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## РАЗВИТИЕ ТЕОРЕТИЧЕСКОГО ЮРИДИЧЕСКОГО ЗНАНИЯ. ОСОБЕННОСТИ СОВРЕМЕННОЙ МЕТОДОЛОГИИ ПОЗНАНИЯ ПРАВОВЫХ ЯВЛЕНИЙ

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### CONSTITUTIONAL GUARANTEES OF THE IMPLEMENTATION OF THE RIGHTS OF MINORS IN THE SYSTEM OF LEGAL GUARANTEES UNDER THE LAWS OF THE REPUBLIC OF KAZAKHSTAN

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***Annotation.** The concept of guarantees, types of realization guarantees of minor's rights and freedoms are considered in the article. Also, due attention is paid to regulations — safeguards to protect the rights and freedoms of the child.*

***Keywords:** constitutional guarantees, types of constitutional guarantees of the rights of minors, protection of the rights and freedoms of minors, constitutional guarantees in the system of legal guarantees.*

***Аннотация.** В статье рассматриваются понятие гарантий, виды гарантий реализации прав и свобод несовершеннолетних. Также должное внимание уделено нормативным актам — гарантам защиты прав и свобод ребенка.*

***Ключевые слова:** конституционные гарантии, виды конституционных гарантий прав несовершеннолетних, охрана прав и свобод несовершеннолетних, конституционные гарантии в системе юридических гарантий.*

Article 27 of the Republic of Kazakhstan Constitution establishes the legal status of man and citizen of the Republic of Kazakhstan recognizes and guarantees the inalienability of fundamental rights and freedoms obliges the state to support marriage and family, motherhood, fatherhood and childhood [1]. At the same time, in modern Kazakhstan the contradiction between the constitutional essence of system of minor's rights protection and its actual functioning retained. As a consequence, there is a need for society to establish an effective mechanism of legal regulation of constitutional rights and legitimate interests of minors.

Social problems in the sphere of childhood reverberate particular public interest. That is why in recent years, Kazakhstan has increased the attention of scientists, politicians, public figures, journalists to the problems of the legal status of minors. The declarativity of juvenile legislation, a low degree of effectiveness of minor's legal protection marked. Respect of human rights begins with respect of the child's rights. At the international level, this is an indisputable fact long recognized and enshrined in a number of normative legal acts. Lack of due attention from the government to the problem of children is possible to qualify as a non-observance of certain provisions of international legal acts by the Republic of Kazakhstan.

An indispensable part of personality legal status is the legal guarantees — the category of directly describing potentially possible ways of protection and defense of human rights in the state.

The constitutional guarantees are a set of conditions and legal means to ensure the realization and protection of the rights and freedoms of man and citizen.

Guarantees as part of the legal status of minors are all legal means ensuring the implementation, the conservation and protection of the rights and freedoms of the child.

Primarily these include constitutional provision guaranteeing of the rights, which receives a detailed justification in the current branches of Kazakh law. The Republic of Kazakhstan law on August 8, 2002 № 345-II «On the Rights of the Child» in the Republic of Kazakhstan establishes basic guarantees of the rights and legitimate interests of the child enshrined by the Constitution of the Republic of Kazakhstan, in order to create the legal, social and economic conditions for the realization of the child's rights and legitimate interests [2].

The general and special guarantees in the legal literature are traditionally allocated.

General guarantees are economic, social, political, ideological, and other types of conditions, which stand out in relation to the rights and freedoms of minors as a favorable sphere for their implementation. That is the essence of general guarantees is to have a kind of sphere that creates a real opportunity to carry out the rights and freedoms of the individual.

In contrast to the general, specific guarantees allow guaranteeing the implementation and protection of minor's rights and freedoms. N. V. Vitruk proposed to allocate two groups of special guarantees: guarantees of implementation and guarantees of guardianship (protection) [3; p. 112]. The realization guarantees include:

- Specification of the rights and freedoms limits;
- The legal facts, which binds their implementation;
- Procedural forms of human rights and freedoms carrying out;

– Incentives and facilities for stimulation of their legitimate initiative realization.

The researcher concerns to second group of special guarantees the following:

– Supervision and control of the legality of law subject's behavior in order to identify violations;

– Legal protection;

– Checkout procedure and the prevention of offenses;

– Suppression of offenses;

– Procedural forms of protection of rights and responsibilities;

– Legal responsibility [3].

In order to implement the constitutional guarantees of minors, public authorities of the Republic of Kazakhstan and their officials, are invested with the following authorities:

– Establishment of the bases of state policy in the interests of children;

– Selection of priority areas to ensure the legitimate rights and interests of the child, the protection of health or morals;

– Formation and implementation of state purposeful programs of child rights protection and child support;

– Establishment of the procedure of judicial protection of the rights and legitimate interests of the child;

– Judicial protection of rights and legitimate interests of minors;

– Fulfillment of the international obligations of the Republic of Kazakhstan and the representation of the interests of the Republic of Kazakhstan in the international organizations for the protection of children's rights.

Chapter 2 of the Republic of Kazakhstan Constitution «Man and Citizen» essentially refers fully and to the children, because, as stated in Article 12 of the Constitution, human rights and freedoms shall belong to everyone from birth, are recognized as absolute and inalienable, and define the content and application of laws and other normative legal acts [1]. This is indicated by the norms of the Law «On the Rights of the Child in the Republic of Kazakhstan», according to which a child from birth has and is guaranteed by the state human rights and freedoms and civil rights in accordance with the Republic of Kazakhstan Constitution, generally accepted principles and norms of international law, international treaties of the Republic of Kazakhstan and other normative legal acts of the Republic of Kazakhstan [2].

Therefore, minor citizens of our country should be treated as full members of society who have the whole complex of the constitutional rights and freedoms of man and citizen, the only difference is that some of the belonging rights and freedoms they have because of their age can implement with the help of their parents, and in the absence parents — with the help of other legal representatives and guardianship au-

thorities. Thus, according to Art. 67 Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» from 11.07.2017, the parents are the legal representatives of their children and to protect their rights and interests in relations with any natural and legal persons, including courts without special authority [4].

However, in case of violation of rights and legitimate interests of the child, including the non-fulfillment or improper fulfillment of their parents or other legal representatives of responsibilities for maintenance, upbringing and education of the child or of abuse of parental (guardianship of trustees) rights, the child has a right to apply for protection their rights to a body exercising functions of guardianship or trusteeship, and upon reaching the age of fourteen years — in court.

Article 38 of the Republic of Kazakhstan Constitution reflected the basic principles of family relations and state, according to which «motherhood and childhood and the family are under the state protection.» These principles are reflected and embodied in the laws relating to the protection of the rights of parents and children. For example, the rules of the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» from 11.07.2017, proclaimed «family, motherhood, fatherhood and childhood in the Republic of Kazakhstan are under the State protection» [4].

The rights of minors enshrined in Chap. 2 «The Individual and Citizen» of the Republic of Kazakhstan Constitution, are reflected and embodied in the laws on the rights of minors. We mention some of the most significant of them.

Law of the Republic of Kazakhstan dated August 8, 2002 № 345-II «On the Rights of the Child in the Republic of Kazakhstan» [2]:

- Measures to protect the rights of the child in the carrying out of its activities in the sphere of education and upbringing.
- Ensuring the rights of children to health care, for rest and health improvement.

Questions minors' rights to health care are also regulated by the Code of the Republic of Kazakhstan «On people's health and health care system» from September 18, 2009 [5]:

- Protection of the rights and legitimate interests of the child in the formation of social infrastructure for children;
- Protection of the child from information, propaganda and agitation injurious to his health, moral and spiritual development;
- Protection of the rights of children in difficult real-life situation.

Other laws that protect the rights of minors and their parents should be attributed:

- Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family», which defines the rights and duties of parents and children; maintenance obligations of parents towards their children; forms of education of children left without parental care, including issues of adoption (adrogation) of children trusteeship and

guardianship over them, foster family, patronatus and others; education, providing state-guaranteed minimum financial support of motherhood, fatherhood and childhood;

– The Labor Code of the Republic of Kazakhstan dated November 23, 2015, which established: peculiar properties of labor regulation of workers under the age of 18 years; guarantees and compensations to employees, including minors, combining work and study;

– The law «On prevention of offences among minors and prevention of child neglect and homelessness», according to the norms which the main objectives of the activities to prevent child neglect and juvenile delinquency are:

a) Prevention of neglect, homelessness, delinquency antisocial acts of minors, identifying and eliminating the causes and conditions conducive to this;

b) Supporting the minors rights and legitimate interests protection;

c) Social-pedagogical rehabilitation of minors, which are in social insecurity;

d) Identification and suppression of cases involving juvenile into crimes commission and antisocial acts.

Some rights of minors are also set in other laws, which include: the Civil Code of the Republic of Kazakhstan, the Criminal Code of the Republic of Kazakhstan, the Correctional Code of the Republic of Kazakhstan, the Code of the Republic of Kazakhstan on Administrative Offenses and other laws governing the provision and protection of minor's questions.

Decrees of the President of the Republic of Kazakhstan and the Republic of Kazakhstan governmental regulations play an important role in the legislation governing the rights of minors.

Summing up the legal regulation of minors rights and freedoms question, the following conclusions are possible:

First, the principle of priority of childhood, declared at all levels of government, none of them are not fully realized;

Secondly, there are three levels of legislation governing matters of constitutional and legal status of minors: international, national, regional;

Thirdly, the current legislation of the Republic of Kazakhstan generally corresponds to the generally recognized principles and norms of international law, however, for the effectiveness of its implementation is required to eradicate the gaps.

Supporting and protection of the rights and legitimate interests of the child in the first place guaranteed by the Republic of Kazakhstan Constitution, is today one of the most relevant state-legal problems.

Like any other civilized state, Kazakhstan is inherent traditional prepossession with the birth and upbringing of new generations of its citizen's problem, healthy

morally and physically. Meanwhile, as a result of the study, we can say that in real decision in our country there are many obstacles.

Considering the group of personal rights of the child, we can conclude that among the social evils of Kazakhstan's society most concern should cause social orphanhood, homelessness, vagabondism, abusive treatment with children, which requires from the state and society particularly close attention and inalienable measures relating to the social rehabilitation of children who find themselves in difficult life circumstances.

System of authorities entrusted with the functions of promoting the child's rights protection, as well as control over the various aspects of child rights respect in the Republic of Kazakhstan, in the main, has long been established. However, the reality shows insufficiency of such an action and control, since in practice complex approach to the child rights protection is not ensured. The following suggestions in our opinion will contribute to solve these problems:

1. The legislative fixation of the legal status of the child in the Republic of Kazakhstan Constitution.

2. The creation of a single legal act regulating the rights of the child.

3. Strengthening of responsibility of persons which responsible for ensuring the child's rights or issues relating to their protection, that is the elimination of the formalist approach of officials and organizations as a whole in solving of maternal and child protection issues;

1. Legal supporting of honor and dignity of the child;

2. Formation of an effective system of targeted social support for children ensuring priority for children in difficult living conditions;

3. Increasing proportion of resources allocated to the support of children;

4. Development of the legal education system of children and parents, increasing of their legal consciousness.

When these proposals will be implemented in practice, we believe, will increase the effectiveness of legislation governing the legal status of children, and improve mechanism for the protection and realization of their rights.

1. The Constitution of the Republic of Kazakhstan [Electronic resource] : 30.08.1995 : with alterations and additions from 10.03.2017. URL: [http://www.akorda.kz/ru/official\\_documents/constitution/](http://www.akorda.kz/ru/official_documents/constitution/) (access date: 25.02.2019). [Вернуться к статье](#)

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5. Labor Code of the Republic of Kazakhstan [Electronic resource] : November, 23, 2015. URL: [http://online.zakon.kz/document/?doc\\_id=31577399/](http://online.zakon.kz/document/?doc_id=31577399/) (access date: 25.02.2019). [Вернуться к статье](#)