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Actual problems of legal protection of children in the Republic of Kazakhstan

The article deals with the most urgent issues of state policy in the field of prevention and rehabilitation of child neglect and homelessness. The authors offer recommendations on the protection of children & apposes rights and analyze the work of the scientific and organizational center on the psychosocial needs of children and families. Moreover, the article deals with the legal protection of children left without parental care in the Republic of Kazakhstan, its forms and tasks. Kazakhstan joined the UN Convention on the Rights of the Child and follows its recommendations. The authors outline the main problems of legal protection of children in Kazakhstan and ways to solve them. Also, the lack of specialists in the regional departments for the protection of children's rights does not allow, in particular, to properly track the fate of a disadvantaged child, to reveal the reasons for a situation and to protect his rights in court. Researchers are recommended to cover all sectors of society, and especially non-governmental organizations, which play an important role in the social stabilization of Kazakhstani society to solve these issues. The cooperation of the «third sector» with the state is based on the principles of equal partnership. All this allows to monitor the observance of the rights of the child, to identify problems in establishing feedback with a wide audience, including with the media and other structures of the society working with children, including state and non-governmental organizations.

Keywords: legal protection of children, Kazakhstan, UN Convention on the Rights of the Child, state, organizations, non-governmental organizations, specialists, prevention, rehabilitation, society, social, minors.

At all times in the social structure of society an important role belonged to the family as a sustainable small groups of people, the social need for which is due to its needs. Performing a variety of social functions the family plays a leading role in social development while providing a number of important social functions. Its strong socio-economic and ethical principles that are directly associated with the healthy development of the economy and social sphere of society, depends on what generation it will be «delivered».

The leading role in shaping the identity of minors belongs to the family. Modern family has come under pressure from external factors due to which educational family environment has become more favorable. Often the breakdown of the family is one of the causes of neglect adolescents. As a result, children of divorce get in an atmosphere of tension, conflict, and avoiding family communication.

The level of civilization of a society is largely measured by its attitude to the children tackle the problems of childhood. The situation in the world of childhood is alarming and dangerous, both for children and for the future of society. Some serious problems occurring in the socio-economic and political life of the society in many ways extends the range of social, economic, psychosocial and other factors that are actively challenging child neglect, homelessness and social orphan hood.

One of the main strategies of the national policy of our republic is the legal protection of children. According to the Law of the Republic of Kazakhstan «On the Rights of the Child in the Republic of Kazakhstan», «a child is a person under the age of eighteen (majority)» [1]. The legal protection of children is understood as the system of normative legal acts establishing the legal status of minors as participants in public legal relations (rights, duties, guarantees of observance of rights and obligations) and fixing the bases for organizing the activity of the system of bodies dealing with minors and protecting their rights and legitimate interests. The task of each state is to strive to create a caring and compassionate society, only then it will be strong and prosperous when it takes care of children, about their future. We often hear the expression «Children are the future of the country». Indeed, in 10, 15, 20 years they will represent the most dynamic sector of our society. Kazakhstan, among the first countries in the post-Soviet space, having joined the UN Convention on the Rights of the Child, adopted on November 20, 1989, ratified in 1994 this document and its two optional protocols. The implementation of the rights of children is also promoted by international instruments ratified by our country concerning the participation of children in armed conflicts, as well as trafficking in children, child prostitution and child pornography. According to the statistical agency in 2017, 935 adults were deprived of parental rights. More than 2 thousand parents were brought to administrative responsibility. 50 criminal cases were opened on the facts of cruel treatment of children. Very complex children grow up among alcoholics, drug addicts, people for whom the commission of crimes is «commonplace».

A special problem is street children. These phenomena are the main reasons for including the child in the system of protection of rights, and families - the main «suppliers» of the contingent of institutions for orphans and children left without parental care. The forms of legal protection of children in our country are guardianship and trusteeship. Guardianship is a legal form of protecting the rights and interests of children under the age of fourteen. Guardianship is a legal form of protecting the rights and interests of children between the ages of fourteen and eighteen. In the Republic of Kazakhstan today there are 40 legal acts regulating the rights of children. In the years 2003-2006, in order to fully comply with the principles and provisions of the UN Convention on the Rights of the Child and the creation of legal conditions for the prevention of its social ills, Kazakhstan adopted laws on the prevention of juvenile delinquency and the prevention of child neglect and homelessness. The Law «On the Rights of the Child in the Republic of Kazakhstan» regulates relations arising in connection with the realization of the fundamental rights and interests of the child, guaranteed by the Constitution. To a certain extent, the state sectoral programs in the fields of education, health, poverty reduction, emigration policy, demographic development, and rehabilitation of disabled people have been directed to the implementation of the national policy regarding the observance of the legitimate rights and interests of children. According to the recommendations of the United Nations under the Ministry of Education and Science in 2002, the Committee for the Protection of the Rights of Children was established, and in the regions, including in the Karaganda region, the departments for the protection of children's rights.

The main tasks of the Department for the Protection of Children's Rights.

1. Ensuring the implementation of the Constitution of the Republic of Kazakhstan, the United Nations Convention on the Rights of the Child, the laws of the Republic of Kazakhstan on the rights of the child in the Republic of Kazakhstan, the Code of the Republic of Kazakhstan on marriage and family, on education and other legislative and regulatory protection of the rights and legitimate interests of children.
2. Coordination at the local level of interdepartmental cooperation and control over the implementation of a set of measures related to the realization of the rights of all categories of the child population, in accordance with the legislation of the Republic of Kazakhstan and the Convention on the Rights of the Child.
3. Assistance to local executive bodies in the implementation of regional programs to protect the rights and legitimate interests of children, spiritual and moral education.
4. Prevention and prevention of «social» orphan hood, child abuse and exploitation, assistance to children in difficult life situations, assistance in creating conditions for improving the quality of life of children.
5. Creation of conditions for successful self-realization of children, support and stimulation of children's social initiatives and children's public organizations aimed at the successful integration of children into society on the basis of moral and spiritual values.
6. Monitoring the implementation of the provisions of the Convention on the Rights of the Child, programs of moral and spiritual education, analysis and forecast of social well-being and spiritual growth of children, development of recommendations for improving the quality of life and raising children in the region.
7. Raising public awareness of the rights of the child and ways to implement them [2].

Sociological survey conducted in 2017 by Department for the Protection of Children's Rights in Almaty, showed that more than 80 % of children do not trust teachers, psychologists, at best they will share with a friend. More often - they will look for a way out for themselves. None of the respondents knew that they have the right to protection under the Code of the Republic of Kazakhstan «On Marriage (Marital) and Family» [3; 114]. It seems that the results reflect a common problem for the entire social space of Kazakhstan in the absence of children's awareness of their legitimate rights and interests. The lack of specialists in the regional departments for the protection of children's rights does not allow, in particular, to properly track the fate of a disadvantaged child, to reveal the reasons for a situation, to protect his rights in court. The inclusion in the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and the Family» of a separate chapter on the rights of the child allows us to overcome the traditional approach to children as passive objects of parental care. To solve these problems, it is necessary to involve all sectors of society, especially non-governmental organizations, which play an important role in the social stabilization of Kazakhstani society. The cooperation of the «third sector» with the state is based on the principles of equal partnership. All this allows to monitor the observance of the rights of the child, to identify problems in establishing feedback with a wide audience, including with the media and other structures of the society working with children, including state and non-governmental.

Noteworthy is the fact that among the homeless and neglected children in recent years has increased the number of former residents of children's homes and boarding schools. The most frequent cause of neglect of

former boarding is maltreatment by caregivers and teachers. Because of this, the question remains about the necessity of laying the legal foundations of behavior in the education of minors and the prevention of crime, social reintegration of juvenile offenders, and child protection before the law, preventing the infringement of their rights, freedoms and legitimate interests.

Lack of experience, stable moral values, physiological characteristics of juveniles promote their involvement in the commission of crime and anti-social activities. Feature of juvenile crime is crime-resistant orientation, as expressed in the commission of a crime and two more times. Much more often than adults, juveniles commit crimes in the group (about half), which is associated with a typical age group in the general nature of the conduct. Therefore, the most characteristic of the commission of their crimes with their peers conducting free time together. These groups are now committed about 80 % of the total number of juvenile crimes [4]. Even minor criminal groups, united relatively lengthy criminal activity with a hierarchical and other characteristics of an organized criminal group, usually converted from recreational groups peers.

About a quarter of crimes committed by juveniles with adult offenders. Holds a special latency infringing behavior in children, adolescents and young adults. Robbery, participation in the robbery, thefts committed by groups of young, premeditated, particularly violent crimes against the person did not receive adequate assessment and the persons who committed them usually go unpunished.

According to scientists, the problem lies primarily in the limited arsenal of means and measures to re-exposure, now known low efficiency. Obviously, the weakness of the earlier preventive direction prevention of juvenile crime has played a role in the magnitude of the violations of the criminal law by persons under the age of criminal responsibility.

The study by experts of the criminal cases shows that the vast majority of juvenile offenders, brought up in dysfunctional families. Caught in a difficult situation and feeling indifferent to his fate, minors are trying to solve their problems, often criminal and violent ways. However, many crimes are committed openly, with displays of unwarranted aggression and cynicism. Currently, violent crimes committed by juveniles, almost fits the crime adults characterized recently cruelty, inhuman treatment to the victims [5].

The variety of causes of orphan hood not only in the literal sense of the word, but also a social orphan hood, their close relationship with the problems of national scale explains the existence of different measures in content rights of orphans. Some of them are designed to prevent such a thing as an orphan in all its manifestations. They are called measures of protection. Others are designed to protect already infringed the rights of the child.

There are certain criminogenic determinants of juvenile delinquency, for instance, set of causes of crime and the conditions conducive to it. They are caused by the social environment that affects the formation of the person and the conditions of the specific situation that determines the transformation of the possibility of committing a crime in reality. Juvenile crime does not exist by itself, but is an indicator of the social situation in the country, a region, a response to the unjustified cruelty of adults towards children.

In order to prevent juvenile delinquency society needs rehabilitation measures of social orphans. One of the main causes of child abandonment is the parents' alcoholism and as a consequence - the ill-treatment of children in the family, the neglect of their needs and interests. Unemployment and parental alcoholism, unemployment teenagers their propensity to commit crimes generate numerous unauthorized withdrawals from home, neglect and crimes. In recent years, more and more children and teenagers become targets of abduction and resale to brothels (sex clubs, strip shows, brothels and similar institutions). Dissemination of criminal activity, pimping, prostitution contributes to such criminal acts as involvement in this activity minors.

To this end, the study of the problems of child abandonment requires a comprehensive study. There are the number of homeless and neglected children from families replenished (complete and incomplete) in which the parents because of various reasons are not engaged in the education of his children and did not take care of it.

On the problem of child abandonment typical for the Kazakh society requires a comprehensive and adequate approach to the definition of the strategic prospects for solutions to the problem. Analysis of the problems of orphanage is impossible without a clear delineation of its species. In the science and practice are two types of orphanage - a complete orphan, when for one reason or another the child's biological parents are absent. And social orphanage, where the number of homeless and neglected children from families replenished (complete or incomplete), in which the parents because of various reasons are not engaged in the education of his children and do not care about him. Under the influence of the new market, socio-political and legal relations of an entirely new kind of abandonment - it's hidden. It is believed that the greatest concern is the social orphanage, which is a consequence and elimination of non-participation in the performance of their duties in relation to children (distortion of parental behavior) [2].

Social orphans - a special socio-demographic group of children from birth to age 18 who have lost parental care by socio-economic, moral, psychological, medical reasons (orphans with living parents). The definition of «social» refers to the fact that, ultimately, it is society that is guilty in the absence of adequate material, financial and general social conditions for the implementation of each family, each parent of duty, are in short supply them with a sense of responsibility, love, compassion and mercy.

The study of problems in the functioning of government and non-governmental institutions for the protection of children from other countries, their interactions have led to the realization of the possibility of similar structures in Kazakhstan. So, it could be a Committee for the Protection of the rights and interests of children within the Ministry of Justice of the Republic. This Committee was entitled to act as a focal point for the other concerned agencies in the field of children's rights, the annual revision in the direction of improving the minimum standards, norms and standards of life indicators of children for the social and legal review of the arrangements of the authorities to protect the rights and interests of children and families in general.

The growth of juvenile crime, the weakening of educational functions of the family, the collapse of traditional moral norms, accompanied by the attendant phenomena such as alcohol and drugs, as well as the growth of youth gangs are forcing local governments of many countries to take unpopular measures aimed at solving the problems of the younger generation. One of these measures - the introduction of restrictions on minors stay in public places at night, so-called curfews.

From this perspective, we can recognize that, despite the economic and social difficulties and limitations, both in Kazakhstan and all over the world have been put forward and supported by valuable initiative. Thanks to these initiatives, young people are coming to realize the need for the community to review and redesign their priorities in transforming today's conditions. One of the main objectives of youth policy is the development and distribution of educational technologies and structures that enhance the competence of the individual. Thus, the younger generation is prepared to clash with the increasingly complex and dynamic economic and cultural contradictions, thus reducing the risk of involving young people at risk and criminal activity.

The main problem in the prevention of delinquency in Kazakhstan is a departmental dissociation: the courts, the police, education, social services, juvenile committee, and others are trying to solve the problem of prevention of child neglect and juvenile crime within its jurisdiction. Meanwhile, the activities of these institutions to prevent child neglect and juvenile delinquency currently requires a clear, concerted action.

The main «suppliers» social orphans are the «crisis of the family», the problems which seem to be necessary to deal not occasionally, but constantly. After all, family - one of the major institutions of society. It is well known that the stability of family relations, health, parents dependent full physical and mental development of children. Accordingly, the level of socio-economic and socio-political development, public health, reproductive health of women, men, children - the components that characterize the health of the family and the nation. Much of the modern families today are not in full, and at times hard to play the role of a full-fledged social institution capable of ensuring inculcation of elementary norms and attitudes. All this combined effect on the causes of social orphanhood, the level and form of prevention.

Urgency of the problem of child abandonment in the current environment is evident and is an impetus for the development of theoretical and applied these issues contributing to promotion of legislative activity in the right direction, developing approaches to the implementation of public policies for children. Our government has laid the legal provisions in the laws of the Republic of Kazakhstan «On the Rights of the Child in the Republic of Kazakhstan», «Children's Villages and young people's homes», «Marriage and Family», «On State Social order», «On the social, medical and educational support for children with disabilities» and other normative acts to address the problems of orphans and children left without parental care.

However, the analysis of legal practice shows that there is a need and improvement, and adjustments of adopted legislations [1]. The main reason for the ineffectiveness of individual provisions of laws, as seems to be a lack of proper monitoring of compliance with the rules and declarative, often do not meet budget parameters.

It appears that for the prevention of child abandonment need government protection of children. Efforts should not be reduced to a one-time charitable actions. It should be a special service for children's rights, tips territorial levels on children and families, scientific and organizational center of psychosocial needs of children and families. Serious bid for the implementation of the state policy of family and child development should reach a qualitatively new state programs and concepts, design options which began to appear in Kazakhstan.

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Қазақстан Республикасында балаларды құқықтық қорғаудың өзекті мәселелері

Мақалада балалардың қадағалаусыз және панасыздығын болдырмау және оңалту саласындағы мемлекеттік саясаттың ең өзекті мәселелері қарастырылды. Авторлар балалардың құқықтарын қорғау бойынша ұсыныстар жасайды және балалар мен отбасылардың психологиялық-әлеуметтік мұқтажықтары бойынша ғылыми және ұйымдастырушылық орталығының жұмысын талдайды. Бұдан басқа Қазақстан Республикасында ата-анасының қамқорлығынсыз қалған балаларды құқықтық қорғау, оның нысандары мен міндеттері зерттелді. Қазақстан БҰҰ-ның «Бала құқықтары туралы» конвенциясына қосылды және оның ұсыныстарына сүйенеді. Авторлар Қазақстандағы балаларды құқықтық қорғаудың негізгі мәселелерін және оларды шешу жолдарын атап өтті. Сондай-ақ балалардың құқықтарын қорғау жөніндегі облыстық департаменттердегі мамандардың жетіспеушілігі, атап айтқанда, әлеуметтік жағдайы төмен балалардың тағдырын дұрыс қадағалауға, жағдайдың себептерін анықтауға, сотта оның құқықтарын қорғауға мүмкіндік бермейді. Осы мәселелерді шешу үшін авторлар қоғамның, әсіресе үкіметтік емес ұйымдардың, қазақстандық қоғамды әлеуметтік тұрақтандыруда маңызды рөл атқаратын барлық секторларын қамтуды ұсынды. «Үшінші сектордың» мемлекетпен ынтымақтастығы тең серіктестік қағидаттарына негізделген. Мұның бәрі балалардың құқықтарын сақтауға мониторинг жүргізуге, кең аудиториямен, оның ішінде бұқаралық ақпарат құралдарымен және балалармен жұмыс істейтін қоғамның басқа құрылымдарымен, соның ішінде мемлекеттік және үкіметтік емес ұйымдармен кері байланыс орнату мәселелерін анықтауға мүмкіндік береді.

Кілт сөздер: балаларды құқықтық қорғау, Қазақстан, БҰҰ-ның «Бала құқықтары туралы» конвенциясы, мемлекет, ұйымдар, үкіметтік емес ұйымдар, мамандар, алдын алу, оңалту, қоғам, әлеуметтік, кәмелетке толмағандар.

А.К. Рахимберлина, Р.Б. Жағалов

Актуальные проблемы правовой защиты детей в Республике Казахстан

В статье рассматриваются наиболее актуальные вопросы государственной политики в области профилактики и реабилитации безнадзорности и бездомности детей. Авторами предложены рекомендации по защите прав детей и анализируются работы научно-организационного центра по психосоциальным потребностям детей и семей. Более того, в статье рассматривается правовая защита детей, оставленных без попечения родителей, в Республике Казахстан, ее формы и задачи. Казахстан присоединился к Конвенции ООН о правах ребенка и следует ее рекомендациям. Авторы выделяют основные проблемы правовой защиты детей в Казахстане и пути их решения. Нехватка специалистов в областных департаментах по защите прав детей не позволяет, в частности, на должном уровне отследить судьбу неблагополучного ребенка, вскрыть причины той или иной ситуации, защитить его права в суде. Для решения этих проблем авторы предлагают охватить все секторы общества, особенно неправительственные организации, которые играют важную роль в социальной стабилизации казахстанского общества. Сотрудничество «третьего сектора» с государством строится на принципах равноправного партнерства. Все это позволяет вести мониторинг соблюдения прав ребенка, выявлять проблемы в налаживании обратной связи с широкой аудиторией, в том числе со средствами массовой информации и иными структурами общества, работающими с детьми, включая государственные и негосударственные организации.

Ключевые слова: правовая защита детей, Казахстан, Конвенция ООН о правах ребенка, государство, организации, негосударственные организации, специалисты, профилактика, реабилитация, общество, социальные, несовершеннолетние.

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