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The forms of the placement of children deprived of parental care in the Republic of Kazakhstan: law enforcement problems

The article includes such actual matters on the protection of children in Kazakhstan as the children's placement deprived of parental care. The matters of placement of orphans and children deprived of parental care into the families are one of the most important institutions of domestic relations. All forms of children deprived of parental care regulated by law have been carefully analyzed as well as the other forms based on the experience of foreign countries. The author used statistical data, analyzed practical materials and came to a conclusion aimed at the solution of problems on giving a shelter to orphans.

Key words: family, orphans, forms of children's placement, adoption, guardianship, foster care.

The problem of orphanhood is one of the most major problems in modern society. Nowadays, there is still the problem in giving a placement to the children deprived of parental care. So, what is the essence of this problem? Everything comes from the fact that many young people want to build a family, to be an example for their children but in many cases, there is a problem that the parents are not ready for parenthood and after all, they avoid responsibility.

According to article 27, paragraph 2 of the Constitution of the Republic of Kazakhstan «the care of children and their upbringing are the natural right and duty of parents». Family education is the best form of child's upbringing. No public forms of education can replace the family. It's about a child living in the home of his parents. As a rule, in this situation the legislation performs only protective power defending the family from illegal tampering from the outside and refraining from interference into family life. However, the state intervenes up to the deprivation of parental rights or taking a child from the parents if the child's rights are violated in the family.

The relevance of the topic is that the child protection matters are related to the following reasons: the increase in the number of children deprived of maternal care and the increase in the number of offenses, crimes committed by juveniles. Today, according to experts, 32 000 children are dependent on the state. Among them 21000 children are in custody, 2000 children are on patronage and 9000 children are in the children's homes [1].

In fact, thousands of children and adolescents, the records of which aren't kept, are also deprived of parental involvement in the education, care, living conditions and who have to wander. Kazakhstan researchers note the growth of so-called «hidden social orphans». The imperfection of orphans accounting systems and high dynamics of the number of children who have lost parental care indicate the need for the prevention of social orphanhood based on a set of actions of law enforcement officers, social services, health care centers and educational institutions. The government is making efforts to create living conditions and upbringing of orphaned children in the family. In this regard, great attention is paid to the development of a network of children's homes and children's villages of family style. This is done for the further socialization of children deprived of parental care in society and for getting life experience in the family. Nowadays there are 188 institutions for orphans, 16 children's homes and 11 children's villages of family style in the country. Nearly 700 children live in these children's homes. Now everything is being done to make such homes and villages as much as possible [2].

According to the Ministry of Education and Science of the Republic of Kazakhstan, till 2020 there will be about 9 children's homes of family style in Kazakhstan. Nowadays there are 16 children's homes and 11 children's villages of family style in the Republic [3]. In Karaganda region for the last 5 years, the number of children in orphanages has been decreased by 100–150 people. Since 2013, 2 orphanages, 1 youth house, 3 shelter houses including one private have been closed. However, the number of children of «social orphans» category is still stable [4; 103]. «Social orphans» are the children who are brought to the orphanages but whose parents are alive (due to the deprivation of parental rights, abandoned children, socially disadvantaged children).

Lately, the number of cases when children were abandoned in the street or killed by a mother or relatives of a newborn baby has increased. There have been several cases that have shocked our society. For example, on the 3^d of January 2016 a baby girl was found in a roadside toilet room in Zhambyl region near the Abai village. Fortunately, now nothing threatens the baby and she was taken from the hospital to the baby house. Her mother was a 21-year-old woman. At that time, she brought up a two-year-old daughter. On the 19th of January, a box with a newborn baby inside it was found in Tselinograd district of Akmola region. Fortunately, the baby girl was still alive [5].

On the 13th of January, 2016, passersby found the second dead baby on the roadside of Bostandyk — Akkol highway in Talas district of Zhambyl region. As it became known, on the way to Taraz an underage girl began giving birth in the car. According to investigation, the baby was thrown out of the car on the road by a stepmother of 16-year-old pregnant woman. The prosecutor's office of Zhambyl region said the reasons that motivated the 54-year-old woman to throw a newborn baby from a car on the road. According to prosecutors, the woman confessed that she felt «a disgrace and shame in front of the people from the same village and relatives» concerning the birth by her underage daughter and that was the reason she got rid of the baby [6].

According to statistics on the information service of the Committee on Legal Statistics and Special Records of the Prosecutor General of the Republic of Kazakhstan in 2014 and 2015, the number of infants who died during these two years was almost the same. 95 babies were killed by their mothers [5].

In this regard, we consider it necessary to strengthen the prevention of child abandonment, to take measures on psychological effect by medical officers and teachers at schools.

The idea of setting baby-boxes (special «boxes» for abandoned infants) was proposed in all medical institutions of Kazakhstan. However, the Ministry of Health and Social Development of Kazakhstan did not support this idea as the introduction of «Baby box» system would violate the Convention on the Rights of the Child and would contradict to Article 60 of the Code of the Republic of Kazakhstan «On Marriage» in part of «Every child has the right to live and grow up in a family and the right to know his parents» and would also boost the number of exposed children in the country.

The Code of Laws «On Marriage» of the Republic of Kazakhstan includes several forms of giving a place to the children deprived of parental care: foster placement (adoption, guardianship, foster care), and if it is impossible then bringing them into different institutions as (educational, medical, etc.) for all types of orphans, children deprived of parental care (Article 118 of the Code). These forms of placement can be classified as follows: state, state and public, family. The state forms of children's placement are the most developed and widely used in our country.

The large-scale reform of orphanage system in Kazakhstan is aimed at the development of new forms of orphans' placement: children's homes and villages of family style, adoptive and foster families, preparation of professional foster families providing services to children on a temporary stay in the family [4; 103].

Let us dwell on the form of education of orphaned children in residential care. The half of orphans is social in the Republic. Among them, 70–80 % of orphans are from problem families who were deprived of their parental rights [7]. Political and social changes in our country led to a sharp decline in living standards of the majority of the population and caused a progressive weakening of ethical motivations in society, thus, giving rise to a problem of orphanhood. The family crisis led to a weakening of responsibility of many parents for the upbringing of their children. This weakening is due to making money by parents and the lack of attention paid to children by parents in the upbringing of a child in the family, a sharp rise in the number of abandoned children, increasing alcoholism and, as a consequence, neglect and domestic violence, increase in the number of children with developmental disabilities.

The children brought up in residential care are a lack of attention, family warmth and communication. When these children grow up, they can not cope with the difficulties that occur in their adult life. Therefore, the state should protect the rights of children to the greatest extent from free influence and provide a more constant stay of children in society within the family. For this reason, there are *guardianship authorities*.

In Kazakhstan, there is a public movement «The child should live in a family» as well as the program «Kazakhstan without orphans». The organizers of the projects are doing their best to reorganize the children's homes into other institutions. For example, family support centers will solve two important problems. The first is to help those families who find themselves in a crisis situation, that is, who are on the verge: to bring their children to an orphanage or not as well as to be deprived of parental rights or not. The second is if the child does not have any family, then to find him a foster parent. The foster parents don't just adopt a child but it is also a guardianship, that is, any type of a family that can take a child to them [7].

In many countries, the term «guardianship» is defined as a method of person's protection needed the patronage due to their minority, lunatic or other disabilities. According to paragraph 21 of the Article 1 of the Code «On Marriage» of the Republic of Kazakhstan «Guardianship is a legal form of protection of children's rights and interests under the age of fourteen and persons adjudged incapable by the court» and according to paragraph 19 of the Article 21 «Custody is a legal form of protection of children's rights and interests from the age of fourteen to eighteen and adult persons limited in capability by the court due to abuse of alcohol or drugs».

We consider it necessary to protect the rights of orphans to a housing which are inherited from parents or relatives. The national legislation protects the property right to housing or the right to use housing of the orphans or a child deprived of parental care and being in educational institutions, medical and other organizations providing temporary isolation from society, under guardianship, and in foster care.

The violations of housing rights of orphans and children deprived of parental care become a case at law. So, for the last three years, 51 flats have been returned on claims of guardianship (8 flats in Akmola region, 14 flats in Karaganda region, 5 flats in Kostanai region, 10 flats in Kyzylorda region, 2 flats in Mangystau regions, etc.).

Guardianship authorities filed 149 lawsuits on the return of property to minors deprived of parental care (among them only 60 claims are in Kostanai region, 17 in Karaganda region, 9 in Kyzylorda region, 9 in Akmola region, 3 in Aktobe region) [8; 116, 117].

Another common form is adoption. Adoption is one of the very important social institutions of domestic relations. Its role and significance lie in the fact that the adoption makes good children's upbringing by their biological parents. The reasons for the need of such changes are enough. The most real and common reason is the absence of biological parents at the time of children's placement in foster care.

According to statistics, over the past 15 years, 50332 children have been adopted, of which 40 925 children have been adopted by Kazakhstan people, 8860 children have been adopted by foreign citizens and 547 children have been adopted by foreign relatives. It turns out that there is one orphan per every 458 people and every 136th child is deprived of parental care [7]. The first online portal «usynovite.kz» has been organized in Kazakhstan where there are over 4 thousand profiles and photos of orphans. It would be effective to organize the republican electronic database of orphans so that adoptive parents and guardians could have an understanding of the children.

At present, there is the problem of watching the adopted child's future. There are cases when the adoptive parents go to court on cancellation of adoption. So, in 2013 there were 10 applications and in 2014 there were 6 applications which were satisfied by the courts [9].

In accordance with paragraph 4 of Article 86 of the Code «On marriage and family» the adoptive parents who are the citizens of the Republic of Kazakhstan and who permanently reside in the country are obliged at least once a year until the child reaches the age of eighteen years to submit reports on living conditions, training, education and state of the adopted child's health to the authority who exercises functions of guardianship or custody in the place where the decision on the child's adoption was passed. The adoptive parents who are the citizens of the Republic of Kazakhstan and who permanently live outside of the Republic of Kazakhstan, as well as the foreign adoptive parents are obliged every six months in the first three years after court's decision on adoption enters into force and in the following years at least once a year until the child reaches the age of eighteen years to submit reports on living conditions, training, education and state of the adopted child's health to the authority in the sphere of children's rights protection of the Republic of Kazakhstan. However, there is no state authority that goes to the place of residence and watches the living conditions of the adopted child in a new family.

Today, there is juvenile police, juvenile advocacy and juvenile courts in Kazakhstan. We consider it necessary to include a further control for adopted children in the mandate of the Commission for Minors within the Akimats which include representatives of the Office of Education, Department of Internal Affairs, Social Protection of Population, Justice, and Health authorities. In foreign countries, such as Sweden, Norway, Denmark, the social services may come to home of the adoptive parent at any time and check the child's living conditions up to food in the refrigerator [9].

There are rules for keeping the centralized recording of children deprived of parental care. Primary recording of children is carried out by the guardianship authorities. Regional recording of children is carried out by the education authorities of the region, city, and capital. The centralized recording of children is carried out by the central executive body in the field of secondary education.

Orphanage administration doesn't always appeal to the guardianship authorities to determine the orphan status in time. This circumstance deprives orphans to get, for example, the housing, as well as to prevent their adoption.

Nowadays patronage is being developed in Kazakhstan. A patronage is a form of education when orphans deprived of parental care are sent to foster care into the family under a contract entered into by the body who carries out the functions of trusteeship or guardianship and by a person who has a desire to take the child in foster care. Foster parents can be only persons of majority age of both sexes who meet the qualifications of teaching staff positions.

The financial incentives for foster parents, guardians and trustees who have taken orphans into the family were entered. Since 2004 the form of foster care has been developed and foster parents are paid wages in the amount of approximately 35 thousand tenge and higher as well as a child benefit in the amount of approximately 16-18 thousand tenge depending on the age of the child. Moreover, since 2011 the guardians and trustees have been given monthly payment of benefits in the amount of 18 minimum calculation indexes. Since January 2015 Kazakhstan citizens who have adopted children are paid a one-time cash payment in the amount of 75 minimum calculation indexes [10].

If we compare with the foreign legislation then we'll see that each country has its own characteristics of forms of children's placement deprived of parental care. For example, in Israel, there are no children's homes due to the fact that any child deprived of parental care or guardianship is entered in the files on adoption immediately. Orphans and children from disadvantaged families, fathers and mothers of which are deprived of parental rights, are brought to foster families as soon as possible.

Today, Romania is in the process of reforming the child protection system. Foster families are a typical form of family placement of orphans (patronage) in Romania. Qualified social and pedagogical work of foster carers is included in the list of specialties and is socially protected in its turn. The functions of foster carers are made on the basis of an employment contract. In addition to the development of foster families' network, there is a network called «Parent helpers». It is a permanent service consisting of professional children's teachers who have a full-time work and provides an additional support for the education of children in foster families [11].

There is still another form of a temporary stay of the child in the family as «Host family». Its purpose is adaptation of the child and adoptive parents in one family. Thus, 127 children were in «host families» in 2012, 116 children were in 2013 and 111 were in 2014. This form allows a child for a short time (vacation, weekends and holidays) to find themselves in a family environment and to exclude the possibility of the child returning to a state institution [4; 104].

After analyzing the enforcement problems for children deprived of parental care, we came to the following conclusions:

1. To solve the problems of children's placement deprived of parental care, it is necessary to organize a single republican electronic database of orphans which contains the information for adoptive parents. This will allow the bodies of trusteeship and guardianship to monitor and control the education and development of children given in adoption, foster care, guardianship. Also, the information is needed for putting orphans in the queue for housing.

2. It is necessary to regulate legally the issues of further control for the fate of adopted children. We consider it necessary to empower the commissions on juvenile within the Akimats, to carry out the control over the living conditions and education of adopted children and to report to the guardianship authorities.

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Г.А. Илиясова

Қазақстан Республикасында ата-аналарының қамқорлығынсыз қалған балаларды орналастырудың нысандары: құқық қолдану мәселелері

Мақалада Қазақстанда балаларды қорғаудың өзекті сұрақтары — ата-аналарының қамқорлығынсыз қалған балаларды орналастырудың нысандары қарастырылды. Отбасына жетім балалар мен ата-аналарының қамқорлығынсыз қалған балаларды орналастырудың мәселелері отбасы құқығының маңызды институттарының бірі болып табылады. Заңнамамен реттелген ата-аналарының қамқорлығынсыз қалған балаларды орналастырудың барлық нысандары жан-жақты талдауға алынған, сондай-ақ шетелдердің тәжірибесінен орналастырудың басқа да нысандары зерттелді. Автор статистикалық мәліметтерді пайдаланып, тәжірибе материалдарына талдау жүргізу негізінде жетім балаларды орналастыру мәселелерін шешуге бағытталған қорытындылар жасады.

Г.А. Ильясова

Формы устройства детей, оставшихся без попечения родителей, в Республике Казахстан: проблемы правоприменения

В статье рассмотрены актуальные вопросы защиты прав детей в Казахстане — устройства детей, оставшихся без попечения родителей. Подчеркнуто, что вопросы устройства в семью детей-сирот и детей, оставшихся без попечения родителей, представляют один из значимых институтов семейного права. Тщательному анализу в статье подвергнуты все формы устройства детей, оставшихся без попечения родителей, регламентированные законодательством, также рассмотрены иные формы из опыта зарубежных стран. Используются статистические данные, проанализированы практические материалы, на основании которых сделаны выводы, направленные на решение проблем устройства детей-сирот.

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