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State bodies' role in protecting and ensuring of minor's constitutional rights and freedoms

The issue of guarantees for implementation and protection of minor's rights and freedoms, is directly related to the theoretical and legal analysis of guarantees of human and citizen's rights. Rights and freedoms are a kind of basis on which the whole ramified system of legal opportunities is based, ensuring the complete realization by the individual their own interests. The protection of child's rights is one of the most serious contemporary social problems caused by the violation of the rights of this category of population in recent years, as well as the lack of effective mechanisms for protecting and restoring the violated rights of minor's, and imperfect legislation in this sphere. Meanwhile, the UN Convention on the Rights of the Child, the main international document regulating the rights of children, covers for the state obligation to provide the child with the protection necessary for his well-being and to take all appropriate legislative and administrative measures for this. The powers and main directions of the activity of state bodies in protecting and ensuring the constitutional rights and freedoms of minors are analyzed in the article. The review of the national legislation in the sphere of realization of the rights and freedoms of minor's was conducted. The article says that a wide range of state bodies that are guarantors of ensuring the rights and freedoms of minor's has proved its effectiveness in the implementation of the legal rights and freedoms of minor's, its relevance to society and authorities.

Keywords: guarantees for the realization of the rights and freedoms of minors, protection of the rights of minor's, ombudsman for the rights of the child, presidential control, government control, judicial control, constitutional control.

It is quite rightly emphasized in scientific literature that «without guarantees, the rights and freedoms of citizens are turned into special «statements about intentions», which have no value for either individual or society» [1]. In the legal literature, the guarantees of the rights of citizens are traditionally understood as the conditions and means for ensuring their effective implementation and protection.

In order to ensure that the laws and subordinate acts really serve as a guarantee for the rights and duties of citizens and do not become an instrument for limitation, restricting or altogether abolishing any rights and freedoms and imposing new unfounded duties on citizens, the Constitution of the Republic of Kazakhstan provides for a number of provisions to exclude such negative version of lawmaking:

- laws and other normative acts not published in accordance with the procedure established by law are not subject to application;
- state bodies are obliged to provide every citizen with an opportunity to get acquainted with documents, decisions and other materials affecting his rights and interests;
- any decisions and actions of state bodies, officials, infringing the rights of citizens, may be appealed to the court;
- nobody has the right to deprive a citizen of any rights and freedoms or restrict him in them except in accordance with the Constitution;
- temporary restrictions on the rights and freedoms of citizens can be established during a state of emergency in accordance with the law and must be clearly indicated in the act on the introduction of a state of emergency;
- state service is based on the responsibility of civil servants to the people of the Republic of Kazakhstan and its every citizen [2].

A number of guarantees are provided for in the Constitution, laws and other acts, i.e. special economic, political, organizational and legal (including administrative and legal) measures directed at implementing and protecting the rights and freedoms of citizens from any violations.

Legal guarantees by their nature, the degree of influence on the effectiveness of the realization of the rights and freedoms of citizens differ significantly between themselves. Some of them influence the process of exercising rights and freedoms mediately, indirectly, in aggregate creating favorable conditions in which this process takes place. Others act directly, their goal is to translate rights and freedoms into action, protect

them from violations, determination of the order of restoration, if the violation already takes place. This group of guarantees in the legislation is presented directly in the form of the powers of participants in the process of realizing rights and freedoms, in the form of procedural rules for their implementation.

With that in mind, legal guarantees for the realization and protection of the rights and freedoms of minors are understood to mean the provisions established in the norms of law that guarantee the exact and unswerving execution of the Constitution, laws, acts of superior bodies, as well as the activities of state bodies (officials) directed at ensuring compliance with the requirements of the law and punishing the perpetrators of their violation, creating conditions to prevent violations of the law. The system of legal guarantees, which includes a whole complex of special measures.

Thus, in the system of legal guarantees, the activities of state bodies charged with maintaining and strengthening the rule of law in the process of issuing legal acts by the executive bodies are of particular importance. In the scientific literature, the various legal and organizational forms and methods of activity used by them, practical methods and operations are collectively called methods of ensuring legality in the sphere of public administration. They are control, supervision and appeal of unlawful acts and actions of executive bodies and their officials.

Control, according to the generally accepted definition, is a system for monitoring and verifying the functioning of an object in order to eliminate from specified parameters, in the process of which three stages are distinguished:

- a statement, i.e. establishing the actual state of affairs;
- analysis, i.e. comparison of the actual position with the set mode, evaluation of the nature of accepted deviations, correction of the control process;
- the adoption of rapid response measures, which include checks and other means of influence in relation to the audited entities envisaged by the Republic of Kazakhstan legislation with a view to preventing, suppressing and eliminating unlawful consequences.

In the context of monitoring the implementation and protection of rights and freedoms of minors, authorized bodies and officials: the President of the Republic of Kazakhstan, legislative, executive, judicial authorities, the Prosecutor's Office, the Constitutional Council, the Ombudsman, the Commissioner for the Rights of the Child, using their inherent organizational and legal methods, find out whether violations of the rule of law have been committed in the law-making and law-enforcement activities of the executive authorities, and if such ones are taken place, eliminated by the cancellation or suspension of such acts, denial of state registration of normative legal acts, restoration of disturbed while the rights and legitimate interests of minors, to bring the perpetrators to justice officials, as well as preventive measures to prevent such violations of the law in the future.

The central government bodies, their agencies and territorial subdivisions, as well as local executive bodies that monitor and verify compliance of the activities of the audited entities with the requirements established by the Republic of Kazakhstan legislation, should be considered as the control and supervision bodies based on the current legislation [3].

The powers of the control and supervision bodies are that they:

- 1) implement the state policy in the control and supervision direction in the relevant sphere;
- 2) develop, within their competence regulatory legal acts, as well as semi-annual audit schedules;
- 3) exercise control and supervision in accordance with the laws of the Republic of Kazakhstan;
- 4) monitor the effectiveness of control and supervision;
- 5) make proposals for improving the monitoring and supervision;
- 6) perform other functions stipulated by the Law and other laws of the Republic of Kazakhstan, acts of the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan [4].

The forms of control activity envisaged by the Law of the Republic of Kazakhstan «On Administrative Procedures» are very diverse and include not only the requisition of necessary information and the hearing followed by discussion of reports and performance reports, but also audits and other forms of documentary verification, on-site inspections, as well as other methods that do not contradict the legislation.

Control and supervision, despite a certain similarity, cannot be identified with each other. Supervision, like control, consists in the constant, systematic observation by special state bodies of the activities of bodies or individuals that are not subordinated to them to identify violations of the law, but it has distinctive features. Sometimes in the scientific literature supervision is justifiably called a truncated control, as it consists in the application by the authorized state body of law-restricting measures of prompt response without the initiation of administrative proceedings.

One of the components that makes it possible to ensure the effectiveness of law enforcement activities to ensure the rights and freedoms of citizens in public administration sphere is the appeal of unlawful acts and actions of executive bodies (officials).

Appealing of unlawful acts and actions of executive bodies (officials) is one of the means of revealing violations of the law, since it creates a legal obligation for state bodies and officials to consider them and take appropriate measures. The legal bases for administrative appeal are defined by the Law of the Republic of Kazakhstan «On procedure for consideration of appeals from individuals and legal entities», the judicial appeal against the Civil Procedure Code of the Republic of Kazakhstan.

The supplement to the system of state control and supervision in the sphere of protection of the rights of minors is public control in the sphere of public administration, which means a set of organizational and legal means of identifying and influencing violations of the law in the activities of executive bodies and officials carried out by civil society institutions. The institute of public control also currently has a clear legal foundation, which includes the Laws of the Republic of Kazakhstan «On public councils», «On access to information», the Decree of the President of the Republic of Kazakhstan «On the establishment of the institution of the Commissioner for the Rights of the Child in the Republic of Kazakhstan».

Analysis of the current legislation, the study of scientific literature gives a full basis for the conclusion that ensuring of implementation and protection of the rights and freedoms of minors is a certain system in which prerequisites and legal guarantees for securing legality should be distinguished.

Legal guarantees have their content a set of special measures, in which the key role is given to state control and supervision.

The most important role in ensuring control over observance of the rights and freedoms of citizens in the sphere of public administration belongs to the President of the Republic of Kazakhstan. The basic positions determining the control powers of the President of the Republic of Kazakhstan in relation to the sphere of public administration are established in the Constitution of the Republic of Kazakhstan [5]. The President of the Republic of Kazakhstan is the Head of State, the highest official, guarantor of human and citizen rights and freedoms, ensuring interaction and balance between branches of power and therefore, the control exercised by him in relation to the executive power has constitutional nature [6].

Speaking about the control of the President of the Republic of Kazakhstan over observing the rights and freedoms of citizens in the sphere of public administration, it must be borne in mind that it is implemented not only through the Presidential Administration but also through other advisory bodies, among which the Commission on Human Rights at President of the Republic of Kazakhstan, which is the body that facilitates the implementation by the Head of State of his constitutional powers of the guarantor of the rights and freedoms of man and citizen, recognized and guaranteed in accordance with the Republic of Kazakhstan Constitution.

The Commission on Human Rights has the competence to review appeals of individuals and legal entities addressed to the Head of State containing various information on the facts of violations of human and civil rights and freedoms; compiling annual and special reports on the observance of human rights and citizen in the name of the Head of State; elaborating proposals on improving the mechanism for ensuring and protecting human and civil rights and freedoms, optimizing the human rights activities of state bodies and submitting them for consideration to the President of the Republic of Kazakhstan for making appropriate decisions. The conclusions of Commission adopted within its powers have recommendatory nature and are forwarded to the appropriate state body, whose competence includes resolving the issue. But at the same time, the authorized state bodies and their officials are obliged to consider the recommendations and conclusions of the Commission at a set time, and notify them about the adopted decision. Thus, the activities of the Commission on Human Rights under the President of the Republic of Kazakhstan have undoubtedly positive and effective character.

The activity of the President of the Republic of Kazakhstan on legal support for the mechanism for the realization and protection of minors' rights has great importance. The «Concept of development of the juvenile justice system in the Republic of Kazakhstan for 2009-2011», approved by the Decree of the President of the Republic of Kazakhstan dated August 19, 2008, No. 646 has primary importance in this plan. Specialized inter-district juvenile courts were established in all regional centers by the Decree of the President of the Republic of Kazakhstan of February 4, 2012 «On the formation of specialized inter-district courts on the affairs of minors and amendments to certain decrees of the President of the Republic of Kazakhstan». The institution of the Ombudsman for the Rights of the Child was established in the country by the President of the Republic of Kazakhstan, February 10, 2016.

Specialized inter-district juvenile courts were established in Astana and Almaty to examine criminal cases in accordance with the legislative acts of the Republic of Kazakhstan, cases of administrative offenses in the attitude of minors and civil cases affecting their interests by the Decree of the President of the Republic of Kazakhstan dated August 23, 2007 N 385 «On the formation of specialized inter-district courts for juvenile affairs».

Specialized inter-district juvenile courts were established in all regional centers by the Decree of the President of the Republic of Kazakhstan of February 4, 2012 «On the formation of specialized inter-district courts for the affairs of minors and amendments to certain decrees of the President of the Republic of Kazakhstan». Today, it can be noted with certainty that Juvenile courts have shown their effectiveness in protecting the rights and freedoms of minors. Currently, the Republic of Kazakhstan is the leader in the region of Central and Eastern Europe and the CIS in the sphere of justice for children, juvenile courts are gaining experience that can rightfully serve as an example for other countries, and the legal basis for juvenile justice has been created. Juvenile courts have been created as courts of complex jurisdiction, the jurisdiction of which includes not only criminal cases of crimes committed by minors and criminal cases of crimes that violate the rights of minors, but also civil and administrative cases. Another feature of juvenile courts in the Republic of Kazakhstan is that they represent a certain system for the protection of children rights and interests, uniting around the specialized court social services (bodies and institutions of the state system for the prevention of neglect and juvenile delinquency) institutions of civil society.

Procuratorial supervision is a form of prosecutorial authority carried out with a view to guaranteeing the rule of law, unity and strengthening of legality, protection of human and civil rights and freedoms, as well as the interests of society and the state protected by law, in which the prosecutor's interaction with other participants in prosecutorial and supervisory relations develops, including a response mechanism aimed at preventing or eliminating them, using state coercion and persuasion.

In accordance with the Order of the General Prosecutor of the Republic of Kazakhstan No. 7 of January 31, 2017, one of the subjects of supreme supervision is the supervision of legality in the social sphere. In this aspect, the most important direction of the Prosecutor's Office is ensuring the supervision of strict observance of constitutional rights and freedoms of a person and citizen [7].

In order to comply with the legislation on child rights, to ensure the supervision of the application of the legislation on minors, the prevention of violations of law, neglect and homelessness among minors, mobile groups for the protection of the rights and interests of minors are permanently operating in the district and city prosecutor's offices.

It is necessary to emphasize the role and importance of the control activities of the justice bodies, representing one of the links in the system of the Republic of Kazakhstan executive bodies, which, within their competence, provide legal support for the activities of the state, support the rule of law in the work of state bodies, organizations, officials and citizens, and provide protection of rights and legitimate interests of citizens and organizations. One of the priority directions of the activities of the justice bodies is the state registration of regulatory legal acts, which is carried out by conducting legal expertise on the existence of a rule of law, the compliance of the act with the Republic of Kazakhstan legislation and entering regulatory enactments into the Register of state registration with the assignment of the state registration number. Regulatory legal acts of central executive and other central state bodies, their departments, as well as maslikhats, akimats and akims are in the field of view of normative legal acts subject to state registration.

The significance of registration is that unregistered normative legal acts have no legal force and should be canceled by the body that issued them, if the decision of the justice bodies is not appealed in due course.

Such diverse activities of state bodies and organizations that carry out functions to protect the rights of the child objectively require the overall coordination carried out by the Government of the Republic of Kazakhstan.

In the system of bodies for monitoring the implementation and protection of minors' rights, a special place is assigned to the authorized body, which is the Committee for the Protection of the Rights of the Child of Education and Science Ministry of the Republic of Kazakhstan.

The activity of authorized bodies and institutions in the sphere of crime prevention, neglect and homelessness among minors has an exceptionally important role in the prevention of administrative offenses. The state policy in the sphere of crime prevention, neglect and homelessness among minors is part of the legal policy and includes the creation of legal and social guarantees for minors, the material, technical, financial, scientific and methodical and personnel support of the bodies and institutions that establish the system of crime prevention, neglect and homelessness among minors.

The organizational and legal system of state regulation in the sphere of preventing offenses, neglect and homelessness among minors is:

- The Government of the Republic of Kazakhstan;
- centralexecutive bodies;
- local representative and executive bodies.

Each of these bodies exercises certain functions and powers. Along with the above-mentioned structures, the legal and administrative system is supplemented by the bodies of internal affairs, Adaptation Centers for Minors, educational authorities, special education organizations, educational organizations with special treatment, health authorities, a state body coordinating the implementation of state policy in the sphere of employment, culture and information authorities, physical culture, sports and tourism, bodies of trusteeship and guardianship.

The system of bodies charged with the functions of assisting the child in protecting his rights, as well as control over various aspects of their observance (Committee for the Protection of the Rights of the Child of the Ministry of Education of the Republic of Kazakhstan and its territorial bodies, guardianship and trusteeship bodies, commissions for minors affairs and protection of their rights etc.) in the Republic of Kazakhstan basically has long been formed. However, at present, there is a need to supplement the system of state control with control by civil society institutions, which would allow ensuring in practice an integrated approach to protecting the rights of the child. Existing control in the overwhelming majority of cases means control exercised by the executive authorities for its own actions (actions of institutions subordinate to executive bodies). In addition, this control is carried out only within the competence of the department.

The system of state control and supervision in the sphere of protection of minors' rights seamlessly completes the control of the Commissioner for Child Rights in the Republic of Kazakhstan.

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Г.Б. Әбікенова, А. Лавничак

Кәмелетке толмағандардың конституциялық құқықтары мен бостандықтарын қорғау және қамтамасыз етудегі мемлекеттік органдардың рөлі

Кәмелетке толмағандардың құқықтары мен бостандықтарын іске асыру және қорғау кепілдіктері мәселесі адамның және азаматтың құқықтарының кепілдіктерін теориялық және құқықтық талдаумен тікелей байланысты. Құқықтар мен бостандықтар — бұл адамның өз мүдделерін толық іске асыруын қамтамасыз ететін құқықтық мүмкіндіктердің тұтастай жүйелі негізі болатын негіздеме. Баланың құқықтарын қорғау соңғы жылдары халықтың осы санатының құқықтарының бұзылуынан туындаған, сондай-ақ кәмелетке толмағандардың бұзылған құқықтарын қорғау, қалпына келтірудің тиімді механизмдерінің жоқтығы және осы саладағы заңнаманың жетілмегендігі болып табылатын аса өзекті әлеуметтік проблемалардың бірі болып табылады. Сонымен қатар БҰҰ-ның «Бала құқықтары туралы» Конвенциясында балалардың құқықтарын реттейтін негізгі халықаралық құжат балаға оның әл-ауқаты үшін қажетті қорғауды қамтамасыз ету және барлық тиісті заңнамалық және әкімшілік шараларды қабылдау міндеттемесін қарастырады. Авторлар мемлекеттік органдардың кәмелетке толмағандардың конституциялық құқықтары мен бостандықтарын қорғау және қамтамасыз ету саласындағы өкілеттіктерін және негізгі бағыттарын талдады. Кәмелетке толмағандардың құқықтары

мен бостандықтарын жүзеге асыру саласындағы ұлттық заңнамаға шолу жүргізілді. Мақалада кәмелетке толмағандардың құқықтары мен бостандықтарын жүзеге асырудың кепілі болып табылатын мемлекеттік органдардың кең ауқымы кәмелетке толмағандардың заңды құқықтары мен бостандықтарын іске асыруда өз тиімділігін, қоғам мен билік үшін қажеттігі дәлелденді.

Кілт сөздер: кәмелетке толмағандардың құқықтары мен бостандықтарын іске асыру кепілдіктері, кәмелетке толмағандардың құқықтарын қорғау, баланың құқықтары жөніндегі омбудсмен, президенттік бақылау, мемлекеттік бақылау, сот бақылауы, конституциялық бақылау.

Г.Б. Абикенова, А. Лавничак

Роль государственных органов в защите и обеспечении конституционных прав и свобод несовершеннолетних

Вопрос о гарантиях реализации и охраны прав, свобод несовершеннолетних непосредственно связан с теоретико-правовым анализом гарантий прав человека и гражданина. Права и свободы являются своеобразным базисом, на котором основывается вся разветвленная система юридических возможностей, обеспечивающих полную реализацию личностью собственных интересов. Защита прав ребенка относится к числу наиболее острых современных социальных проблем, порожденных нарушением прав данной категории населения в последние годы, а также отсутствием эффективных механизмов защиты и восстановления нарушенных прав несовершеннолетних, несовершенством законодательства в данной сфере. Между тем Конвенция ООН «О правах ребенка» — основной международный документ, регулирующий права детей, предусматривает обязанность государства обеспечить ребенку защиту, необходимую для его благополучия, и принять для этого все соответствующие законодательные и административные меры. В статье проанализированы полномочия и основные направления деятельности государственных органов в защите и обеспечении конституционных прав и свобод несовершеннолетних. Проведен обзор национального законодательства в сфере реализации прав и свобод несовершеннолетних. Авторами сделан вывод, что широкий круг государственных органов, являющихся гарантами обеспечения прав и свобод несовершеннолетних, доказал свою эффективность в вопросах реализации законных прав и свобод несовершеннолетних, свою востребованность обществом и органами власти.

Ключевые слова: гарантии реализации прав и свобод несовершеннолетних, защита прав несовершеннолетних, уполномоченный по правам ребенка, президентский контроль, правительственный контроль, судебный контроль, конституционный контроль.

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