

SOCIAL SECURITY FOR FAMILY AND CHILD IN KAZAKHSTAN: THEORY AND PRACTICE

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ABSTRACT

In the research the analysis of a situation with the social rights of a family and the child in the modern Kazakhstan is carried out; monitoring of system of the regulations regulating the social rights and guarantees of a family and the child is carried out; requirements, expectations and the prospects of development of the social rights of a family and the child in Kazakhstan are defined; monitoring of results of law-enforcement practice, the legislation on social protection of a family and the child is carried out. Difference of the real work from previous consists in definition of the common mechanisms of action of the government in the field of the public relations; in the analysis of a retrospective of process of a becoming and development of guarantees of the social rights of a family and the child in Kazakhstan; in justification of effective opportunities of increase in effectiveness of legal support of social protection of a maternity and the childhood.

Keywords: Family, Child, Social Protection, Social Rights, Social Standards.

INTRODUCTION

Processes of creation of independence by the Republic of Kazakhstan, becoming of constitutional and legal bases of the state and national legal system, development of social institutes in the conditions of market economy caused cardinal changes in definition of bases of existence and development of the social sphere, social security on a maternity and the childhood. Such change needed qualitatively new scientific judgment and justification, new statutory regulation of the relations arising in the course of realization of the social rights was necessary. Scientists were always interested in problems of social protection of a family and the child not only as the self-contained scientific direction and also in interrelation with general-theoretical and constitutional and legal questions of definition of a substance of the social state, system of the constitutional social rights and guarantees of their realization, execution of the social function

by the state, in interrelation with social interests, the state social policy, bases of public administration and other legal phenomena.

A review of scientific and research literature shows the interest of foreign researchers concerning the phenomenon of social protection, mechanisms to ensure the social rights of the individual in the modern period. The theoretical sources contain the analysis of genesis, sources, causes and development of social security systems in the regions and individual countries, various aspects of the individual. Scientific papers pay much attention to the problems of the governmental management of social sphere (Salter, 1998; Vigoda, 2002), assessment of social reforms carried out by the states (Norton, Conway & Foster, 2001).

Children, due to their inherent inadequate level of physical, mental, mental development and life experience, have always needed and will need the daily care of adults and at the level of state power and local government in social protection. Therefore, the maintenance of children, the satisfaction of their reasonable needs, protection from adversities and dangers have always been and remain the natural need and responsibility of man, the community of people, human society, the state (Stillman, 2010). The problem of children left without parental care is one of the most acute for Kazakhstan. In the conditions of continuing instability in social and economic life, the number of children left without parental care as a result of their refusals, the decision to restrict and deprive parental rights, is not reduced. The social portrait of this group of children is characterized by the following features. In 2-4% of cases, these are unwanted babies, from whom the mother refuses in the maternity hospital, they use the incomprehensible term “abandoned children”. In 4-6% of cases, true physical orphan hood as a result of loss Parents (Salter, 1998).

In the remaining 90-95% of cases orphans with live parents who do not fulfil their duties, with reference to this group of children, we are talking about “social orphan hood”. Existing orphanages are overcrowded (Nelson, 2013). The analysis of legislation, the search for new forms of orphans are also very important, they help to find positive and negative aspects of protection, help children, find new forms of the device in accordance with the prevailing social and economic situation in the Republic of Kazakhstan (Khamzin, 2009).

The study of orphan hood as a social phenomenon involved both scientists of our country and foreign experts. The issues of social protection of orphans, problems of their education, employment, housing provision and other social aspects of their life were studied and studied in the sociology of the family by many scientists, such as: Holostova, Kurbatov, Seny, Vasilkova, Vasilkova, Krasnitskaya, Bayanova, Mudrik, Yntymakov, Kemakina, Teslenko, Gurko, Dementieva, Elizarov, Sillaste, Osadchaya, Smirnova, Forsova, Barashkova, Rybinskiy, Kuznetsova, Nesmeyanov & Barsukova, Kochetkova, Isupova. Problems of the social protection of children left without care were brought in by Selyanina, Lykov, Smirnov, Zhuravleva & Shatilov, As well as for the basis were taken Laws of the Rights of the Child, the Law on Marriage and the Family (Huber, Ragin & Stephens, 1993).

As for the social protection of orphans during the Soviet era, they were reflected in the works of a number of authors. So, Konius, considering the issues of social protection of orphans in the pre-war period, noted that in the difficult war years, a huge work was carried out in the country to service children (Daly 2003). It was a period rich in content, together with the prewar years immediately adjacent to it (1939-1940). Sinitsyn In his study stressed that a great work was carried out in the first year and a half of the war, revealing the mechanisms of the state policy of social protection of orphans in the post war period, recognized that the leitmotif of helping children was the increase in the network of orphanages (Gilbert and Terrell, 2013). The number

of children after the war years (1945) was 678,000 orphans, most of them their parents were killed during the war. 1990 the time of perestroika. The number of orphans was 639 thousand. The share of children who lost both parents in the early 90's was about 5% of the total number of orphans; in 1998 this figure in some regions reached 25-30%.

MATERIALS AND METHOD

The methodological basis of a research was made by dialectic, logic-legal, social and legal, systemic and structural methods. The considerable attention in work is paid to application of express and legal research techniques comparative legal and historical legal. In researches doctrinal provisions of philosophy, the common theory of the right, constitutional right, administrative, civil, international, labour, social law are applied. In the analysis of problems of legal support of the social rights of a family and the child systems approach is applied. The phenomenon of social protection of a family and the child is provided with the interindustry nature of legal regulation (standards of the constitutional, administrative, labour, medical, educational, housing right, the right of social security), cross-disciplinary approach to a problem of management of this sphere.

Theoretical and legal foundations of this research are derived from analytical and comparative and legal approaches within the study of theoretical and legal framework, Kazakh and foreign literature on social law (Axinn & Stern, 2011; Hacker, 2002; Heredero, 2009; Huber, Ragin & Stephens, 1993), economics (Holzmann & Jørgensen, 2001; Lampert, 1993; Seale, 2013), political science (Dahrendorf, 2011; Daly, 2003; Gilbert & Terrell, 2013; Korkut, Bucken-Knapp, Cox & Mahendran, 2015; Nelson, 2013; Newman, Barnes, Sullivan & Knops, 2004) and other branches of knowledge in the field of social human rights (Spicer, 2005; Stillman, 2010; Estevez-Abe, Iversen & Soskice, 2001), as well as the statistical and sociological data. Subject of the research was studied by experts by fragments; it has still not been the subject of comprehensive monographic research in the law science. Scientific sources reflect findings only of the analysis of individual issues of legal support of the state administration in the sphere of social security (Khamzina, 2009), protection, participation of individual subjects in the management, assessment of individual parameters of social reforms (Abankina, Nikolayenko, Seroshtan & Filatova, 2012).

RESULTS AND DISCUSSION

Performed analysis of legislation in the field of social security provides grounds to conclude that the executive power does not fully monitor the compliance of national legislation in this sphere with the international law. Planning of legislative activities shall strictly consider the international obligations of Kazakhstan. In addition, it shall be noted that all-purpose norms on social security are not self-executing and always require internal legislative and budgeting processes.

The performed analysis proposes development and adoption of a special legal act providing following legal consequences:

- Creation of guarantees of equal starting material opportunities for funding and upbringing of all children of Kazakh families;

- Creation of a logically verified material incentives childbirth system corresponding to relevant government social policy, encouragement of having many children;
- Creation of state mechanisms of financial security for each child living in a low-income family with income at a subsistence level;
- Improvement of forms of social protection of disabled children and their caregivers;
- Attachment in legislation the concept of “family with many children”, provision of benefits under this basis to a larger number of recipients;
- Creation of state mechanisms of financial security for each child living in a family with many children, with income at a subsistence level;
- Promotion of the birth rate, implementation of care for children with disabilities;
- Increase of the level of social protection of population, better enforcement of social function by the state;
- Raising of the level of material support for families with children, including children with disabilities;
- Improving of the material welfare of large families;
- Creation of a logically verified material incentives childbirth system corresponding to relevant government social policy, encouragement of having many children;
- Attachment in legislation the concept of “family with many children”, provision of benefits under this basis to a larger number of recipients;
- Creation of state mechanisms of financial security for each child living in a family with many children, with income at a subsistence level.

Analysis of social support for large families and poverty patterns allow arguing in favour of the fact that Kazakhstan’s poverty has a child’s face. Families with children, as a rule, are representatives of the “traditionally poor” families. However, a large share of the poor households refers to the so-called “new poor” families, whose low standard of living is caused by low wages, unemployment of able-bodied family members. An important role in this case is given to the situation on the labour market, which determines the accessibility to earnings for employed parents. In this regard, policy in the field of labour relations shall be focused on the priority of provision of employment to the families with many children, expansion of the practice of flexible working mode for employed mothers, which was not fully taken into account in the new Labour Code of Kazakhstan dd. November 23, 2015 No. 414-V.

Since January 1, 2018 radical change will be implemented as for the approach to the formation of measures of a material social support for large families: Instead of the current provided three types of social payments (special government allowances for families with many children, state benefits to families with children, targeted social assistance) there will be introduced a single targeted assistance of new format. It ensures the provision of the targeted social assistance for the family with able-bodied members in the event of their participation in employment programs. Thus, the state budget will remove the burden of social financial support of a large family (family upbringing more than 4 cohabiting minor children). This social fact family with many children will cease to be such and will be removed from the list of social risks involving provision of forms of social security. Legislation will retain unconditional assistance only in the form of benefits for mothers of large families, awarded with pendants “Altyn alka”,

“Kumis Alka” or previously received the title of “Mother heroine”, awarded with the Order of Maternal Glory of I and II degree.

In accordance with the provisions of the Law of the Republic of Kazakhstan dd. October 28, 2015 No. 369-V “On amendments and alterations to some legislative acts of the Republic of Kazakhstan on the issues of social protection of population” since January 1, 2018 families with many children are excluded from the number of subjects to social benefits. Families whose income is below the poverty line, will be able to apply on a general basis for the targeted social assistance, which since that date will be of a conditional nature, i.e., able-bodied members of such families will have to take mandatory participation in employment promotion measures. It shall be mentioned that the above requirement, taking into account the incapacity of some subjects, will not be applied to minor children, including children enrolled in full-time training in the organizations of secondary, technical and vocational, post-secondary education, higher education institutions, after they reach adulthood before graduation (but not longer than until the age of twenty-three).

Thus, after the entry into force of the Law of the Republic of Kazakhstan dd. October 28, 2015 No. 369-V “On amendments and alterations to some legislative acts of the Republic of Kazakhstan on the issues of population social protection”, from January 1, 2018, causing restructuring of targeted social assistance system, social security for families with many children, access of poor children to material forms of social security will become more limited, aggravated by the fact that the targeted assistance is financed from the local budgets and the regions characterized by high levels of poverty will not be able to fund in full and sufficient volume the social assistance payments; and in the future it will entail only deterioration of living conditions of children in these regions.

At the first stage solution of the existing set of problems in the field of social protection of maternity and childhood requires recognition and classification of motherhood and childhood to risks social important for our state and society. Following issues require to be solved in this area:

1) Lack of a unified legal framework of state family policy. Measure taken by the state are mainly addressed to an individual and almost do not take into account the interests of the family as a social institution. The term “social family policy” is almost never used in government documents. The family does not act as an independent object of state policy and programs on various government levels. There is no unified system of state expertise, providing the adjustment of social policies and their specific directions with regard to the interests of family;

2) There are no formed strategies to guarantee social protection of families. Lack of adequate family support systems which may include:

- Reduction of the taxable gross income per each child for both parents;
- Lowering of the retirement age for mothers with disabilities from childhood, as well as one of the parents to care for a disabled child;
- Increase in the period of payment of benefits for child care, in the first phase—until the child reaches one and a half years; further—for the entire period of guaranteed leave for child care;
- Revision of the system of social benefits for mothers and children so as to guarantee their provision in the amount not less than the minimum subsistence level and others.

Despite strong demographic growth, Kazakhstan occupies the 63rd place in the list of countries in terms of population. The average density of just over 6.39 people per km², i.e., today the Republic is the 184th out of 195 in the list of countries by population density), which conditions the necessity of special treatment by society and the state to the families with many children, provides a state interest in increase of number of families with many children as Kazakh family standard. The foregoing allows us to come to a conclusion about the demand for reduction of the level of large families: Recognition of families large if they are raising three or more minor children.

Considering to national circumstances and international experience, main areas of public administration reform in the social sphere until 2020 in Kazakhstan shall include:

- Improving of maternal and child support systems in order to create favorable conditions to stimulate the birth rate, support large families and young families with children;
- Solution of issue aiming to provide simultaneous employment of young people, persons of pre-retirement and old age;
- Taking into account the recommendations of international institutions, ensuring of social activity to bring national labour standards into correspondence with the standards of developed countries.

Social rights of the family and the child are an integral and indivisible part of universal human rights. The future of every nation and humanity as a whole depends on the potential of the younger generation, social well-being of the family in which the child is brought up, so ensuring the rights of the family, children and their legal protection, of course, are an integral part of international law in the field of individual rights.

CONCLUSION

The basis of the law-making process in the field of social-security relations shall be the strategic planning and forecasting of social impact, in a clear relationship with the social indicators developed by the state. The development of social legislation should be aimed at improving social standards, bringing them into line with the universal, commonly recognized rules and parameters of action on social protection, care, assistance, the emergence of new forms of social goods corresponds with the above processes. It naturally determines new approaches to improve the legislation, including its systematization. The current agenda includes the acute problem of developing a new methodological approach to the improvement of legislation in the social sphere, aimed at creating a single framework of regulation and governance of social protection sphere, meeting modern social policy priorities of Kazakhstan in the framework of the progressive formation of a social welfare state.

Determining such a clear relationship between economic developments and raising the level of social commitment, we consider it important not to overlook the main principles of the principles of state development specified in the Constitution, i.e., the selected model of a legal social welfare state Kazakhstan is characterized by irreversible nature of the process of government socialization and continuous implementation. Proclaimed model of building of the

social welfare state imposes on the authorities' certain responsibilities as for creation of the conditions for a decent high quality life for citizens. Economy development shall be for the benefit of all the people. Due to this, direct conditionality of obligations performance by the state concerning the social modernization by the possibilities of sustained economic growth seems not quite justified. This conclusion is confirmed both by the facts of the global economic crisis of 2007-2009 in Kazakhstan and by the modern trends of the country's leadership on the inadmissibility of reduction of social modernization level under conditions of global financial crisis impacts.

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