

CONSTITUTIONAL COURT CLARIFIED THAT THE PROSECUTOR'S APPROVAL OF THE PROCEDURE FOR FORCED DEPRIVATION OF DWELLING DOES NOT SET ASIDE THE NECESSITY TO ISSUE A COURT JUDGMENT

■ General

On 19 April 2024, the Constitutional Court of Kazakhstan issued a normative resolution No. 41-HP "On Official Interpretation of Article 25.1 and Article 26.3 of the Kazakhstan Constitution".

The Kazakhstan Constitution guarantees the right of citizens to private ownership and inviolability of dwelling: it is not allowed to deprive of property, specifically, dwelling, except as based on a court judgment.

In turn, the Civil Procedure Code of Kazakhstan and the Kazakhstan Law on Enforcement Proceedings and Status of Court Enforcement Officers established that court enforcement officers could take measures on forced recovery proceedings against property, including dwelling, only **after issuing a court judgment**.

On 21 January 2019, certain amendments were introduced into the Civil Procedure Code of Kazakhstan and the Kazakhstan Law on Enforcement Proceedings and Status of Court Enforcement Officers, which require approval of **court or prosecutor** for resolutions of court enforcement officers on forced recovery proceedings against property, including dwelling.

The Prosecutor General applied to the Constitutional Court to get official interpretation and clarification as to whether Article 25 of the Kazakhstan Constitution "*shall not be deprived of dwelling, except as based on a court judgment*" and Article 26 of the Kazakhstan Constitution "*no one may be deprived of own property, except as based on a court judgment*" must be understood as expressly prohibiting the possibility to initiate recovery proceedings against property and dwelling in the course of enforcement proceedings without a court judgment with the prosecutor's approval.

The Prosecutor General point out that to date forced recovery proceedings against property of debtors, including dwelling, are carried out under the general procedure with the prosecutor's approval without issuing a court judgment, which is in contradiction with the Kazakhstan Constitution.

■ Interpretation by the Constitutional Court

Having considered the application of the Prosecutor General, the Constitutional Court pointed that the principle of inviolability of dwelling and inadmissibility of a situation where a person is deprived of dwelling, except as based on a court judgment, is distinguished as a separate constitutional rule, according to which Kazakhstan "*shall create the conditions to provide citizens with dwelling*". Therefore, the rule contained in Article 25.1 of the Kazakhstan Constitution and establishing that "*shall not be deprived of dwelling, except as*

based on a court judgment", subject to the constitutional rules on dwelling, property and right of ownership, must be understood word-for-word.

The Constitutional Court specified in the Resolution that decisions in enforcement proceedings relating to forced deprivation of citizens of dwelling must be made by court. The said constitutional power of court may not be transferred to other agencies and officers, including the prosecutor. This means that citizens may be deprived of dwelling only on the basis of a court judgment.

The prosecutor's approval of the procedure for forced recovery proceedings against dwelling neither revokes a court judgment, nor supersedes or is deemed equal to it. The prosecutor may approve forced recovery proceedings against dwelling; however, a resolution of a court enforcement officer approved by a prosecutor is not a ground for deprivation without a court judgment.

A prosecutor exercises superior supervision over observance of lawfulness of deprivation of property and in certain cases approves or refuses to approve the procedure for forced recovery proceedings against the debtor's property, **except for dwelling**.

Conclusion

Despite the fact that the Kazakhstan Constitution establishes that forced privation of dwelling and other property is allowed only on the basis of a court judgment, the Constitutional Court clarified in its Resolution that a court judgment is mandatory in case of forced deprivation of specifically dwelling, because dwelling as a special type of property, which enjoys respective protection of the Kazakhstan Constitution.

Forced deprivation of other property may take place on the basis of a court judgment or prosecutor's approval with subsequent judicial control over lawfulness of alienation of property.

The normative resolution entered into force from the date of its issuance, it is binding within the entire territory of Kazakhstan, final and is not subject to any appeals.

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