

**REPORTS OF THE NATIONAL ACADEMY OF SCIENCES  
OF THE REPUBLIC OF KAZAKHSTAN**

ISSN 2224-5227

<https://doi.org/10.32014/2020.2518-1483.23>

Volume 1, Number 329 (2020), 177 – 183

UDC 341.1/9

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JUDICIAL DECISIONS ON FAMILY CASES IN THE REPUBLIC OF KAZAKHSTAN**

**Abstract.** The Republic of Kazakhstan is now at an important stage in the formation of its legal system as a sovereign state. An important role in this process is played by the creation of a normally functioning mechanism of international civil relations, a special component of which is family relations complicated by the “foreign element”. Often, international family relations are accompanied by the problem of recognition and enforcement by one country of the decision of the competent authority on family matters, issued in the territory of another country. Of course, in international family relations it is important that the decision on a family dispute, made by the competent authority of one state, has legal consequences in another state. However, acts of jurisdictional bodies, as a general rule, have a territorial principle of operation. “They acquire legal force in another state if the other state expresses its consent to this in some form.” With regard to family relations, it can be noted that the recognition of foreign decisions in family matters is one of the ways to eliminate “lame family relations,” that is, recognized in the country in which the judgment was issued, but not recognized in the country in which it should give rise to legal consequences.

**Key words:** citizens, foreigners, stateless persons, family code, legal framework, legislation, legal system, court decisions, family disputes, family relations.

**The relevance of the topic.** Prior to the independence of the Republic of Kazakhstan, the issue of recognition and enforcement of foreign court decisions in family matters did not arise, since the few rules of Soviet law were extremely rare. But in the last 20 years, since the adoption of the new Family Code of the Republic in December, 26, 2011, the country’s legislation has done a great job to create the prerequisites for the development of a legal framework for the recognition and enforcement of foreign court decisions. The interest in recognizing and enforcing foreign court decisions in family matters is not accidental, since family disputes are one of the most common civil cases in all countries, and therefore it is far from always possible to resolve all issues peacefully [1].

The difference in mentality, the isolation and conservatism of family relations, the principle of non-interference in family affairs are recognized in all civilized countries, and therefore it is not always clear by what principle family relations are built. They become public when a dispute arises between family members, most often between husband and wife, in the property or non-property spheres. Moreover, one of the parties to this dispute could potentially be a citizen of Kazakhstan.

Family relations in the Republic of Kazakhstan are under the scrutiny of the Government and the President of the country, as evidenced by the Law on Parental Responsibility for Raising and Educating Children, the State Program on Judicial and Legal Reform in the Republic of Kazakhstan of 2007, etc. Taking into account the peculiarities of family relations, the Judicial Collegiums for Family Affairs were created in the Supreme Court of the Republic of Kazakhstan and the corresponding amendments to the legislation of the Republic of Kazakhstan were introduced. However, the changes being made in the legal system of Kazakhstan and in the mechanism for protecting the rights of subjects of family relations, while complicating the international component, are insufficient and require the development of adequate legal support.

It should be noted that the further development of Kazakhstan's jurisprudence in this direction is impossible without appropriate scientific research and analysis of judicial practice. The problem of recognition and enforcement of decisions of foreign courts on family matters in the Republic of Kazakhstan is relevant not only from a theoretical point of view, but also from a practical point of view.

In this regard, there is a need to identify current trends at the international, regional and national levels governing the recognition and enforcement of foreign court decisions in family matters, developing an optimal form of protection of the rights of participants in family legal relations in modern conditions, and harmonizing family and civil procedural laws with international treaties recognized by the Republic of Kazakhstan.

Thus, the problems associated with the recognition and enforcement of foreign court decisions in family matters are among the most urgent for the Republic of Kazakhstan in view of their prevalence in practice and the absence of both their clear legal regulation and a system of theoretical development.

Great controversy is the issue of classifying the international civil process as a sub-sector of private international law. The question of the independence of private international law as an industry no longer causes much discussion [2].

**Materials and methods of research.** At the moment, we can talk about two areas in determining the place of international civil relations. The first position is based on the classification of civil procedural relations in the presence of a "foreign element" to the subject of regulation of private international law. The second point of view justifies the consideration of international civil procedural relations within the framework of civil procedural law.

Most specialists in private law relations of an international nature (L.A. Lunts, N.I. Marysheva, G.K. Dmitrieva) believe that procedural relations are the subject of civil procedural law [3].

Other scholars (M.M. Boguslavsky, Sh. Mengliev), despite the fact that they consider private international law to be private law, still adhere to a broader approach to the issue of this branch of law [2].

It is impossible to separate procedural relations complicated by the "foreign element" from private substantive legal relations, since it is their combination that makes it possible to achieve optimal legal regulation. Procedural relations with the international component are much closer to private international law than to the civil procedure law of the country.

A characteristic feature of private international law as a complex branch of law is the presence of a foreign element. In the event of a dispute with a foreign component, these relations should be regulated by this industry until the resolution of the conflict situation. Therefore, to divide these relations, which are a single whole, relating them to either civil law or civil procedure, in our opinion, is inappropriate. In this regard, the conclusion suggests itself that international private law is a complex branch of law, which includes both substantive and procedural legal relations [4].

The peculiar "distraction" of private law relations with a foreign element in various laws complicates their application. The necessity of combining the rules governed by private international law in one Law-*"On Private International Law"*, which includes civil law, labor, family and procedural relations with the "foreign element", which will facilitate the clarification, interpretation and use of legal norms, is substantiated.

When considering the problem of recognition and enforcement of foreign judgments, categories are used that relate to the subject of the general part of private international law: reciprocity, international courtesy, public policy clause, domicile, international treaty and others. In addition, the role of international treaties in this matter is significant, the absence of which may constitute grounds for refusing to enforce a foreign court decision. The rules on the recognition and enforcement of foreign judgments are contained not only in laws on the international private law of foreign states, but also in international treaties.

**Research results.** The decision-making process abroad is often preceded by a resolution of the conflict problem of the choice of legislation applicable to the family dispute. The resolution of the conflict issue allows the court to make a decision on a specific family law dispute. Here the judge, making such a decision, provides that a "foreign element" is present in the relationship. The process of determining the

applicable law, the conduct of a civil process and the adoption of a decision that should subsequently be recognized and enforced in a foreign country cannot be interrupted [3].

The theory of acquired rights justifying the recognition and enforcement of foreign judgments by the principle of the need to protect the rights acquired in a foreign state does not take into account the particularities of the legal systems of various countries. Not always a decision made by a court on the territory of a foreign state can be enforced, since the possibility of a conflict with its public order in the country in which recognition and further execution of the decision is sought is not ruled out. The doctrine of harmony between the decision and the legal system of the state equated a foreign court decision with *lex specialis*, mixing the categories of law and court decision. A court decision is considered as a special law aimed at resolving a specific case [4].

The principle of reciprocity, being one of the most important legal principles of private international law, allows for stable relations between states and provides subjects of private law relations of various affiliations with the opportunity to exercise their rights in the territory of a foreign state.

The Institute for the Recognition and Enforcement of Foreign Judicial Decisions, which has found its application in the legal system of Kazakhstan in the 20-th century, with the acquisition of independence and sovereignty by the Republic of Kazakhstan every year becomes more and more in demand. The recognition and enforcement of foreign court decisions in the Republic of Kazakhstan on family matters is interpreted in a slightly different form, which is related to the specific nature of the relationship in question, the special nature of the relationship between married persons, persons wishing to marry, issues of maintenance obligations, establishing paternity, questions with which of the parents the child will remain if they live in different countries, and between the latter there are no agreements on mutual assistance in family matters and The importance of proper legal regulation of family relations issues, according to the author, comes from the importance of the institution of the family itself not only for the Republic of Kazakhstan, but also, perhaps, for the entire international community [5].

The legal basis for the recognition and enforcement of foreign judgments in the Republic of Kazakhstan are international treaties with the participation of the Republic of Kazakhstan. But there is a category of cases in which Tajik law allows for the recognition of foreign judgments even in the absence of an international treaty with the relevant state. This is allowed only in family relationships.

In addition to the Civil Procedure Code, the Family Code is a source of recognition and implementation of foreign court decisions on family matters in the Republic of Kazakhstan. However, the problem of recognition and implementation of foreign court decisions did not find proper fixing in the Family Code, which, according to the dissertation, is a big omission of the law.

According to Part 3 of Art. 171 of the Family Code of the Republic of Kazakhstan, divorce between citizens of the Republic of Kazakhstan and foreign citizens or stateless persons, committed outside the territory of the Republic of Kazakhstan in compliance with the legislation of the relevant foreign state on the competence of the bodies that made the decision to dissolve the marriage, and the legislation applicable to the dissolution of marriage, It is recognized as valid in the Republic of Kazakhstan and even in the absence of an agreement on mutual recognition of decisions. Decisions of foreign courts on divorce between foreign nationals are also recognized.

In the absence of an international treaty, foreign court decisions on family legal relations in the territory of the Republic of Kazakhstan are not recognized and are not enforced. In particular, this also applies to such significant institutions of family law as child support obligations, which often affect the interests of the unprotected layer of the population-children [4].

Persons leaving for permanent residence in a state with which the Republic of Kazakhstan has not entered into an international agreement providing for the mutual recognition and enforcement of court decisions on the recovery of alimony are required to conclude a written agreement with family members to be notarized [5].

Given the peculiarity of the recognition and enforcement of foreign court decisions on family disputes, the author considers it necessary to resolve this issue in Section VIII of the Family Code of the Republic of Kazakhstan “Application of Family Law to Family Relations with the Participation of Foreign

Citizens and Stateless Persons”, with reference to the Civil Procedure Code. The regulation of relations between subjects of family law in the presence of a foreign element is connected with the resolution of the issue of applicable law, the so-called conflict problem. In turn, law enforcement, allowing the relationship of participants in family relations, may lead to the need for its recognition and enforcement on the territory of the Republic of Kazakhstan. These issues relate to the subject of private international law. Unfortunately, the absence of a law that unites all possible variants of private law relations in the broad sense of the word and procedural relations complicated by a foreign element necessitates the improvement of laws that enshrine their legal regulation.

The category of “recognition” of foreign court decisions in family matters is considered in two important ways: firstly, as a simple recognition, namely recognition that does not require further procedural actions, that is, execution (recognition of divorce cases; invalidation of a marriage; cases in custody and guardianship; adoption); secondly, as a complex recognition, that is, recognition, which is a necessary prerequisite, the basis for the execution of foreign court decisions [6].

Currently, the Republic of Kazakhstan is a party to regional international treaties regulating the recognition and enforcement of decisions of foreign courts on family legal relations. Moreover, neither a treaty nor national legislation contains a legal definition of the concept of “recognition of a foreign court decision”. The Civil Procedure Code and the Family Code of the Republic of Kazakhstan also bypass this issue. However, the content of this concept, the identification of specific features inherent only in this category of features play perhaps a key role in the mechanism for regulating the recognition and enforcement of foreign court decisions on family legal relations both at the national level and in international treaty practice of states.

The court, considering the application for recognition, does not resolve the case on the merits, it only verifies compliance with a number of conditions by a foreign court. This reflects the property of exclusivity of a court decision that has entered into legal force, which means that from the moment the court decision comes into legal force, the parties and other persons involved in the case cannot reiterate the same claims in court on the same basis. Similar rules are valid only in these categories of cases.

In the presence of an international legal aid treaty or regulation of the principle of reciprocity, the contracting parties must necessarily admit such a category of cases as recognition of foreign court decisions. This, perhaps, is the property of binding, especially since a court decision is to a certain extent given the status of legal force [7, P.49].

The court, accepting the application for recognition, as noted, does not consider the case on the merits and does not in any way alter the court decision made in a particular case in the country of the initial court decision. It only checks whether there are threats of violation of the basic procedural principles in the state that recognizes the decision and whether the distribution of the legal effect of the court decision contradicts the foundations of the public order of the recognizing state.

The peculiarity of family affairs makes it possible to identify the specifics of the manifested reservations on public policy in the execution of foreign court decisions. A clause on public policy in case of refusal to enforce foreign court decisions in family matters is manifested in the discrepancy between the consequences of recognition of moral and moral standards [8 P.61].

Among the decisions of foreign courts relating to the relationship of spouses, we can distinguish a special group of decisions that are recognized in the absence of an international treaty. These court decisions are indisputable and state the fact that the spouses do not want to continue the marriage relationship or testify to the presence of defects in the subject, in the will expressed by him, defects in form, order at the conclusion of the marriage: divorce, invalidation of the marriage [9, P.47].

A study of property disputes between spouses leads to the conclusion that the recognition and further enforcement of a foreign court decision is only in relation to movable property. The exclusive jurisdiction of real estate disputes stipulates the regulation by the legislation of Kazakhstan also of disputes on the division of real estate located on the territory of the Republic of Kazakhstan.

The legislation of the Republic of Kazakhstan provides for two cases of recognition of foreign court decisions: upon recognition of the marriage invalid and divorce. Foreign court decisions regarding the



rights and interests of the child are not subject to recognition in the absence of an international treaty and due to the absence of a direct reference to this in the legislation. An open list of recognized decisions of foreign courts allows the development of legislative provisions in this direction [10, P.179].

At the present stage, the recognition and enforcement of decisions of foreign courts requires to some extent the changes made in the field of civil procedural law. At the same time, judicial proceedings are effective, their execution and the decision of the courts of foreign states in the Republic of Kazakhstan, as well as the principle of mutual integration of states. Because in the process of globalization, the propensity of family relations cannot be solved unilaterally, multilateral or bilateral decisions are mandatory.

In the conclusion we would like to stress, that the recognition and enforcement of decisions of foreign courts is very important, because they took place with the participation of a foreign citizen or in a foreign state, or a decision of a court of a state in which it is recognized and executed is issued, and on the basis of this they make their decision, of course, these events are considered by private international law. Recognition of foreign court decisions as irrefutable, meaning the impossibility of further appeal or appeal of this decision. The parties require only to recognize in the territory of another state an already issued court decision.

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### **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ ОТБАСЫЛЫҚ ІСТЕР БОЙЫНША ШЕТЕЛ СӨТТАРЫНЫҢ ШЕШІМІН ҚАБЫЛДАУ ЖӘНЕ ОРЫНДАУ ТӘРТІБІ ТУРАЛЫ**

**Аннотация.** Қазіргі уақытта, Қазақстан Республикасы егеменді мемлекет ретінде, өзінің құқықтық жүйесін қалыптастырудың маңызды кезеңінде тұр. Халықаралық азаматтық қатынастардың қалыпты жұмыс істейтін механизмін құру бұл процесте маңызды рөл атқарады, оның ерекше құрамдас бөлігі – «сыртқы элемент» арқылы қиындатылған отбасылық қатынастар. Халықаралық отбасылық қатынастарда, көбінесе бір елдің басқа елдің аумағында шығарылған отбасылық мәселелері бойынша құзыретті органның шешімін мойындауы және орындауы мәселелері жиі қаралады. Әрине, халықаралық отбасылық қатынастарда бір мемлекеттің құзыретті органы қабылдаған отбасылық дау туралы шешімнің басқа мемлекетте заңды салдары болуы маңызды. Алайда юрисдикциялық органдардың актілері әдетте аймақтық жұмыс принципіне ие. «Егер басқа мемлекет оған қандай да бір түрде өзінің келісімін білдірсе, олар басқа мемлекетте заңды күшке ие болады». Отбасылық қатынастарға қатысты, отбасы мәселелерінде шетелдік шешімдерді тану – «шешеліскен отбасылық қатынастарды» жоюдың бір әдісі, яғни сот – шығарылған елде танылған, бірақ ол заңды салдар туғызатын елде танылмайтындығын айтып өтуіне болады.

Шетелдік тұлғалардың қатысуымен болатын отбасылық дауларды құқықтық реттеу юрисдикцияның белгілі бір нормаларының болуын білдіреді. Егер мұндай норма істің шет мемлекеттің сотында қаралуы керек екенін анықтаса, онда бұл сот істі қарап, шешім шығарады. Іске қатысушы адамдардың құқықтары мен заңды мүдделерінің сақталуын қамтамасыз ету және шешімде белгіленген құқықтарды шетелде іске асыру үшін, тиісті мемлекеттің шетелдік сот шешімін мойындауға және орындауға келісімі қажет. Осы құқықтық институтты реттеудің басты қайнар көзі – ҚР АПК. ҚР АПК-не сәйкес, шетелдік сот шешімдері халықаралық шартта көзделсе, мұны Қазақстан Республикасындағы соттар да мойындайды және орындайды. Шетелдік соттардың мәжбүрлеп орындатуға жатпайтын шешімдеріне (мысалы, егер ерлі-зайыптылардың екеуі де істі қарау кезінде ҚР шегінен тыс жерде тұрса, қазақстандық азаматтар арасындағы некені бұзу немесе жарамсыз деп тану туралы) қатысты мүдделі тұлғаның тарапынан қарсылық түспесе, Қазақстан Республикасында қандай да бір арнайы іс жүргізусіз танылады. Заң шығарушы тиісті халықаралық шарттың болуы шет мемлекеттің сот шешімін тану және орындауына мүмкіндігін туғызады. Егер мемлекеттер арасында тиісті шарт болса, ал мойындау және орындау туралы шарт болмаса, онда пікірталас мәселесі туындайды, оны өзара түсіністік немесе халықаралық сыпайылық қағидаттарында жүзеге асыру керек.

Отбасылық қатынастар бойынша, егер істі қарау кезінде ерлі-зайыптылардың ең болмағанда біреуі Қазақстан Республикасынан тыс жерде тұрған болса; егер ерлі-зайыптылардың екеуі де істі қарау кезінде Қазақстан Республикасынан тыс жерде тұрған болса, қазақстандық азаматтар арасындағы некені бұзу немесе

жарамсыз деп тану туралы; қазақстандық азамат пен шетелдік азамат арасындағы некені бұзу немесе жарамсыз деп тану туралы, заңда көзделген басқа да жағдайларда қарастырылады. Шетелдік сот шешімін орындаудың қажетті алғышарты – оны тану. Көбінесе іс жүзінде шешім ғана мойындалады, бірақ орындалмайды.

**Түйін сөздер:** азаматтар, шетелдіктер, азаматтығы жоқ адамдар, отбасы кодексі, құқықтық база, заңнама, құқықтық жүйе, сот шешімдері, отбасылық даулар, отбасылық қатынастар.

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### **ПРОБЛЕМЫ ПРИЗНАНИЯ И ИСПОЛНЕНИЯ ИНОСТРАННЫХ СУДЕБНЫХ РЕШЕНИЙ ПО СЕМЕЙНЫМ ДЕЛАМ В РЕСПУБЛИКЕ КАЗАХСТАН**

**Аннотация.** Республика Казахстан находится сейчас на важном этапе формирования своей правовой системы как суверенного государства. Важную роль в данном процессе играет создание нормально функционирующего механизма международных гражданских отношений, особой составляющей которого являются семейные отношения, осложненные «иностраннным элементом». Часто международные семейные отношения сопровождается проблема признания и исполнения одной страной решения компетентного органа по семейным вопросам, вынесенного на территории другой страны. Безусловно, в международных семейных отношениях важно, чтобы решение по семейному спору, вынесенное компетентным органом одного государства, имело юридические последствия в другом государстве. Однако акты юрисдикционных органов, по общему правилу, имеют территориальный принцип действия. «Юридическую силу в другом государстве они приобретают, если другое государство в какой-либо форме выразит на это свое согласие». Применительно к семейным отношениям можно отметить, что признание иностранных решений по семейным делам является одним из способов устранения «конфликтных семейных отношений», то есть признаваемых в стране, в которой вынесено судебное решение, но не признаваемых в стране, в которой оно должно породить правовые последствия.

Правовое регулирование семейных споров с участием иностранных лиц подразумевает под собой наличие определенных норм о подсудности. В случае, если такая норма определит, что дело подлежит рассмотрению в суде иностранного государства, то именно этот суд рассмотрит и вынесет решение по делу. Для того, чтобы обеспечить соблюдение прав и законных интересов участвующих в деле лиц и реализовать, установленные решением права за границей необходимо согласие соответствующего государства на признание и исполнение иностранного судебного решения. Главным источником, регулирующим данный правовой институт, является ГПК РК. В соответствии с ГПК РК иностранные судебные решения признаются и исполняются в Республике Казахстан судами, если это предусмотрено международным договором. Решения иностранных судов, которые не подлежат принудительному исполнению, (например, о расторжении или признании недействительным брака между казахстанскими гражданами, если оба супруга в момент рассмотрения дела проживали вне пределов РК), признаются в Республике Казахстан без какого-либо специального производства, если со стороны заинтересованного лица не поступит возражения против этого признания. Законодатель ставит возможность признания и исполнения судебного решения иностранного государства от наличия соответствующего международного договора. Возникает вопрос о том, что если имеется соответствующий договор между государствами, а в нем отсутствует условие о признании и исполнении, тогда отсюда вытекает не менее дискуссионный вопрос, а стоит ли осуществлять это на принципах взаимности или международной вежливости.

По семейным отношениям это решения о расторжении или признании недействительным брака между казахстанским гражданином и иностранным гражданином, если в момент рассмотрения дела, хотя бы один из супругов проживал вне пределов Республики Казахстан; о расторжении или признании недействительным брака между казахстанскими гражданами, если оба супруга в момент рассмотрения дела проживали вне пределов Республики Казахстан; в других предусмотренных законом случаях. Необходимой предпосылкой исполнения иностранного судебного решения является его признание. Чаще всего, на практике решение только признается, но не исполняется.

**Ключевые слова:** граждане, иностранцы, лица без гражданства, семейный кодекс, правовая база, законодательство, правовая система, судебные решения, семейные споры, семейные отношения.

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