

## ON PROBLEMATIC ISSUES IN THE ACTIVITIES OF THE OMBUDSMAN FOR CHILDREN IN KAZAKHSTAN

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Children, because of their age and related with it features of mental, physical and intellectual development, due to its limited capacity cannot in most cases independently seek protection of their rights and legitimate interests.

On their behalf are the legal representatives of the child (parents, guardians, director of children's institutions and so forth). In the case of child rights violations by the legal representatives, as well as when they do not defend the violated rights of the child, the child is left defenseless.

Over the past decades in the world practice an additional mechanism to provide targeted and priority protection of the rights of the child: as each individual child in violation of his rights, and children in general, which in many countries performs the functions of an independent mechanism for ensuring the rights of children at national and regional levels is produced.

Children - the future of the state guarantee of a reliable defense, genuine security, law and order and economic development of the country. As full members of society they must be protected by the state. At the same time, according to statistics, every year the child population of the country is reduced by about 90 thousands persons. Today in Kazakhstan are 5.4 millions of children, representing 31% of the country's total population[1]. And exactly they have because of their age, inexperience, need special attention and care.

In the first place this applies to children deprived of parental support, physically or mentally disabled, children from needy families, etc.

It should be noted that the Republic of Kazakhstan is taking steps to implement the Convention on the Rights of the Child, ratified by our country in 1994 [2]. The normative legal acts adopted in the Republic of Kazakhstan relating to the protection of children's rights; various targeted programs implemented, etc.

However, many of the rules have declarative character. For another thing, occurring in the post-Soviet sphere, the socio-economic crisis has led in due course to reduce the standard of living and to the massive violations of children's rights.

In the country, according to official data of the Statistics Committee of the Ministry of National Economy of the Republic of Kazakhstan, one of three marriages ends by divorce. Only during the first 9 months of 2016 the number of minors that have fallen into the category of children who are brought up in single-parent families, made up almost 46.9 thousands; number of successful actions for deprivation of rights to education of children was in 1530; registered 140 facts of suicide [3].

Thus, a large number of children today is outside the scope of the state's care. Mostly the children left without parental care and brought up into institutions (orphanages, children's homes, boarding schools for orphans and children left without parental care).

Children are extremely vulnerable when they have to defend their rights, because they are due to their inexperience cannot independently use the existing protection mechanisms: the recourse to the courts, the bodies of state administration, etc. Thus, the child's abilities to use the existing mechanisms to protect their rights are limited, as compared with the adult population - are insignificant. This fact alone suggests that additional independent mechanisms are required to ensure the rights of children.

The institute of the Ombudsman for Children was established in the Republic of Kazakhstan by the presidential decree of the Republic of Kazakhstan February 10, 2016 in order to further improvement of the national system of protection of children's rights, guarantying safeguard of rights and legitimate interests of children, as well as the restoration of violated rights and freedoms[5].

Thus, a new independent institute was formed in Kazakhstan, independent of any departmental interests and ambitions and at the same time is a bridge between the state and civil society.

The activities of the above-mentioned institution based on the principles which enshrined in the Law of the Republic of Kazakhstan dated August 8, 2002 № 345-II «On the Rights of the Child in the Republic of Kazakhstan» it is:

– the principle of legality; the principle of independence; the principle of accessibility for children; the principle of priority of protection of the rights and legitimate interests of the child; principle of objectivity; the principle of openness [6].

The main tasks of the Ombudsman for Children should include:

- strengthening of guarantees for state protection of rights freedoms and legitimate interests of the child;
- contribution to the smooth implementation and restoration of the rights, freedoms and legitimate interests of the child;
- improvement of the mechanism of ensuring and protection of the rights, freedoms and legitimate interests of the child;
- Improvement of legislation on the rights, freedoms and legitimate interests of the child, etc.

In order to protect the legitimate rights and consider appeals interests of children Ombudsman for Children's Rights:

- concerning violations of rights, freedoms and legitimate interests of the child, and complaints about decisions or actions (inaction) of the state central and local executive bodies and organizations, enterprises, their officials those who violate the rights, freedoms and legitimate interests of the child;
- supports the contribution to smooth implementation and restoration of violated rights, freedoms and legitimate interests of the child;
- develops and submits to the Government of the Republic of Kazakhstan recommendations for improving of the Republic of Kazakhstan legislation;
- it has unfettered access to the state bodies and institutions of education, health and social welfare, defense, culture and sports, as well as the institutions of the penitentiary system, where juveniles are;
- it has unobstructed access to the documents of state and public institutions dealing with children's rights;
- Performs other powers conferred on him by the laws of the Republic of Kazakhstan and acts of the Republic of Kazakhstan President[6].

The most significant differences of activity of the Children's Rights Ombudsman on the work of other supradepartmental bodies also involved in the protection of children's rights (prosecution, guardianship authorities, commissions of minors affairs, the Commissioner for Human Rights) are facilitate the procedure of self-treatment of a child for help - without the mediation of adults either prior approval by the courts the facts of a violation of his rights; responsiveness to become known child rights violations; protection of children's rights not only in the relationship with the family environment, but with all the social institutions and organizations, as well as the personal involvement of Commissioner in solving problems. Ombudsman, that is very important, organizes procedures to ensure the availability and simplicity of handling child to him.

The Ombudsman provides a wide range of free legal assistance to children and their families, including the preparation of procedural documents. An important direction of the Ombudsman for the Protection of the rights activity of the individual child has become a practice of participation in the civil cases consideration in the court of involving the interests of minors.

To participation in the case authorized drawn at the request of parties to proceedings as well as on the initiative of the court and their own initiative. This is especially actual in the cases where the rights of children are violated by authorities are obliged to protect them.

Along with the protection of the rights of the individual child, the Children's Rights Ombudsman promotes the protection of children's rights in general. For this purpose, authorized bodies monitor the rights of children respect, conducted by an independent non-departmental analysis and assessment of the situation to ensure the rights and lawful interests of children, attend child care centers; special attention is given to verifying compliance of the rights of children in foster home institutions and prisons.

Treatments of authorized bodies to the authorities contribute to management decisions to ensuring and restoration of the violated rights of children, the solution of actual problems of childhood. Objectively, the activity of the regional children's ombudspersons enhances coordination of all structures and provision of integrated solutions of children problems.

In general we can say that the institution of Ombudsman of Children rights today proved its relevance by society and authorities.

As you can see, the range of tasks and functions of the Ombudsman of Children rights is quite broad. However, in our view, the legal status of the Ombudsman of Children rights in the Republic of Kazakhstan is at a formative stage. To date, the legal status of the Ombudsman of Children rights is regulated by the Law of the Republic of Kazakhstan "On the Rights of the Child in the Republic of Kazakhstan", in particular, by articles 7-1 and 7-2, defines the principles and functions of the this Institute. Of course, there is an urgent need to adopt a separate legal act "On the Ombudsman of Children rights in the Republic of Kazakhstan." In this case, it would be appropriate to granting the status of Authorized State Body (a person holding public office).

Authorized institution shall have the right to approve the structure of the apparatus, the positions about it and provide overall guidance device activity, make regulations relating to the activities of the apparatus. It is necessary to endow the children's ombudsmen with additional powers that will contribute to more efficient work of the institution. These are the following powers:

- the right to submit to the supreme bodies of state power public annual reports and thematic reports on the position of affairs in the sphere of promotion and protection of children's rights, which are subject to official publication;
- the right to address state authorities and officials the comments and suggestions of a general nature relating to the rights of the child guaranteeing, improving administrative procedures;
- the right to apply to the subjects of legislative initiative with proposals on amending and supplementing the Republic of Kazakhstan legislation;
- the right to work with citizens petitions in a special order, which takes into account the persons who may file such an appeal;
- the right to provide professional legal assistance free of charge;
- the right to exercise the child's representation in courts on criminal and civil cases, cases of administrative offenses and to give opinions on such matters;
- the right to apply to the bodies of the constitutional control with the complaint of a violation of the constitutional rights and freedoms of the child's legal act, as well as on the interpretation of the Republic of Kazakhstan Constitution.

However, the development of the Institute of Ombudsman for Children rights in the Republic of Kazakhstan, improving the efficiency of its activities to promote the protection of children's rights is constrained by a number of problems. The success of the work of the Ombudsman for Children rights as an institution independent of public control over the activities of state bodies on ensuring children's rights to a large extent related with the organizational and legal status of the Ombudsman.

Embeddedness of the Ombudsman for Children's Rights in the Republic of Kazakhstan into the structure of executive power, the actual submission to superiors leader restricts actions of the Ombudsman for the full protection of the rights and legitimate interests of the child, although the first stage of such an option of organization of work authorized, to some extent justified.

Examples of Ombudsman work on a voluntary basis evidence that Ombudsmen face significant difficulties in carrying out their activities, especially financial, organizational and technical character, and this, in turn, reduces the effectiveness of their work and ultimately undermines the activities of the very idea of independent monitoring public authorities on the rights of children respect.

Seems preferable option, in which the position of the Ombudsman for Children's Rights in the Republic of Kazakhstan introduced by a special law which establishes the legal framework, principles and guarantees of activity of the Ombudsman, his powers, appointment and termination of office. In this case, the Ombudsman for Children's Rights receives a certain stability and independence in the work, which is important for this institution.

Institute of the Ombudsman for Children's Rights in the Republic of Kazakhstan is not yet integrated into the system of Kazakhstan legislation, what limits its ability to implement the rights of children, for example, in court or children who are in prisons. Further development of the Ombudsman for Children's Rights Institute is an objective necessity.

Institute of Ombudsman for Children's Rights in Kazakhstan is in formation period, but it has good prospects for development; its activities are directed to ensure that governance has changed in the direction of the recognition, observance and protection of the rights of minors.

A significant factor, from which largely depends on the effectiveness of the Ombudsman activity is his reliance on the public authorities and close cooperation with public human rights organizations.

In the early stages, much depends on the identity of the person who holds the post, his authority and principal positions in the sphere of compliance, safety and protection of children's rights and freedoms in modern Kazakhstan. The Ombudsman for Children's Rights is to merge and consolidate around himself public institutions, to become member of civil society in relations with the state. Only then will he be able to become an effective regulatory authority, leading the fight against violations of children's rights by the state and its employees.

Activities of this institution contributes to the implementation of the UN Convention on the Rights of the Child, legal education of children and adults, the constructive resolution of school conflicts, opportunities for conciliation technologies creation, promote respect for human dignity. In order to introduce new technologies into the system of protection of rights and legal interests of children at the Ombudsman for Children's Rights community councils are created, volunteer movements are organized. Thus, the task of

overcoming stereotypes about the possibility of the involvement of children into decisions affecting them is before the Ombudsman.

Child Ombudsman has no power authority. He does not accept the laws, is not responsible for the implementation of the state policy, and has no right to impose sanctions when the child's rights have been violated. But based on expert judgment, he could propose new laws or amendments to existing ones, thereby contributing to the development of social policies for children interests. All actions of ombudsman for children should be based only on the knowledge and understanding of the real situation in which there are children and young people, and with the obligatory reliance on the opinions and views of children and young people.

The special role of the children's ombudsman, which distinguishes it from other institutions such as the time and is constantly reminding the authorities and the public about the obligations imposed by the Convention on the Rights of the Child.

Creating of new institution of the Ombudsman for Children's Rights is an important and noble task. For the successful functioning of this institution is necessary to concentrate the efforts of specialists of different areas that should provide the legal framework of the activities of the human rights machinery.

In our view, the institution of the Ombudsman for Children's Rights in the future will be the main form of independent monitoring of children's rights guaranteeing, the closest of the public institutions in relation to the family and children.

So, in conclusion of this work, we need to draw a line under our modest investigation.

Legal institution of children's ombudsman in a relatively short time of its existence conclusively proved its effectiveness, thereby predetermining its wide distribution in the world. Ombudsman - not artificial, instrumental construction, but a living, constantly updated Institute.

In foreign countries, the Ombudsman for Children's Rights defends the needs, rights and interests of minors, fights for the observance of the Convention on the Rights of the Child and supports its dissemination. What about of the Republic of Kazakhstan, this institution is new for us; protection of the rights of children are engaged in a variety of different state and public structures, but their activities are not coordinated. But, despite all the difficulties, the institution of ombudsman for children, from the very beginning of its existence, has proven its effective role in protecting of the rights and legitimate interests of children, its demand for the society and the power authorities.

Summing up all the work, the authors consider it necessary to note the following:

Protecting the rights of the child is the most important national and international legal task. It seems that the full potential of civil society institutes should aim at not to ignore any child to take control of the destiny of each child, to support him and help grow healthy and educated.

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