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zaure567@yandex.ru**MECHANISM OF DEFENCE OF WOMEN AND CHILDREN'S RIGHTS
IN THE LEGAL SYSTEM OF THE REPUBLIC OF KAZAKHSTAN**

Abstract. At the beginning of the third millennium, special attention was paid to the issue of children's and women's rights. Specifically, the democratization of society, in addition to political and economic changes in the countries of Central Asia created both opportunities and obstacles for achieving gender equality. This article discusses the available legislation and pertinent issues with respect to the legal rights of women and children. In short, the national legislation of the Republic of Kazakhstan, is not conducive to the realization and development of women's and children's rights. Authors offer their own vision in the field of further enhancement of the system of law of the Republic of Kazakhstan for the wide providing of the rights of women and children. Relevance of this problem means that civilized countries of the West, Europe carry annually the largest international scientific symposiums, where recommendations about adaptation of the national legal systems for universal providing of the rights of women and children were done.

Key words: feminist movement, children's and women's rights, gender equality, Central Asia, Kazakhstan, non-governmental women's organizations, gender statistics, strategy of gender equality, institutionalization of gender policy, realization of children's rights.

In the modern conditions, special attention is paid to the topic of women's and children's rights. From the perspective of jurisprudence, the feminist movement is considered a special movement in the theory of gender equality. It is important to note, that in the late 1970s various feminist movements gained mass character. The feminism inspired by socialist ideals proclaims a main objective fight against all forms of operation, including the exploitation of women (L.T. Shineleva, 2010).

One of the necessary conditions of the creation of the democratic law-abiding state is the formation and development of a flexible non-governmental sector, which is to allow and enable the free and real participation of citizens in decision-making and management of social processes. We have to stress that the special role in the development of the civil society belongs to women's non-governmental organizations, which maintain actual influence to the legal policy of Kazakhstan. In accordance with its strong legal base, stable legislation allows such women's organizations to develop and participate independently of the state and society.

Famous researcher of the feminist movement during the Soviet period, B.P. Palvanova, has studied the peculiarities of the provision of women's rights during the pre-revolutionary period, as well as the formation of the legal status of women in Central Asia and Kazakhstan. Needs footnote

1. Ratification of international documents in the field women's rights protection.

Critical international documents pertaining to the rights of women are as follows: The Convention of the United Nations "On elimination of all forms of discrimination against women" (ratified in 1998); The Convention "On the political rights of women" (ratified in 2000); The Convention "On nationality of the married woman" (ratified in 2000); The Convention of the International Labor Organization of 1951 № 100 "On equal remuneration of men and women for work of equal value" (ratified in 2000).

The Law of the Republic of Kazakhstan: This focuses on State Guarantees of the Equal Rights and Equal Opportunities of Men and Women. This legislation was adopted on December 8, 2009. Needs footnote Article 10 of the legislation addresses the participation of employers, ensuring the equal rights

and equal opportunities for men and women in the work place. The equal rights and equal opportunities in the sphere of labor relations include:

- Execution of an employment agreement;
- Equal access to vacant workplaces;
- Aspects of professional development, retraining and promotion.

Adoption of this law has undoubtedly changed Kazakhstan to a new level of gender policy and has brought state competence closer to the achievement of gender equality.

2. Introduction of gender statistics.

In order to monitor and assess the state of gender equality, it is necessary that there be statistical evidence of progress or lack of progress in this area. In Kazakhstan the maintaining of gender statistics requires the division of statistical data for men and women in important spheres of life. Kazakhstan has published an annual collection of this statistical information called *Men and Women*. Needs footnote

In Kazakhstan, in situations of violence against women have led to the creation of a new form of the statistical report, which analyzes not only the types and forms of violence, but also the persons, victims of violence, etcetera. In 2001, the Department of Public Safety in the Ministry of Internal Affairs of the Republic of Kazakhstan was created. It has an automatic databank for statistics on women's violence. It obtains the information on many parameters: reasons and consequences of commission of violence, age, and physical state. (D.Z. Mutagirov, 2008)

Moreover, in Kazakhstan, the introduction of the mechanism of public monitoring is planned. This approach answers questions such as how effectively governmental bodies perform work, whether the planned objectives are achieved, whether they correspond to real requirements of the population, how they connect the budget and the purposes of state policy.

3. Acceptance of state programs and strategy.

Introduction of the state policy and large strategic documents is rather widely applied. However, for Kazakhstan the adoption of national programs and strategies of gender equality development have been calculated through the year of 2030, through the *Strategy of Gender Equality in the Republic of Kazakhstan*. The strategy of gender equality in the Republic of Kazakhstan for 2006-2016 has been approved by the Decree of the President of the Republic of Kazakhstan N.A. Nazarbayev as of November 29, 2005, № 1677.

The *Strategy of Gender Equality in the Republic of Kazakhstan* was the fundamental document in the realization of a long-term gender policy for the state. The instrument of monitoring through the state and civil society as discussed in the policy has been an important factor for the formation of democracy. In this regard, each section of strategy includes the indicators developed the United Nation's Women's Fund (UNIFEM) for achievement of gender equality in policy, economy, education, family, healthcare and prevention of violence against women and children.

The strategy of gender equality consists of nine sections in which strategic actions for achievement of gender equality in the social and political life, economy are provided; implementation of legal and gender education; strengthening of reproductive health of men and women; prevention of violence in the society on the basis of sex; achievement of gender equality in family; strengthening of family and increasing the role of education in the family; development of gender-sensitivity public consciousness.

Each section of the strategy contains considerable descriptive parts in different problems, with the indication of the purpose, analysis of the situation, instruction regarding weaknesses and strengths, possible risks and strategic tasks and strategic actions. Certainly, the value of this document consists of a detailed study of each problem sphere in the field of gender equality achievement. For the first time, the basic concepts, such as "discrimination on the basis of sex", "direct and indirect discrimination", concepts of "the equal rights" and "equal opportunities" are determined in the national documents (V.V. Boytsova, 2006).

The downfall of this strategy is the lack of terms regarding the realization of specific actions as, it the document is connected with a period of validity that is to span for ten years (2006-2016).

4. Institutionalization of gender policy.

In the Republic of Kazakhstan in 1995, an Advisory Council was created for the problems of family, women and demographic policy under the guidance of the President of Kazakhstan. In accordance with

the Decree of the President of the Republic of Kazakhstan, on February 1, 2006 № 56, the National Commission on Affairs of Women and Family was created.

In Kazakhstan, the governmental institutions that regulate the questions of gender equality, have been changed only three times. We can see the certain growth of the status of women's organizations in this area. All three bodies have been created under the guidance of the President of the Republic of Kazakhstan.

5. Gender expertise of the normative legal acts.

For the first time, the normative legal acts in the sphere of gender policy have been enshrined in the National Plan of Action for the Advancement of Women in the Republic of Kazakhstan. Such inclusion was approved by the resolution of the Government of the Republic of Kazakhstan in July 19, 1999, № 999. The norm on obligatory gender examination in order to decrease social risks and damages entered into the Strategy of Gender Equality of the Republic of Kazakhstan in the 2006-2016 publican cycle. In 2008 the guide to carrying out gender examination of drafts of regulations was approved.

In 2008 the Guide to Gender Examination of all drafts of normative legal acts was adopted. The Guide of Gender Examination must carry out gender prescriptions. It was adopted through the efforts of the National Commission on Lawmaking Activity in the government of the Republic of Kazakhstan. In the management section, the principles and main stages of gender examination are defined and ratifications have been made to the Resolution of the Government of the Republic of Kazakhstan, which regulates the scientific examination; gender expertise of bills is carried out within the scientific examination (G.S. Sultanbayeva, 2013). Kazakhstan was the first state of the CIS to require a gender-focused examination of drafts of regulations.

6. Violence against women.

The law of the Republic of Kazakhstan “About Prevention of Domestic Violence” was adopted in 2009. Violence against women is extremely commonplace for Kazakhstan. In Kazakhstan, the governmental bodies tried to regulate the questions of violence through normative legal acts. In 1999, by the initiative of the President, special divisions on the protection of women's rights against homicide were created. Kazakhstan is the only country in the former Soviet Union that has created such divisions (Urunbayev 2008). Activity of such divisions is carried out on the basis of the legislation “About the Organization of Work of Divisions of Law-Enforcement Bodies of the Republic of Kazakhstan for the Fight against Manifestations of Violence against the Women”. The Minister of Internal Affairs of the Republic of Kazakhstan approved this instruction on October 26, 1999, № 535. The instruction allocates the functions, forms and methods of work and staff of the specified divisions. The main tasks include protection of constitutional rights, freedoms and legitimate interests of women from illegal encroachments; coordination of the activity of the divisions of law-enforcement bodies in the question of the prevention and suppression of violence against women; analytical research of the types, forms and methods of violence against women; rendering the legal aid to the population in the prevention and suppression of violence against women.

With the adoption of the recent legislation “About the Prevention of Domestic Violence”, the Republic of Kazakhstan has recognized the importance of paying careful attention to this problem.

7. Protection of the social and economic rights of women.

In 2003 the Republic of Kazakhstan created the Republican Fund for the Development of Small Business Finance Projects of Female Businesspersons. The fund has financed the projects of businesswomen for the total amount of more than 2 billion tenges (approximately \$57 million dollars). The legislation has led to a decrease in credit rates, averaging around 3%. As a result, the level of women's involvement in small and medium businesses today in the Republic of Kazakhstan is about 40%.

8. Quotas for women in Parliament in the Republic of Kazakhstan.

In the Republic of Kazakhstan there are no quotas of women representation in the Parliament of the country. An introduction of the special measures of equality for men and women has been supported in a number of states. For example, in the *Strategy of Gender Development of the Republic of Kazakhstan for 2006-2016* there existed reference to the international practice of quotas in Parliament. Moreover, it was recommended to the parties to increase the number of the women in the lists. However, in the Republic of Kazakhstan this problem was not solved by legislation.

The elections to the Mazhilis of the Parliament of the Republic of Kazakhstan and the Maslikhats (local self-governmental bodies), which took place in March 20, 2016, have shown that the number of female ex-deputies has remained in the renewed legislative body. Notable women are G. Karagusova and Z. Baliyeva, etcetera. In previous years the number of female deputies in the Parliament of the Republic of Kazakhstan comprised 24%, in 2016 it has grown to approximately about 31%.

9. Financing NGO's by the state compromises the independence of NGO's who receive money from civil society.

The Law of the Republic of Kazakhstan "About the State Social Order", has existed in Kazakhstan since 2005. The law allows females to receive financing for important social programs and projects through the government budget. The mechanism of state social orders and its influence on the development of gender NGO's possesses two sides: positive and negative. For the Republic of Kazakhstan NGO suggests stable financing of an activity through the participation and the realization of social state programs. From a positive perspective, it allows the number of NGO's to remain steady. However, in such situations there are inherent risks; the NGO could become "manual", leading only to state policy. This situation as it presently stands requires NGO's to strive for an appropriate level of autonomy from a parent's state control. The independent role of NGO's is an important civil society safeguard from state neglect or state malfunction.

The six principles of the Declaration of the Children's Rights suggest that, "intensive and harmonious development of the child's personality, the child needs love and understanding" (I.R. Chikalova, 2014). The child must also be protected by the parents in the atmosphere of love, moral and material security; the juvenile child should not be separated from the mother. The society and the bodies of public power pay great attention to orphan children. Consequently, the state provides payments to large families in order to preserve them.

In international law the protection of children's rights is provided: a) any illegal intervention in implementation of his or her right to private life, or infringement of honor and advantage; b) all forms of physical or mental abuse, insult or abuse, absence of care or negligent address, ill-treatment or operation; c) economic exploitation and performance of any work which can constitute danger to his health or to serve as an obstacle in receiving education by him or her, or to cause damage to his or her health and physical, intellectual, spiritual, moral and social development; d) illegal consumption of drugs and psychotropic substances; e) all forms of sexual exploitation and sexual seduction; e) non-human or severe treatments or punishment; g) all other forms of operation causing damage to any aspect of welfare of the child (articles 16, 19, 32-34, 37 of the Conventions on the Children's Rights). Thus, the rights of children must be protected from all negative influences by the state and respective society.

The protection of children's rights implies the following: restoration of any violated rights, creation of conditions in cases of compensations, removal of obstacles inhibiting implementation of the law, etcetera. It is quite necessary to specify, that "rights" do not suggest only political, economic and social rights, marked in the Constitution and Family Code, but also the legitimate interests of the children, contradictions between "rights" and "interests".

It is well understood that in theory and in practice there have been two main forms of protection for children's rights: jurisdictional and non-jurisdictional. The jurisdictional form of protection suggests an activity of the bodies for protection, generally authorized by the state, in the cases of violation or challenged rights (courts, agencies of guardianship, law-enforcement bodies). Within the jurisdictional form of protection, the general (judicial) and special (administrative) order of protection of the violated rights exists. The non-jurisdictional form of protection implies the actions of citizens and NGO's for the protection of their rights and interests by law. Examples of non-jurisdictional forms of protection of children's rights are following: "Center of Support of the Children", "Childhood without Borders", Association of Mothers-Heroes, who have many children "Gibrat", Public association "Dostar", etcetera.

Needs footnote

The mission of these organizations is to activate and involve children and adolescents in the creation of civil society, and the creation of opportunities for the development of moral and physical health.

The activities of such centers suppose: the analysis of the position of children and adolescents in Kazakhstan, reform of juvenile justice child protection systems, educational seminars (economic, psychological, and legal) for the development of the child's potential, the maximum development of the

personality, talents and physical abilities of children. Thus, NGO's make significant contributions to the education of future generations in Kazakhstan.

When women's rights are violated, the rights of children are also exposed to risk, assuming the natural appointment of the woman to be a mother. Motherhood is the category which defines an exclusive status of the female.

In the Convention of the International Labor Organization № 103 "About Protection of Motherhood", in Article 2 the term "woman" means 'any female person, irrespective of age, nationality, race or religion.' The defining sign of reference to a person in the category of "woman" is exclusively sexual, and is received by the person by nature at the birth.

The concept of motherhood is irreducible to biological aspects of reproductive ability; no person may limit the relations between mother and child directly after delivery and in the first year of the child's life. The concept of motherhood covers the communication of mother her children until the age of positive responsibility for health and normal development of the children, realization of the rights and duties by the children. Therefore, motherhood is not reduced to the biological reproductive function of the woman.

Many ask the logical question: what about the correlation between the categories "motherhood" and "paternity", are they equivalent? In response, it is possible to imagine that motherhood and paternity are absolutely equal categories. There are no doubts about the social value of motherhood and paternity, the role of both parents in the family and the education of children.

The term "child" means any child, regardless of the status of its parents, married, or not (Article 2 of the Convention of the International Labor Organization, № 103). According to Article 1 of the Convention on the Children's Rights, "a child is any human being before the achievement of eighteen years of age". In Kazakh legislation, family law determines the child as a person who is under the age of eighteen years – the age of civil majority by Kazakh legislation. From the eighteenth year onwards, one is considered a completely capable adult. While using the term "children" in legislation, the value of such a term can be varying. The term "children" can be used for a designation of specific blood relatives, sons and daughters, the children, who have almost reached eighteen years of age. In the Constitution of Kazakhstan there is one significant concept, "family". The concept of "family" is the basis of family relationships. The legislation does not define the concept of family, its value and paramount importance, which is fixed into the Family Code. For much of history the concept of family remained a topic of debate in jurisprudence. The definition of family has sociological, illegal character. The family is defined as free, a private and untouchable element of society. In legal acts the concept of family is connected with the establishment of a number of family members. In the Kazakh legal doctrine the family is defined as the people, connected by personal non-property relations, property rights and duties, based on marriage and education of children. In accordance with the definition of Article 23 of the International Convention on the Civil and Political Rights, the family is the natural element of society, which is protected by the state and society.

Members of the family are connected by family legal relationships. Family legal relationships arise between spouses, parents and children, grandparents, siblings, and also between adoptive parents, trustees, and actual tutors. Family legal relations are the relations constructed on mutual love and respect.

Family law regulates a special type of public relations- human relations in the connection with marriage, creation of family, birth and education of children (M. Urumbayev, 2008). In this regard, it is important to focus attention to the distinction of family legal relationships, settled by the standards of family legislation. Family legal relationships are the relations between family members.

It is imperative that the categories "family legal relationship" and "family relations" remain distinct. The latter category is much broader, as it includes not only the relations between family members, settled by family law, but also the relations between different subjects, regulated by morals, legal norms, traditional and cultural factors.

Motherhood, childhood, and family represent a large system of social factors, defining the condition of society and the prospect of its progressive development, communication, and connection between generations, full realization of the rights and duties of the person and citizen as well as the actual realization of these rights and duties in social and private activity.

Protection of motherhood and childhood are matters generated by state law. The law includes protections about birth, survival and more broadly the protection of children. The fundamental law

provides general guidance. This is a constitutional mandate. The constitutional mandate is supplemented by state legislation to give the constitutional prescriptions more efficacy. In general, the activity of the state in the field of protection of motherhood and childhood can be divided into three layers:

1. The relevant acts, guarantees and norms of the realization of guarantees register. Programs at the central and local levels are developed;

2. The mechanisms and institutions, directed to the realization of these guarantees and norms are created;

3. Practice is acquired, institutions and norms are improved, and additional conditions are created and corrected according to the changes of economic, social and other circumstances in the state and in the world for the protection of motherhood and childhood.

Therefore, any organization aspires to create an effective system for the organization of work. However, such “systems of organization” for the private interests of the company may not necessarily enhance the interest of workers, including females, mothers, and children.

Market relations often do not promote social policy within the concrete organization (including protection of the rights of mother and child) and occasionally they contradict it. It is “favorable” to unfair employers to use child labor as an inexpensive source of work, to dismiss pregnant women in order to preclude excess social freight. As a result, children are exposed to dangerous and harmful working conditions, which may threaten their health and security. In other instances, young women are fearful of becoming mothers, on the condition that they may lose their work and source of income. The market economy dictates these working conditions.

Protection of motherhood is a priority issue in the Republic of Kazakhstan, especially in recent times, during the period of transition to a market economy. The Constitution of the Republic of Kazakhstan corresponds to the international legal acts of the UNO on human rights and testifies the significance of the modern society to the family, mother and child. However, in practice these norms are occasionally broken: child labor is used, young mothers are forced into perilous conditions.

In conclusion, we stress that research of the legal bases that protect the interests of the mother and child is traditionally not a focus of scholarly attention. At present, the legislative mechanisms in Kazakhstan are not sufficiently sophisticated to both understand the scope of the problems and prescribe effective measures to remedy these problems. It is important that Kazakhstan develop stronger civil society mechanisms to pressurize the state function that is charged with the enforcement of gender equality and women and children’s rights.

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З.К.Аюпова, Д.Ө. Құсайынов

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ ҚҰҚЫҚТЫҚ ЖҮЙЕСІНДЕГІ АНА МЕН БАЛА ҚҰҚЫҚТАРЫН ҚОРҒАУ МЕХАНИЗМДЕРІ

Аңдатпа. Үшінші мыңжылдықтың басында ана мен бала құқығы мәселелеріне аса зор көңіл аударылу үстінде. Орталық Азиядағы қалыптасып жатқан демократиялық қоғамдар саяси-экономикалық өзгерісте-

рінің түп негізінде гендерлік тепе-тендік қалыптастырған жағдайларды жүзеге асыруда. Бұл мақалада ұлттық заңнамадағы бала мен ана құқықтарын қорғаудың негіздері мен оны жүзеге асыру механизмдері қарастырылған. Қысқарта айтқанда, Қазақстан Республикасының ұлттық заңнамаларында әйел мен баланың құқықтарын қорғайтын механизмдер аяғына дейін жетілмеген. Авторлар өздерінің көзқарастары мен нұсқаларында Қазақстан Республикасының құқықтық жүйесін одан әрі қарай жетілдіруде ана мен баланың құқығын қорғауды қамтамасыз ету жолдарын көрсетуге тырысқан. Бұл мәселенің қоғам үшін өзектілігін біз Батыс Еуропа елдердің осы мәселелерге арналған жылда өткізілетін халықаралық ғылыми симпозиумдардың тақырыптарынан көре аламыз, олардың жұмыстарының қортындысы ретінде, осы симпозиумдардың ұлттық заңнамаларды жетілдіруге бағытталғын ана мен бала құқығын қорғаудың жаңа бағыттарын ұсынатындығын айта аламыз.

Кілттік сөздер: феминистік қозғалыс, ана мен бала құқығы, гендерлік тепе-тендік, Орталық Азия, Қазақстан, өкіметтік емес әйелдер ұйымдары, гендерлік статистика, гендерлік тепе-тендік стратегиясы, гендерлік саясатты институциялау, бала құқығын жүзеге асыру.

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МЕХАНИЗМ ЗАЩИТЫ ПРАВ ЖЕНЩИН И ДЕТЕЙ В ПРАВОВОЙ СИСТЕМЕ РЕСПУБЛИКИ КАЗАХСТАН

Ключевые слова: феминистское движение, права женщин и детей, гендерное равенство, Центральная Азия, Казахстан, неправительственные женские организации, гендерная статистика, стратегия гендерного равенства, институционализация гендерной политики, реализация прав детей.

Аннотация. В начале 3 тысячелетия особое внимание было уделено проблеме прав женщин и детей. Демократизация общества, в совокупности с политическими и экономическими изменениями, в странах Центральной Азии, создала возможности и условия достижения гендерного равенства. В статье изучается национальное законодательство в области защиты прав женщин и детей. Вкратце, национальное законодательство Республики Казахстан не в полной мере выработало механизм защит прав женщин и детей. Авторы предлагают свое видение в области дальнейшего совершенствования правовой системы Республики Казахстан для наиболее полного обеспечения прав женщин и детей. Актуальность данной проблемы заключается в том, что развитые страны Запада, Европы ежегодно проводят крупнейшие международные научные симпозиумы, где даются рекомендации по адаптированию национальных законодательств для универсального обеспечения прав женщин и детей.

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