

(unofficial)

Regulatory Decision of the Constitutional Court of the Republic of Kazakhstan dated July 26, 2024 No. 50-ND "On Consideration for Compliance with the Constitution of the Republic of Kazakhstan of Subparagraph 13) of Part 1 of Article 616 of the Code of the Republic of Kazakhstan dated December 25, 2017 "On Taxes and Other Obligatory Payments to the Budget" (Tax Code)"

IN THE NAME OF THE REPUBLIC OF KAZAKHSTAN

The Constitutional Court of the Republic of Kazakhstan composed of Chairperson E.A. Azimova, Judges A.K. Yeskendirov, A.Y. Zhatkanbayeva, A.K. Kydyrbayeva, K.S. Mussin, B.M. Nurmukhanov, Y.A. Ongarbayev, R.A. Podoprigora, Ye.Zh. Sarsembayev and S.F. Udartsev, with the participation of:

the appellant D.D. Dautova and her representative - lawyer B.R. Zhailauov,
Representatives:

A.N. Tashenova – legal consultant of the subject of the appeal M.E. Zhumabayeva-Shomirova,

T.B. Adamov – Advisor to the Prosecutor General of the Republic of Kazakhstan,

N.E. Sagindykova – Vice Minister of the Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan,

Sh.Zh. Mankeshov – Director of the Department of Legislation of the Ministry of Justice of the Republic of Kazakhstan,

G.A. Smagulova – Head of the Department of Administration of Non-Production Payments of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan,

E.E. Sagnaev – Director of the Department of Tax and Customs Policy of the Ministry of National Economy of the Republic of Kazakhstan,

G. Zhumagalikzy – Chief Consultant of the Department of Legislation of the Office of the Mazhilis of the Parliament of the Republic of Kazakhstan,

N.A. Sartaeva – Deputy Head of the Legislation Department of the Office of the Senate of the Parliament of the Republic of Kazakhstan,

considered in an open meeting the appeals of M.E. Zhumabayeva-Shomirova and D.D. Dautova on verification of compliance with the Constitution of the Republic of Kazakhstan of subparagraph 13) of part one of Article 616 of the Code of the Republic of Kazakhstan dated December 25, 2017 'On Taxes and

Other Obligatory Payments to the Budget' (Tax Code) (hereinafter referred to as the Tax Code).

having heard the report of the Rapporteur – Judge of the Constitutional Court of the Republic of Kazakhstan A.K. Yeskendirov and the participants of the session, having studied the materials of the constitutional proceedings, having analyzed the norms of the current law of the Republic of Kazakhstan, the Constitutional Court of the Republic of Kazakhstan

has established:

The Constitutional Court of the Republic of Kazakhstan (hereinafter - Constitutional Court) received applications from citizens of M.E. Zhumabayeva-Shwororova and D.D. Dautova on the verification of conformity with paragraph 2 of Article 13 and Article 14 of the Constitution of the Republic of Kazakhstan (hereinafter - Constitution, Basic Law) sub-paragraph 13) of the first part of Article 616 of the Tax Code, according to which the plaintiffs - veterans of the Great Patriotic War, veterans treated as veterans of the Great Patriotic War and veterans of combat operations in the territory of other states - are exempted from paying state duties in courts, Persons awarded with the orders and medals of the former SSR Union for their hard work and impeccable service in the rear during the Great Patriotic War, persons who have worked (served) at least six months from June 22, 1941 to May 9, 1945 and not awarded with orders and medals of the former USSR for dedicated work and impeccable military service in the rear during the years of the Great Patriotic War, persons with disabilities, one of the parents of a person with a disability from childhood or a child with a disability - in all cases and documents.

It follows from the appeals of the applicants (defendants in civil cases) that this provision of the Tax Code infringes on their constitutional right to access to justice when appealing against judicial acts in cassation, puts them in an unequal procedural position with persons (plaintiffs) who have the same social status, but are exempt by law from paying State duty in courts.

In the constitutional review of contested provisions of the Tax Code related to appeals, the Constitutional Court follows the following approach.

1. One way of protecting the rights and legitimate interests of the individual is the right to apply to a court. This right is absolute and inalienable and not subject to any restriction (Articles 13, paragraph 2, and 39, paragraph 3, of the Basic Law).

The Constitution guarantees not only equality before the law and the court, but also excludes any discrimination on grounds of origin, social, professional and property status, sex, race, nationality, language, attitude to religion, Beliefs, place of residence or any other circumstances (Article 14).

The constitutional duty and obligation of each person is to pay legally established taxes, fees and other compulsory payments (Article 35 of the Constitution).

The constitutional provisions on fundamental human rights and duties, equality of all before the law and the courts, non-discrimination are reproduced in the principles of civil procedure based on competition and equality of the parties in defending their positions, Guarantee them freedom to appeal against judicial acts, equal procedural rights and obligations, excluding the granting of undue preference to any participant in the process (Article 5, part first and second articles 13, part first Article 15, Article 22, part first and fifth Articles 47 and part first Article 435 of the Civil Procedure Code of the Republic of Kazakhstan of 31 October 2015).

2. Constitutional control body has previously formulated a number of legal positions regarding the constitutional right of everyone to judicial protection, the principle of equality of all before the law and the court and their implementation in judicial instances (Regulatory Resolutions of the Constitutional Council of 10 March 1999 2/2, of 29 March 1999 7/2, of 10 July 2000 14/2, of 26 June 2003 9 and of the Constitutional Court of 22 February 2023 3, of 16 May 2023 13-RR, of 14 July 2023 21-RR and others).

In particular, it was noted that equality of all before the law and the court means equal protection of human rights by the State and equal responsibility of everyone before the law, unity of requirements for performance of duties. Laws may not establish differences in the rights of persons who do not have objective and reasonable justification. Subject to the same conditions, subjects of law should be in an equal legal position. The implementation of this constitutional principle determines equality in the means of protection and restoration of violated rights and freedoms on the basis of unity of substantive and procedural norms.

An important element of the right to judicial protection is access to justice – a fundamental principle of the rule of law, which guarantees a person a real opportunity to apply to the court without any unreasonable obstacles. Mandatory payments established in the sphere of activity of the courts should not serve as a means of discrimination against citizens depending on their property status, infringe on constitutional rights, impede their implementation and restrict access to justice (Normative Decision of the Constitutional Court of February 22, 2023 № 3).

As the Constitutional Court has repeatedly explained, the right of everyone to a remedy includes the right to appeal against judicial acts, which is the most effective guarantee of such protection. The possibility of review of a case by higher judicial authorities shall be ensured by the laws of the Republic of Kazakhstan.

The constitutional right to judicial protection of individual rights and freedoms implies that the State ensures conditions for a fair trial in the first instance court, with the possibility of reconsideration on the merits through appeal review judicial acts that have not entered into force. The right to appeal to a court of cassation is an additional guarantee of justice and is granted under permissible and restrictive conditions. The constitutional principle of equality before the court is inherent in judicial activity. The legal content of this principle is based on the unity of the judicial system, which ensures that every person, regardless of any circumstances, has a fair and public hearing by a competent and independent court; equal application of legal norms in the process of resolving a judicial dispute; procedural equality of the parties in the court session (Normative decisions of the Constitutional Court of May 16, 2023 No 13-ND and of July 14, 2023 No 21- ND).

3. The legal positions of the Constitutional Court are in accordance with the provisions of the universally recognized international treaty and other obligations of the Republic of Kazakhstan on the right to judicial protection and non-discrimination.

Articles 7 and 8 of the Universal Declaration of Human Rights, adopted by resolution 217 A (III) of the General Assembly of the United Nations (hereinafter - UN) of 10 December 1948, recognize the equality of all before the law, the right of everyone to equal protection against discrimination of any kind and to effective redress by competent national courts in cases of violation of his fundamental rights granted to him by Constitution or law.

The International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in its resolution 2200A (XXI) of 16 December 1966 and ratified by the Act of the Republic of Kazakhstan on 28 November 2005, establishes the obligation of States parties to provide everyone with an effective remedy. Everyone is guaranteed the right to a fair and public hearing by a competent, independent and impartial tribunal, to equal protection of the law without discrimination of any kind, and to equality of all before the courts and tribunals (Articles 2, paragraph 3, and 26).

The Convention on the Rights of Persons with Disabilities, adopted by UN General Assembly resolution 61/106 of 13 December 2006 and ratified by law of the Republic of Kazakhstan of 20 February 2015, Places the obligation on the parties to the agreement to ensure that the rights of persons with disabilities are protected by equal legal protection and effective access to justice on an equal basis with others. The Convention reaffirms the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms, the need to guarantee disabled persons their full enjoyment without

discrimination which constitutes an infringement of dignity and values, inherent in the human person (paragraphs c) and h) of the Preamble, Articles 2-7,12,13).

4. The Republic of Kazakhstan has, in accordance with the Constitution, declared itself a social State and has undertaken obligations to reduce social inequalities and provide support for people with disabilities, as well as other persons who, because of certain circumstances, require State assistance (Article 1, paragraph 1, and Article 28, paragraph 1).

The State policy of the Republic of Kazakhstan in the field of social protection is based on the following principles: 1) equality and non-acceptance of restriction of human and citizen rights in the field of social protection; 2) prevention; 3) Targeting, accessibility and differentiated approach; 4) Solidarity and collective responsibility of the state, employers and citizens in social welfare system; 5) Transparency and equity in the use of economic resources; proportionality to the objectives of public policy in the field of social protection.

State guaranteed equality and non-restriction of human and citizen rights means equal opportunities for everyone in the exercise of their rights and freedoms in the field of social protection (subparagraph 1) Articles 3 and 4 of the Social Code of the Republic of Kazakhstan of 20 April 2023 (hereinafter - Social Code).

The category of persons in need of social protection of the state includes persons with disabilities, parents of persons with disabilities since childhood or children with disabilities.

Disability of a person is characterized by the degree of limitation of his vital activity due to health disorders with a persistent disorder of body functions. Persons with disabilities and a child with disabilities (under the age of eighteen) have health disorders with a persistent impairment of bodily functions caused by diseases, injuries (wounds, traumas, contusions), their consequences, disorders that lead to the limitation of life activities and the need for their social protection (subparagraphs 105), 106) and 110) of Article 1 of the Social Code).

5. Legislative approaches to the implementation of state policy in the field of social protection of citizens are implemented in tax legal relations.

Thus, the main principles of taxation are their obligation, certainty and fairness, good faith of the taxpayer, unity of the tax system and publicity of tax legislation (Articles 4-10 of the Tax Code).

A number of provisions of the Tax Code provide tax benefits both directly to persons with disabilities and one of the parents of a child with a disability, and to taxpayers carrying out activities in the social sphere in the field of social protection and social security of persons with disabilities (for example, subparagraph 3) of paragraph 5 of Article 232, paragraph 6 of Article 243, paragraph 1 and

subparagraph 3) of paragraph 2 of Article 290, subparagraphs 2) and 3) of Article 346).

The State duty is a payment to the budget charged for the performance of legally significant actions, including those related to the issuance of documents (copies, duplicates) by authorized state bodies or officials (paragraph 1 of Article 607 of the Tax Code). Accordingly, its payers are persons who apply to authorized state bodies or officials for the performance of legally significant actions (paragraph 1 of Article 608 of the Tax Code).

The list of types of legally significant actions acting as objects of collection of state duty in courts, and the rates for their performance are given in subparagraph 1) of paragraph 1 of Article 609 and Article 610 of the Tax Code. The rates of the state duty are differentiated on the basis of the following criteria: 1) categories of disputes (property, non-property and others), 2) types and forms of civil and administrative proceedings (administrative claims, claims, applications of special proceedings, applications (complaints) in cases of special proceedings, applications for the issuance of court orders), 3) applications for the issuance of writs of execution for the enforcement of decisions of arbitration and foreign courts, 4) applications for re-issuance of copies of judicial acts, duplicates of writs of execution and other documents, 5) petitions for review of judicial acts in cassation.

Determining the range of payers of the state duty who apply to the courts, authorized state bodies or officials, the legislator uses the universal concept of 'persons applying for the performance of legally significant actions'. As applied to payers and exempt persons, this concept has been transformed according to the criterion of dividing them depending on their procedural status.

Part 1 of Article 616 of the Tax Code defines the categories of persons exempt from payment of state duty in courts, mainly when they file claims (applications and complaints) with the court of first instance. Along with this, there are cases of exemption from payment of state duty for defendants and other persons participating in civil or other forms of legal proceedings (for example, in subparagraphs 7), 15), 20), 26-1) and 29)).

An analysis of the above provisions of the Tax Code allows us to conclude that defendants and other persons participating in judicial proceedings, when appealing against judicial acts and filing applications related to the re-issuance of copies of these acts, duplicates of executive and other documents, also apply for the performance of legally significant actions.

In Part 2 of Article 616 of the Tax Code, plaintiffs are granted privileges when appealing against judicial acts in cassation. Citizens who act as defendants in court proceedings (third parties and interested parties) and belong to the

category of those in need of social protection of the State do not have the right to benefits.

In the opinion of the Constitutional Court, such an approach, dividing citizens according to their procedural status in court with their same social status, has no reasonable and objective justification and contains signs of inequality in legal remedies in relation to certain categories of citizens. For the performance of other types of legally significant actions, the legislator has not established additional qualifying (separating) criteria in relation to taxpayers of the category in question (subparagraphs 2)-22) of paragraph 1 of Article 609, subparagraph 4) of Article 617, subparagraph 5) of Article 620, subparagraphs 4) and 5) of Article 622 of the Tax code).

6. The Constitutional Court has previously noted that the fiscal goal of the State's tax policy should be achieved on the basis of a balance of economic interests of the State and the taxpayer (Article 11 of the Tax Code). When setting the rates of the State duty, the legislator must find a reasonable balance between the accessibility and efficiency of justice (Normative Decision of February 22, 2023 No 3).

The provision of tax benefits in the form of exemption from payment of State duty in the cassation instance only to plaintiffs in the absence of such a right for defendants and other persons participating in the case who have the same social status hinders the exercise of their constitutional right to judicial protection and contains signs of discrimination (Article 14 of the Basic Law).

In the opinion of the Constitutional Court, in order to ensure and protect the constitutional rights, freedoms and legitimate interests of all persons who apply for the commission of legally significant actions in court, In the version of article 616, part one of the Tax Code, a single legislative approach is needed using the concept of the payer of the state duty (paragraph 1 of Article 608 of the Tax Code).

On the basis of the above, guided by paragraph 3 of Article 72, paragraphs 2 and 3 of Article 74 of the Constitution of the Republic of Kazakhstan, subparagraph 3) of paragraph 4 of Article 23, Articles 55 – 58, 62, paragraph 3 of Article 63, Article 64 and subparagraph 2) of paragraph 1 of Article 65 of the Constitutional Law of the Republic of Kazakhstan dated November 5, 2022 'On the Constitutional Court of the Republic of Kazakhstan', the Constitutional Court of the Republic of Kazakhstan

DECIDES:

1. To recognize the provision of Article 616, paragraph 1, sub-paragraph 13) in conjunction with the second part of the same Article of the Code of the

Republic of Kazakhstan «On taxes and other compulsory payments into the budget» (Tax Code) not in accordance with the Constitution of the Republic of Kazakhstan in terms of use of the word «plaintiffs - ».

2. The Government of the Republic of Kazakhstan shall, within six months after the publication of this Regulation, submit to the Mazhilis of the Parliament of the Republic of Kazakhstan a draft law, aimed at bringing the individual rules of tax legislation of the Republic of Kazakhstan into line with the legal positions of the Constitutional Court of the Republic of Kazakhstan, set out in this regulatory decision.

Inform the Constitutional Court of the Republic of Kazakhstan about the measures taken within the specified period.

3. This regulatory decision shall enter into force from the day of its adoption, is generally binding throughout the territory of the Republic of Kazakhstan, is final and not subject to appeal.

4. To publish this regulatory decision in the Kazakh and Russian languages in periodical printed editions, which have received the right to official publication of legislative acts, in the unified system of legal information and on the Internet resource of the Constitutional Court of the Republic of Kazakhstan.

**Constitutional Court
of the Republic of Kazakhstan**