

# IMPROVING QUALITY OF LEGAL REGULATION FOR SOCIAL RIGHTS OF FAMILY AND CHILD WITHIN NEW SOCIAL COURSE IN THE REPUBLIC OF KAZAKHSTAN

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## ABSTRACT

*The object of the study is the legal institution of the social protection of the family and child. The purpose of the study is the scientific and legal justification of the main parameters of the national social security system for maternity and childhood development, based on the current conditions for political, economic and social renewal of Kazakhstan; the need to implement international universal and regional social standards and the experience of implementing measures to support the world's population. Research methods: Analysis, synthesis, comparison, analogy, deduction, induction, abstraction, as well as comparative and legal, formal and legal, method of political and legal modelling. The following results were obtained: Substantiated the essence and individual prospects for the further development of social guarantees and the rights of the family and child as the most important direction of state social policy; monitoring of the results of law enforcement practice, legislation on social protection of the family and child was done; problems of realization of social relations on social security of the specified subjects are revealed, the foreign experience of the possibilities of introducing social standardization is summarized; for improving the legal norms that make up the institution of social protection of the family and child are presented, from the perspective of the implementation of international generally recognized parameters, as well as the development and implementation of a national standard for social protection and provision.*

**Keywords:** Social Reforms, Social Rights, Subsistence Level, State Management, Social Trends.

## INTRODUCTION

The main idea of the research is to substantiate legislative proposals, recommendations on the development in Kazakhstan of the standards of social protection systems for maternity, paternity and childhood.

As a result of the research, conclusions were drawn up aimed at improving the norms of the current legislation and law enforcement practice and on modernizing measures to implement social policy in the context of the progressive development process of Kazakhstan as a social state (Herebero, 2009). The relevance of the research is determined by the interests of the state and society in the qualitative consolidation and regulation of the social rights of the family and child in the modern legal system and social relations.

Analysis of the legislation of Kazakhstan in the social sphere showed the existence of collisions, obsolete norms, the obviousness of the declarative regulatory acts, that is, without the corresponding subordinate regulatory framework or other implementation mechanisms, the inconsistency of certain regulatory acts with the international obligations of the Republic of Kazakhstan, the prevalence of a large number of laws and subordinate legislation with multiple reference rules. In a number of sectors, the legislation update is not taking place at a sufficiently fast pace, which leads to its inadequacy to rapidly changing social trends. Gaps are also indicated in law enforcement practice.

## LITERATURE REVIEW

The issues of social protection of the population in the scientific and practical literature of our country are poorly developed, the number of publications on this issue is insignificant and a larger number concerning the period of transition to an independent statehood of Kazakhstan was published in the previous ten to fifteen years.

At the same time, the review of scientific and research literature shows the interest of researchers to the phenomenon of social protection, the mechanisms for ensuring the social rights of the individual in the modern period. Theoretical sources analyse the genesis, causes, development of social security systems in regions and individual countries (Samuelson, 1975); forms of social assistance (Baldwin, 1990; Pascall and Manning, 2000; Pierson, 2001). Much attention in scientific works is paid to the problems of state management of the social sphere (Gill and Meier, 2000; Musalem and Ortiz, 2011), the evaluation of state social reforms (Massuanganhe, 2014, Sabates-Wheeler and Devereux, 2007), the standards of individual forms of social protection (Keiser, 1999), international standards of social protection (Roth, 2004), implementation of guarantees of constitutional social human rights (Shaipova, 2013; Steiner, 2010), including at the level of local administrations (Vinci, Djeddah & Hani, 2014). The questions of assessing the social reforms carried out by states are of considerable interest to researchers (Norton, Conway & Foster, 2001).

The theoretical and regulatory framework of this work derives from analytical and comparative and legal approaches to the study of the theoretical and legal framework, the literature on social law (Huber, Ragin & Stephens, 1993), economics (Holzmann and Jørgensen, 2001; Seale, 2013), political science (Dahrendorf, 2011; Daly, 2003; Korkut, Bucken-Knapp, Cox & Mahendran, 2015; Mahendran, 2015; Nelson, 2013) and other branches of knowledge in the field of ensuring social human rights (Spicer, 2005; Stillman, 2010) and also statistical and sociological data.

The topic of the work was subjected to a fragmentary examination by specialists and so far it has not been the subject of a monographic study in legal science. The scientific sources reflect the conclusions of selected issues' comprehensive analysis of public administration's

legal provision in the sphere of social security, the effectiveness of certain parameters of social reforms (Ibraev, Yerkebaeva, Mirzakulova, Nazarkulova, Buribayev & Khamzina, 2017).

Scientists have always been interested in problems of managing the social sphere, not only as an independent scientific direction (Khamzin & Buribayev, 2015) and also in interrelation with general theoretical and legal issues of defining the essence of the social state, the system of constitutional social rights and guarantees for their implementation, the state's performance of its social function, in conjunction with social interests, state social policy, the basics of managing social development (Castells, 2008) and other legal phenomena.

As a result of the research, scientific prerequisites and the basis for further improvement of the level, quality of life of the population of Kazakhstan, development of the scope of social standards' application have been created.

## **MATERIALS AND METHOD**

The scientific analysis is based on two main directions: On one hand, the mechanisms of fixing and ensuring the standards of social rights of the family and child were studied, on the other hand, the issues of the qualitative implementation of international generally accepted norms in the field of social protection of the population in the internal law of the Republic of Kazakhstan were analysed.

In recent years, the field of social legislation of the Republic of Kazakhstan has undergone radical changes, the system of relevant regulatory acts has become more qualitative and effective due to unification, implementation of organizational reform to ensure guaranteed social protection measures and significant reforms are expected in 2018. Based on the principle of complexity, the work takes into account both political and socio-economic aspects of the formation and development of legislation in the field of social protection of the population, social standardization.

Specificity and complexity of the research theme cause the application of a set of general scientific and private scientific methods of cognition, including: Analysis, synthesis, comparison, analogy, deduction, induction, abstraction, as well as a comparative and legal, formal and legal method of political and legal modelling. The work uses the historical method, with the help of which the process of forming the state social policy for the protection of the rights of the family and child is analysed.

At the same time, the researchers proceed from the conclusion drawn in the work that perspective directions of state social policy are closely related to the introduction of the social activities of non-governmental organizations (non-commercial and commercial) in the system of state management of the social sphere. Public non-state structures can complement the social activities of public authorities in the organizational aspect.

## **RESULTS**

As a result of the conducted research the following most significant conclusions were made. Social guarantees for families raising children need to be strengthened in the part of: Guarantee of equal starting material support and upbringing of children; creation of a system of material incentives for the birth of a child, logically calibrated and corresponding to the state social policy; improvement of forms of social security for disabled children and caregivers.

There is a demand for a full transition in the allocation of benefits to families with children, from the monthly calculated index (which has no meaning in the social aspect) to the subsistence level; social payments should be calculated and assigned in the subsistence level, which is a social indicator that determines the minimum human needs.

The last line of activity, in our opinion, should include:

- Expansion of the list of parameters that make up the consumer basket, in accordance with universally recognized standards of human nutrition, taking into account the specific requirements for balanced nutrition in Kazakhstan;
- Development of the cost expression of expenditures on non-food goods and services, on the basis of scientific justification and legislative consolidation, which together with the food basket constitute a subsistence level in value terms;
- In accordance with international standards, the concept of “poverty line” and “subsistence level” needs to be adjusted in terms of the monetary value of the two values given. The categories “poverty line” and “subsistence level” have different semantic and social significance.

The amount of targeted assistance in Kazakhstan is unreasonably understated and is limited by the amount of surplus of the difference between income level and the poverty line. It constitutes 40% of the subsistence level for more than 15 years, annually approved by the Government of the Republic of Kazakhstan.

Taking into account the studied foreign experience, the following directions are seen as promising for further work on the quality of the social legislation of the Republic of Kazakhstan: Creation of a unified system of social protection, including state and non-governmental mechanisms; the introduction of unified terminology into social legislation; transfer of a significant array of social legislation norms from by-laws to a single regulatory act; the introduction of new forms and types of social protection that ensure the effectiveness of modern social policy; increase the importance of non-governmental organizations, subjects of social partnership in the social sphere; the implementation of universally recognized international social standards into national legislation.

## DISCUSSION

The process of research work on the research was built taking into account the purpose and objectives. It was carried out in the following logical sequence of types of activities for support. The analysis of the situation with the social rights of the family and child in modern Kazakhstan was carried out. The factual material from the media was sampled. The processing and analysis of the results of law enforcement practice (judicial practice, the work of government bodies, NGOs) of legislation on the social protection of the family and child were carried out. Problems of realization of social relations on social security of the specified subjects were revealed; “gaps” in legal maintenance were established.

The current legislation on international treaties does not fully ensure: The mechanism for the adoption of a system of measures to implement international treaties by the Republic; the procedure for making proposals on ratification of international treaties, as well as changes and amendments to the legislation, by the interested central state bodies (Decree of the President of Republic of Kazakhstan, 2014). State’s consideration of the fact of the birth and upbringing of the child in the family as a social fact entailing the right to social security is a prospect that will

require an increase in financial resources. It is necessary to harmonize the international requirements with the procedure for granting parental leave until the age of three. In the Republic of Kazakhstan, leave to take care of a child is granted until the age of three years with the preservation of the workplace; at the same time, the paid part of it lasts only a year, which means that a woman is forced either to return to work when the child reaches the age of one year; or a single woman raising a child is in a situation where she cannot provide a child with a standard of living above the poverty line, which is only 40 percent of the subsistence level (Resolution of the Government of the Republic of Kazakhstan, 2014). We believe that the possibility of maintaining and caring for a child should be guaranteed by the state and not depend on the capabilities of the family, the specific life situation.

In the Republic of Kazakhstan, it is long overdue to reconsider the policy in the sphere of employment of the population in such a category as the “self-employed population”. According to official data, their number is stable—at least 25-30%. The majority of “self-employed” are women, their sickness sheets for pregnancy and childbirth, days of disability are not paid; annual leave is not provided, mandatory accumulative pension contributions are not deducted, they are not subject to compulsory social insurance for harm caused to health. In the second quarter of 2015, the economically active population was 9091.3 thousand people, 2488.7 thousand people or about 27% of whom are self-employed, 1,178,485 people or about 50% of whom are women; the number of labour (economically active population) at the age of 15 years and older amounted to 9.0 million people in the third quarter of 2016. The economy of the republic employed 8.6 million people or 67.0% of the population aged 15 and older. The number of employees was 6.4 million. The number of self-employed persons was 2.2 (million people, in turn, 1010.5 thousand of them are women, that is, about 46%) (The official information of the Committee on Statistics of the Republic of Kazakhstan.) The situation with the problem of social security for self-employed women in Kazakhstan is not solved.

Children with disabilities under the age of sixteen are paid a 0.9 monthly calculation index for a special state allowance or 1.909 tenge (or \$6) in 2016. A state social benefit allowance of 1 subsistence level—22.859 tenge (\$63). Additionally a person who provides care for a disabled child receives a benefit of 1 minimum wage or 22.859 tenge (\$63). In total, 47.627 tenge (\$132) per month together constitute social payments to a disabled child and a person who cares for them.

In our opinion, in a social state where the welfare of citizens is the main concern of the state, the social security of the family and child must be provided through a system of special measures aimed at both ensuring the productive employment of parents and providing material support to every disabled family member, a child, at a level not lower than the subsistence level.

## CONCLUSION

The basis of the law-making process in the sphere of social security should become strategic planning and forecasting the social effect in a precise interconnection with the developed state social indicators. Development of social legislation should be aimed at increase in the social standards. An important indicator of social state is presence of a wide nomenclature and observance of social standards for quality of living. By implementing its functions, social state should guarantee the optimum subsistence level at emergence of social risks, but not due to

social charity, but by allocating the budget funds, which is a form of execution of the constitutional principle of economic development for the benefit of the whole nation; strictly regulate the quality and volume of the social security according to age, disablement, survivorship and other social factors. The state social policy should be implemented in accordance with the legally documented social standards.

The following results were obtained as a result of the research implementation:

- The essence and individual prospects for the further development of social guarantees and the rights of the family and child as the most important direction of state social policy was substantiated;
- The analysis of the theoretical basis of social rights of the family and child, the social protection of maternity and childhood was conducted;
- Separate proposals for strengthening constitutional guarantees for the social protection of the family and child were developed and formalized;
- Individual parameters of public administration in the sphere of social protection of the family and child were systematized;
- Methods and opportunities for improving the quality of legal provision of social guarantees, family and child rights, as well as forecasting of social results from the proposed measures were argued;
- Recommendations for improving the legal norms that make up the institution of social protection of the family and child were presented, from the perspective of the implementation of internationally recognized parameters.

The targeted consumers of this study's results are the concerned state authorities, scientific community, students, graduate students, postdoctoral students, a wide circle of persons interested in the problems of legal support of state social policy and social human rights. The results obtained by the authors and the theoretical conclusions made on their basis, replenish the scientific potential of the social security right, international social right and may form the basis of the further scientific developments. The practical significance is expressed in the suggestions aimed at improving the content and structure of the legislation on social security of family and child in the Republic of Kazakhstan. The results of the conducted research may form the basis for the law-making activities in the sphere of regulation of social security of families, children and the persons substituting them, as well as for useful instruments for optimization of the law enforcement activities. The results obtained by the authors may be used in the educational process at development of the methods for teaching and contents of such training courses as "Social Law", "Labour Law" and "International Social and Labour Law".

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