



Original article

Women and Childrens Rights in the Republic of Kazakhstan: Theory and Practice

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Abstract

At the beginning of the third millennium, the special attention was made to the issue of childrens and women rights. Especially, the democratization of the society, political and economic changes in the countries of Central Asia created both opportunities and obstacles to achieving gender equality. This paper discusses the available legislation and real life problems with respect to the legal rights of woman and children. In conclusion, the national legislation is to enabled and enforced for the development of women and childrens rights.

Keywords: Feminism movement, Children and women rights, Gender equality, Central Asia, Kazakhstan, Women non-governmental organizations, Gender statistics, Strategy of Gender Equality, Institutionalization of gender policy, Realization of children's rights.

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INTRODUCTION

In the modern conditions the special attention is paid to the problem of women and childrens rights. From the point of view of jurisprudence the feminist movement is the special movement in the theory of gender equality. We would like to note, that in the late seventies of the XX century the feminist movements have gained mass character. The feminism inspired by the socialist ideals, proclaims the main objective fight against all forms of operation, including the exploitation of women (Shineleva, 2010).

Now one of the necessary conditions of the creation of the democratic law-abiding state is the formation and development of flexible non-governmental sector, which will allow providing 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 non-governmental organizations which have the real influence to the legal policy of our country. In accordance with the strong legal base, the stable legislation allows to the women's organizations to develop and participate independently in political life of the state and society.

The famous researcher of the feminist movement in the Soviet period B.P. Palvanova (Palvanova, 1972) has studied the peculiarities of the provision of women rights during the pre-revolutionary period, formation of the legal status of women of Central Asia and Kazakhstan.

Ratification of the Main International Documents in the Field of Protection of Women's Rights

The Convention of the United Nations “On elimination of all forms of discrimination against women” (it was ratified in 1998); The Convention “On the political rights of women” (it was ratified in 2000); The Convention “On nationality of the married women” (it was 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” (it was ratified in 2000).

The Law of the Republic Kazakhstan “About the State Guarantees of the Equal Rights and Equal Opportunities of Men and Women” has been adopted on December 8, 2009 (system PARAGRAPH, 2010). In Art. 10 of the law were fixed the participation of employers in ensuring the equal rights and equal opportunities of men and women in the sphere of work, job. The equal rights and equal opportunities in the sphere of the labor relations are guaranteed to men and women, including:

- execution of an employment agreement;
- equal access to vacant workplaces;
- questions of professional development, retraining and promotion.

Adoption of this law has undoubtedly transferred Kazakhstan to the new level of gender policy and brought the state to the achievement of gender equality.

Introduction of Gender Statistics

In Kazakhstan the question of maintaining the gender statistics means the division of statistical data in the position of men and women in all important spheres is regulated relatively recently. In our country has published an annual collection of statistical information “Men and women” (Agency of statistics of the Republic of Kazakhstan, 2016).

Besides, in Kazakhstan in the cases of violence against women was created the new form of the statistical report, which allows to analyze and generalize not only the types and forms of violence, but also the persons, victims of violence, their faces, etc.

Fifteen years ago, 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 about the women violence. It obtains the information on many parameters: reasons and consequences of commission of violence, age, physical state, etc. (Mutagirov, 2008).

Also in Kazakhstan introduction of the mechanism of public monitoring is planned. The purpose of public monitoring is definition of an assessment of the results of the regular process of collecting and analysis of comparative information about the situation. Such approach would answer questions: 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, tasks of turn on the indicators, efficiency.

Acceptance of State Programs and Strategy

Now introduction of the state policy through large strategic documents is rather widely applied. However, for Kazakhstan the adoption of national programs in the form of long-term, the strategies of gender development according to long-term Strategy of the development of Kazakhstan was calculated till 2030 year.

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 in November 29, 2005, № 1677 (ru.government.kz/docs/u051677_rus.html).

It was the fundamental document directed to the realization of long-term gender policy of the state, the instrument of its realization and implementation of monitoring from the state and civil society, as an important factor of formation the democracy. In this regard each section of Strategy has included the indicators developed together with regional office of UNO Women's fund (UNIFEM) for

achievement of gender equality in policy, economy, education, family, healthcare and prevention of violence against women and children.

Strategy of gender equality consists of 9 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 increase the role of education in family; development of gender-sensitive public consciousness.

Each section of Strategy contains considerable descriptive part in different problems, with the indication of the purpose, analysis of the situation, instruction weak and strengths, possible risks and strategic tasks and strategic actions. Certainly, the value of this document consists in detailed study of each problem sphere in the field of achievement of gender equality. 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 given in the national documents (Boytsova, 2006).

The only minus of this Strategy is possible accurate definition of strategic actions and mechanisms of their achievement, and also lack of terms of the realization of specific actions. First of all, it is connected with the period of validity of the Strategy as it has been calculated on quite long term - 2006-2016.

Institutionalization of Gender Policy

In the Republic of Kazakhstan in 1995 was created an Advisory Council for the problems of family, women and demographic policy under the guidance of the President of Kazakhstan. In 1998 the National commission on the affairs of family and women under the guidance of the President of Kazakhstan was created. In accordance with the Decree of the President of the Republic of Kazakhstan in February 1, 2006 № 56 was created the National commission on affairs of women and family-demographic policy under the guidance of the President of the Republic of Kazakhstan.

In the republic the governmental bodies, regulating the questions of gender equality, were changed only three times. We can see the certain growth of the status of the organizations in this area. If earlier it was the Advisory body- the Council for the problems of family, women and demographic policy under the guidance of the President of Kazakhstan, now it is an official governmental body in the field of realization of gender policy of the country.

All three bodies have been created under the guidance of the President of the Republic of Kazakhstan.

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 advancement of women in the Republic of Kazakhstan, which was approved by the resolution of the Government of the Republic of Kazakhstan in July 19, 1999, № 999 (adilet.zan.kz/rus/docs/P990000999_/links). The norm on obligatory gender examination of all regulations in order to decrease the social risks and damages, connected with the neglect gender specifics, were entered into the Strategy of gender equality of the Republic of Kazakhstan for 2006-2016 years. In 2008 the Guide to carrying out gender examination of drafts of regulations has been approved.

In 2008 the Guide of gender examination of all drafts of the normative legal acts was adopted. The Guide of gender examination must to carry out the gender prescriptions. It was adopted in October, 2008 by the efforts of the National commission on lawmaking activity at the Government of the Republic of Kazakhstan. Respectively, now similar examination of the legislation became obligatory. In the Management the principles and the main stages of gender examination are defined, addition is made to the Resolution of the Government of the Republic of Kazakhstan, regulating the scientific examination. Now gender expertise of bills is carried out within the scientific examination (G.S. Sultanbayeva, 2013). Kazakhstan was the first state of the CIS, where gender examination of drafts of regulations has been entered.

Violence against the Women

The law of the Republic of Kazakhstan “About prevention of domestic violence” has been adopted in December 4, 2009 (online.zakon.kz/Document/?doc_id=30525680). The problem of violence against the women is nowadays extremely actual for Kazakhstan. In Kazakhstan the governmental bodies tried to regulate the questions of violence by the normative legal acts. So, in 1999 by the initiative of the President of the country in the structure of law-enforcement bodies, the special divisions on protection of the women rights against homicide have been created. Kazakhstan is the only one country in the former Soviet Union, where such divisions are created (M. Urumbayev, 2006). Activity of such divisions is carried out on the basis of the Instruction “About the organization of work of divisions of law-enforcement bodies of the Republic of Kazakhstan for fight against manifestations of violence against the women”. The Minister of Internal Affairs of the Republic of Kazakhstan has approved this Instruction by in October 26, 1999, № 535. The Instruction provides the functions, forms and methods of work of staff of the specified divisions.

Their main tasks are: protection of the constitutional rights, freedoms and legitimate interests of the women from illegal encroachments; coordination of the activity of the divisions of law-enforcement bodies in the questions of the prevention and suppression of violence against the women; analytical

researches of the types, forms and methods of violence against the women, and also the reasons and conditions, promoting their commission; render the legal aid to the population in the questions of the prevention and suppression of violence against the women.

However, with the adoption of the special Law “About the prevention of the Domestic violence” the Republic of Kazakhstan has recognized the importance of the careful attention to this problem and necessary of settlement of the mechanisms of protection of the women in the result of violence. This law has been adopted relatively recently.

Protection of the Social and Economic Rights of the Women

Since 2003 in the Republic of Kazakhstan was created the Republican Fund of the development of small business finance projects of female business women. The Fund has financed the projects of female business women for the total amount more than 2 billion tenges (about 57 mln. dollars of the USA). The legislation has fixed for them the decrease in rates on the credits, in average for 3%. As the result the level of involvement of the women in small and medium business in current times in the Republic of Kazakhstan is about 40%.

Quotas for the Women in the Parliament of the Republic of Kazakhstan

In the Republic of Kazakhstan there are no quotas of women representative in the Parliament of the country. An introduction of the special measures of equality of men and women has been supported in the number of states. For example, in the Strategy of gender development of the Republic of Kazakhstan for 2006-2016 was fixed about 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 wasn't solving by the legislation.

As well known, 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 female ex-deputies has remained in the renew legislative body: G. Karagusova, Z. Baliyeva, etc. If in last years the number of female deputies in the Parliament of the Republic of Kazakhstan consisted 24%, in 2016 it is about 31%.

Financing of NGO's Mechanism of the State Social Order

In the Republic of Kazakhstan since 2005 existed the Law of the Republic of Kazakhstan “About the state social order”, which allows to the female to receive the financing of social important programs and projects from the budget.

If to estimate an introduction in the Republic of Kazakhstan of the mechanism of the state social orders and its influence to the development of gender NGO, it has two sides: positive and negative. For the Republic of Kazakhstan NGO means the stable financing of the activity through the participation in

the realization of the social state programs. It is positive and allows to the number of NGO's being steadier. However, in such situation there is a risk for NGO to become "manual", leading only the state policy. In such situation it is very important the functioning of NGO as the identification and attention of the state and society to the problems of the society.

The 6-principle of the Declaration of the children's rights has fixed, that "the child for intensive and harmonious development of his personality needs love and understanding (Chikalova, 2014). He has to be protected by the parents in the atmosphere of love, moral and material security; the juvenile child shouldn't to be separated from the mother. The society and the bodies of the public power pay the great attention to the orphan children. The state makes the payments for keeping the children in the large families".

In the International law the protection of the children's rights is provided: a) any illegal intervention in implementation of his right for 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 to cause damage to his 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 children's rights have to be protected from all negative influences by the state and society.

The protection of the children's rights means the following: restoration of the violated rights, creation of the conditions in the cases of compensations, removal of obstacles on the way of implementation of the law, etc. It is quite necessary to specify, that "rights' don't mean only the 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 known, that in the theory and in practice have been accepted two main forms of the protection of the rights: jurisdictional and non-jurisdictional. The jurisdictional form of the protection means an activity of the bodies for the protection, authorized by the state, in the cases of violation or challenged rights (courts, prosecutor's office, agencies of guardianship, law-enforcement bodies.). Within the jurisdictional form of the protection, the general (judicial) and special (administrative) order of the protection of the violated rights is existed. Non-jurisdictional form of the protection means the actions of the citizens and the NGO's for the protection of their rights and interests by the law. As an example of non-jurisdictional forms of protection of the children's rights there are the following: "Center of support of the children", "Childhood without the borders", Association of mothers-heroes, who have

many children “Gibrat”, Public association “Dostar”, etc. (Site Partnership with non-governmental organizations: www.ombudsman.kz/publish/docs/doklad_spec/detail).

Mission of these organizations is to activate and involve the children and teenagers to the active life, creation of the civil society, and creation of the opportunities for the development of moral and physical health of the children.

Activity of such centers supposes: the analysis of the position of children and teenagers in Kazakhstan, reform of juvenile justice and protection of the child, educational seminars (economic, psychological, legal) for the development of the potential of the children, the maximum development of the personality, talents and physical abilities of children, work with the parents in the process of education of the child. Thus, NGO’s make the contribution to the education of the future generation in our country.

Where the rights of women are violated, the rights of the children are also exposed to risk. Of course, 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 Art. 2 the term “woman” means any female person, irrespective of age, nationality, race or religion. The defining sign of reference of the person to the category “woman” - only and exclusively sexual, received by the person by nature at the birth.

The concept of motherhood is irreducible to biological aspects of reproductive ability; nobody can't also limit the relations between mother and child directly after the delivery and in the first year of life. The concept of motherhood covers communication of mother and children until the age of positive responsibility for health and normal development of the children, realization of the rights and duties by the children, the emotional relations. The motherhood isn't reduced to the biological reproductive function of the woman.

Everyone can ask the logical question: what about the correlation of the categories “motherhood” and “paternity”, or they are equivalent? It is possible to imagine, that the 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, irrespective of the status of the parents, is those married, or not (Art. 2 of the Convention of the International Labor Organization, № 103). According to Art. 1 of the Convention on the Children’s rights, “a child is each human being before achievement of 18-year age”. The Kazakhstan’s legislation, first of all, Family law, determines the child as the person under the

age of eighteen years - age of civil majority by the Kazakhstan legislation. From this date the person is considered completely capable, adult.

While using the term “children” in the legislation its value can be various. The term “children” can be used for designation of specific blood relatives, sons and daughters, the children, who have almost reached 18 years.

At the Constitution there is one significant concept - “family”. The concept “family” is the basis of the family relationships. The legislator doesn't define the concept of the family, its value and paramount importance, fixed in the Family Code. The concept of the family for a long time still remained in the jurisprudence debatable. The definition of family has sociological, illegal character. The family is defined as free, private and untouchable element of the society. In the legal acts the concept of the family is connected with the establishment of the number of the family members.

In the Kazakhstan legal doctrine the family is defined as the people, connected by the personal non-property relations, property rights and duties, based on marriage and education of the children. In accordance with the definition of Art. 23 of the International Convention on the Civil and Political Rights, the family is the natural element of the society, protected by the state and society.

Members of the family are connected by the family legal relationships. Family legal relationships arise between the spouses, parents and children, the grandfathers (grandmothers) and grandsons, sisters and brothers, and also between the adoptive parents, trustees, actual tutors. Family legal relations are the relations, constructed on the mutual love and respect.

The family law regulates the special type of the public relations - human relations in the connection with marriage, creation of the family, birth and education of children (Urumbayev, 2006). In this regard it is important to focus attention to the distinction of family legal relationships, settled by the standards of the family legislation. Family legal relationships are the relations between the family members.

It is necessary to stop on the definition of the concepts “family legal relationship” and “family relations”. The last category is much broader, because it includes not only the relations between the family members, settled by the Family law, but also the relations between the different subjects, regulated by the morals, legal norms, traditional and cultural factors.

So the motherhood, the childhood, the family represent the large system of the social factors, defining the condition of the society and prospect of its progressive development, communication, normal change and connection between the 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 the social and private activity.

Protection of the motherhood and childhood are the conditions, created by the state in the conditions of the birth, survival and protection of children, their development and for realization by the family of all its functions in the life. Thus, in order to elaborate the constitutional principles the current legislation creates the necessary system of the protection of interests of mother and child, by the provisions of the law.

In general, the activity of the state in the field of the protection of the motherhood and childhood can be divided into three layers:

1. In general, the activity of the state for protection of the motherhood and childhood can be divided into three layers: 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 institutes, directed to the realization of these guarantees and norms are created;

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

Therefore any organization seeks for the creation of the effective system of the organization of work. However, such “system of the organization” of the private interests of the company whereas means the interests of workers, including such category as female mothers and children.

The market relations most often don't promote the social policy within the concrete organization (including protection of the rights of mother and child) and even directly contradict it. It is “favorable” to unfair employers to use child labor as the most low-paid, to dismiss future mothers (pregnant women), in order to “excess social freight”. As the result the children very often are used at the works with the hard conditions, dangerous and night works negative for their health. Sometimes young women “are afraid” to become the mothers and to lose the work. The market economy dictates the working conditions.

Protection of the motherhood is one of the priority problems in the Republic of Kazakhstan, especially in current times, in the period of the transition to the 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 children.

Meanwhile, in the practice these norms are broken sometimes: child labor is used; young mothers leave in bad conditions, make abortions.

In the conclusion we would like to stress, that the research of the legal bases of the protection of the interests of the mother and children is traditionally actual topic. Until in this sphere in our country

the legislative mechanisms and practice of application wouldn't create it is impossible to create "healthy state" and "healthy society".

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