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Realization of international legal norms in the sphere of children's rights protection in the Republic of Kazakhstan

The rights and freedoms of the person and the citizen, their recognition, respect and protection is a basis on which the democratic government of the modern states is based. Origin and protection of institute of human rights it was originally carried out within the national legislation though value of some acts overcame borders of the national states and promoted development of national consciousness in other countries. For protection of the rights and freedoms of the minor, the current legislation, provided a specific set of means and methods of protection: international legal mechanism of protection of human rights; judicial protection; administrative actions of executive authorities; lawful self-defense by the person of the rights. Analyzed questions of international legal standards implementation in the sphere of respect for the child's rights in the Republic of Kazakhstan in this article. Carried out the review of international legal documents and generally accepted international standards, and also the national legislation on protection of children rights, recommendations about improvement of the legislation in the sphere of children rights protection are offered.

Keywords: The rights of children, the child, protection of children rights, the international standards on children rights protection, implementation of international legal standards.

Protection of the rights and legitimate interests of children — the main indicator of any civilized society, a social orientation of state policy.

Today the Republic of Kazakhstan makes great efforts in achievement of international standards on improvement of quality of its people life, especially in the sphere of children rights and interests protection, their full and harmonious development. Message of the Head of our state to the people of Kazakhstan «The Kazakhstan way – 2050: The single purpose, single interests, the single future» where the President Nursultan Nazarbayev announced protection of the childhood the main priority of national policy [1] is confirmation to it. Besides, in 2014 Kazakhstan was included into the top ten of the most fast-growing economies that allows increasing expenses of the state on protection of the childhood, to realize new national programs for the children benefit.

The globalization processes happening before our eyes more and more raise a role of international law. Application in the national legal system of world law regulations to which the international agreements, conventions, declarations, the conventional principles and rules belong are based on the fact of their incorporation into domestic system of the law. Realization of regulations of the supranational law in the domestic law is called implementation.

Mechanisms of implementation of supranational law provisions represent «set of interstate legal and organizational means which are applied by the state for the purpose of timely and complete implementation, assumed according to international law obligations» [2; 11]. However, according to Afonichkina N.V. «... implementation of international law is a necessary prerequisite of realization of international law in one and all cases, and not just at coincidence of subjects of international and internal law regulation» [3; 12].

As for questions of implementation of the international legal standards connected with international protection of child rights, they are solved in, the first stage, at the level of the country and, respectively, responsibility for their accomplishment or failure carry out is assigned to the member country of the Convention on the Child Rights which is the determining document in this sphere. At the interstate level children interests and the rights protection can be provided only by means of the effective legislation in case of an independent branch of judicial authority and availability of state or private organizations, which are engaged in protection of the children rights.

The main international document in the sphere of children rights protection which regulations are obligatory for application in all territory of the Republic of Kazakhstan is the Convention on the Child Rights [4]. The Republic of Kazakhstan without any clauses of the Convention on the Child Rights designated those borders within which the state shall provide to society of a guarantee of ensuring children rights protection. This measure has served as the serious application in ensuring protection of the children rights by the state as

work on priority and best ensuring of the rights and interests of the child in activity of all state, private, administrative, judicial and legislature is conducted. The convention affirms various rights of the child — civil, political, economic, social and cultural, earlier never uniting in the single document. Recognizing the child as the independent person of law, convention puts in front of the Republic of Kazakhstan and other member countries a task of training of the child for independent life in society, his education in the spirit of the world, advantage, tolerance, freedom of equality and solidarity.

The most important value of the Convention is that thanks to creation of Committee on the child rights the international control of execution and progress, reached by the national legislation in the sphere of children rights protection is exercised. The principles of the Convention on the Child Rights were implemented in the Constitution of the Republic of Kazakhstan, and also in family and marriage, criminal, criminal procedure and criminal and executive codes. Kazakhstan accepted a number of laws which sphere of application were interests of younger generation. These are the republican laws «About the Child's Rights in the RK», «About Houses of Youth and Villages of Family Type» «About prevention of offenses among minors and the prevention of children's neglect and homelessness», et al.

Owing to an era of globalization and the becoming complicated processes of social and political life children appear in new circumstances and are exposed to new threats which protection wasn't enveloped by the Convention on the Child Rights. Owing to what, in 2000 as addition to the Convention on the Child Rights two Optional protocols — the Optional protocol to the Convention on the Child Rights the concerning the children trade, a children's prostitution and a child pornography and the Optional protocol to the Convention concerning an involvement of children in armed conflicts were accepted. The specified documents were accepted in response to the involvement of minors in internal armed conflicts which amplified recently (Afghanistan, Syria, Sudan, Sierra Lyon, Chechnya, etc.). Wider use of children for the purpose of sexual exploitation became at least dangerous tendency. By estimates, annually in the world in illegal sexual business which brings incomes in the amount of many millions of dollars about one million children arrive. One of them are forced to it by force, others are kidnapped or deceived. Some force to be engaged in prostitution of a circumstance as they need to survive on streets or to pay livelihood and clothes. Irrespective of circumstances, dangers of sexual exploitation are huge: irreparable injury is caused to the advantage and self-esteem of children, their physical and mental health is exposed to risk and the threat to future development is created.

The Optional protocol to the Convention ratified by the Republic of Kazakhstan concerning participation of children in armed conflicts proclaims inadmissibility of direct participation in military operations and conscription of the persons which didn't reach 18-year age. Regulations of this protocol found implementation in article 41 of the Law of the Republic of Kazakhstan «About the child's rights in the Republic of Kazakhstan» [5], forbidding involvement of the child to participation in military operations, armed conflicts, creation of children's paramilitary forces, and also in article 31 of the Law of the Republic of Kazakhstan «About military service and the status of the military personnel», determining an appeal of citizens on conscription military service aged from eighteen up to twenty seven years.

In 1999 the Republic of Kazakhstan joined the Convention on collection abroad the alimony accepted within the UN [6]. Alimentary legal relationship of parents and children are determined by the legislation of the state in the territory of which children constantly live. Kazakhstan ratified the Conventions regulating the international legal relationship between the countries participants of the CIS on collection of the alimony for minor children. Now the interstate cooperation concerning the international collection of the alimony is regulated by the Hague Convention about the international order of collection of children maintenance and other forms of a maintenance of family accepted 23.11.2007. Hague conference on a private international law.

We consider expedient accession of Kazakhstan to the Hague Convention about the international order of collection of children maintenance and other forms of a maintenance of family as it corresponds to the pursued policy of Kazakhstan on determination and protection of the childhood. Also one of the priority directions in case of ratification of the convention is that Kazakhstan will be able to establish a cooperation concerning collection of the alimony with 32 countries and the European Union. Besides ratification of the convention doesn't contradict the Constitution and the legislation of Kazakhstan and in case of ratification doesn't incur additional budgeted expenses.

In subsequent the International Labor Organization Convention No. 182 about prohibition and immediate measures for eradication of the worst forms of child labor (2002) was ratified. According to this Convention the term «child» is applied to all persons aged up to 18 years, the term «the worst forms of child

labor» includes all forms of slavery, recruitment or use of children for occupations prostitution, in production of pornographic products, in unlawful activity, in particular for production and sale of drugs, in any other work which in character or to conditions can do harm to health, safety or morality of children. In this regard Kazakhstan assumed a number of liabilities on development and implementation of state policy and the social programs directed to the solution of this problem in the country [7; 35, 36].

According to the Convention of the UN About the child's rights the Law of the Republic of Kazakhstan «About the child's rights in the Republic of Kazakhstan», governing the relations arising in connection with implementation of basic rights and interests of the child was adopted on August 8, 2002 and includes articles which are approved with articles of the Convention. This regulatory legal act established not only the purposes of state policy of the Republic of Kazakhstan for the benefit of children, but also its bases. So, the purposes of state policy for the benefit of children are: providing rights and legitimate interests of children, non-admission of their discrimination; consolidation of basic guarantees of the rights and legitimate interests of children, and also restoration of their rights in cases of violations; forming of the legal basis of guarantees of the child rights, creation of relevant agencies and organizations for protection of the rights and legitimate interests of the child; assistance to physical, intellectual, spiritual and moral development of children, to education in them of patriotism, civic consciousness and peacefulness, and also implementation of the identity of the child for the benefit of society, traditions of the people of the state, achievements of national and world culture; ensuring purposeful work on forming at minor sense of justice and legal culture.

According to article 10 of the Law «About the Child's Rights in the Republic of Kazakhstan» each child has the right to life, personal liberty, immunity of advantage and private life, the state provides security of person of the child, performs his protection against physical and (or) mental abuse, the cruel, rough or degrading human dignity address and actions of sexual nature, involvement in criminal activities and making of the antisocial actions and other types of activity violating the rights and freedoms of the person and the citizen affirmed by the Constitution of the Republic of Kazakhstan [5]. In this regard, the state guarantees immunity of the child against application of violence to him.

Ensuring protection of children, which became the victims and/or witnesses of the crimes, including domestic violence, sexual and economic exploitation, stealing and human trafficking, is performed through enhancement and effective application of the legislation of the Republic of Kazakhstan. So, according to point 2 of article 17 of the Constitution of the Republic of Kazakhstan nobody shall be exposed to tortures, violence, another to the cruel or degrading human dignity address or punishment.

In November, 2004 Kazakhstan signed the Convention of the UN on fight against human trafficking and with operation of prostitution by the third parties that shall improve protection of children rights as the main victims of human trafficking are children. The convention provides, in particular, cancellation of such institute similar to slavery as operation of child labor. It is meant as any institute or custom «owing to which the child or the teenager 18 years are younger silt of its work [8; 260] is transferred by one or both parents for remuneration or the trustee to other person for remuneration or without that, for the purpose of exploitation of this child or the teenager. The convention provides criminal liability for slave trade.

Since 2006 the Committee on protection of children rights which is the department performing within competence of the Ministry of Education and Science of the RK implementation of state policy in the sphere of protection of the rights and legitimate interests of children and also realizable and control functions in this direction. In 2007 at the Government of the Republic of Kazakhstan as advisory body the Interdepartmental commission on affairs of minors and protection of their rights as part representatives of ten profile ministries, non-governmental and public associations are is created. It is formed for the purpose of development of offers on ensuring implementation of state policy in the sphere of prevention of offenses, neglect and homelessness among minors, protection of their rights and legitimate interests.

In 2010 the Republic of Kazakhstan ratified the Convention on protection of children and a cooperation concerning foreign adoption [9]. This step, first of all, allowed our state, along with many countries, signed and joined this Convention to protect the rights and legitimate interests of children, the citizens of the Republic of Kazakhstan adopted by foreigners. This step demanded reflection of regulations of the Convention in the Code «About marriage (matrimony) and family», taken legal effect on January 18, 2012. Feature is that the child can be adopted by that country which has the international liabilities, equivalent with Kazakhstan. Each child has the right to live and be brought up in a family. The code establishes a priority of the Kazakhstan adoptive father and if the child isn't suited in the Kazakhstan family, he can be adopted by the foreigner. One more important moment is the fact that not the foreign adoptive father will choose the child, and the authorized body will choose a family for the child [10].

The current position of the state and confessional relations in Kazakhstan demonstrates that in the country legal, ideological and public conditions for peaceful co-existence of representatives of various religions and nationalities are created. The Republic of Kazakhstan is an active participant of the international movement for the sake of the peace and safety and opposes any manifestations of the terrorism acts encroaching on life, health and tranquility of civilians. In April, 2010 guarantees of protection of civilians and responsibility of law enforcement officers for conducting anti-terrorist operations are legislatively strengthened. According to the Law of the Republic of Kazakhstan «About counteraction to extremism» for involvement of children to participation in armed conflicts administrative and criminal punishment is prescribed [11].

According to the Law «About the Child's Rights in the Republic of Kazakhstan» the right of defense of interests of refugee children and forced migrants is provided. Since January 1, 2010 the Law of the Republic of Kazakhstan «About refugees» came into force, Regulations of article 2 of the Convention of the UN on the child rights the enshrined in the Kazakhstan legislation guarantee the equal rights of each child therefore for children of the foreigners and stateless persons having the registration certificate conditions for profound studying of the native language are created.

The international marriages gained big distribution, as well as disputes of parents on children and on approaches of their education and the place of residence in modern conditions. In this connection recently cases of kidnapping by one of parents living in other country, and evacuation of the child abroad became frequent. For the effective dispute resolution about education of children between parents who are citizens or live in the territory of the different states, by The Hague conference on private international law the Convention on civil aspects of the international kidnapping of October 25, 1980 was drafted [12]. Kazakhstan became the participant of this Convention. The convention came into force on the territory of the Republic of Kazakhstan on September 1, 2013. The convention is applied in cases: if the child isn't 16 years; stealing/deduction of the child by one of parents violates the guardianship right (individual or joint) or right of access of the second parent as it is determined in article 3 of the Convention; from the date of stealing/deduction passed no more than a year; The Convention works between the Republic of Kazakhstan and the state into which or from which the child is imported.

Within the CIS the Convention on legal aid and legal relations on civil, family and criminal cases which was signed by Armenia, Belarus, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine is adopted.

The general principles and regulations of the Convention on Child Rights are included in Criminal, Criminal procedure and Criminal executive codes of the Republic of Kazakhstan. Criminal liability of the persons which committed crimes against sexual integrity of minors is considerably strengthened. So, articles 120, 121, 122 and 124 of the Criminal code [13] of the Republic of Kazakhstan are added with the new norms connected with actions of sexual character, acted by persons to whom the obligation for education of children is assigned (parents, trustees, teachers). Punishment for tutors of minors is toughened. After completed sentence they are forbidden to work with children for a period of 10 up to 20 years.

The law provided responsibility for production and turnover of materials (objects) with pornographic images of minors, and also for attraction and their participation in actions of pornographic nature. For distribution in the territory of the Republic of Kazakhstan of products of mass media containing the data and materials directed to promotion of a cult of cruelty, violence and pornography, the legislation of the Republic of Kazakhstan provided administrative and criminal liability.

For the purpose of children protection from sexual harassments the law established additional requirements to the persons condemned for such crimes. They can be provided to parole only after the actual completing sentence at least three quarters of punishment term. For the purpose of prevention of operation and protection of child labor the prohibition on sale by the minor of the periodicals publishing materials of erotic content is legislatively established. In this regard article 14 of the Law «About Mass Media» is added with the regulation establishing a prohibition of sale by the minor of the periodic printing editions publishing materials of erotic nature.

New round of development the child rights got owing to adoption of the Decree of the Head of state of February 10, 2016 about creation of institute of the Ombudsman for Children in the Republic of Kazakhstan, for the purpose of further enhancement of national system of protection of children rights. This fact confirms aspiration of Kazakhstan as State member to perform the Convention of the UN on the child's rights in practice and correspond to recommendations of UN committee on the child's rights of creation of independent human rights institutions according to the Parisian principles, concerned the status of the national institutions which are engaged in promotion and protection of human rights [14]. As the international practice shows, in many countries of the world as the additional mechanism on monitoring of children rights and their protection institutes of children's ombudsmen as in global human rights process of the law of the most vulnerable

part of society hold a specific place successfully function. The organization of the Ombudsman for Children causes creation of new institute and expresses intention to render every possible assistance to its formation for the purpose of implementation of common defense of the rights of children.

In view of the above, it should be noted that the legal base of the Republic of Kazakhstan conforms to the commonly accepted international standards in the sphere of children protection. And though the national legal system progressed in implementation process of international legal standards further, than under all other human rights agreements, the Law «About the Child's Rights in the Republic of Kazakhstan» almost completely implementing Convention regulations was adopted, international standards are still distanced from national law system. Perhaps, experience of implementation of the Law «About the Child's Rights in the Republic of Kazakhstan» will promote development of new model of implementation of regulations of international treaties in the national law while many provisions of the law are inactive.

It would be desirable that main goals of international conventions — the maximum protection of child interests, recognition of their priority in society and the equal rights of the child with adults promoted valid, but not proclaimed, for providing legitimate rights of children: survival, development, protection and ensuring active participation in life of society.

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Қазақстан Республикасында бала құқықтарын қорғау саласындағы халықаралық-құқықтық нормалардың іске асырылуы

Адам және азаматтың құқықтары мен бостандықтары, оларды тану, құрметтеу мен қорғау — қазіргі заманғы мемлекеттердің демократиялық мемлекеттік билігінің тірегі. Адам құқықтары институтының пайда болуы мен қорғалуы бастапқыда ұлттық заңнама шегінде ғана жүзеге асты, алайда кейбір актілердің маңызы ұлттық мемлекет шекарасынан шығып кетті және басқа елдерде жалпыұлттық сананың дамуына жағдай жасады. Қолданыстағы заңнамада кәмелетке толмағанның құқықтары мен бостандықтарын қорғау үшін қорғаудың арнайы құралдары мен әдістерінің жиынтығы қарастырылған: адам құқықтарын қорғаудың халықаралық-құқықтық механизмі; соттық қорғау; атқарушылық билік органдарының әкімшілік әрекеттері; адамның өз құқықтарын заңды түрде өзін-өзі қорғауы. Мақалада авторлар Қазақстан Республикасындағы бала құқықтарын қорғау саласындағы халықаралық-құқықтық стандарттарды іске асырылуымен байланысты мәселелерге талдау жүргізді. Халықаралық-құқықтық құжаттарды, жалпы қабылдаған халықаралық стандарттарды және бала құқықтарын қорғау саласындағы ұлттық заңнама шолу жасап, бала құқықтарын қорғау саласындағы заңманы жетілдіру жолдарын ұсынды.

Кілт сөздер: бала құқықтары, бала, бала құқықтарын қорғау, бала құқықтарын қорғау жөніндегі халықаралық стандарттар, халықаралық-құқықтық стандарттарды жүзеге асыру.

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Реализация международно-правовых норм в области защиты прав ребенка в Республике Казахстан

Права и свободы человека и гражданина, их признание, уважение и защита — это основа, на которой базируется демократическая государственная власть современных государств. Зарождение и защита института прав человека первоначально осуществлялись в рамках национального законодательства, хотя значение некоторых актов преодолевало границы национальных государств и способствовало развитию общенационального сознания в других странах. Для защиты прав и свобод несовершеннолетнего действующим законодательством предусмотрен специфический набор средств и методов защиты: международно-правовой механизм защиты прав человека; судебная защита; административные действия органов исполнительной власти; законная самозащита человеком своих прав. В данной статье проанализированы вопросы реализации международно-правовых стандартов в области соблюдения прав ребенка в Республике Казахстан. Проведен обзор международно-правовых документов и общепринятых международных стандартов, а также национального законодательства по защите прав детей. Предложены рекомендации по совершенствованию законодательства в сфере защиты прав детей.

Ключевые слова: права детей, ребенок, защита прав детей, международные стандарты по защите прав детей, реализация международно-правовых стандартов.

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