penalties should be based on a comprehensive, complete and objective study of the circumstances of the case and the identity of the defendant.

Footnote. Paragraph 11 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

12. The courts should bear in mind that in accordance with part three of article 14 of the CC in the recognition of recidivism and dangerous recidivism does not take into account the criminal record taken and canceled, as well as the criminal record for crimes committed by a person under the age of 18 years. Along with it, in the recognition of a dangerous recidivism on the basis of part two of article 14 of the CC, those unexpunged or outstanding convictions that are related to the conviction of a person for serious or especially serious crimes shall be taken into account.

Establishing the number of previous convictions, the courts should bear in mind that convictions for crimes committed prior to sentencing in the first case with the determination of the final punishment for the aggregate of crimes on the basis of part six of article 58 of the CC, shall be considered as one conviction.

The courts should take into account the conditions specified in the law for the repayment of a criminal record. A person released from punishment by a court verdict (order), regardless of the length of his stay in custody in connection with the choice of a preventive measure in the form of detention, shall be considered in accordance with part two of article 79 of the CC not to have a criminal record from the moment of entering into legal force of the judicial act, on the basis of which the person was released from punishment.

If, however, the person has only been released from the main penalty and not from an additional one, the commission of this offence shall interrupt the period extinguishing the previous conviction. The period of clearing a criminal record shall be re-calculated after serving the additional sentence for the last offence. Commitment of a crime for which criminal prosecution has been terminated on the grounds of an amnesty act shall not interrupt the term of repayment of the previous conviction.

When determining the recidivism or dangerous recidivism of a crime, the previously convicted of deprivation of liberty should be considered a person who, in the past, by a court verdict that has entered into legal force, was sentenced for committing a grave or especially grave crime in the form of imprisonment, which was to be served in a correctional institution, including when the person did not serve this punishment (for example, evaded serving it, was released from serving the punishment on the basis of article 75 of the CC).

Recognition of a recidivism should take into account the person's previous unexpunged and outstanding conviction for a grave and especially grave crime and in the case when the deprivation of liberty has been imposed conditionally (using article 63 of the CC) or by applying a delay in the execution of the sentence (articles 74 and 76 of the CC), and this person committed a new crime during probationary control or in the period of delay of

execution of a sentence, or conditional conviction or delay of execution of a sentence were canceled and this person was sent to the appropriate institution for serving designated punishment upon conviction in form of imprisonment.

At the same time, persons, released of serving penalty in accordance with article 77 of the CC in connection with expiration of the period of limitation of the judgment of conviction; conditionally convicted (article 63 of the CC) upon expiration of the term of probationary control, the convicted person with application of postponement of execution of judgment (article 74 of the CC) – upon expiration of the period of postponement, if the person has been released of serving penalty; or released of penalty due to combination of adverse circumstances (part one of article 76 of the CC), shall not be considered as previously convicted to deprivation of liberty.

Persons to whom the punishment by a court verdict (fine, community service, correctional labor, restriction of liberty) on the grounds provided for by the General Part of the Penal Code for these types of punishments was replaced by imprisonment may not be considered as persons convicted to imprisonment.

Conviction of a person for a criminal offense does not entail a criminal record, and a criminal record for crimes of small and medium gravity shall not be taken into account in determining recidivism.

In case of recidivism and dangerous recidivism, the punishment shall be imposed subject to the provisions of paragraph 1) of part one of article 54 and article 59 of the CC. The court may recognize on the basis of paragraph 1) of the first part of Article 54 of the Penal Code the existence of a recidivism or dangerous recidivism as a circumstance aggravating criminal liability and punishment, only if this is stated in the indictment.

Footnote. Paragraph 12 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); dated 11.12.2020 № 6 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall take effect from the date of first official publication).

13. The commission of a crime in a group, in a group of persons by prior conspiracy and in a criminal group entails a more severe punishment, so the courts should correctly determine the type of complicity, accomplices in the crime and the role of each of them.

14. When imposing the punishment on the aggregate of criminal infractions, the courts should take into account that principles of absorption of a less severe punishment by a more severe punishment or the full or partial addition of sentences provided by the law should be motivated in the sentence.

When applying the principle of absorption of a less severe punishment by a more severe punishment the courts should bear in mind that the degree of severity of punishments shall be determined in that sequence in which they are specified in article 40 of the CC. When imposing one and the same type of punishment for each criminal offense in the aggregate, the

most severe of them shall be the punishment, the term or the size of which is bigger. If the criminal offenses included in the aggregate are imposed the same type and size of punishment, the determination of the final punishment by absorbing one punishment by another shall be allowable only in cases when they are imposed to the maximum extent of the sanctions of the relevant articles of the criminal law.

In aggregate of criminal infractions, the main and additional punishment should be imposed per each criminal infraction separately; same should be done when imposing additional punishment with part three of article 50 of the CC, then in accordance with article 58 of the CC to impose the final penalty. In full cumulative sentence, the terms and sizes of punishments shall be summarized in accordance with the requirements of article 61 of the CC. In partial cumulative sentence, the gravest one is added a part of a less grave punishment. Terms and sizes of the summarized punishment may not exceed the limits established by article 58 of the CC. If different types of additional punishment are imposed for criminal offenses that make up an aggregate, they must be indicated along with the corresponding sizes and terms in the verdict and when assigning the final penalty.

When deciding the issue on the application of the principle of cumulative sentence or absorption of punishment, the courts, when choosing one of these principles, should in each particular case take into account the nature, degree of public danger and the circumstances of the criminal infractions, information about the identity of the guilty person and other facts affecting the imposition of punishment.

At the sentencing with absorption of less strict punishment by a more severe one in cases when additional punishment is assigned only for less grave criminal offense, additional punishment shall be subject to joining to the final primary punishment on aggregate of criminal infractions.

In cases when an article of the Special Part of the Penal Code has been amended in the direction of toughening its sanction, then when qualifying under this article several offenses committed by a person before and after the introduction of such amendments, the punishment to the guilty party shall be imposed under one amended article without application of Article 58 of the PC.

Footnote. Paragraph 14 as amended by regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication); dated 28.09.2023 № 1 (effective from the date of the first official publication).

15. The courts should take into account that when imposing the punishment under accumulation of sentences on the basis of part six of article 58 of the CC the final punishment under cumulative criminal infractions may not be lower than the punishment imposed under the first sentence, as in such cases in absorption or cumulative sentence it should be based on the size of the entire sentence imposed on the first sentence, and not on its unserved part.

If after imposition of sentence it is established that the convicted person is guilty yet in commitment of other criminal infractions, one of which have been committed before and other after the imposition of sentence, the punishment under the second sentence shall be determined with application of both article 58, and article 60 of the CC: at first, the punishment under accumulation of sentences for offences committed before the first sentence shall be determined, then the rules of part six of article 58 of the CC, after which the punishment under accumulation of sentences for offences committed after the first sentence shall be determined, and final punishment shall be determined in an accumulation of sentences.

When a person is convicted of a criminal offense committed before the previous sentence, the entire sentence served on the previous verdict shall be set off. The term of serving the sentence imposed on the basis of part six of article 58 and article 60 of the CC, shall be calculated from the date of the last sentence, including the time spent in custody until trial in the last case, in order of restraint or detention.

In the case of imposition of sentence in the form of restriction of liberty for an unfinished crime and its replacement in case of malicious evasion from serving a sentence by imprisonment, the term and size of this punishment shall not exceed the limits established in article 56 of the CC.

When imposing the punishment in an accumulation of sentences, only the principle of addition shall apply, at the same time the punishment by its size must be more as punishment imposed under the last sentence and of unserved part of punishment under the previous sentence.

If a person, after the sentencing, but before its entry into legal force, has committed a new criminal offense, then the court, in accordance with the rules of part six of Article 58 of the Penal Code, shall impose a cumulative punishment on him.

Footnote. Paragraph 15 as amended by regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication).

16. When imposing the punishment in an accumulation of sentences, the courts need to establish and to specify in the verdict the type and the size of unserved part of punishment under the previous sentence, as long as on the basis of article 60 of the CC this punishment is subject to full or partial addition of penalties, imposed under a new sentence.

The unserved part of punishment under the previous sentence shall be considered:

upon conditional sentencing as well as in suspension of servicing the sentence on the grounds stipulated by article 74 and part two of article 76 of the CC, or in accordance with the procedure, stipulated by article 475 of the CPC or when applying part three of article 75 of the CC, – the entire term of punishment, except for the period of guard in connection with

detention or with application of a restraint in form of arrest, house arrest or execution of punishment or staying of a person in a medical institution in connection with the use of compulsory medical measures;

upon release on parole from punishment on the grounds stipulated by article 72 of the CC, – a part of punishment, from serving of which the convicted person has been actually convicted on parole;

when sentencing to restriction of freedom or community service - the unserved sentence as of the day the new criminal offense was committed.

When imposing the punishment upon accumulation of sentences, the courts must consider the rules of addition of sentences, stipulated by article 61 of the CC.

If under the previous sentence, a person has been convicted to deprivation of liberty conditionally and during the period of probation control committed a new criminal infraction, for which it is established a punishment in form of imprisonment, then full or partial addition of sentences upon accumulation of sentences shall be possible only to the extent when in accordance with article 64 of the CC the conditional conviction under the first sentence is cancelled.

In cases of establishment of a guild of a person in a crime committed before bringing the first sentence, under which it was convicted conditionally and where there are no grounds for cancellation of the conditional conviction, or where the penalties, established under several sentences, in accordance with article 61 of the CC are not subject to addition, it is necessary to indicate in the verdict about the execution of a punishment by each of the sentence independently.

In the event of a new crime committed by a person serving a sentence of imprisonment, the unserved part of the punishment shall be considered the period remaining at the time of establishing a preventive measure in the form of custodial detention for the newly committed crime. If the specified restraint measure was not applied, the unserved part of the punishment shall be the term remaining by the time of the last sentencing.

Footnote. Paragraph 16 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); dated 11.12.2020 № 6 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall be effective as of the date of first official publication); dated 28.09.2023 № 1 (effective from the date of the first official publication).

16-1. The provisions of the first part of Article 65 of the Penal Code shall apply to a person who has committed a criminal offense or has committed a crime for the first time, as a rule, in the accumulation of the following circumstances: the presence of his surrender, formalized in accordance with Article 182 of the Criminal Procedure Code; facilitating by him of the disclosure, investigation of a criminal offense; making amends for the damage caused by the criminal offense.

Persons listed in the second part of Article 65 of the Penal Code may not be exempted from criminal liability in connection with active repentance.

At the pre-trial proceedings stage, the provision of part one of Article 65 of the Penal Code may not be applied to a person who has committed a corruption offense.

Footnote. The regulatory resolution supplemented with Paragraph 16-1 in accordance with regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication).

17. In case of partial or full addition of penalties for cumulative crimes or for cumulative sentences, the courts should follow the procedure of determination of the terms of punishment when adding them, established by article 61 of the CC. According to the meaning of the mentioned article, an additional punishment, unserved under the previous sentence, shall be fully or partially added to the final main punishment or fully or partially added to the additional punishment of the same kind, imposed under a new sentence, within the period, established for this type of the additional punishment. Penalties, specified in part two of article 61 of the CC, shall be executed independently.

If for crimes constituting the aggregate of criminal offenses or the aggregate of sentences, the court has set different types of main punishments, then with their full or partial addition the final punishment shall be imposed issuing from its more severe type.

Where a person sentenced to deprivation or restriction of liberty for an offence after conviction but before serving his or her sentence fully has committed a criminal offence, the rules of Article 60 of the Criminal Code shall not apply. In such cases the sentences shall be enforced independently.

If under the first sentence, the person is convicted to deprivation of liberty, corrective labour or other punishment subject to execution, and under the second sentence a conditional punishment is established with application of article 63 of the CC, then in such cases in addition of punishments the court must indicate in a verdict that they are subject to execution independently.

The application of the act of amnesty to persons who had committed criminal offences prior to the adoption of the act shall be discussed when sentencing for cumulative criminal offences under part six of Article 58 of the CC or for cumulative sentences. However, it shall be considered that the provisions of the act of amnesty shall not apply to persons who reoffend wilfully after its application, provided that this is stated in the act itself.

Footnote. Paragraph 17 as amended by regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall come into force on the date of first official publication).

18. In case of commitment by the convicted person of a new criminal infraction within the period of suspension of execution of punishment under the previous sentence, the court must join to the punishment, imposed for a new criminal infraction, in accordance with article 60

of the CC fully or partially unserved punishment under the previous sentence. Therewith to bring an order on cancellation of suspension of execution of punishment under the first sentence shall not be required.

When a new crime is committed upon expiration of the period of suspension of servicing of punishment and entering into the legal force of the court's order on sending of the convicted person in accordance with part three of article 74 of the CC to an appropriate institution for servicing the punishment, having determined the punishment for a new crime, shall be obliged to apply the rules for imposition of punishment in an accumulation of sentences, stipulated by article 60 of the CC.

If, at the time of the sentencing on the new case, upon the expiration of the deadline for the execution of the sentence, the question of releasing the convicted person from serving the sentence or sending him to serve the sentence to the appropriate institution by the court has not been decided, the court shall appoint punishment only for the newly committed crime. In such cases, the issue of the execution of the sentence in the presence of other outstanding sentences may be decided in accordance with the procedure stipulated by articles 476, 477, 478 of the CPC.

Footnote. Paragraph 18 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

19. Additional punishment shall be imposed within the limits, established by the article of the CC, under which the convicted person is recognized guilty. If the additional punishment applies on the basis of article 49 or 50 of the CC, its term may not exceed the limits, established by the law for such type of punishment.

When the sanction of the criminal law provides for the possibility of applying or not applying additional punishment, the courts shall be obliged to discuss the issue of his appointment and indicate in the verdict the reasons for the decision. Non-application of additional punishment in such cases shall not be indicated in the operative part of the sentence

When convicting a person under the articles of the criminal law, according to which the imposition of an additional sentence is mandatory, the court may not appoint him only subject to the conditions, provided for in article 55 of the CC, with the mandatory introduction of the reasons for the decision in the sentence.

These provisions shall not apply to imposition of an additional punishment in the form of confiscation of property, the grounds and conditions of application of which shall be determined by the content of this punishment in accordance with the requirements of article 48 of the CC.

Footnote. Paragraph 19 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

20. Confiscation of property can only be imposed in cases where the sanction of the article of the CC, whereby the defendant is found guilty, provides for it as an additional punishment. Property subject to confiscation must be specified clearly in the operative part of the sentence. Confiscation may be applied only to property that has been in the ownership of the convicted person and (or) third parties, obtained by criminal means or acquired with funds obtained by criminal means, as well as property that is an instrument or means of committing a criminal infraction.

It should be taken into account, that the relevancy of the property to the items of confiscation on the basis of provisions of part three of article 113 of the CPC is a circumstance in proof. In this connection, when deciding an issue on confiscation of property, including registered to the third parties, the courts shall in all cases check all proof which substantiate the origin of this property and funds for which it has been acquired. . If there are no data on criminal nature of the origin of the property in the case, or the property has not established at all, the confiscation of the property shall not be imposed, including according to articles of the Special Part of the Criminal Code, providing for mandatory imposition of this type of an additional punishment. Application of article 55 of the CC shall not be required in this case. Decision made by the court on confiscation of property in all cases must be motivated in the verdict with reference to availability or absence of grounds, stipulated by article 48 of the CC.

In cases, stipulated by part three of article 48 of the CC, the court must indicate in the sentence a monetary sum that is subject to confiscation, substantiating the decision made.

The confiscation may not apply to the property, specified in part five of article 48 of the CC subject to legal restrictions established by this norm. In the event if the criminal nature of the origin of the property that is not subject to confiscation according to the requirements of the mentioned norm is established, in accordance with the provisions of part three of article 48 of the CC its value in monetary terms with substantiation in the verdict of the decision made shall be subject to collection to the state revenue.

If the sanction of the article of the Special Part of the Penal Code provides for the property confiscation as a mandatory additional punishment, but the crime was committed by a minor, then, pursuant to the provisions of the General Part of the Penal Code, the additional punishment in the form of property confiscation shall not be applied. Such a ruling must be motivated in the rationale part of the court's verdict with reference to Article 81 of the Penal Code, respectively. References to article 55 of the Penal Code shall not be required in these cases. In non-application of confiscation in the mentioned cases, the property of criminal origin, recognized as material evidence established at the convicted persons, shall be subject to forfeiture to the State in accordance with the procedure of part three of article 118 of the CPC in resolution by the court of the fate of the material evidence in the verdict. In the same manner, issues shall be resolved if the imposition of a punishment in the form of confiscation of property is not provided by the sanction of article of the Special Part of the CC, however in

the course of proceedings on the case property related to a crime has been established according to the grounds listed in part one and part two of article 48 of the CC.

When deciding on material evidence, the court must determine their belonging, the owner's awareness of the use of his property for unlawful purposes and, depending on the established, adopt one of the decisions specified in part three of Article 118 of the CPC. If the property owner did not know and should not have known about the unlawful purposes of the use of his property by other persons, then it must be returned to him.

Footnote. Paragraph 20 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); as amended by regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication).

21. The deprivation of the right to occupy certain positions or engage in certain activities, the deprivation of a special, military or honorary title, class rank, diplomatic rank, qualification class and state awards as an additional punishment may also be imposed in cases where it is not provided for as a punishment in an article of the Special Part of the CC, for which a criminal offense is qualified. In this case, the decision to impose an additional sentence in the operative part of the sentence should contain a reference respectively to article 49 or to article 50 of the CC.

When a person is convicted of a deliberate criminal offense at the same time as the sentencing, the court must discuss the issue of making, on the basis of part two of article 49 of the CC, a submission to the President of the Republic of Kazakhstan on deprivation of the convicted person of state awards or special, military or honorary title, class rank, diplomatic rank, or qualification class assigned by the President of the Republic of Kazakhstan. To determine whether an award is state, it should be guided by the Law of the Republic of Kazakhstan dated December 12, 1995 № 2676 "On state awards of the Republic of Kazakhstan".

When imposing this type of punishment, the court in submission shall be entitled to solicit for deprivation of one or several awards, ranks, grades, diplomatic rank or qualification class (for example, if the convicted person has qualification class and state awards, he has the right to raise the issue of depriving only the qualification class). The decision made must be reasoned in the verdict. This provision shall not apply to the cases of sentencing for corruption offenses, under which on the basis of the requirements of part two of article 49 of the CC the court shall mandatorily make a submission to the President of the Republic of Kazakhstan on deprivation of a convicted person of all available titles, classes, ranks, grades enlisted in article 49 of the CC, and state awards.

Footnote. Paragraph 21 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

22. In accordance with article 50 of the CC, in each case where a person has committed a crime related to the performance of duties by his duties or engaging in certain activities, the court shall be obliged, taking into account the nature of the crime committed, to discuss the issue of depriving the defendant of the right to occupy certain positions or engage in certain activities. Positions or type of activities must be specified in particular in the operative part of the verdict. It is unacceptable, in particular, to deprive the convicted person of the right to work in a particular industry or in any institution or organization without defining a range of positions for which he is not entitled to hold. The fact that at the time of sentencing the defendant was no longer in office or was not engaged in activities related to the commission of the crime is not an obstacle to the application of this additional punishment. Due to the provisions of article 50 of the CC, the deprivation of the right to occupy certain positions and engage in certain activities at the same time for the same crime shall not be allowed.

When imposing this type of additional punishment, the court must take into account that its appointment is for life provided only for certain categories of crimes directly listed in part two of article 50 of the CC. For other criminal offenses not included in this list, life deprivation of the right to occupy certain positions or engage in certain activities is not assigned, even if this type of additional punishment is prescribed as mandatory in the sanction of article of the CC. In such cases, the court must proceed from the general grounds and conditions for the imposition of this type of additional punishment, in accordance with which it is assigned for a period of one year to ten years. Persons who committed the offence as minors shall not be sentenced to deprivation of the right to hold certain offices or engage in certain activities for life.

If, for two or more criminal offenses included in the aggregate, along with the main punishment, an additional punishment is imposed for a certain term in the form of deprivation of the right to occupy certain posts or engage in certain activities, then its final term or size with partial or full addition of punishments may not exceed the maximum term or size for this type of punishment stipulated by the General Part of the CC, i.e., ten years.

The deprivation of the right to drive vehicles may be imposed by the court as an additional punishment in accordance with the sanction of the criminal law, regardless of whether this person had this right or was deprived of it by administrative penalty.

In imposing the additional penalty for extremist offences under Article 50 of the Criminal Code, the specific type of activity for which the convicted person is prohibited from engaging in must be specified (for example, activity connected with the establishment, membership or participation in the work of political parties, political voluntary associations or movements).

When imposing a punishment of deprivation of the right to hold certain positions or engage in certain activities, the courts shall take into account the specificities provided for in part two of Article 50 of the Penal Code in relation to persons who have committed crimes in economic activity and against the interests of service in financial organizations, sexual inviolability of minors, corruption and transport crimes.

If the deprivation of the right to hold certain positions or engage in certain activities is not provided for by the sanction of the relevant article of the Special Part of the Penal Code, then proceeding from the nature and extent of public danger of the committed act and the personality of the perpetrator, must discuss the issue of imposing such an additional punishment on him under the rules of part three of Article 50 of the Penal Code.

Footnote. Paragraph 22 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication); dated 11.12.2020 № 6 (shall be enforced from the date of the first official publication); № 3 of 08.12.2021 (shall be promulgated with effect from the date of first official publication).

22-1. For a corruption offense committed before January 1, 2020, an additional penalty shall be imposed in the form of life deprivation of the right to hold positions in the civil service, of a judge, in local government bodies, the National Bank of the Republic of Kazakhstan and its departments, government organizations and organizations, in whose authorized capital the share of the state is more than fifty percent, including in national management holdings, national holdings, national companies, national development institutions, the shareholder of which is the state, their subsidiaries, more than fifty voting shares (participation interests) of which they hold, as well as in legal entities, more than fifty percent of the voting shares (participation interests) of which belong to the said organizations.

For a corruption offense committed from January 1 to January 10, 2020 inclusive, an additional penalty shall be imposed in the form of life deprivation of the right to hold positions in the civil service, of a judge, in local state bodies, the National Bank of the Republic of Kazakhstan and its departments, an authorized body for regulation, control and supervision of the financial market and financial organizations, state organizations and organizations, in whose authorized capital the state share is more than fifty percent, including in national management holdings, national holdings, national companies, national development institutions, the shareholder of which is the state, their subsidiaries more than fifty percent of the voting shares (participation interests) of which are owned by them, as well as legal entities, more than fifty percent of the voting shares (participation interests) of which belong to the said subsidiaries.

For a corruption offense committed after January 10, 2020, an additional penalty shall be imposed in the form of life deprivation of the right to hold positions in the civil service, of a judge, in local government bodies, the National Bank of the Republic of Kazakhstan and its departments, an authorized body for regulation, control and supervision of the financial market and financial organizations, government organizations and subjects of the quasi-public sector.

Footnote. The regulatory resolution supplemented with Paragraph 22-1 in accordance with regulatory resolution № 6 of the Supreme Court of the Republic of Kazakhstan dated 11.12.2020 (shall be enforced from the date of the first official publication).

23. When considering cases by courts considering complaints and petitions, protests against sentences, decisions, it is necessary to verify compliance with the general principles of sentencing in sentencing, the compliance of the chosen punishment with the gravity of the criminal offense and the personality of the convicted person, the correct application of the norms of the criminal law when imposing the punishment, as well as compliance with the norms of the criminal procedure law governing the procedure for expressing in a verdict a decision on the sentence and specific circumstances of the case, which therewith have been taken into account. If errors and violations of the law committed by the courts of first instance are discovered when imposing the punishment, higher instances must take the measures prescribed by law to eliminate them.

Having found the court's conclusions on the scope of the charge, the form of guilt or the complicity of the convicted person to commit a criminal offense, the presence of aggravating circumstances and punishment to be wrong, and amending the sentence in connection with this (for example, excluding the episode of the charge or one or more aggravating circumstances, recognizing the person is an accomplice, and not a co-executor of a criminal offense, seeing in his actions signs of preparation for a criminal offense or attempt on him, and not finished criminal offenses), the courts considering complaints and petitions, protests against sentences, decisions, should discuss the possibility or necessity of reducing the sentence to the convicted person and give reasons for the decision in the decision.

Without amending the qualification of a crime or the scope of the charge, reducing or increasing of punishment imposed by the court of first instance within the sanction of the criminal law in accordance with article 438 of the CPC may take place only in those cases, when it is by its type or size it is unjustified due to excessive severity or excessive leniency. At the same time the grounds for mitigation punishment or release of the convicted person from his service must serve only those circumstances, which have been established during consideration of the case and evidence that the convicted person has been imposed to an excessively severe punishment.

Footnote. Paragraph 23 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

24. When the case is examined by higher courts on the complaint of the convicted person, his defense attorney or legal representative, as well as on the petition, protest or complaints of the prosecution, which did not raise the issue of excessive leniency, the court, canceling the sentence on other grounds, does not have the right to draw conclusions on excessive softness of sentence.

Footnote. Paragraph 24 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

25. If the court of first instance, when imposing the punishment for the totality of crimes, applied the principle of partial addition of sentences imposed for each crime, the courts that examine complaints and petitions, protests against sentences, decisions do not have the right to apply the principle of complete addition of sentences even in cases where these judicial authorities mitigate the punishment for one or more crimes in the aggregate.

If by the court of first instance when imposing the punishment in the aggregate of sentences, the application of the principle of absorption of one punishment by another is allowed in violation of the law or because of the impossibility of joining the unserved part of the punishment in accordance with the rules of part two of article 60 of the CC, the courts considering complaints and petitions, protests against sentences, decisions, in the case of mitigation of punishment for the last sentence, have the right to partially or fully add the unserved punishment for the previous sentence, provided that the final punishment will not exceed the size of the punishment imposed in accordance to the verdict, subject to changes made in it by subsequent authorities.

When a deed is reclassified from one article to several articles of the criminal law providing for liability for a less serious crime, when this does not worsen the situation of the convicted person and does not violate his right to defense, the courts that examine complaints and petitions, protests against sentences and decisions, decide the question of punishment apply the rules of article 58 of the CC. In this case, the final punishment should not be more severe than the punishment imposed by the verdict.

Footnote. Paragraph 25 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

26. In the event that a person has committed two or more crimes, which form a multiple occurrence, but the first-instance court has erroneously qualified for two or more articles (parts of the article), giving a correct legal assessment of the act under one article and erroneously qualifying some acts under another article, which provides liability for more serious crime, courts considering complaints and petitions, protests against sentences, rulings, re-qualifying the corresponding criminal actions on an article on a less serious crime, within the limits of her sanction, has the right to determine a more severe punishment than that imposed by her by the court of first instance, without exceeding, however, the final size of the punishment imposed by the verdict. Courts that consider complaints and petitions, protests against sentences, decisions shall not be entitled to impose additional punishment if it has not been imposed by a verdict, and in the event the crime is reclassified to an article of the law providing for its mandatory application. If, when imposing an additional punishment in the form of deprivation of the right to occupy certain posts or engage in certain activities, the verdict does not specify or positions or activities are not specified accurately, a higher court may cancel this additional punishment or make appropriate clarifications to the verdict if the situation of the convicted person does not worsen.

In a new hearing of a case, after the conviction is canceled, the court cannot impose additional punishment under the same article of the criminal offense if it was not appointed by the original sentence, except in cases of cancellation of the sentence for leniency of punishment or in connection with the need to apply the law on a more serious criminal offense.

Footnote. Paragraph 26 as amended by the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2017 № 13 (shall enter into force from the day of its first official publication).

27. To declare to be no longer in force:

1) regulatory decree of the Supreme Court of the Republic of Kazakhstan dated April 30, 1999 № 1 “On observance of lawfulness by the courts when imposing criminal punishment”;

2) regulatory decree of the Supreme Court of the Republic of Kazakhstan dated October 19, 2001 № 15 “On certain issues of imposing punishment in form of deprivation of liberty”;

3) regulatory decree of the Supreme Court of the Republic of Kazakhstan dated October 28, 2005 № 8 “On amendments to the regulatory decree of the Supreme Court of the Republic of Kazakhstan № 15 dated October 19, 2001 № 15 “On certain issues of imposing punishment in form of deprivation of liberty”;

4) regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 25, 2007 № 9 “On amendments to the Decree of the Plenum of the Supreme Court of the Republic of Kazakhstan № 1 dated April 30, 1999 “On observance of lawfulness when imposing criminal punishment”;

5) regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2008 № 9 “On amendments to the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated April 30, 1999 № 1 “On observance of lawfulness by the courts when imposing criminal punishment”;

6) regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 22, 2008 № 16 “On amendments to the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated October 19, 2001 № 15 “On certain issues of imposing punishment in form of deprivation of liberty”;

7) paragraph 7 of the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 № 12 “On amendments and additions to certain decrees of the Plenum and to the regulatory decrees of the Supreme Court of the Republic of Kazakhstan”;

8) paragraphs 3, 5 of the regulatory decree of the Supreme Court of the Republic of Kazakhstan dated April 21, 2011 № 1 “On amendments and additions to certain regulatory decrees of the Supreme Court of the Republic of Kazakhstan”.

28. According to article 4 of the Constitution of the Republic of Kazakhstan this regulatory decree shall be included into the composition of the current law, it is binding and effective from the date of official publication.

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

K. MAMI

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

K. SHAIKHAROV

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