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## Legal Protection Issues of Housing Rights of Orphans and Children Left Without Parental Care

The article examines the issues related to the implementation of housing rights guaranteed by the state for orphans and children left without parental care. The main goal of the article is to study the realization of the right to receive housing from the state housing fund by orphans and children left without parental care as subjects of housing relations, as well as to propose effective solutions to the problems arising in this process. The author analyzed practical and statistical data related to the protection of the rights of orphans and children left without parental care, including statistics on individuals in this category who were on the waiting list for housing in various regions, as presented on the Kezekte.kz website. The study identifies and analyzes issues related to the application of legislation. The article explores such problems as long waiting periods in the queue, low rates of social housing construction, and the lack of guarantees from the state. The research employed general scientific methods of cognition, including synthesis, analysis, induction, deduction, comparative legal and systematic approaches, the study of specialized articles and legislation, data analysis and generalization, and logical methods. As a solution to the problems associated with the realization of the right to receive housing from the state housing fund, the author proposed the introduction of alternative approaches into legislation.

*Keywords:* housing relations, housing for orphans, children left without parental care, children's rights, housing rights, social protection, housing queue, housing fund, Children's Rights Commissioner.

### Introduction

In accordance with internationally recognized norms, the right to housing is regarded as a guarantee of every individual's right to a decent standard of living. The protection of the legal rights and interests of children in need of care is one of the fundamental trends of state policy.

Article 11 of the International Covenant on Economic, Social, and Cultural Rights [1] emphasizes that this right includes elements such as the legal provision of living conditions, the availability of infrastructure, materials, and opportunities, as well as the suitability of housing for residence and affordability in terms of expenses.

In September 2010, during an official visit to Kazakhstan, Raquel Rolnik, the UN Special Rapporteur on the Right to an Adequate Standard of Living, highlighted issues related to the right to adequate housing and the right to non-discrimination within this context. She noted that, according to the country's Constitution and national legislation, the right to housing is still interpreted in a limited sense — viewed merely as access to a place to live rather than as a fundamental human right. Moreover, she pointed out that housing continues to be viewed as a commodity rather than a human right [2; 2].

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In national legislation, this right is referred to as the «right to housing,» and according to constitutional norms, the state creates conditions to ensure that citizens have access to housing. The Constitution of the Republic of Kazakhstan establishes that every citizen has the right to housing. According to Article 25 of the Constitution of the Republic of Kazakhstan, “Provisions to provide citizens with housing in the Republic of Kazakhstan shall be created. Citizens in need of housing shall be categorized in a manner, to be prescribed by law and provided with housing at an affordable price from the state housing funds in accordance with the norms stipulated by law” [3]. In accordance with the Housing Legislation of the Republic of Kazakhstan, every child has the right to housing.

Furthermore, the “Law on Education” establishes guarantees for housing provision for children in this category by enshrining a norm that mandates the state to provide orphans with housing [4].

Orphans and children left without parental care face various challenges after graduating from boarding institutions, including obtaining housing, social discrimination, starting a family, and other related issues.

In accordance with international legal norms, a child who has been temporarily or permanently deprived of their family environment, or who cannot remain in such an environment in their best interests, shall receive assistance and protection from the state in accordance with national laws [5]. The guarantees for the protection of children’s rights are defined in internationally recognized legal norms.

Upon analyzing the issue under consideration, it can be concluded that children in need of care belong to socially vulnerable groups [6; 2]. Due to reasons such as the incarceration of parents, their treatment in healthcare institutions due to health conditions, disappearance, or deprivation of parental rights, children are legally guaranteed the right to upbringing, protection, and support from the state and society.

In our country, the issue of providing housing for children under state care has not been adequately addressed. Moreover, due to the failure to register these children in the housing queue in a timely manner, many of them become homeless immediately after leaving the orphanage. The responsibility for registering individuals in need of housing from the state housing fund and allocating housing using local funds is directly assigned to local executive authorities.

#### *Methods and materials*

The article examines the theoretical and practical aspects related to the protection of housing rights of orphans and children left without parental care.

The study employed general scientific-theoretical, analytical, generalization, research, and logical methods. Additionally, a comparative legal analysis of normative acts regulating housing relations in the Republic of Kazakhstan and the Russian Federation has been conducted.

The methodological and material basis of the study includes the «Law on Housing Relations,» the «Law on the Rights of the Child,» as well as normative legal acts within the framework of housing legislation. Additionally, periodical publications and the works of scholars such as A.P. Leonchenko, A.K. Urazbayeva, M.T. Akimzhanova, U. Kazyken, and A.B. Ordabayeva have been analyzed.

Within the scope of the study, statistical data on individuals in the housing queue, including orphans and children left without parental care, were analyzed using the Shanyraq housing queue registration service via kezek.kz for all regions of Kazakhstan.

#### *Results*

The primary legal source regulating housing provision relations for children in need of care is the Law of the Republic of Kazakhstan «On Housing Relations» [7]. This law governs the emergence and termination of ownership and usage of rights to housing involving citizens, legal entities, and state authorities. Additionally, it sets requirements for housing and ensures the protection of citizens’ rights within the housing sector and housing fund.

Additional guarantees for children’s rights to property and housing are explicitly outlined in Article 14, Paragraph 2 of the Law of the Republic of Kazakhstan “On the Rights of the Child” [8]. For instance, orphans and children left without parental care who are placed in educational, medical, or other institutions, including organizations ensuring temporary isolation from society, a child placed under the care of a foster caregiver or relatives retains the right of ownership and use of housing. In the absence of such rights, the child is entitled to be placed on the waiting list for housing.

At present, the issue of safeguarding property belonging to children who have lost their parents and are in need of care is of significant importance. In this regard, a regulation was adopted on June 29, 2023 [9]. The preservation of housing for children in this category is overseen by the local executive authorities. Addi-

tional, before orphans and children left without parental care are placed in specialized institutions, the responsibility for ensuring the preservation of their housing lies with local executive authorities. However, when children are placed under guardianship, trusteeship, foster care, educational institutions, medical institutions, or other organizations, their legal representatives are responsible for ensuring the preservation of their housing until they reach adulthood.

Transactions involving the alienation of housing belonging to minors under the age of fourteen, including transactions that result in the division of their housing or the allocation of a share from it, are prohibited [10; 1].

In cases where parents have passed away, have been deprived of parental rights, or have refused to take their children back from educational, medical, or other institutions, the responsibility for protecting the rights and interests of these children is assigned to the guardianship and trusteeship authorities. According to legislation, the primary duty of guardianship and trusteeship authorities is to monitor the activities of guardians and trustees. To fulfill their assigned responsibilities, they must request reports at least twice a year on the health and upbringing of children under guardianship, compile an inventory of the property belonging to minors, and take measures to ensure the protection of the described property.

The provision of housing for orphans and children left without parental care in accordance with the queue system is established by Article 67, Paragraph 1, Subparagraph 1-1) of the «Law on Housing Relations.» To be eligible, they must be registered as citizens in need of housing at their place of residence. The responsibility for placing children on the housing queue is assigned to their legal representatives [11; 123].

According to Article 71 of the «Law on Housing Relations,» orphans and children left without parental care must be registered for housing with the local executive authority within three months from the date they are admitted to an educational, medical, or other institution, or from the date a guardian or trustee is appointed, or from the date a contract with a foster caregiver is concluded.

According to Article 68 of the Law «On Housing Relations,» children under the age of eighteen who have lost their parents and are in need of care are classified as socially vulnerable groups. Therefore, children under state care, upon reaching the age of eighteen and changing their permanent place of residence, are entitled to reapply for the housing waiting list until the age of twenty-nine. However, this may result in a significant delay in obtaining housing [7].

In 1996, Russia enacted a law establishing additional social guarantees for children who had lost their parents and were in need of guardianship [12; 1].

In the Republic of Kazakhstan, authorized bodies do not maintain separate statistics on the number of children living with relatives who are in need of housing.

Monitoring is carried out by the authorized for the protection of children's rights, along with its central and local executive agencies, and other organizations, including the Ombudsman. In practice, it has been observed that the administration of orphanages often fails to prepare and submit documents for their residents in a timely manner for registration with the housing commission, leading to delays in placing them on the housing queue.

According to data from the Karaganda Region Department for the Protection of Children in 2010, children under the care of special institutions were placed on the housing waiting list starting from the age of 16. In practice, there have also been cases where children in this category were added to the list only after reaching the age of majority. As a result, graduates of orphanages in the country often find themselves without housing.

In 2022, 49 orphans and children left without parental care in Petropavlovsk were removed from the housing queue. This situation was explained as a technical error that occurred during the transfer of data from the local database to the national database. A similar incident took place in May 2024 in the North Kazakhstan region, where 43 orphans who had been on the waiting list since 2010 were illegally removed from the housing queue by local administration staff. In Akzhar district and Petropavlovsk, guardianship and trusteeship authorities failed to take any action for three months regarding the registration of six orphans on the housing waiting list. Additionally, in the Kyzylzhar, G. Musrepov, and Temiryazev districts, no measures were taken to enforce the collection of alimony from legal representatives in favor of minors. As a result of the inspection, eight officials, including two heads of education departments, were held disciplinarily liable [13; 1].

In Astana, cases have been reported where orphans were unjustifiably denied placement on the housing waiting list due to the absence of registration for children under the age of 14 or because their guardian, who is not a family member, owned registered property. These incidents indicate that authorized bodies failed to comply with housing legislation. As a result of prosecutorial oversight measures, more than 200 orphans

were placed on the housing waiting list. In Semey, two brothers who had been raised in an orphanage for ten years were registered under one housing number for an apartment from the state housing fund. Consequently, only one of them received a one-room apartment, while the other was listed as a family member.

The Housing Inspection and Housing Relations Department in Semey refused to reinstate the housing queue status for the second brother, leading him to file a lawsuit. In court, the state authority's argument that the claimant already had housing was dismissed, after it was established that no rental agreement had been signed with him. The court ruled in favor of the claimant. According to current legislation, registering two orphans under the same housing number constitutes a violation of the law by the state authority [14; 1].

Furthermore, when examining issues encountered in practice, court rulings demonstrate that the rights of citizens in this category are frequently violated by administrative authorities.

In cases where the procedure or deadlines for submitting data on children in this category for the purpose of being placed on the housing waiting list are violated, an administrative fine in the amount of 30 monthly calculation indices is imposed in accordance with the Code of Administrative Offenses [15].

For instance, in 2021, 84 claims concerning children in need of guardianship were filed with the administrative court in the city of Almaty. Among them:

- 29 cases were reviewed, and court decisions were issued (22 claims were satisfied, and 7 claims were dismissed);

- 28 claims were returned (21 under Article 138, Paragraph 6 of the Administrative Procedural Code, including 3 cases related to the actual settlement of the dispute).

In the first half of 2022, 87 claims were received, among them:

- 43 cases were reviewed, and decisions were issued (25 claims were satisfied, 18 claims were not satisfied);

- 31 claims were returned, including 8 cases settled through a mediation agreement, 4 cases related to the actual settlement of the dispute, and 8 cases reviewed in written proceedings.

Thus, in 2021, 75.6 % of claims were satisfied in favor of the plaintiff, while in the first half of 2022, this figure was 58 %.

The majority of claims were related to:

- registration and removal of children in need of housing from the state housing fund waiting list;
- privatization;
- payment of housing allowances [16; 61].

#### *Discussion*

According to Article 73, Paragraph 1 of the Law «On Housing Relations,» it is established that children in this category may not be removed from the housing waiting list.

This provision must be strictly observed to ensure the protection of the housing rights of orphans and children left without parental care. However, court practice demonstrates that authorized bodies often fail to comply with this norm. For example, in a case reviewed by the Specialized Interdistrict Administrative Court of Almaty, the claim of citizen K. against the Almaty City Department for the Development of Communal Infrastructure was satisfied. According to the case materials, the claimant had been registered as in need of housing in the state housing fund under the category of orphans by a resolution of the Almaty City Housing Commission. However, at the beginning of 2022, the claimant was removed from the waiting list, as they had been officially registered in Almaty Region since 2021. The court ruling declared the removal of the claimant from the waiting list under the orphan category was unlawful and ordered that the violation would be rectified within one month from the date the decision entered into legal force.

In practice, cases where individuals classified under the «orphans» category are denied the privatization of their housing after reaching the age of 29 are frequently encountered. This occurs due to misinterpretations of legal provisions.

Age-related requirements for children who have lost their parents and are in need of guardianship are taken into account when placing them on the housing waiting list; however, it is important to note that the legal provisions do not specify an age threshold with regard to privatization. Guardianship and custody authorities fail to take appropriate measures regarding the timely placement and removal of children in this category from the housing waiting list.

Currently, such matters can be referred to the recently established Children's Rights Commissioner. The Children's Rights Commissioner reviews applications and complaints regarding violations of children's rights and legitimate interests by state and executive authorities, organizations, and officials.

According to information from the Ministry of Education of the Republic of Kazakhstan, in 2024, there are 22,081 orphans and children left without parental care in the country.

There are 116 organizations operating in the country, including:

- 78 organizations in the field of education;
- 18 organizations in the field of healthcare;
- 20 organizations in the field of social protection.

As for the age distribution of children: 445 children are between the ages of two and four; 5,562 children are between the ages of five and eleven; 15,978 children are between the ages of twelve and seventeen [17; 1].

In the Republic of Kazakhstan, authorized bodies do not maintain separate statistics on the number of children living with relatives who are in need of housing. The Number of Orphaned and Vulnerable Children Who Received Housing from the Municipal Housing Fund in the Karaganda Region:

in 2019 — 3 individuals;

in 2020 — 4 individuals (including 1 individual under a state program);

in 2021 — 16 individuals (including 10 individuals under a state program).

2021 — 16 individuals (6 received municipal housing, 10 received housing under the «Nurly Zher» state program).

The number of orphans and children left without parental care who obtained housing through mortgage lending by accumulating 50 % of the required amount in «Otbasy Bank» JSC:

- 2019 — 45 individuals;
- 2020 — 53 individuals;
- 2021 — 48 individuals.

Currently, all individuals can check their status on the housing queue through the Shanyraq housing queue registration service on Kezekte.kz [18]. According to the data, the number of orphans and children left without parental care registered in Kazakhstan's regions and regional centers is as follows:

1. Astana — 2,607;
2. Almaty — 2,301;
3. Shymkent — 1,745;
4. Akmola Region — 4,170;
5. Aktobe Region — 3,083;
6. Almaty Region — 4,774;
7. Atyrau Region — 1,599;
8. East Kazakhstan Region — 4,227;
9. Zhambyl Region — 3,206 (Taraz — 2,166);
10. West Kazakhstan Region — 2,482;
11. Karaganda Region — 6,038;
12. Kostanay Region — 5,733;
13. Kyzylorda Region — 1,937 (Kyzylorda city — 1,336);
14. Mangystau Region — 1,145;
15. Pavlodar Region — 3,701;
16. North Kazakhstan Region — 3,537;
17. Turkistan Region — 2,053;
18. Zhetysu Region — 2,969;
19. Abai Region — 2,693;
20. Ulytau Region — 853;

Based on the indicators presented above, a total of **60,858 individuals** have been registered across the Republic of Kazakhstan.

Since 2024, the Russian Federation has introduced an alternative mechanism for orphaned children and those under state guardianship who are on the housing waiting list. In addition to receiving housing from the state fund, they are now eligible to obtain housing certificates, which can be used either to purchase housing or to repay existing mortgage loans. The average payment amount under the certificate is expected to be approximately 2.8 million rubles. Under the new mechanism, to protect orphans from fraud, the certificate funds will be transferred directly to the seller's account or to a credit organization to repay the mortgage.

According to the regional regulation, orphans and children left without parental care who have reached the age of 23 (or 21, depending on the region) must meet the following requirements:

- Proof of an official source of income for the past year, not less than the minimum wage;
- No outstanding tax liabilities or unpaid fees;
- No criminal record, addiction, or mental illness;
- The applicant must not be experiencing a crisis situation.

The housing certificate is primarily intended for individuals who have started a family and are seeking to improve their living conditions [19; 1]. Typically, the housing provided to children in this category by the executive authorities does not fully meet their needs. Therefore, the certificate offers them the opportunity to exercise their rights by acquiring housing of their own by choosing that one which better aligns with their personal and familial requirements.

The certificate amount should take into account housing prices in each region. When using this mechanism, guardianship and trusteeship authorities must supervise the process. In addition, the certificate should not be considered the only solution to the housing queue problem, but rather one of the possible ways to solve the housing problems of this category of citizens [20;1].

### *Conclusions*

In any society and any state, children must receive special care and support. The state has an obligation to ensure the provision of housing for orphaned children and those who were deprived of parental care in order to protect their rights.

Under the social legislation of the Republic of Kazakhstan, state benefits are allocated to children who have lost their parents, whose sole parent has been declared legally incapable, or in cases where the parent is unable to provide proper care [21]. Typically, a bank account is opened in the name of such children, and the allocated benefits are transferred directly to that account. In practice, orphans and children who have lost their breadwinner can use the funds accumulated in their Otbasy Bank account to purchase housing upon turning 18 or withdraw the saved money. Additionally, the state allows them to use these funds as an initial payment under various housing programs. Many children in this category have successfully acquired housing through this opportunity. However, those who do not use the funds for housing often spend the money within two to three months and later find themselves waiting for state-provided housing for many years, facing a helpless situation.

Currently, all individuals can check their queue status through the Shanyraq housing queue registration service on [Kezekte.kz](http://Kezekte.kz). This platform allows people to see their position in the waiting list for housing across all regions of Kazakhstan, including the category of orphans and children left without parental care, as well as the queue positions of other applicants.

According to information obtained from local executive authorities, the oldest person at the top of the housing waiting list is 40 years old.

Additionally, individuals who receive housing through the waiting list have the opportunity to transfer ownership to another person or sell the property and, after having no registered housing for the past five years, they can reapply for the housing queue. This practice is not legally prohibited, as the list of individuals who have already received housing is not stored in the database. In this regard, we believe that the list of individuals who have received housing should be electronically recorded in the database with their full names to ensure transparency and prevent misuse.

Under the housing policy reform initiated by the First President, a new law has been adopted, according to which, starting from June 1, 2025, the responsibility for centralized housing queue management will be assigned to Otbasy Bank.

In the Republic of Kazakhstan, based on the housing provision practices implemented in Russia, we believe that a housing certificate system should be legally introduced as an alternative method to ensure housing for orphans and children left without parental care. Therefore, in our view, it is necessary to establish programs that accompany the housing certificate with additional support measures — such as a prohibition on the sale of the acquired property within five years and access to preferential mortgage loans at reduced interest rates (e.g., 2 % or 4 %). These measures would ensure the long-term stability and effective utilization of housing assistance provided to eligible individuals.

The main factors that hinder the realization of housing rights for children in this category include: long waiting periods, slow construction rates of social housing, lack of concrete state guarantees, corruption within local executive authorities, and other systemic issues.

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### Жетім балалар мен ата-анасының қамқорлығынсыз қалған балалардың тұрғын үй құқықтарын құқықтық қорғау мәселелері

Мақалада жетім балалардың және ата-анасының қамқорлығынсыз қалған балалардың мемлекетпен кепілдендірілген тұрғын үйге құқықтарын іске асыру мәселелері зерделенген. Мақаланың мақсаты — тұрғын үй қатынастарының субъектісі болып табылатын жетім және ата-анасының қамқорлығынсыз қалған балалардың мемлекеттік тұрғын үй қорынан берілетін тұрғын үйді алу құқығын іске асыруды қарастыру және одан туындайтын міндеттерге қол жеткізу үшін кездесетін проблемаларды шешудің

тиімді жолдарын ұсыну. Авторлар жетім балалар және ата-анасының қамқорлығынсыз қалған балалардың құқықтарын қорғауға байланысты практикалық және статистикалық мәліметтерді, соның ішінде Kezekte.kz. сайтында кезекте тұрған осы санаттағы субъектілерге қатысты әр облыс бойынша статистикалық мәліметтерді қарастырып, заңды қолданудағы проблемаларды анықтап, талдау жүргізген. Осы санаттағы балалардың құқықтарын іске асыруда кезектің ұзақтығы, әлеуметтік тұрғын үй құрлысының баяу қарқыны, мемлекет тарапынан берілетін кепілдіктердің жоқтығы сияқты проблемалар зерттелген. Сонымен қатар мақалада ғылыми танымның жалпы әдістері: синтез, талдау, индукция, шегеру, салыстырмалы құқықтық жүйелік, арнайы мақалаларды, заңнамаларды зерттеу, алынған мәліметтерді талдау және жалпылау, логикалық әдістер пайдаланылған. Мемлекеттік тұрғын үй қорынан берілетін тұрғын үйді алу құқығын іске асыруға байланысты мәселелерді шешу үшін заңнамаға баламалы тәсілдерді енгізуді ұсынған.

*Кілт сөздер:* тұрғын үй қатынастары, жетім балалардың тұрғын үйі, ата-анасының қамқорлығынсыз қалған балалар, бала құқықтары, тұрғын үй құқықтары, әлеуметтік қорғау, тұрғын үй алу кезегі, тұрғын үй қоры, бала құқықтары жөніндегі уәкіл.

Ж.Т. Мырзалиева, Т.С. Тілеп

## Проблемы правовой защиты жилищных прав детей-сирот и детей, оставшихся без попечения родителей

В статье рассмотрены вопросы реализации прав детей-сирот и детей, оставшихся без попечения родителей, на гарантированное государством жилье. Основная цель статьи — проанализировать реализацию права детей-сирот и детей, оставшихся без попечения родителей, являющихся субъектами жилищных отношений, на получение жилья из государственного жилищного фонда, а также предложить эффективные пути решения возникающих проблем для достижения поставленных задач. Автор представил практические и статистические сведения, связанные с защитой прав детей-сирот и детей, оставшихся без попечения родителей, рассматривает статистические данные по каждой области в отношении детей, стоящих в очереди на сайте Kezekte.kz, выявляет и анализирует проблемы, возникающие при применении действующего законодательства. В числе основных проблем в реализации прав этой категории детей выделяются: длительность очередей, медленный темп строительства социального жилья, отсутствие гарантий со стороны государства. В статье использованы общенаучные методы познания: синтез, анализ, индукция, дедукция, сравнительно-правовое, системное, изучение специальных статей, законодательства, анализ и обобщение полученных данных, логические методы. Автор предлагает внедрение альтернативных подходов к законодательному регулированию для решения проблем, связанных с реализацией права на получение жилья из государственного жилищного фонда.

*Ключевые слова:* жилищные отношения, жилье для детей-сирот, дети, оставшиеся без попечения родителей, права детей, жилищные права, социальная защита, очередь на жилье, жилищный фонд, уполномоченный по правам ребенка.

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