

EXTENDING LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN BY ANCHORING INTERNATIONAL CHILD RIGHTS

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ABSTRACT

This article deals with the issues of implementing the international standards on child rights in the Republic of Kazakhstan. Research purpose is to compare the theoretical provisions and problems of the established practice in anchoring the international child rights into the national legislation of the Republic of Kazakhstan, and in generating proposals on the national legislation improvement.

The comparative legal analysis of laws, introduced in the Convention on the Rights of the Child and the national legislation, allows pointing out that the Republic of Kazakhstan expends proactive efforts to improve the national legislation in order to bring it in one line with the provisions of the Convention on the Rights of the Child.

This article carefully analyses the property and personal non-property rights of a child, regulated by the legislation, as well as the theoretical provisions, statistical data and judicial practice materials. The article also considers the best experience of foreign countries in child maintenance, adoption and in running the Ombudsman for Children. Based on the conducted research, conclusions were drawn for improving the national legal mechanism of children rights protection and implementation in accordance with the international legal acts.

Keywords: Child Rights, Extension, International Standards, Republic of Kazakhstan.

JEL Classification: K10, K15, K19

INTRODUCTION

The Republic of Kazakhstan became a full-fledged member of the world community as it gained independence (December 16, 1991) after the collapse of the Soviet Union. The Republic became a full-fledged member of the United Nations on March 2, 1992. Since then, the Republic of Kazakhstan has been expending proactive efforts to extend the national legislation with international legal acts. There were ratified about 60 international documents on human rights, over 15 thereof touch the child rights protection (Report on the Situation of Children in the Republic of Kazakhstan, 2016).

“The International Treaties, ratified by the Republic, take priority over national laws and are directly applicable under Article 4 of the Constitution of the Republic of Kazakhstan, except the cases, when it follows from the International Treaty that it is applied under the issued law.”

In this regard, Kazakhstan has ratified the Convention on the Rights of the Child of November 20, 1989 on June 8, 1994 in the view of the priority taken by the established principles of the international law (1994), thereby accepting the international obligations to bring the national legislation in line with the Convention. The Convention regulations were anchored in the national legislation, in other words-Republic of Kazakhstan has adopted the Law on the Rights of the Child (August 8, 2002).

THEORY/CALCULATION

A special authorized body-Child Rights Protection Committee under the RK Ministry of Education and Science-was established under the requirements of the UN Convention on the Rights of the Child (Article 43) (2006).

The Republic of Kazakhstan is improving its national legislation protecting the child rights in order to bring it in line with the provisions of the Convention on the Rights of the Child and other ratified international conventions. The general principles and regulations of the Convention on the Rights of the Child (Articles 2, 3, 6 and 12) (1994) are anchored in the Constitution of the Republic of Kazakhstan (Articles 14, 15 and 27) (1995) and in the Code on Marriage (Matrimony) and Family (2011). Currently, the extension process continues.

The Law No. 501-V on Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Children's Rights Protection was adopted on April 9, 2016, in order to implement Articles 19 and 20 of the Convention on the Rights of the Child. Amendments were made to the existing legislative acts to anchor the international law protecting the child rights. As this law was adopted, the Code on Marriage (Matrimony) and Family was amended by adding several chapters and new foster placement solutions relating to children without parental care: foster family and a host family.

In July 2016, an Orphaned Children Database appeared in Kazakhstan. At the moment, it contains 1326 profiles of children under the age of 10. This resource contributes to the family care transparency and increases the chances of orphaned children to find a suitable family to live in. As of November 2017, 295 orphans were placed for adoption through the database (285-by Kazakhstani citizens, 10-by foreigners) (Report on the Situation of Children in the Republic of Kazakhstan, 2017).

The Republic of Kazakhstan is also going to create a system for registering 0-18-years old children to secure their right to receive educational and social services. Currently, 5.5 million children live in Kazakhstan. In other words, the share of children in the total population is 31% on average.

The Kazakhstan Child Rights Ombudsman was first established in the Republic with the Presidential Decree No. 192 of February 10, 2016. According to the Paragraph 15 of Article 1 of the Law on the Rights of the Child,

“Commissioner for Children’s Rights in the Republic of Kazakhstan shall be appointed by the President of the Republic of Kazakhstan, responsible for securing basic guarantees of rights and legitimate

interests of children and for restoring their violated rights and freedoms in cooperation with state and public institutions.”

The Commissioner for Children’s Rights performs on a voluntary basis. He/she is not accountable to state bodies and officials. Therefore, the Commissioner can impartially assess the situation of children in the country or region and fairly analyse the laws and decisions that the national government and local authorities take with respect to the rights of the child. In the Republic of Kazakhstan, the Law on the Rights of the Child provides for regulating the legal status of the Commissioner for Children’s Rights only under two Articles (7 and 7-1), enshrining the principles and powers of the Commissioner's performance. According to the Paris Principles Relating to the Status of National Institutions, the Commissioner has no required human and/or financial resources. Thus, the legal status of the Kazakhstan Child Rights Ombudsman has not been regulated as an independent national human rights body. Its source of financing has not been determined. The Government has to regulate the mechanism of considering appeals and taking measures for restoring violated children’s rights, freedoms and interests (recourse to law enforcement agencies, child’s complaint investigation, representation of the child, etc.).

We believe it necessary to take into account the international experience in establishing the Child Rights Ombudsman. The Ombudsman’s activity models are diverse in foreign countries. For example, Poland is the only State, where the Child Rights Ombudsman has a constitutional status. The Saeima appoints the Ombudsman with the consent of the Senate. At that, the Ombudsman reports to the Parliament and is liable only to the Saeima. In Australia, the Child Support Agency was established in 1989. It is subordinate to the Ministry of Family and Community Services. In Austria, the Children's Office has been operating since 1989. Besides the central office in Vienna, there is one in every region. In Finland, a special non-governmental organization has been presiding as the Commissioner for Children’s Rights since 1981. In Spain and Guatemala, there are child rights sections operating under the Committee on the Rights of the Child. In Canada, there are regional offices of Human Rights Ombudsmen. Moreover, some provinces have established the child rights sections under the Ombudsman (for example-Quebec, 1979). In Germany, the Child Rights Commission has been operating in the Bundestag since 1988. In New Zealand, Children's Commissioner Office was established under the Norwegian model in 1989. The same model has affected Sweden, where the Child Rights Ombudsman was established in 1992 (Witkowski et al., 2000). Establishing Parliamentary Ombudsman, being called the classical one, became the most frequent international practice. Its activity is under the auspices of the Parliament. This allows it to be independent of the executive branch, controlled by the Child Rights Ombudsman. Communication with the Parliament, to which the Ombudsman reports, provides it with the status and finance that it needs (Kuznetsova, 2001).

There are hot lines (Children Rights Protection Committee) and the Single 111 Call Centre (Children's Rights Commissioner) for immediate counselling assistance and psychological support for children in difficult situations. However, there is no free dialling from cell phones and the hot lines are not twenty-four seven, although the dangerous life situations can arise at any time and people use mostly the cell phones. Thus, one of the problems of anchoring international standards on child rights is the low awareness of provisions, outlined in the UN Convention on the Rights of the Child. The UN Committee mentioned this problem in the Recommendations, given to Kazakhstan on September 17, 2015. The population, in fact, is not informed about those recommendations.

The RK Law on the Rights of the Child was extended by anchoring the Convention regulations. This Law regulates the relations arising during the enforcement of basic child's rights and legitimate interests, secured by the Constitution of the Republic of Kazakhstan and the Convention on the Rights of the Child. However, there are many regulations that have been not realized yet. We have highlighted this problem earlier (Akimzhanova & Ilyassova, 2017).

RESULTS

Property Rights of the Child

The comparative legal analysis of provisions, introduced in the UN Convention on the Rights of the Child and the RK Law on the Rights of the Child, has revealed that national provisions are adopted in accordance with the Convention on the Rights of the Child. The Law even introduces some rules that stipulate the property rights of the child, not regulated by the Convention. For example, Article 13 of the Law on the Rights of the Child enshrines the following property rights of the child: *the right to receive maintenance* from his/her parents, other family members and from the State until reaching the age of majority (18 years). The maintenance refers to alimony, compensation money and other social benefits. Unfortunately, not all parents voluntarily fulfil their duties to maintain children. Such violations are committed due to objective and subjective reasons (increase in divorce unemployment rates, decrease in the standard of living). This gives rise to problems with material support for disabled family members and members in need, most significantly for children.

This issue is currently of great importance for the society. According to official figures, over 350.000 children are short of child support money in Kazakhstan. Child support debts reach up to 1.8 billion tenge; more than 13 thousand debtors have been denied the right to leave the country over the past three years. The list of deliberate alimony non-payers covers 25 thousand people.

According to the Ministry of Justice of the Republic of Kazakhstan, "*court executives rendered 213 thousand alimony orders in Kazakhstan*" in 2016. The alimony was successfully recovered in approximately 50 thousand cases, about 40 thousand cases (20%) were closed with trouble-child support money had not been paid for more than three months; over 14 thousand debts were not paying at all.

In Kazakhstan, amendments and additions were made to the existing legislation in order to improve the legal alimony recovery mechanism. The family, administrative and criminal legislation were toughened.

If the debtor has no income or property to be enforced, there will be no possibility to recover the child support, most specifically to collect payments for children, held in state institutions, from debtors deprived of parental rights due to alcohol abuse, who do not have money to support children. In this case, the child shall be supported by the State. This problem can be solved by establishing the State Aliment Fund. The State should pay benefits to children living below the poverty line, one of whose parents does not pay child support. We suggest fixing the minimum legal maintenance amount equal to the minimum cost of child's living with regard to his/her needs. Thus, the State will assist the parent to support the child in the period of alimony non-payment.

There is still no real legal mechanism for tracking the true debtor's proceeds. The legislation does not provide for the establishment of hidden income and property of child support payers. In this regard, we suggest creating a state database covering the information on employees, who have entered into an employment contract with employers, in order to have information about the alimony debtor's place of work.

Since, alimony recovery is terminated on the payer's death under Article 176 of the Code on Marriage (Matrimony) and Family. Based on the experience of foreign countries, we suggest amending a hereditary devolution procedure relating to the child support obligations. Thus, the person, who inherited the obligation to pay maintenance, will recover the alimony [16].

Child's Right to Dwelling Place

According to the Ministry of Education and Science, over 23.489 orphans and children without parental care are in need of housing in Kazakhstan. At the time of the Prosecutor General's Office inspection, over 4.000 children were not put on the waiting list for housing for various reasons (Protection of property rights of orphans, 2015).

The legal literature provides certain opinions on where the minor child should live after the his/her parents go through a divorce. Egorova points out that:

“The Family Code of the Russian Federation does not contain any special requirements for the procedure of making an agreement, giving parents the right to decide among themselves on who will take care over the child” (Egorova, 2016).

According to Pchelintseva:

“This agreement must be written with reference to Article 66 of the Family Code of the Russian Federation” (Pchelintseva, 2007).

Bespalov (2002) suggests providing for the notarization of this agreement in the legislation, as well as for its registration in the guardianship and trusteeship bodies. We believe it is important to pay attention to a divorce settlement agreement, which stipulates who will be living with the minor children, as this practice is directly related to the housing right of the child. At this point,

“The court shall consider the affection of a child towards each of the parents, brothers and sisters, age of a child, moral and other personal properties of parents, relationships, existing between each of the parents and a child, opportunity to provide conditions for development and nurturing” (Article 73 of the Code on Marriage (Matrimony) and Family).

Child's housing rights are often violated in cases, when parents are living separately, when the dwelling place is on sale or when the parent is evicted from a dwelling place, owned by another marital partner. According to the housing legislation, the evicted one will be considered as a former member of the dwelling owner's family after the termination of marital relations. At this point, minor children will remain as family members. They retain the right of ownership as the members of the dwelling owner's family and have the right to use the dwelling place equally with him (Article 22 of the Law on Housing Relations). Although, child's right to use the

dwelling place, owned by specific parent, is terminated after the child moves to another dwelling place (in another city, country) with another parent, with whom the child is going to live.

According to the Article 22 of the Code on Marriage (Matrimony) and Family, the court is obliged to

“Perform the partition of common property after demand of spouses, being in their joint property, in recognition of the interests of minors and (or) interests of the spouses.”

According to the Paragraph 9 of the Regulatory Statute of the Supreme Court of the Republic of Kazakhstan Concerning Certain Issues of Administration of Housing Ownership Legislation No. 10 of 9 July 1999, (Regulatory, 1999):

“In the event of property separation, the court has the power not to divide the spouse's property equitably for the benefit of the underage children.”

If the spouses do not have property owned in common and the parent, with whom the child will be living, does not own a dwelling, child's right to housing will not be realized. The child's right to housing is violated in the event of signing an alimony agreement, which provides for the transfer of the ownership of dwelling in maintenance payment. The latter act can be committed, since the law provides for the possibility of recovering the through the granting of property, as well as other methods relative to which the agreement is reached (Part 2 of Article 162 of the Code on Marriage (Matrimony) and Family). Thus, the law does not prohibit granting a dwelling place for a minor child to live in after divorce in maintenance payment. A dwelling place owned in common cannot be granted in maintenance payment under the alimony agreement. If the child support payer grants another dwelling place in maintenance payment under agreement, then such an act does not violate the child's right to housing. One should also keep in mind that

“The dwelling owner's duty to provide other dwelling space for the former spouse and other family members, in whose favour he/she satisfies the maintenance obligations (at their request), can be imposed only if the alimony is recovered through a court proceeding” (Egorova, 2016).

We suggest supplementing the Part 2 of Article 22 of the Code on Marriage (Matrimony) and Family with the Subparagraph 5-to determine the right of minor children to housing-for the case of dissolution of marriage (matrimony) in a judicial proceeding in order to protect the housing rights of a minor child.

The Right to Life

The Convention on the Rights of the Child proclaimed the essential right of every child to life (Article 6). This provision was anchored in the RK Law on the Rights of the Child (Article 10). Unfortunately, adult citizens are taking advantage over the child's helplessness posing a threat to his/her life or depriving the child of life. Media often covers such facts. In the country, cases, when children are abandoned on the street and/or in garbage cans, became more frequent, although such behaviour is not typical for Kazakh mentality. There have been several cases that shocked the Kazakh society-recently born children were killed by their mothers or relatives.

According to 2014 and 2015 statistics, placed on the information service of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, the number of dead infants did not change significantly during those two years-95 babies were killed at the hands by their own mothers (2016). In 2016, internal affairs agencies opened 15 criminal cases under Article 119 of the Criminal Code (*Abandoning to Danger*). There were eight abandonment cases recorded over three months in 2017 (2017).

In Kazakhstan, there were ideas for installing baby-boxes (special boxes for abandoned babies) in all medical institutions of the country. According to the deputies of the Parliament, cradles of hope, opened near the medical institutions, should save the lives of many babies (Ilyassova, 2016). However, the Ministry of Health and Social Development did not support this idea, since the baby-box system introduction would violate the Convention on the Rights of the Child and contradict the Article 60 of the Code Marriage (Matrimony) and Family, under which the child has the rights to life, to family life and to know his/her parents. Such an act will also spark the growth of the number of abandoned children in the country (Ilyassova, 2016). This problem remains unsolved, while the abandonment cases continue to arise. This problem threatens the national values. Thus, the Government has to strengthen the child abandonment prevention; medical officers and school teachers must make a psychological impact on citizens.

Child's Right to Dignity and Privacy

This regulation was anchored in Article 10 of the RK Law on the Rights of the Child.

“Avoidance of performance, as well as improper fulfilment of obligations by parents (persons substituting them) on nurturing and maintenance of children, cruel treatment of children, including carrying out of physical or mental act of outrage against him (her), shall entail deprivation of parental rights or their restriction” (Article 50 of the Law on the Rights of the Child; Article 75 of the Code on Marriage (Matrimony) and Family).

Based on the administration practice analysis, we should point out that the Human Rights Ombudsman received complaints about violence against children. Besides, media are covering the cases of violence against children, performed both in residential institutions and in families. In Pavlodar, for example, a three-year-old girl named Aylin was beaten by her own mother Nurgul Dokuova. The mother recorded the mockery, sending the video to the girl's father, who lived separately after divorce.

The juvenile court judge restricted the Nurgul Dokuova's parental responsibility for Aylin for six months by a decision. The claim on deprivation of parental responsibility for her eldest daughter Aiganyym was rejected. If the woman proves her good attitude toward her daughter during the fixed period, then the girl will be returned to her mother.

In Kazakhstan, there are recorded about 2 thousand families annually, where parents are deprived or restricted in their rights. In most cases, parents lose their parental responsibility for the child due to unemployment, lack of dwelling and poverty.

Child's Right to Family Life

The problem of orphan hood is one of the most pressing problems of modern society. According to the 2017 Report on the Situation of Children in the Republic of Kazakhstan, in

there was 27.274 orphans and children without parental care registered in 2017. If we compare these figures with the international data, we will recognize that the Republic of Kazakhstan can be classified as a country, where the number of children, hold in residential institutions, is much higher than in a number of neighbouring countries.

In the Republic of Kazakhstan, there are the following forms of foster placement, introduced for orphans and children without parental care:

“Transfer on care in a family (adoption, trusteeship or guardianship, foster care), and in the absence of such opportunity-in organizations of all types for children-orphans, children left without a parental custody” (Article 116 of the Code on Marriage (Matrimony) and Family).

We have analysed all the forms of foster placement, introduced for children without parental care are regulated by law, in our previously published papers (Ilyassova, 2016).

Kazakhstan's protection policy adopted to protect the rights of orphans and children without parental care provides for de-institutionalizing the existing placement system. The concept of host and foster families was introduced into the Kazakh legislation. There was also establishes a Republican Database on Orphans, Children Left without Parental Care and Persons Wishing to Foster Children. The number of orphanages has declined over the past five years, as well as the number of children settlements under alternative forms of custody: patronage, foster families and family-type orphanages.

In total, there were 21.051 children de-institutionalized (placed in families) out of 27.274 children; 18.941 thereof (69%) were placed under guardianship and tutorship, 1900 (7%) under patronal care, 92-were adopted by foster families (0.3%), while 118 children were taken in family type orphanages (0.4%). The 138 residential organizations became a dwelling place for 6223 children left without parental care until they find a new family.

Adoption is the most optimal form of foster placement. In accordance with the requirements, imposed in the Convention (Article 21), national legislation provides for the priority right of Kazakhstani citizens to adopt; it also simplifies the adoption procedure for them (Chapter 13 of the Code on Marriage (Matrimony) and Family).

Regulations of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Adoption Convention) were anchored in national legislation, securing the principle of adherence to the best interests of the child (Law of the Republic of Kazakhstan No. 253-IV, 2010).

According to Part 4 of Article 84 of the Code on Marriage (Matrimony) and Family:

“Children, who are the citizens of the Republic of Kazakhstan, being on a centralized registration of children-orphans, children left without a parental custody may be transferred for adoption to foreign persons, only in cases if a child may not be adopted by the relatives, citizens of the Republic of Kazakhstan living in the territory of the Republic of Kazakhstan and beyond its borders.

At the same time, judicial practice analysis reveals that courts may violate the legal requirements. The Karaganda regional juvenile court, for example, brought on the ex parte case on inter-country adoption of a minor A. born in 2012 by the Spain citizens G. and S. At the preparation stage, the court did not take into account that authorized bodies have not taken measures to find the child's relatives and consider the possibility of adoption by the Kazakhstani citizens. Accordingly, necessary materials were not submitted to the court.

The Botakoz public institution did not go beyond the child's profile, which technically indicated that the child had no relatives. The case materials had no information confirming that registered child was offered to his (her) relatives or Kazakhstani citizens for adoption since. Despite these circumstances, the court accepted and considered the claim of the above mentioned adoptive parents, thereby violating the Part 3 of Article 3 of the Code.

The similar approach was in touch when the court considered a civil case on inter-country adoption of a minor G. born in 2012 by French citizens O. and A. According to case materials, there were lists of children attached to the case that indicate which children were offered to Kazakhstani citizens for adoption. The child with the surname G., however, was not on the list.

The Aktobe regional juvenile court handled the claim of Canadian citizens D. and J. on the adoption of T., born in 2011, whose mother was underage. The case materials had data attached on the child's grandmother living in the Don village (Khromtau District). However, guardianship and trusteeship bodies having such information in their possession did not take measures to find other relatives, did not check the possibility of resigning the child to their families when the foreign citizens applied for adoption.

Thus, cases analysis revealed that some courts settle the issue of impossibility of resigning children to foster families, relatives or citizens of the Republic of Kazakhstan in a technical manner through certificates, issued by the heads of the orphanages, indicating that Kazakhstani citizens were not interested in adopting the child. The guardianship and trusteeship bodies certify the same conclusion (Generalized judicial practice in trials of civil suits on adoption of April 13, 2013).

The judicial practice analysis revealed that some regulation of the RK legislation do not comply with the Hague Adoption Convention.

The Code on Marriage (Matrimony) and Family is compliant with the Convention. According to Article 95 of the Code on Marriage (Matrimony) and Family:

“For the adoption of a child, attained the age of ten years, his (her) agreement shall be required. The agreement of a child to adoption shall be established by the court in the presence of parents or other legal representatives of a child, a prosecutor.”

However, Article 317-4 of the Civil Procedure Code states that:

“If necessary, the court may bring into proceedings the parent (s) or other legal representatives of the adopted child, his/her relatives and other interested parties, as well as the child him/herself, who shall have reached the age of ten years.”

The Aktobe regional juvenile court, for example, has settled the claim (June 17, 2013), brought by I. on the adoption of A., who was born in 1998. At the same time, 14-years-old A. was not involved in the proceedings, but her written consent for adoption was attached to the case. The child's parents were also not involved.

We believe that this provision is completely incompatible with the Article 12 of the Convention on the Rights of the Child, which gives the child the opportunity to be heard in any judicial and administrative proceedings affecting the child. At proceedings concerning the adoption of a child, the judge must substantiate the fact that the child gives consent to adoption without any pressure put on him.

Meanwhile, this requirement may be not followed at all. The Akmola regional juvenile court, for example, considered the claim, brought by N. on the adoption of his daughter of the first marriage K., who was born in 1999. At the time of proceedings, the girl was 14 years old. The minor, however, was not involved the court proceedings; her consent was not substantiated.

The same court has considered the claim, brought by B. on the adoption of her husband's daughter M., born in 2004. The claim was settled, but the court did not substantiate the girl's consent to adoption, although she turned 10 at the time of decision rendering (Generalized judicial practice in trials of civil suits on adoption of April 13, 2013).

According to Article 93 (3) of the Code on Marriage (Matrimony) and Family and Article 313 of the Civil Procedure Code, the judge obliges the:

“Guardianship or trusteeship bodies at the place of residence (location) of the adopted child to submit a conclusion on validity and on compliance of the adoption with the child's interests to the court.”

Such conclusion must be supported with a housing inspection report made in respect to adoptive parents.

The judge's point out that above conclusions is often formal. For example, they are centred on the material living conditions of families, furniture and appliances availability. There is little information about the relationship between the minor and his/her parents, other family members, about their interest in child maintenance. These conclusions do not contain sufficient information about the minor (school performance, daily routine, leisure time, people looking after his/her welfare, health, etc.) (Kurmanova, 2012).

The foreigners are allowed to adopt children only if they (the foreigners) are from the States with international obligations alike the RK obligations to protect children's rights and interests. Children placed for adoption by foreigners shall be registered with the Ministry of Foreign Affairs of the Republic of Kazakhstan until they leave the Republic of Kazakhstan.

Kazakhstani children can be adopted by foreign citizens only through the accredited international agencies, which number should not exceed twenty in the Republic. In 2017, 9 foreign agencies were accredited in the country.

According to national legislation, adoption procedures aren't hard for foreign adoptive parents. In some foreign countries, adopting a child is hard and lengthy process. As international practice shows, many countries give priority to the strict control over the adoption procedures; they also have restrictions stipulated on the identity of adoptive parents. In the Netherlands, for example, only couples with a marriage experience of at least five years are permitted to adopt a child. In Germany, only married couples can go for adoption. The Armenia laws allow the adoption by ethnic Armenians, immigrants from the same region, where the biological parents are from, as well as by those, who speak Armenian. Tajikistan allowed the adoption by couples if one of the partners is a citizen of Tajikistan (Ak-Kuova, 2016).

Unfortunately, there were cases, when the adoptive citizens of the Republic of Kazakhstan abandoned the child after adoption: up to 1.7% of resigned children return to residential institutions. The main reason for this situation is that adoptive parents were not ready to look after the child. The list may also include child's psychological incompatibility with adoptive parents and other family members; child's diseases (including the inherited ones) arising as the child develops, etc. The imperfect legal mechanism of adoption leads to negative results, which cause psychological injuries in abandoned children.

According to Article 5 of the Hague Adoption Convention, future foster parents must undergo special training, where they will learn how to cope with these or other psychological problems of adopted children.

We consider it necessary to anchor this position in the national legislation in order to prevent the abandonment of adopted children.

In the Republic of Kazakhstan, adoption procedure is simplified.

“Citizens of the Republic of Kazakhstan permanently residing on the territory of the Republic of Kazakhstan, who wish to adopt children, are permitted to personally choose the child, have direct contacts with him/her (personal acquaintance with the child, his/her habits, tastes, traits involving walks and games) for at least two weeks at the place of habitual residence of the child (Paragraph 20 of the Regulations on Placing Children, who are Citizens of the Republic of Kazakhstan, for Adoption) (Issues and Legal Aspects of Intercountry Adoption. 2007).”

Therefore, citizens adopt a child without responsibility for his/her fate only to take the child. There is no training system intended for foster parents, although a person can understand the difficulties that he/she may face, as well as whether he/she is ready or want to adopt a child, only after training.

We also believe that counselling the adoption validity and compliance with the child’s interests through the report on the adoptive parent’s living conditions is a legal technicality that does not go beyond the description of the adoptive parent’s material conditions. The conclusion should reason the child’s psychological compatibility with the adoptive parents and other family members, as well as the level of readiness of both adoptive parents to fulfil their parental responsibilities and obligations to educate and maintain the child. Thus, compulsory psychological testing can be legally established.

For example, Steffas I., the member of the American Academy of Lawyers and the Adoption Advisory Board, notes that in the USA, adoption procedure goes with FBI investigation: the adoptive parent’s life is being checked for inappropriate treatment of children or old people. Besides, FBI investigates whether the adoptive person experienced home violence or any other ill-treatment as a child. If foster parents have adult children, then each child goes through a conversation.

People, who carry out such investigation, are social workers, specially trained how to ask the family the questions. They know exactly how to handle each family member at such checks. The social workers usually make five visits. The first visit is made with the participation of both parents. The second one only with the wife. The third one only with the husband. This procedure is to satisfy that both parents equally eager to adopt the child. If there are people at the age from 18 years upward living in the house, they will also be checked and their fingerprints will be taken off.

The international child “*right to know his or her parents,*” regulated by the Convention on the Rights of the Child (Article 7), was not anchored.

The Code on Marriage (Matrimony) and Family provides for the legally protected secrecy of adoption. Parents, relatives, administrative officials of organizations, carrying out the functions of defence of the child’s rights, and (or) state bodies, carrying out the state registration of adoption; judges, delivered decisions on adoption, as well as other persons, informed on

adoption, shall be obliged to keep the secrecy of adoption (Article 102). Thus, the right of an adopted child to know his/her biological parents is violated.

The following provisions should be introduced to secure the secrecy of adoption:

1. *Upon request of an adoptive parent, the date of birth of an adopted child may be changed in the court decision on his (her) adoption, but for not more than for six months. Change of the date of birth of an adopted child shall be allowed only in adoption of a child under the age of three years.*
2. *Upon request of an adoptive parent, the place of birth of an adopted child may be changed in the court decision on his (her) adoption only within the territory of the Republic of Kazakhstan, regardless of the child's age (Article 98).*

The Kazakh mentality allows hiding the secret of adoption from others and from the child. The attitude to the secrecy of adoption has not changed since the Soviet times. Deception, betrayal by foster parents can cause psychological injuries in the child. Currently, social views of foster placement and adoption have changed. In this regard, there should be changes made in the attitude towards adoption, which should become a normal phenomenon in the society.

DISCUSSION

The UN Convention on the Rights of the Child is the main source of the international child rights, but there is no legal enforcement mechanism. For example, Article 42 of the Convention states that:

“States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.”

In Kazakhstan, the Children Rights Protection Committee has initiated the realization of this provision by placing the annual Committee Report on the Situation of Children in Kazakhstan on the Internet. According to the official report, published material analysis has revealed that the provided information is mainly a report, since the published materials are devoted to official measures, undertaken with government participation to protect the rights of children. We believe that information should touch the interests of children and parents explain the rights and responsibilities of a child in a child friendly language with the given opportunity to express one's opinion. Including a course on children's rights in the school curriculum is advisable to inform them the provisions of the Convention (Bajpai, 2018; Jørgensen et al., 2017; Schulz, 2018).

Currently, there is neither a single state program shaping the child rights realization strategy in Kazakhstan, nor a national action plan for designing effective mechanisms of its implementation and financial supply. State program design and implementation will contribute to the equal access to quality education and health care for the children of all categories, as well as to their protection against discrimination, abuse and exploitation. Such an act will also contribute to accessibility and equal opportunities for recreation, leisure, cultural and creative activities for every child, regardless of his/her social status.

The Convention on the Rights of the Child enshrines the following basic principles: non-discrimination; adherence to the best interests of the child; respect for the views of the child (Akdeniz, 2016; Dingwall et al., 2014).

The principle of non-discrimination is set in Article 14 of the Constitution of the Republic of Kazakhstan and in Article 4 of the RK Law on the Rights of the Child. However, legislation does not define discrimination as the international standards do-in the RK Law on the Rights of the Child, the term “*children’s equality*” is used instead of the term “*discrimination*.”

The principle of adherence to the best interests of the child, proclaimed by the Convention (Article 3) is not adequately reflected in national legislation. This principle is not included in the RK Law on the Rights of the Child and other laws regulating the child rights. The principle of adherence to the best interests of the child is a priority principle. Therefore, it binds the States to give priority to the best interests of the child in making decisions that affect the children’s lives. This principle should be a priority grounding the state policy and programs relating to children. Therefore, we consider it necessary to extend the RK Law on the Rights of the Child by anchoring the principle of adherence to the best interests of the child, as well as to interpret the principle concept, to reflect this principle in other legislative acts, programs and projects that affect children.

The right of the child, who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, enshrined in Article 12 of the Convention on the Rights of the Child, is not anchored in Kazakhstan's national legislation. The Law on the Rights of the Child enshrines the child’s right to express his/her opinion.

“A child has the right to express his (her) sentiment in the decision of any question that affects his (her) interests in a family, as well as in the course of any judicial examination or administrative proceeding. The public hearing of a child, attained the age of ten years, shall be obligatory under Article 62 of the Code on Marriage (Matrimony) and Family.”

The minimum legal age of 10 years, at which a child can express an opinion, contradicts the Article 12 of the Convention, stating that

“The views of the child being given due weight in accordance with the age and maturity of the child.”

In this regard, we suggest abolishing the minimum legal age, at which the child can express his/her views, and be heard during the trial affecting the rights and interests of a minor child.

The judicial practice analysis confirms that the child’s opinion should be taken into account during the civil trial involving care proceedings, regardless of the child’s age, as the child’s affection is shaped towards the parent and relatives.

Article 8 of the Convention on the Rights of the Child provides for that the:

“States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

“A child shall have the right to communicate with both parents, grandfathers, grandmothers, brothers, sisters and other relatives. The parents’ dissolution of marriage (matrimony), recognition of its

invalidity or estrangement of parents shall not influence on the rights of a child under Article 61 of the Code on Marriage (Matrimony) and Family.”

In other words, national mentality imposes that a child can be raised by a grandmother with affection shaped not only towards parents, but also towards grandparents and other relatives.

In judicial practice, this rule is clarified provocatively. Some courts dismiss grandmother's claim to fix the time for them to see their grandchildren because they had no right to claim such, since the law provides for the child's right to see grandparents, but not the right of the latter to see the children.

Article 28 of the Convention provides for the primary education to be compulsory and available free to all, and for secondary and higher education to be accessible to all. The Constitution of the Republic of Kazakhstan secures the right to free secondary education, which is compulsory in the Republic of Kazakhstan. A citizen has also the right to receive free higher education on a competitive basis. Thus, legislation, expanded with regulations of the Convention, guarantees the right of citizens to free primary and secondary education.

The child's right to health protection, regulated by the Convention (Article 24), is anchored in the RK Law on the Rights of the Child. According to Article 8 of the Law, the right to health is an essential right of every child. The state guarantees gratuitous volume of medical assistance for children in accordance with the legislation of the Republic of Kazakhstan.

According to the Children Rights Protection Committee, about 13% of ill children aren't watched by their parents-they are literally left to themselves; 72% of ill children do not always receive medical treatment; and 5% of ill children cannot receive medical treatment at all due to the lack of such service at the place of residence or for other reasons. Besides, 32% of children do not take prescription drugs as there aren't any (Report on the Situation of Children in the Republic of Kazakhstan, 2017). Thus, there is a national problem of medical care and medicines availability for poor children and children living in rural areas.

The problem of refugee children protection has not been solved as well, since the Convention regulations, provided for in Article 22, were not anchored.

The refugee and internally displaced children's rights protection is regulated by the Law on the Rights of the Child, which secures their right to protection of interests. The guardianship and trusteeship bodies having jurisdiction at the child's location, as well as the local subdivisions of the authorized body regulating the relations on the issue if refugees, facilitate the informing about the existence and residence of parents or other legal guardians. These bodies also put the child in healthcare or other facilities protecting the rights of the child (Article 47). The rights of refugee children should be expanded in the law, so the refugee children could fully enjoy all the privileges arising from the principles and provisions of the Convention.

The Republic of Kazakhstan has acceded to the Convention and Protocol Relating to the Status of Refugees (Law of the Republic of Kazakhstan of December 15, 1998). The Republic has not acceded to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

CONCLUSIONS

In order to harmonize the international and national standards on child rights, we suggest introducing the following amendments and additions to the existing legislation of the Republic of Kazakhstan:

1. The legislation does not fully reflect the principles and standards on child rights, enshrined in the Convention. In particular, the basic principle of adherence to the best interests of the child is not enshrined. The RK Law on the Rights of the Child should be extended by introducing the principle of adherence to the best interests of the child and defining the principle concept. This principle should also be reflected in other legislative acts, programs and projects affecting children.
2. In the Republic of Kazakhstan, legal status of the Child Rights Ombudsman has not been regulated as an independent national human rights body. Its source of financing has not been determined. Based on the world experience, we suggest transforming the Child Rights Ombudsman into a classical model assigning it the public status; make it accountable to the Parliament of the Republic of Kazakhstan. It is also essential to regulate the claim and complaint handling procedure, to take measures to restore the violated rights, freedoms and legitimate interests of the child (recourse to law enforcement agencies, child's complaint investigation, representation of the child, etc.).
3. The right of the child, who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, enshrined in Article 12 of the Convention on the Rights of the Child, is not anchored in Kazakhstan's national legislation. The Law on the Rights of the Child enshrines the right of the child to express his/her opinion after reaching the age of 10. We believe that this regulation is completely inconsistent with the Convention on the Rights of the Child and infringes upon the rights of the child, since Article 12 does not establish the age line for the child to invoke this right. The child's view should be assessed on case-to-case basis. The ripeness of child's views cannot be determined by biological age. Since, psychological development and maturity of each child is case-specific, child habilitation should be taken into account.

In order to bring the legislation in line with the Convention, we suggest abolishing the minimum legal age, at which the child can be heard during the trial affecting the rights and interests of a minor child. The Article 62 of the Code on Marriage (Matrimony) and Family should be amended as follows:

“The opinion of a child shall be taken under consideration on a compulsory basis in accordance with the age and maturity of the child.”

4. Regulations of the Convention on refugee children protection, provided for in Article 22, are not anchored. We suggest expanding the rights of refugee children, stipulated in the Law on the Rights of the Child, so the refugee children could fully enjoy all the privileges arising from the principles and provisions of the Convention.
5. The problem of alimony recovery can be solved by establishing the State Alimony Fund. The State Fund will repay the support debt, while the State will claim against debtors for repayments.

Based on the experience of foreign countries, we suggest amending the legislation by adding a hereditary devolution procedure, and supplementing the Code on Marriage (Matrimony) and Family with the Article 176-1 on the Inheritance of Alimony Obligations as follows:

“At death of an obligated person, alimony obligation shall be transferred to his (her) heirs. Alimony shall be paid or recovered with the property inherited by a person obliged to pay alimony.”

6. Research on the legal mechanism of protecting the housing rights of minors in Kazakhstan has revealed that many regulations are not being implemented. The Child Rights Law gives every child the right to housing; an orphan child and a child without parental care retain the right to own a dwelling or the right to use the dwelling place; they have the right to receive a dwelling in the event of its absence. Despite the provided guarantees, these children's rights are not realized.

We suggest supplementing the Part 2 of Article 22 of the Code on Marriage (Matrimony) and Family with the Subparagraph 5 to determine the right of minor children to housing-for the case of dissolution of marriage (matrimony) in a judicial proceeding in order to protect the housing rights of a minor child

7. An imperfect legal mechanism for child rights protection and realization in the event of adoption leads to the infringement of child's rights, in particular, adoptive parents are not being trained, while adopted children are not going through the process of adaptation. We consider it necessary to anchor the Article 5 of The Hague Adoption Convention in the Code on Marriage (Matrimony) and Family, as well as to establish mandatory training for adoptive parents in order to prepare them for fostering.
8. The right of the child to know his (her) parents, regulated by the Convention on the Rights of the Child (Article 7) was not anchored in national legislation. The Code on Marriage (Matrimony) and Family establishes the secrecy of adoption and secures it. Thereby, this provision contradicts the Convention. We suggest in the legislation repealing the secrecy of adoption and enshrining the child's right to know his (her) biological parents.

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