On the court decision in the case of administrative offense

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 5 of April 20 , 2018.

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A court decision on a case of an administrative offense is a procedural document, in which, as a result of the consideration of the case, the result of the proceedings on the case of an administrative offense is reflected.

For the purposes of determination of the place and features of judicial acts adopted by the court in connection with the consideration of cases on administrative offenses by the court, ensuring along with the legality and validity of the decision on the case of an administrative offense of its clarity and brevity, the plenary session of the Supreme Court of the Republic of Kazakhstan decisions to provide the following explanations:

1. To draw the attention of the courts to the fact that delivery of the decision on the case of an administrative offense, designed to ensure the fulfillment of the tasks of the proceedings on cases of administrative offenses, shall require special responsibility for its legality and validity.

The decision shall be legal if it meets the requirements of the Code of the Republic of Kazakhstan on administrative offences (hereinafter referred to as the CAO), as well as conforms to provisions of other regulations of the legislation.

The validity of the decision means that the decision should reflect the circumstances relevant to the given case, confirmed by the evidence examined by the court and satisfying the requirements of the law on their relevance, admissibility and credibility.

2. Having considered the case of an administrative offense, complaint, protest, the court shall pass one of the decisions provided for in part one of article 829-14 of the CAO.

When delivering an decision, information should be indicated, and questions should be resolved, provided for in article 829-14 of the CAO.

The decision should have a strict logical structure consisting of relatively separate parts that together form a single legal document.

The decision includes three components - introductory, descriptive-reasoning, and operative parts.

In accordance with part eight of article 829-14 of the CAO, the decision shall be delivered in writing or in the form of an electronic document.

An decision made in the form of an electronic document must comply with the provisions of the Law of the Republic of Kazakhstan dated January 7, 2003 no. 370 "On electronic

document and electronic digital signature". The Government of the Republic of Kazakhstan shall determine the procedure for electronic document management.

3. The decision can be made handwritten, typewritten or computerized in one copy.

In drafting the decision, one should be guided by the internal documents of the judicial system regulating the issues of legal technique and parameters for drafting judicial acts.

4. The introductory part of the resolution begins after the name of the document and includes information, provided for in sub-paragraphs 1), 2), 3), 4), 5) of part one of article 822 of the CAO.

The decision shall indicate the date, month and year of the decision.

The date of the delivery of the decision shall be the day, month and year of its announcement by the judge.

The place of consideration of the case shall be a city or another locality where this decision has been actually delivered.

5. The name of the court should be indicated in accordance with the regulatory legal act on its formation.

In the introductory part of the decision it is necessary to indicate the name and initials of the judge, secretary of judicial session, prosecutor and other participants in the proceedings listed in articles 744, 745, 746, 747, 748, 758 of the CAO, participated in the court hearing, in which the decision has been delivered.

6. Provisions of sub-paragraph 3) of part one of article 822 of the CAO contain a list of information about the person in respect of whom the case has been considered, which is to be reflected in the introductory part of the decision in full, is exhaustive and is not subject to broad interpretation.

Information about the person in relation to whom the case has been considered is essential for the proper resolution of the case (in particular, for determining whether this person is a subject of this administrative offense), for setting a fair measure of administrative penalty, execution of the decision, resolution of other issues.

7. The surname, name and patronymic (if any) of the person in respect of which the proceedings are being conducted shall be indicated in the language of the proceedings, taking into account the rules of practical transcription.

In cases where the proceedings are carried out in Russian, and the surname, name and patronymic of the person indicated in the identity documents are in the state language, the decision must state the personal data of the person, not declining, in strict accordance with the record in the official identity document.

The surname, name and patronymic of the foreign person in the decision must be indicated both in the language of production and in the transcription used in the identity document. (For example, Тойнбаев Равшан Мавланкулович (Toyimbaev Ravshan Mavlankulovich).

In cases where a foreign person does not have an identity document, a certificate of a stateless person or a refugee, the person in respect of which the proceedings are being conducted shall be indicated on the basis of a written confirmation received from the country of its origin.

The identity of the individual in respect of which the proceedings are conducted in the case shall be certified on the basis of the documents, the list of which is provided for in paragraph 1 of article 6 of the Law of the Republic of Kazakhstan dated January 29, 2013 no. 73-V "On identity documents" (hereinafter referred to as the Law on documents).

If the proceedings are initiated in relation to a legal entity, the name should be indicated in accordance with the state registration of the legal entity.

In accordance with paragraph 4 of article 6 of the Law on documents, the identity documents, used and presented to individuals or legal entities via the service of digital documents, shall be equal to the documents on paper.

Footnote. Paragraph 7 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan 07.12.2023 No. 5 (shall be enforced from the date of the first official publication).

8. The circumstances established during the consideration of the case are subject to presentation in the descriptive and motivating part of the decision. These circumstances include:

the circumstances of the administrative offense (the establishment of an administrative offense event), as well as a description of the time and place of the administrative offense, the consequences resulting from its occurrence;

description of illegal actions (inaction) of the person brought to administrative responsibility, the form of his guilt in committing an administrative offense;

presentation of evidence confirming or refuting the guilt of a person in committing an administrative offense, their assessment in terms of relevance, admissibility and reliability;

analysis of other information of legal significance for the correct qualification of the offense, the imposition of a fair penalty for the administrative offense and the execution of the decision.

9. In drawing up the descriptive-reasoning part of the decision, the completeness of the description of the administrative offense recognized as proven must be ensured.

If a person is found guilty of an offense, the relevant part of the decision shall include a description of the act or omission, the commission of which is expressly prohibited by both the rules of the CAO Special Part and laws and bylaws - if there is a direct reference to this circumstance in the CAO Special Part article (reference rules) - indicating the place, time, method of its commission, the form of guilt, the reasons and consequences of the offense committed.

The descriptive-reasoning part of the decision shall be the substantiation of decisions stated in its operative part and shall not contravene to it.

10. Certain provisions of the Special Part of the CAO bear a blanket form of presentation. For such compositions, the court decision should contain an indication of what specific provisions of the regulatory legal acts have been violated, as well as the content of these violations. It should be borne in mind that violations of regulatory legal acts that are not in a causal relationship with the ensuing consequences can not constitute the objective side of the offense and should be exclude.

The indication in the descriptive-reasoning part of the decision on the fact of drawing up a protocol on an administrative offense with regard to a person held administratively responsible shall be unnecessary.

The text of the decision shall not allow for: excessive detailing of events and circumstances; citing norms of law that are not related to the offense; use of abbreviations and words that are not used in official documents.

It shall be incorrect to state the essence of the offense in the court decision by fully copying the text from the protocol, since only the circumstances of the offense established by the court are to be presented in the descriptive-reasoning part of the decision.

11. In the descriptive-reasoning part of the decision, it is necessary to indicate what evidence was examined in court, their content has been disclosed and an assessment has been given.

The analysis of evidence shall not imply a simple enumeration of procedural and other documents, but a disclosure of their content, indicating what circumstances confirm this evidence.

The courts should indicate in the decision that the evidence examined at the court hearing has been deemed inaccurate and which factual data have been considered inadmissible as evidence, and to motivate their conclusions.

12. The position of the person in respect of which the proceedings on the case of an administrative offense are conducted, to the alleged offense shall be subject to presentation in the decision.

A confession of guilt can be used as a basis for bringing to administrative liability only if the guilt is confirmed by a combination of other evidence established in the case. In the case of non-recognition by the person in respect of whom the protocol on the administrative violation of his guilt has been drawn up, an assessment of the arguments he presented in his defense should be made in the descriptive-reasoning part of the decision.

In the event that a person brought to administrative liability changes his explanations given during the pre-trial proceedings, the court shall be obliged to verify all explanations, to find out the reasons for their change and, as a result of the investigation, together with other evidence gathered in the case, to give them a proper assessment.

13. Explanations of the person in respect of whom the protocol on the administrative offense was drawn up, the victims, other persons involved in the case, the testimony of witnesses, explanations of the expert, specialist shall be given in the decision in third person.

The courts should remember that the reference in the decision to the explanations of the victims and witnesses who have not been interviewed at the court hearing shall be possible when these persons are absent during the trial for valid reasons, excluding the possibility of their attendance at the court, announced and investigated at the judicial proceedings.

In the decision, it is necessary to indicate not only the names of witnesses, victims and other persons whose testimony confirms certain factual circumstances, but also to state the essence of these testimonies.

In the event if there are several witnesses interviewed in the case who gave similar testimony, it shall be sufficient to present the testimony of one of the witnesses, confining himself to indicating that the testimony of other witnesses is identical.

Footnote. Paragraph 13 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan 07.12.2023 No. 5 (shall be enforced from the date of the first official publication).

14. The case of an administrative offense shall be subject to consideration with the mandatory participation of the victim. In his absence, the case can only be considered in the cases provided for in part two of article 744 of the CAO. The reasons for the consideration of the case in the absence of the victim should be reflected in the descriptive part of the decision.

15. The courts should remember that the expert opinion, like other evidence, should be assessed in conjunction with other materials collected in the case and examined at the court session.

The court's assessment of the expert's opinion must be fully reflected in the decision.

The court should not be limited only by reference to the expert opinion, but must indicate what facts relevant to the case are supported by this conclusion.

If the expertise is entrusted to several experts who have given separate conclusions, the motives of agreement or disagreement with them should be given separately for each conclusion.

16. Conclusions regarding the qualification of the offense under any article of the Special Part of the CAO, its part or paragraph, must be substantiated in the decision.

Notwithstanding the fact that the administrative offense protocol specifies a specific article of the CAO, a law or other regulatory legal acts providing for administrative liability for the offense committed by a person, the right to final legal qualification of actions (inaction) of the person of the CAO shall fall under the authority of the court.

If during the consideration of the case it is established that the protocol on an administrative offense contains the wrong qualification of the offense, the judge must reclassify the actions (inaction) of the person into another article providing for the composition of the offense, having a single generic object of encroachment, provided that the article's sanction is less strict administrative penalty than imputed protocol that should be motivated in the decision.

The question of retraining the actions (inaction) of a person when reviewing a decision on an administrative offense case can be resolved in the same procedure.

17. In presenting the event of an offense, it is necessary to indicate all the qualifying signs of the offense, based on the disposition of the article of the Special Part of the CAO imputed to the offender, including repetition of actions.

A copy of an enacted decision of the court (of an official) confirming the fact that the offense was committed again, or information from the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan should be attached to the materials of the administrative violation case.

In determining the repetition, the court must proceed from the provisions of the general part of the CAO on the period during which a person is considered to have been subject to an administrative penalty provided for in article 61 of the CAO.

18. The disposition of individual articles of the Special Part of the Code on administrative infractions provides for responsibility for the commission of several actions by various subjects of the infraction (for example, part one of article 282 of the Code of administrative infractions – failure to submit or late submission of the accompanying invoice, the declaration of ethyl alcohol and (or) alcoholic products). In this case, the courts need to specify only those actions, the commission of which resulted in bringing the person to administrative liability and proved by the materials of the case, and not to list all the actions specified in the article's disposition, as well as to determine the subject of the infraction.

Footnote. Paragraph 18 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan 07.12.2023 No. 5 (shall be enforced from the date of the first official publication).

19. In determining the administrative penalty, the court shall be obliged to bring the reasons for the selected administrative penalty in the descriptive-reasoning part of the decision.

When imposing an administrative penalty on an individual, the nature of the committed administrative offense, the identity of the perpetrator, including his behavior before and after the commission of the offense, property, circumstances mitigating and aggravating responsibility shall be taken into account.

Draw the attention of the courts to the need for strict compliance at the delivery of the decision with the principle of individualization of administrative penalties, in presence of alternative penalties in the sanctions of articles of the Special Part of the CAO. It is necessary to indicate in the decision what circumstances specifically indicating the nature and degree of social danger of the offense, as well as the identity of the guilty person, shall be taken into account when electing a punishment measure. The reference in the decision only to the fact that the administrative penalty was imposed “taking into account the identity of the guilty person” shall be insufficient.

The court shall have the right to refer as a motive for the election of a certain measure of punishment only to such circumstances that have been examined at the court hearing.

In the absence in the sanction of the article of the Special Part of the CAO, of alternative administrative penalties, reference to article 56 and 57 of the CAO, as well as the rationale for the reasoning for selection of this administrative penalty measure shall not be required. In this case, the decision should reflect that the sanction of this provision of the CAO provides for only one specific type of administrative penalty.

20. On the basis of part one of article 54 of the CAO, when considering a case on administrative offense, the court may establish special requirements for the behavior of the person who committed the administrative offense at the request of the participants in the administrative violation case and (or) internal affairs bodies.

The list of these requirements is exhaustive and shall not be subject to broad interpretation.Special requirements for the behavior of the person who committed an administrative offense can be applied in full or separately, depending on lifestyle, behavior in the family and place of residence, other circumstances that characterize the person's identity.

The establishment of such requirements shall be a right, and not an obligation of the court, therefore the reasons for the decision taken by the court to establish such requirements or the refusal to establish them should be motivated in the decision.

In the operative part of the decision it is necessary to indicate which requirements for the behavior of the person who committed the administrative offense are established by the court, and for which term.

21. The resolution of the petitions filed during the trial shall not require a separate determination, unless a separate document shall be required for a separate procedural act (assignment of examination, court decision, evidence, etc.). Grounds for rejection of petitions shall be reflected in a court decision in cases where it is associated with the evaluation of evidence or is otherwise essential for the consideration of the case on the merits.

Disagreement of persons, specified in articles 744, 745, 746, 747, 748, 759 of the CAO, with a court ruling on satisfaction or rejection of a petition may be set out in a complaint, an appeal petition against a court decision issued on the basis of an administrative offense, and is subject to mandatory review by the court of appeal when considering the complaint, an appeal petition.

22. The court decision must resolve the issues of compensation for property damage by the guilty, with the amount of damage to be recovered.

When resolving the issue of compensation for damage in the framework of the proceedings of an administrative infraction, the relationship between the victim and the offender peculiar to the plaintiff and the defendant shall not arise. Damage must be collected in accordance with part one of article 59 of the Code on administrative infractions in the event of the absence of a dispute about its size, which must be indicated in the descriptive-reasoning part of the decision.

The motives of the decision on damages, the future of physical evidence shall be provided by the court in the descriptive-reasoning part of the decision.

If there are disputes about the compensation of material damage, these issues shall be resolved in civil proceedings, which must necessarily be explained to the participants in the proceedings of an administrative infraction.

Footnote. Paragraph 22 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan 07.12.2023 No. 5 (shall be enforced from the date of the first official publication).

23. On the basis of part two of article 829-11 of the Code on administrative infractions the right to reduce the amount of an administrative fine imposed on a person in respect of whom an administrative infraction case has been filed. Courts should keep in mind that this provision does not contain a lower limit for the reduction, however, compliance with the restrictive upper limit for the reduction (no more than thirty percent of the total amount of the administrative fine) is mandatory.

In the descriptive-reasoning part of the decision, the reasons for the decision to reduce the amount of the administrative fine should be given, taking into account the established circumstances provided for in part one of article 829-11 of the CAO.

In the case of reduction of the size of the administrative fine in the operative part of the decision, it shall be sufficient to indicate the final amount of the administrative penalty to be recovered without reducing the calculation, which is to be reflected in the descriptive-reasoning part of the decision.

Footnote. Paragraph 23 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan 07.12.2023 No. 5 (shall be enforced from the date of the first official publication).

24. In the case of the imposition of an administrative penalty, the decision made shall be indicated in the operative part of the decision. It should consist of conviction of an individual, in respect of whom proceedings are being conducted in the case of an administrative offense, bringing to administrative responsibility of a legal person and imposing an administrative penalty on him.

When setting forth the operative part, the surname, name and patronymic (if any) of the person found guilty of committing an administrative offense shall be indicated, when bringing a legal entity to administrative responsibility - the full name and legal form of the legal entity, as well as the article, part, paragraph of the Special Part of the CAO for which an individual is found guilty or a legal entity is subject to administrative liability, the type and size of the main and additional administrative sanction.

25. The decision on termination of the proceedings shall be rendered in the cases provided for in articles 741, 742 of the CAO, as well as in the case of the transfer of case materials to the relevant authorities to resolve the issue of bringing the person to disciplinary responsibility in accordance with articles 32, 64-1 of the CAO (exemption from

administrative responsibility in case of insignificance of the offense), 68 of the CAO (exemption of minors from administrative liability and administrative penalties).

The descriptive-reasoning part of the decision on termination of a case shall state:

the circumstances of the offense specified in the protocol on administrative violation;

the circumstances served as the grounds for the termination of the case.

The operative part of the decision shall indicate the court's decision to terminate the proceedings on the case of an administrative offense, the grounds on which such a decision has been made, as well as the regulation of the Special Part of the CAO, on which an administrative offense has been initiated.

26. When appointing an administrative arrest, in the operative part of the decision its term - the number of days in numbers and in words shall be indicated.

To draw the attention of the courts, that in the decision on imposing an administrative penalty in the form of arrest, the judge should indicate the time from which the term of arrest is calculated, taking into account the time of actual detention, to the hour and minute.

27. The removal from unlawful possession of a person who committed an administrative offense of paragraphs of an administrative offense withdrawn from circulation and subject to appeal to the state or destruction of the state is not confiscation. The court in delivering an decision on the case of an administrative offense must decide on the future of these objects, regardless of whether the person is brought to administrative responsibility, including when deciding to discontinue the proceedings.

By assigning an additional measure of recovery in the form of confiscation of property, the court, in the operative part of the decision, shall specify the amount of property subject to confiscation and shall list the items subject to confiscation.

When specifying brands of the vehicles, it is necessary to adhere to the official name, in strict accordance with the certificate of state registration.

If the brand of the vehicle is specified in two languages, it is necessary to state in full compliance with the certificate of state registration of the vehicle

28. When delivering a decision on administrative expulsion from the Republic of Kazakhstan, the decision shall specify a reasonable period during which the foreigner or stateless person must leave the territory of the Republic of Kazakhstan.

The course of the reasonable period starts from the time when the decision on expulsion is put into effect. In accordance with sub-paragraph 4) of article 883 of the CAO A court decision to expel a foreigner or stateless person outside of the Republic of Kazakhstan shall be put into effect after the announcement. If the expulsion is appointed as an additional penalty to the main measure of the penalty, the court decision shall be put into effect after the expiration of the time limit set for appealing the decision on the case of an administrative offense, if it has not been appealed or an appeal petition has been filed.

The courts must determine the reasonable period, during which a foreigner or a stateless person must leave the territory of the Republic of Kazakhstan, subject to provisions of

paragraphs 9, 16 of the Regulatory Decision of the Supreme Court of the Republic of Kazakhstan dated December 13, 2013 no. 4 "On the judicial practice of considering cases of expulsion of foreigners or stateless persons beyond of the Republic of Kazakhstan.";

29. According to article 829-18 of the CAO the court issued the decision, upon request of the participants in the proceedings of the case, the bailiff, body (official) executing the decision on the case of an administrative offense, or on its own initiative, shall have the right to correct the errors, misprints and arithmetic errors made in the decision without changing the content of the decision. At the same time, correction of the errors, misprints and arithmetic errors made in the decision without changing the content of the decision shall be allowed after the issuance of the decision , regardless of whether it entered into legal force or not.

30. In the operative part, the time limit and the procedure for appealing against the decision shall be indicated. The judge who issued it shall sign a written decision. The decision made in the form of an electronic document shall be certified by means of electronic digital signature of the judge issued such an decision.

Based on part one of article 829-16 of the CAO the decision shall be announced immediately after its issuance.

After the announcement, the judge verbally shall explain the essence, reasons and legal consequences of the decision, which is noted in the court record.

The judge also shall explain the right, procedure and time limit for appealing against the decision; the indicated actions are to be reflected in the minutes of the judicial proceedings.

A court decision, within three days after its issuance, shall be served or sent to the person in respect of whom the case has been decided, and to the victim if he lodged a complaint or at his request, the prosecutor who brought the protest, except for cases on administrative offences, the sanction of which provides for an administrative penalty in the form of administrative arrest, expulsion.

31. The courts should remember that when deciding on the results of a complaint, a protest, along with information and issues to be resolved, provided for in article 822 of the CAO, the descriptive-reasoning part of the ruling should contain a legal assessment of the arguments of the complaint, appeal, provided for in article 829-10 of the CAO.

32. In accordance with article 4 of the Constitution of the Republic of Kazakhstan, this regulatory decision shall be included in the composition of the current law, shall be generally binding and shall be put into effect from the date of the first official publication.

Footnote. Paragraph 32 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan 07.12.2023 No. 5 (shall be enforced from the date of the first official publication).

Chairman of the Supreme Court
of the Republic of Kazakhstan *Zh. Assanov*
Judge of the Supreme Court

of the Republic of Kazakhstan,
Secretary of the Plenary Session *G. Almagambetova*