

On the practice of application by courts of legislation on child adoption

Unofficial translation

Normative decision of the Supreme Court of the Republic of Kazakhstan dated March 31, 2016 № 2.

Unofficial translation

Having studied the practice of application by courts of legislation on child adoption and for the uniform application of regulations of the current legislation on marriage and family the plenary session of the Supreme Court of the Republic of Kazakhstan

resolves:

1. Legislation of the Republic of Kazakhstan on adoption of children at the national and international levels (hereinafter referred to as adoption), based on the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution) and shall consist of the Code of the Republic of Kazakhstan "On marriage (matrimony) and family" (hereinafter referred to as the Code), Law of the Republic of Kazakhstan dated August 8, 2002 № 345-II "On the rights of the child in the Republic of Kazakhstan," Convention on the rights of the child (Adopted by the United Nations General Assembly on November 20, 1989, ratified by Resolution of the Supreme Council of the Republic of Kazakhstan on June 8, 1994 № 77-XIII) (hereinafter referred to as the Convention on the rights of the child), the Convention on the protection of children and cooperation in respect of foreign adoption (ratified by the Law of the Republic of Kazakhstan dated March 12, 2010 № 253-IV, entered into force for the Republic of Kazakhstan on November 1, 2010) (hereinafter referred to as the Convention on the protection of children and cooperation in relation to foreign adoption) regulatory resolutions of the Constitutional Court and the Supreme Court of the Republic of Kazakhstan, resolutions of the Government of the Republic of Kazakhstan dated September 21, 2010 № 966 "On measures to ensure the fulfillment by the Republic of Kazakhstan of obligations, arising from the Convention on the protection of children and cooperation in respect of foreign adoption, dated 30 March 2012 № 380 "On approval of the Rules for the transfer of children, being citizens of the Republic of Kazakhstan, for adoption," orders of the Minister of Education and Science of the Republic of Kazakhstan dated December 9, 2014 № 513 "On approval of the Rules for accreditation of adoption agencies and organizations for assistance in the arrangement of orphans, children left without parental care in the families of citizens of the Republic of Kazakhstan, "dated June 29, 2016 № 407 "On approval of the Rules for accounting of persons, being citizens of the Republic of Kazakhstan permanently residing in the territory of the Republic of Kazakhstan, those wishing to adopt orphans, children left without parental care, dated January 16, 2015 № 13 "On approval of the Rules for activity

and the composition of the commission issuing an opinion on the possibility of (impossibility) of issuing a permit for the transfer of children who shall be citizens of the Republic of Kazakhstan for adoption, "dated January 16, 2015 № 16 "On approval of the Rules for organizing the registration of orphans and children left without parental care and access to information about them, order of the Minister of Healthcare and Social Development of the Republic of Kazakhstan dated August 28, 2015 № 692 "On approval of the list of diseases in the presence of which a person cannot adopt a child, accept him under guardianship or guardianship, patronage" (hereinafter referred to as the List of diseases in the presence of which a person cannot adopt a child, accept him under guardianship or patronage), order of the acting Minister of Foreign Affairs of the Republic of Kazakhstan dated June 14, 2016 № 11-1-2/262 "On approval of the Rules for accounting for persons who are citizens of the Republic of Kazakhstan, permanently residing outside the Republic of Kazakhstan, foreigners wishing to adopt orphans, children left without parental care, who are citizens of the Republic of Kazakhstan and other regulatory legal acts.

Footnote. Paragraph 1 as amended by regulatory rulings of the Supreme Court of the Republic of Kazakhstan № 7 of 20.04.2018 (shall be promulgated from the date of its first official publication); № 2 of 30.09.2021 (shall be enacted from the date of its first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

2. Cases of adoption of a child and its cancellation, recognition of adoption as invalid shall be considered and resolved by specialized inter-district juvenile courts (part three of Article 27 of the Civil Procedure Code of the Republic of Kazakhstan - hereinafter referred to as the Code of Civil Procedure) at the place of residence (location) of the child.

Specialized inter-district juvenile courts shall consider and resolve civil cases in disputes affecting the rights and legitimate interests of minors.

At the request of the legal representative of a minor, declared before the end of the preparation of the case for trial, cases on applications for adoption can be considered or can be transferred to the district (city) court at the place of residence (location) of the child, with the exception of cases under the jurisdiction of district (city) courts located within the cities of republican significance and the capital, regional centers (part three of Article 27 of the Code of Civil Procedure).

Citizens of the Republic of Kazakhstan permanently residing outside the territory of the Republic of Kazakhstan, as well as foreign citizens, including in cases where they permanently reside in the territory of the Republic of Kazakhstan, apply for adoption to a specialized inter-district court for juvenile affairs.

It should be borne in mind that the person applying for adoption shall acquire the rights of the legal representative of the child only after the court decision on the adoption of the child comes into force, unless the applicant is a guardian or trustee, adoptive parent (foster parents), a foster carer or other person replacing a legal representative who, in accordance with the

legislation of the Republic of Kazakhstan, takes care, education, upbringing, protection of the rights and interests of the child (subparagraph 12) of paragraph 1 of Article 1 of the Code).

Footnote. Paragraph 2 in the wording of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

3. When accepting an application for adoption, the court checks whether the application in form and content meets the general requirements of Article 148 of the Code of Civil Procedure for the claim and the requirements of Article 311 of the Code of Civil Procedure.

Based on the specifics of the cases of this category, the court must check the indication in the application of information about the adoptive parents themselves, the children they want to adopt, and the place of residence (finding) children, their parents, the presence of full-birth and incomplete brothers and sisters in children, requests for possible changes in the registration of acts of birth of adopted children, the circumstances with which the code connects the possibility of being an adoptive parent, supporting their evidence, as well as the presence in the Annex to the application of the necessary documents, the list of which shall be contained in Article 312 of the Code of Civil Procedure.

If it is impossible for the applicant to receive these documents, they must be requested from the relevant authorities by the court at the request of the applicant.

When adopting children by relatives, the application must indicate information about the adoptive parents being related to the biological parents of the children and attach documents confirming the relative relationship between the biological parents of the child and the adoptive parents (birth certificates, documents on the change of surname, court decisions on establishing kinship relations, etc.). When determining the circle of persons belonging to the relatives of the adopted child, the court should be guided by subparagraph 36) of paragraph 1 of Article 1 of the Code, according to which relatives are related persons who have common ancestors before their great-grandparents. In the absence of evidence confirming family ties, the application is not subject to satisfaction, in this case the absence of other obstacles to the adoption of a child is not legally relevant. The applicant should be explained about the need to comply with the procedure established by the law for adopting a child.

In order to prepare the case for the trial, the court should find out the reasons for adoption in order to exclude the facts of adoption in order to obtain the status of a mother with many children or a family with many children in order to access state benefits and advantages, receive a stay of execution of the sentence and other advantages not related to the purposes of adoption.

By virtue of part two of Article 54 of the Code of Civil Procedure, the participation of the prosecutor in civil proceedings shall be mandatory in cases where protection is required for citizens who cannot independently defend themselves, which shall include adopted children, in connection with which the adoption case shall be subject to consideration with the obligatory participation of the prosecutor.

Citizens of the Republic of Kazakhstan permanently residing outside the Republic of Kazakhstan, foreigners, including those with a residence permit in the Republic of Kazakhstan, wishing to adopt children, must submit the written consent of the authorized body in the field of protection of children's rights of the Republic of Kazakhstan (Committee for the Protection of Children's Rights) at the beginning of the adoption procedure.

The obligation of personal participation of adoptive parents in the court session shall not exclude the possibility of participation of authorized representatives on the basis of Articles 57, 58, 60 of the Code of Civil Procedure, which have the right, without the personal participation of the principal outside the stage of the trial, to collect and provide the necessary evidence, at the request of the judge to provide additional evidence, to raise the issue of assistance in requesting written and material evidence.

Footnote. Paragraph 3 as amended by regulatory resolution № 2 of the Supreme Court of the Republic of Kazakhstan dated 30.09.2021 (shall come into force from the date of its first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication); dated 28.11.2024 № 2 (shall enter into force from the date of its first official publication).

4. Under sub-paragraph 8) of paragraph 1 of Article 610 of the Code of the Republic of Kazakhstan “On Taxes and Other Obligatory Payments to the Budget (Tax Code)” for applications (complaints) in cases of special proceedings, administrative lawsuits within the framework of the Administrative Procedural Code of the Republic of Kazakhstan, excluding those specified in sub-paragraphs 2), 3), 4) and 13) of paragraph 1 of the above article, a state duty in the amount of 0.5 monthly calculation index (hereinafter - MCI), specified in the Law on national budget and effective on the date of payment of the state duty is charged.

In view of the above, it may be noted that, as adoption applications are considered through a special proceeding rather than an action proceeding, a state duty of 0.5 monthly calculation index shall be charged regardless of the number of adoptive parents (one adopter or a married couple) and the children specified in the application for adoption.

Footnote. Paragraph 4 as amended by regulatory rulings of the Supreme Court of the Republic of Kazakhstan № 7 of 20.04.2018 (shall be enacted from the date of its first official publication); № 2 of 30.09.2021 (shall enter into force from the date of its first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

5. When adopting a found, abandoned (refused newborn) child, a protocol or an act on the discovery of a child drawn up by the internal affairs body or local executive body is not sufficient. When accepting applications for adoption of such a child, the judge shall check whether the copy of the birth record and his birth certificate are attached to the application, confirming the registration of the child in accordance with article 196 of the Code.

If at the time of filing an application for adoption a found, abandoned (refused newborn) child is not registered in the manner prescribed by Article 196 of the Code, and it is

impossible to eliminate this shortcoming at the stage of pre-trial preparation of the case, then in accordance with subparagraph 3) of part 1 of Article 152 of the CPC, the court shall consider returning the application to the applicant to eliminate the circumstances that impede initiation of the proceedings.

6. When considering cases of adoption of children - citizens of the Republic of Kazakhstan by foreign nationals, the courts shall bear in mind that foreigners enjoy procedural rights and fulfill procedural obligations on a par with citizens and legal entities of the Republic of Kazakhstan, unless otherwise provided by the international treaty ratified by the Republic of Kazakhstan (part 2, article 472 of the CPC).

Documents issued, compiled or certified in the established form by the competent authorities of foreign states, executed outside the Republic of Kazakhstan on the laws of foreign states in relation to organizations of the Republic of Kazakhstan or foreign persons, shall be accepted by the courts of the Republic of Kazakhstan in the presence of consular legalization or an apostille stamp, unless otherwise provided by law and (or) the international treaty of the Republic of Kazakhstan.

At the same time, it shall be borne in mind that legalization of documents is not required in relations between the member states of the Convention, abolishing the requirement of legalization for foreign public documents (The Hague, October 5, 1961), enforced for the Republic of Kazakhstan on January 30, 2001 (hereinafter - the Convention).

In accordance with Articles 3 and 5 of the Convention, instead of diplomatic or consular legalization of official documents in the States Parties to the Convention, an apostille is affixed to confirm the authenticity of the signatures of officials, seals or stamps on the document by the competent authority of the state in which this document was executed. The court must pay attention to observance of the order of affixing the apostille provided for in Article 4 of the Convention, namely: the apostille is placed on the document itself or on a separate sheet attached to the document, and it must conform to the model attached to the said Convention.

If the apostilled document issued by a foreign agency has a limited validity term that has expired by the time it is presented to the court, then it is necessary to decide on recognizing this document as invalid evidence.

7. Under Article 314 of the Code of Civil Procedure, adoption cases must be heard in the presence of the adoptive parents (adoptive parent), representatives of the authority responsible for guardianship or custody, and the public prosecutor. It shall be noted that, if the participation of the adoptive parents, representatives of the guardianship or custody body is obligatory by law, the court may involve in the proceedings the adoptive parents, other lawful guardians of the adopted child, his/her relatives and other interested persons, and the child who has reached the age of 10, as appropriate, in the following cases. When preparing the

case for trial, the judge must decide whether to include these persons in the case in order to safeguard the interests of the child. If the biological parents are involved, the judge must explain the legal consequences of the adoption.

In the event that the court concludes that it is appropriate to question a ten-year-old child who has been adopted in court to obtain his or her opinion on the matter under consideration, the court shall first seek the opinion of the authority responsible for guardianship or custody so that the child's presence in court will not have an adverse effect on the child. In addition, the courts shall consider the provisions of Article 12 of the Convention on the Rights of the Child and Article 62 of the Code, under which the child, regardless of age, has the right to express his or her opinion freely in all matters affecting his or her interests and to be heard in any judicial or administrative proceedings.

When interviewed in court with a psychologist, it shall be ascertained whether the child's opinion is influenced by a parent or other interested party, whether the child is aware of his or her own interests in expressing that opinion, and how he or she justifies it.

If a child who has reached the age of ten years is unable to attend court proceedings due to health reasons (e.g. the child has a childhood disability and has limited mobility), the court, with due regard to the child's interests, may seek his or her opinion on the adoption at the child's place of residence.

Footnote. Paragraph 7 as amended by regulatory rulings of the Supreme Court of the Republic of Kazakhstan № 7 of 20.04.2018 (shall be promulgated from the date of first official publication); № 2 of 30.09.2021 (shall become effective from the date of first official publication).

8. If the child has parents, their consent shall be a mandatory condition for adoption. Consent of the parents to the adoption of the child must be expressed in a statement notarized or certified by the head of the institution where the child is left without parental care, or by the authority that exercises custody or guardianship at the place of adoption of the child or at the place of residence of the parents, or can be expressed directly in court during the adoption process. Consent to adoption given by the parent in court shall be reflected in the record (summary record) of the hearing and signed by him/her personally, and also reflected in the decision. Given that this category of cases are considered in closed court session, the court shall have the right not to conduct audio-video recording of the process at the request of the applicants, in this case a full transcript of the court session shall be drawn up.

Issuing from the priority of the parents' rights, it shall be borne in mind that any of them may, prior to making a decision, revoke his/her earlier consent to adoption, regardless of the motive that led him/her to it (Article 93 of the Code). In this event, the court shall decline the application for adoption.

Requirement of the law on the need for parental consent to adopt a child shall apply to children with parents (parent) and under guardianship of educational, curative and preventive

healthcare institutions, social welfare institutions and other similar institutions, except as provided for in Article 94 of the Code.

When adopting a child of minor parents under the age of sixteen, the consent of legal representatives shall be required too. In the absence of legal representatives of minor parents or in the event that a child is abandoned by minor parents in a medical institution after birth and no one is interested in its fate for more than three months, the consent of the authority performing the guardianship or custody functions is required.

In accordance with paragraph 7, Article 77 of the Code, adoption of a child in the event of deprivation of parental rights shall be permitted upon expiry of six months from the date of enforcement of the court decision on the deprivation of parental rights. Adoption of a child whose parent is deprived of parental rights shall be allowed with the consent of the other parent.

Refusal of the guardian (custodian) or the heads of the institutions indicated above to give consent to adoption, in contrast to the refusal of parents to adoption of their child, does not prevent the court from positively resolving the issue of adoption if the interests of the child require it (paragraphs 1, 4 - 6 of Article 93 of the Code).

Article 94 of the Code restricts the court's right to request other documents confirming consent of the parents to adoption in the presence of a written statement in the prescribed manner on the abandonment of the child in a medical institution by a mother who is not married. In this case, the court shall check whether the consent of the mother to the adoption of the child was withdrawn at the time the case was examined in court by sending a request to the notary's chamber, the bodies performing guardianship or custody, the head of the medical institution, depending on who executed the refusal from the child and consent to adoption.

By virtue of Article 95 of the Code, the adoption of a child who has reached the age of ten years shall require his consent, which is established by the court in the presence of parents or other legal representatives of the child, the prosecutor.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

9. Adoption of a child by one of the spouses requires a written consent of the other spouse for adoption if the child is not adopted by both spouses (Article 96 of the Code).

The exception is cases when the court examining the application for adoption establishes that the spouses have terminated family relations, have been living separately for more than a year and the place of residence of the applicant's spouse is unknown. These circumstances can be established by the evidence provided for in Article 63 of the CPC (testimony about termination of family relations between the spouses, certificates from address services, internal affairs bodies on the search results, etc.), as well as the enforced court resolution declaring this spouse untraceable.

When adopting a child by one spouse, the court shall establish the relations formed in the adoptive family, the motive, the reason for refusing adoption by the other spouse, whether there are any circumstances that exclude the right of this spouse to be an adoptive parent under the law, whether the totality of established circumstances is in the interests of the adopted child.

10. Adoption of siblings who were brought up in the same family by different persons shall be prohibited, unless the adoption is in the interests of the children and the children are unaware of their kinship, have not lived and have not been brought up together (paragraph 2 of Article 90 of the Code).

Whereas the law does not stipulate that this rule applies only to full-siblings and, by virtue of subparagraph 13) of paragraph 1 of Article 1 of the Code, full-siblings and half-siblings are close relatives, the provision of paragraph 2 of Article 90 of the Code shall also apply to cases of adoption by different persons of half-siblings. Therefore, regardless of whether the adoption application or the materials enclosed with it state that the adopted child has full siblings or half-siblings, the court shall clarify at the stage of preparation of the case for court proceedings whether the adopted child has full siblings or half-siblings and whether they are subject to adoption.

Footnote. Paragraph 10 - as reworded by regulatory ruling № 2 of the Supreme Court of the Republic of Kazakhstan dated 30.09.2021 (shall be put into effect from the date of its first official publication).

11. When examining cases relating to the adoption of a child who is a national of the Republic of Kazakhstan by nationals of the Republic of Kazakhstan permanently residing outside the territory of the Republic of Kazakhstan or by foreign nationals, the courts shall take into account the following:

1) children may be adopted only if it has not proved possible to place them in the custody of nationals permanently residing in the Republic of Kazakhstan (adoption, tutorship, guardianship, foster care, foster families or other forms of placement of children deprived of parental care as provided for by law) or for adoption by relatives of the children, regardless of their place of residence or nationality (paragraph 4 of Article 84 of the Code).

To clarify these circumstances, the courts must obtain documents from the agency responsible for guardianship or custody confirming that the child cannot be placed in a family of citizens of the Republic of Kazakhstan or for adoption by relatives of the child, regardless of citizenship and place of residence of such relatives, data on the registration of the adopted child in the primary, regional register and also data from the competent authority for child protection on the registration of the adopted child in the Republic of Kazakhstan. When examining these documents it shall be verified from what time the child has been on the register, whether the three-month period for registration has expired, whether the child has been offered for fostering or adoption to nationals of the Republic of Kazakhstan or relatives of the child, if so, for what reason they have refused to accept the child in the family, to

question relatives and persons who have refused to adopt the child, whether they have signed statements to familiarise themselves with data on the child and refuse adoption or acceptance of the child for adoption;

2) persons seeking to adopt a child who is a national of the Republic of Kazakhstan and who have duly registered through accredited adoption agencies must submit to the court an opinion of the competent authority of the state of which they are nationals or have permanent residence, on their living conditions and their capacity to be an adoptive parent, the permission of the competent authority to enter the adopted child from the Republic of Kazakhstan into the adoptive state. When a court examines an opinion on the living conditions of these nationals and their suitability to become adoptive parents drawn up by a foreign adoption organisation (adoption agency), it must be ascertained whether the organisation has been authorised to draw up such opinions on behalf of the competent authority of the state concerned.

Footnote. Paragraph 11 as amended by regulatory ruling № 7 of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 (shall come into force from the date of its first official publication).

12. When examining documents proving a person's eligibility to be an adoptive parent, it shall be noted that the existence or absence of a criminal record shall only be confirmed by the competent authority of the country of residence of the person wishing to adopt the child.

When a child who is a national of the Republic of Kazakhstan is adopted by foreign nationals who have a residence permit for a foreign national in the Republic of Kazakhstan, the court shall be obliged to request documents on the presence or absence of criminal record drawn up by the competent authorities of the country of which they are nationals and by the competent authorities of the Republic of Kazakhstan for the period of residence of these persons in the Republic of Kazakhstan.

When examining whether the applicants have any of the diseases listed in the List of Disorders that prevent a person from adopting a child or taking a child into care or custody or foster care, a medical certificate issued in the applicants' country of residence must be examined. If in doubt as to their admissibility and sufficiency as evidence, the court may propose that the adoptive parents undergo a medical examination in medical institutions in the Republic of Kazakhstan.

If a child who is being brought up in an institution for orphans and children deprived of parental care is adopted, the court must be satisfied that the candidates for adoption are registered as persons wishing to adopt.

Footnote. Paragraph 12 as amended by regulatory ruling № 2 of the Supreme Court of the Republic of Kazakhstan dated 30.09.2021 (shall take effect from the date of its first official publication).

12-1. Persons who have not undergone psychological training under the procedure laid down in paragraph 4 of Article 91 of the Code (with the exception of close relatives of the

child) may not become adoptive parents (subparagraph 15) of paragraph 2 of Article 91 of the Code).

This limitation shall not apply to persons who are or have been adoptive parents and in respect of whom the adoption has not been revoked, nor to persons who are or have been guardians (custodians) of children and have not been removed from their duties.

It may be noted that psychological training is compulsory for nationals residing permanently in the territory of the Republic of Kazakhstan who wish to accept orphans or children deprived of parental care into their families (paragraph 4 of Article 91 of the Code).

Such training shall be organised by institutions facilitating the placement of orphans or children deprived of parental care in families of nationals of the Republic of Kazakhstan, as well as by educational organizations for orphans or children deprived of parental care, at the expense of the organisations in question.

The requirements for the content of the psychological training programme, the procedure for organising psychological training activities and the form of the certificate of completion of such training have been approved by Order № 165 of the Minister of Education and Science of the Republic of Kazakhstan of 27 April 2020 “On Approval of the Requirements for the Content of a Psychological Training Programme, the Procedure for Organising Psychological Training Activities for Nationals of the Republic of Kazakhstan Residing Permanently in the Republic of Kazakhstan Wishing to Place Orphans or Children Deprived of Parental Care in their Families and the Form of the Certificate of Completion of Such Training”.

Footnote. Regulatory ruling supplemented by paragraph 12-1 as per regulatory ruling № 2 of 30.09.2021 of the Supreme Court of the Republic of Kazakhstan (shall be promulgated from the date of the first official publication).

13. Adoption of children by foreign nationals shall be allowed only to citizens of a country that has international obligations equivalent to the Republic of Kazakhstan in the field of protecting the rights and interests of children. In order to find out these circumstances, it is necessary to verify the fact of ratification and recognition by the country of adoptive parents of a number of Conventions in the field of children rights protection ratified by the Republic of Kazakhstan, also the existence of bilateral agreements on provision of legal assistance concluded between the Republic of Kazakhstan and the country of adoptive parents.

14. Citizens of the Republic of Kazakhstan permanently residing in the territory of the Republic of Kazakhstan who wish to adopt children are required to personally choose a child and have direct contact with him for at least two weeks. Citizens of the Republic of Kazakhstan permanently residing outside the Republic of Kazakhstan and foreign nationals applying for adoption of a child are required to have direct contact with the child for at least four weeks. These terms must be observed by the indicated persons before filing an application in court for adoption.

Application for adoption, submitted before expiry of these terms, in accordance with subparagraph 1) of the first part of Article 152 of the CPC shall be returned to the applicant,

since the law binds the adoptive parents to personally get acquainted with the adopted child; during the proceedings the court must examine the circumstances of the applicants' communication with the adopted child, make sure of the established contact between them.

15. The court, in accordance with part two of Article 19, Article 314 of the Code of Civil Procedure, shall consider cases of this category in a closed court session, including the announcement of the court's decision. Taking into account the fact that the consideration of adoption cases in closed court shall be provided for by the Law, the judge at the stage of preparation of the case must make such a decision and indicate this in the determination on the appointment of the case to trial.

At the session, the court must warn the persons involved in the case examination of non-disclosure of information that became known to them during the application examination, and the possibility of holding them criminally liable for disclosing the secrecy of adoption, which shall be reflected in the record of the hearing in writing or in a summary record and audio recordings of the court hearing.

Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

16. By virtue of paragraph 1 of Article 84 and paragraph 1 of Article 91 of the Code, adoption shall be permitted in respect of minor children only in their interests, with due regard for the possibilities of ensuring the full physical, mental, spiritual and moral development of the adopted child by the adoptive parents..

The interests of children in adoption shall be understood to be the creation of favourable conditions (both material and moral) for their upbringing and all-round development.

When deciding on adoption, courts must examine and consider the moral and other personal qualities of the adoptive parent and the family members living with him or her (details describing their behaviour at work or at home, criminal or administrative liability, etc.) , the health status of the adoptive parent and the family members living with him or her, the family relationships between the family members, the relationship between the adoptive parent and the child, the family members' position regarding the adoption of the child, and the material and living conditions of the prospective adoptive parents.

These circumstances shall be considered equally in the adoption of a child by outsiders, step-parents and relatives of the child.

Footnote. Paragraph 16 - as reworded by regulatory ruling of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be brought into force as of the date of its first official publication).

17. By virtue of the requirements of paragraphs 1 and 2 of article 100 of the Code, adopted children and their offspring with respect to the adoptive parents and their relatives, and adoptive parents and their relatives with respect to the adopted children and their offspring, shall be fully equal in their personal non-property and property rights and

obligations to their relatives by descent. Adopted children shall lose the rights mentioned above and shall be released from their duties towards their blood parents.

These legal consequences shall arise irrespective of the recording of the adoptive parents as parents in the child's birth record. An exception may be made in cases where one of the parents of an adopted child has died and close relatives of that parent, in the interests of the child, request that the rights and obligations of the deceased parent's relatives towards the adopted child be maintained.

The court may also preserve the personal non-property and property rights and obligations of one of the parents when a child is adopted by only one person and this is requested by the father, if the adopter is a woman, or the mother, if the adopter is a man (paragraph 3 of Article 100 of the Code). Therefore, when preparing a case for trial, the courts must clarify to these persons the possibility of preserving the personal non-property and property rights of one of the adoptive parent or relatives of the deceased parent.

The adopted child's continuing relationship with one of the parents or with relatives of the deceased parent shall be stated in the court decision on the adoption of the child.

Footnote. Paragraph 17 as amended by regulatory ruling № 7 of the Supreme Court of the Republic of Kazakhstan dated 20.04.2018 (shall be effective as of the date of first official publication).

18. The operative part of the adoption decision, by which the application of the adoptive parents (adoptive parent) has been satisfied, must indicate that the request for the adoption of the child by the applicants (applicant) has been satisfied and that the child has been recognised as adopted by specific persons (person), and the need to make the appropriate changes to the birth record, including the recording of the adoptive parents in the book of births, changes to the child's surname, first name, patronymic, date and place of birth, if such a request is made in the application and the consent of a child aged 10 years or older is given, as well as on the preservation of the personal non-property and property rights of one of the adoptive parent or relatives of a deceased parent, if these matters have been favourably decided by a court upon the request of the applicant or the persons concerned. If the surname and patronymic of the adopted child are changed, the data shall be indicated using the surname and first name of the adoptive parents (adopter); further change in the spelling of the surname and patronymic of the adopted child on the basis of the traditions of the Kazakh people shall be made by the competent state authority as prescribed by law.

Changing the nationality of a child in the case of adoption shall not be within the competence of the court and shall be determined under Article 65 of the Code, while a court may change the child's place of birth only within the territory of Kazakhstan (paragraph 1 of Article 98 of the Code).

It must be noted that, under paragraph 2 of Article 10 of Law of the Republic of Kazakhstan № 223-III of January 12, 2007 “On the National Registers of Individual Identification Numbers”, an individual identification number shall be conditionally excluded

from the National Register of Individual Identification Numbers upon entry into force of a court decision on adoption, when the data on the adopted child and his/her personal data have been changed.

The operative part of the decision shall include a clarification to adoptive parents of the provision of paragraph 4 of Article 86 of the Code on the need to submit reports on the living conditions, training, upbringing and health status of the adopted child in the form and as per the Rules and deadlines for reporting on the living conditions, training, upbringing and health status of the adopted child and its forms approved by Order № 551 of the Minister of Education and Science of Kazakhstan of September 7, 2016.

Footnote. Paragraph 18 as amended by regulatory ruling of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall come into force from the date of its first official publication).

19. In the presence of exceptional circumstances directly affecting the interests of the child, the court, in accordance with Article 244 of the CPC, shall have the right, at the request of the applicant, to put the decision into immediate execution, indicating the motives on which he came to the conclusion that the court decision must be immediately executed (for example, urgent hospitalization is required for the adopted child to undergo a course of treatment or surgery, and procrastination jeopardizes the life and health of the child).

20. The Code shall provide for the grounds for both the abolition of adoption and the invalidation of adoption.

The right to demand the abolition of the adoption of a child in accordance with Article 108 of the Code shall be vested in his parents, the spouse of the adoptive parent, the adoptive parents of the child, the adopted child who has reached the age of 14, the body exercising the functions of guardianship or guardianship, as well as the prosecutor in the interests of the child.

The requirement to abolish adoption shall be made if there are grounds provided for in paragraph 1 of Article 106 of the Code. It is necessary to draw the attention of the courts that the subject of the claim should be the requirement to abolish adoption, and not to deprive parental rights, since parental rights and obligations arise from adoptive parents as a result of adoption, and not the origin of children from them.

It shall not be necessary to clarify the child's consent to the abolition of adoption in cases provided for in Article 106, paragraph 1 of the Code.

In accordance with paragraph 2 of Article 106 of the Code, the court shall have the right to cancel the adoption of a child and in the absence of guilty behaviour of the adopter, based on the interests of the child and taking into account his opinion. Such circumstances, in particular, include: the non-established relationship between the adopter and the adopted due to their personal qualities; identification after adoption of mental disability or hereditary deviations in the state of health of the child that significantly impede or make impossible the process of upbringing, the presence of which the adopter was not warned of during adoption;

restoring the legal capacity of the parents of the child, to whom he is strongly attached, cannot forget them, which negatively affects his emotional state, etc.

The claim for cancellation of adoption shall be considered by the court in the procedure of claim proceedings with the obligatory involvement of adoptive parents, the body exercising the functions of custody or guardianship, as well as the prosecutor (paragraph 2 of Article 107 of the Code).

Footnote. Paragraph 20 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

21. In accordance with Article 103 of the Code, adoption shall be recognized by the court as invalid in the following events:

- 1) a court decision on adoption made on the basis of forged documents;
- 2) adoption committed without consent of the persons specified in Article 93 of the Code;
- 3) adoption by a married person without a written consent of the other spouse;
- 4) violation of provisions of paragraph 2 of Article 91 of the Code.

Parents of the adopted child, the spouse of the adoptive parent, persons whose rights have been violated by the adoption, the prosecutor, the body exercising the functions of guardianship or trusteeship shall have the right to demand recognition of adoption as invalid.

According to Article 103, paragraph 3 of the Code, when considering a case on invalidating adoption, the participation of adoptive parents, the prosecutor and a representative of the body exercising custody or guardianship shall be mandatory.

Footnote. Paragraph 21 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (shall enter into force from the day of its first official publication).

22. It shall be noted that within three business days from the day of entry into force of the court decision on the adoption of a child an extract of the court decision must be sent to the registering authority and the authority responsible for guardianship or custody of the place where the decision on adoption was issued, and an extract from the court decision annulling the adoption and declaring the adoption null and void must be sent within the same period to the registration authority and the authorities responsible for guardianship or custody in the place of the state registration of birth (Article 88 and Article 105, paragraph 4, of the Code).

In case of cancellation of adoption by foreign citizens or invalidation of adoption, an extract from the court resolution should be sent to the Committee for the protection of children's rights of the Ministry of Education of the Republic of Kazakhstan to resolve the issue of returning a child - a citizen of the Republic of Kazakhstan to the country of origin on the basis of paragraph 1 of Article 21 of the Convention on the protection of children and cooperation in relation to foreign adoption.

Footnote. Paragraph 22 as amended by regulatory ruling of the Supreme Court of the Republic of Kazakhstan № 2 of 30.09.2021 (shall be brought into force from the date of its

first official publication); dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

22-1. Where the court considers cases of adoption, annulment of an adoption or cancellation of an adoption and finds evidence of a violation of legality or finds evidence of a criminal offence in the actions of a party, other parties to the proceedings or an official or other person, it must hand down a special ruling as per Article 270 of the Code of Civil Procedure.

Footnote. Regulatory ruling supplemented by paragraph 22-1, as per regulatory ruling № 2 of 30.09.2021 of the Supreme Court of the Republic of Kazakhstan (shall be promulgated from the date of its first official publication).

23. To recognize as invalid:

1) regulatory resolution № 17 of the Supreme Court of the Republic of Kazakhstan dated December 22, 2000 “On some issues of application by courts of the legislation on Marriage (Matrimony) and Family when considering cases of adoption of children”;

2) regulatory resolution № 10 of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 “On introducing amendments and additions to resolution № 17 of the Plenum of the Supreme Court of the Republic of Kazakhstan dated December 22, 2000 “On some issues of application by courts of the legislation on Marriage and Family when considering cases of adoption of children”;

3) regulatory resolution № 14 of the Supreme Court of the Republic of Kazakhstan dated December 22, 2008 “On introducing amendments to regulatory resolution № 17 of the Supreme Court of the Republic of Kazakhstan dated December 22, 2000 “On some issues of application by courts of the legislation on Marriage and the Family when considering cases of adoption of children.”

24. According to Article 4 of the Constitution, this regulatory resolution shall be included in the current law, shall be generally binding and enter into force from the day of its first official publication.

Footnote. Paragraph 24 as amended by the regulatory resolution of the Supreme Court of the RK dated 07.12.2023 № 4 (shall enter into force from the date of its first official publication).

*Chairman
of the Supreme Court
of the Republic of Kazakhstan
Judge of the Supreme Court
of the Republic of Kazakhstan,
secretary*

K. MAMI

K. SHAUKHAROV