

подведения итогов голосования. Негативная оценка подведения итогов голосования зачастую была связана с процедурными нарушениями. Прозрачность была ограничена, во многих случаях международные наблюдатели не могли следить за процессом [10]. Таким образом, реализация международных стандартов играет важную роль в совершенствовании избирательного процесса в Республике Казахстан. Замечания и рекомендации международных наблюдателей играют положительную роль в осуществлении избирательного процесса и позволяют учитывать международные избирательные стандарты при проведении выборов. Эти рекомендации и замечания, по существу, имеют своей целью имплементацию международных стандартов в национальное законодательство. Рекомендации рассматриваются Центральной избирательной комиссией и служат основой для совершенствования национального избирательного законодательства.

В ходе проведенного исследования были сделаны следующие выводы:

- Защита и обеспечение избирательных прав граждан является базовым условием справедливых и демократических выборов, обуславливающих законность и легитимность проводимых выборов.

- Реформирование социально-политической системы, осуществляемое в сжатые исторические сроки, обуславливает необходимость изучения и рассмотрения международных избирательных стандартов с целью их имплементации в национальное законодательство.

- Определение основных этапов развития избирательного законодательства позволяет выявить закономерности развития современной избирательной системы в Республике Казахстан и определить основные направления развития избирательного права.

- Признается необходимость внедрения международных стандартов на основе рекомендаций БДИПЧ/ ОБСЕ по совершенствованию казахстанского избирательного законодательства.

Список литературы:

1 Веденеев Ю.А. Развитие избирательной системы Российской Федерации: проблемы правовой институционализации // Журнал российского права. - 2005. - № 6.

2 Командирова Т.Г. Международные избирательные стандарты и их значение для формирования и развития избирательного законодательства Российской Федерации // Сборник научных трудов . – Вып. 3 . – Минск, 2010.

3 Статут Международного суда ООН // <http://www.zakonprost.ru/content/base/part>

4 Мюллерсон Р.А. Права человека: идеи, номы, реальность. - М., 1991.

5 Избирательное право и избирательный процесс в Российской Федерации: учебник. - М., 1999.

6 Кучеренко П.А. Реализация международных избирательных стандартов в правовой системе Российской Федерации: автореферат дисс....канд.юр. наук. - М.,2007.

7 Бунич А.А. Конституционные функции выборов в современной России: автореферат дисс.... канд.юр. наук. - Саратов, 2007.

8 Свод рекомендуемых норм при проведении выборов. Принят Европейской комиссией Совета Европы «За демократию через право» (Венецианской комиссией Совета Европы) 2002 г. // <https://www.google.kz/sourceid>

9 Конвенция Организации Объединенных Наций против коррупции от 31 октября 2003 года // http://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml

10 Итоговый отчет Миссии БДИПЧ/ОБСЕ по наблюдению за парламентскими выборами 2016 года // <https://www.osce.org/ru/odhr/elections/kazakhstan>

THE JUVENILE JUSTICE SYSTEM COURTS. ESTABLISHMENT, DEVELOPMENT AND PERSPECTIVES

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Juvenile justice translated into russian means justice to minors.

Juvenile justice is a specialized system of justice, relevant legislation and a set of state and other bodies and organizations for the protection of the rights and legitimate interests of minors, the implementation of justice against them, the response to juvenile delinquency.

The system consists of judges authorized by the government, prosecutors, investigators, lawyers and social workers[6].

In our time, a specialized system includes the juvenile justice system. But the question "what is the juvenile justice?" does not have a proper answer, because of different models of the juvenile justice system in each state. Taking into account the development of legal and historical features of this system, where this system already exists, the term "juvenile justice" appears.

The juvenile justice system was originated on July 2, 1899 in Chicago, the United States, based on "the law on abandoned, homeless and criminal children and their care", when the first-ever juvenile court was established. Lucy Flower from Chicago Women's Club and Julia Latrop from the public organization "Hull House" worked on establishment of the law and the juvenile court. After that, the system of juvenile justice gradually began to arise.

As a result, first children's shelters opened in the 19th century in the USA in New York, Philadelphia and Boston[1].

At this time, in the USA begins rapid development of the industry. It leads to migration of the rural population to the cities. Further, this situation entails a juvenile delinquency and homelessness, poverty and unemployment[1].

After shelters and child welfare services begin to promote the full rehabilitation of the juvenile offender and the juvenile delinquency draws more attention, the new system arises as the juvenile justice[1].

It is obvious, that at that time, attention was focused only on juvenile delinquency investigation, but not on other civil disputes and subjects arising from the family law.

These courts worked absolutely different from the modern courts.

The main actors in the trials, along with the judges, were state and public trustees. Moreover, the judge managed the work of the services of trusteeship[1]. In our time, tutorship and guardianship authorities work and represent in courts on behalf of the Department of education in the Republic.

And in July 1908 juvenile justice began to function in Canada, in August 1905 in England, in May 1912 in Belgium, in 1905 in the Netherlands, in 1910 in Russia, in 1919 in Poland, in March 1914 in France, in 1908 in Hungary, in August 2 1918 in Spain, in May 1908 in Italy, in December 1924 in Greece[1].

The history shows that the first juvenile court in Russia was established in St. Petersburg on January 22, 1910. The court cases were considered by a justice of the peace, who also realized judicial supervision over the work of institutions taking care of minors.

However, the juvenile justice in Russia ceased to exist on April 17, 1918, in accordance with the decree by the Council of People's Commissars[1].

It is obvious, that the experience adopted from the West, even in Russia, to create a system of juvenile justice is worth a lot of effort, because almost all state bodies, non-governmental organizations, as well as the state should be involved in this. And with hard and cohesive work, common goals and objectives it will cause positive results[1].

In France, there are two stages in the formation of the French system, the first ended in 1880. Since the family was considered to be private ownership. During this period, the state did not interfere in the affairs of the family. The head of the European family has rights to his child throughout his life. This idea is now reflected in Western European law. Until the 12th century the child existed not as a person with typical of his age characteristics and needs of his age, but rather as an adult in miniature. And only from the 17th century, the child begins to be considered, mainly because of his need for education. The child becomes to get the attention after beginning the education at the church. But in the same period the number of children, who died and abandoned by their parents, is increasing. This situation left almost everyone indifferent. The French revolution will lead to the restriction of parental domination. According to the law 1792, the father has authority over the child only until the age of 21. The civil code on the creation of a family is connected with the registration of marriage, hierarchical order in society established under Napoleon, tells that in the family the woman is subordinate to the man, and the child to the father. In the 19th century, the state sends children to the entrepreneurs, and losing any interest to them. Children were treated badly and exploited[2].

The current system of children's rights protection, developed after establishment of the system in 1945, is often considered to be complex and unclear. Even if it is accepted that the system can be improved, it can be considered as the political will. The political will assists families in their child-rearing tasks and promotes the development of children's abilities during their growing period[2].

Robert Loutes, Crown judge, writes about the Canadian juvenile justice system that in Canada, a separate justice system and different manner were adopted to young people unlike adults since 1908. Since then, the juvenile justice system has undergone significant changes. In 1984, Canada enacted the Young Offenders Act. The transition from Juvenile Delinquents Act since 1908, to the enactment of the Young

Offenders Act (YOA) in 1984, had a philosophical significance. In fact, it was a transition from a “social patronage model” to a more traditional model of justice, where the rights of minors were given more attention and criminal cases were heard in an open juvenile court[3].

The juvenile justice system provides an opportunity to protect the rights and interests of the child. During the trial act legal representatives, attorneys, social workers as proxy. Today the establishment of the juvenile justice system brings positive results, based on the implementation of juvenile justice for consideration of cases[1].

In Kazakhstan, the first juvenile courts appeared Astana and Almaty in 2007.

Soros Kazakhstan Foundation has launched the pilot project "juvenile justice in Kazakhstan". The project began to operate at the beginning of 2003. According to this project, the juvenile justice system should work throughout the country. The system should consist of juvenile courts, specialized prosecutors, lawyers, investigators, as well as social workers represented by teachers and psychologists. Even before the project in Kazakhstan, an analysis of criminal and civil cases related to the interests of a minor showed many problems that could not be ignored. Consequently, the establishment of a juvenile justice system and allocation of criminal and civil cases in individual proceedings seemed important, and in order to protect the juvenile right[4].

Taking into account that a great role in the development and productive activity of juvenile justice belongs to psychologists, the project "juvenile justice in Kazakhstan" has created another model of social service – "social psychologists for the protection of minors". A group of social psychologists, volunteers from the graduate students of Almaty universities together with lawyers, formed a juvenile protection group. As a result of the "juvenile justice project", for the first time was practiced participation in civil and criminal proceedings of specialized social psychologists as a juvenile protection group in Kazakhstan[1].

In any case, the project became possible due to the Convention on the rights of the child of August 12, 1994[5].

The most important and effective result of the project "juvenile justice in Kazakhstan" was the establishment of juvenile courts in the Republic. The project showed the model of the juvenile justice that meets both local and international standards of the child rights protection. In the areas where the project took place, the participants in the processes were guided by the norms of the Convention on the rights of the child. In each case, effective protection was provided, the project was completed. But the process of the juvenile justice establishment has just begun[1].

At the same time, according to the Concept of the juvenile justice establishment of August 19, 2008, it becomes important to create a single specialized juvenile police. The police should include district inspectors, investigators and operational commissioners of the criminal police, social psychologists and teachers for juveniles[6; 2]. However, in practice, all this is formal. The juvenile court sent an appeal to the Astana DIA on the need to introduce such a structure, taking into account the existence of a specialized court in the capital.

The Concept of development of the juvenile justice system in the Republic of Kazakhstan for 2009-2011 (hereinafter – the Concept), approved by the President of Kazakhstan, tells that only in the judicial system created operates a specialized structure of juvenile justice, aimed at protecting the rights and interests of children [6; 2].

In this connection, the akimat of Astana held an extended meeting of the Commission on juvenile Affairs, which discussed the interaction of the juvenile justice system in the education and prevention of juvenile delinquency. At this event, the issues during the consideration of cases were raised. In particular when considering cases of deprivation of parental rights, administrative materials, investigation of criminal cases were raised. The proposal of the court chairman to establish a Coordination Council of juvenile justice bodies of the city in the framework of an expanded meeting of the Commission on juvenile affairs was supported. The Coordination Council will also address issues related to the juvenile justice.

In addition, the juvenile court will involve the specialist psychologist to participate in cases.

At the time of accession to independence, the juvenile justice system did not exist in the Republic of Kazakhstan. However, its development was previously identified as a priority in the framework of the implementation of judicial and legal reform, subsequently enshrined in the Concept of development of juvenile justice for the period 2009-2011[7].

International experts emphasize that the process of development of juvenile justice, in which the specialized juvenile court, according to the Concept of legal policy from 2010 to 2020 is designated as the Central link of this system, is the progress of Kazakhstan in the implementation of the recommendations of the UN Committee on the rights of the child[8].

It seems that the specialized court should be the most important part of the juvenile justice system due to the Constitution of the Republic of Kazakhstan.

According to the Constitution the judicial power extends to all cases and disputes. It is the court that has the widest possibilities in dealing with issues relating to the protection of the rights and legitimate interests of juveniles[9; 4].

The specialized court should work the special system of justice.

In general, the current legislation meets modern international standards. But the procedural legislation needs to be improved. In order to maximize the detail of the legal procedure for juveniles and further implementation of the principles of juvenile justice in the proceedings[1].

The juvenile court coordinates its work with other agencies, that work with children at the local level, including state, law enforcement agencies and public[1].

It requires a special procedure and form of interaction between the activities of the court and prosecutors, which we are trying to implement together. However, the existing problem of the allocation of staff units for the establishment of specialized units in the Prosecutor's office is the reason for the lack of adequate supervision in the field of protection of the rights of juveniles.

Inspectors of the juvenile police do not work hard. The division only nominally renamed the division of juvenile justice, is not in the service of criminal police and investigators. In turn, it requires special expertise.

The Committee for the protection of children's rights and its territorial bodies have been established within the Ministry of education and science to ensure guarantees and rights of juveniles. The Committee works on interdepartmental coordination and monitoring of the implementation of the state policy on the protection of children's rights. The Department for the protection of children's rights in the field should become the authorized and, accordingly, the coordinating body of juvenile justice.

The most important problem, is the lack of an integral attribute of juvenile justice of the Institute of social workers, probation services.

The absence or formal presence of specialized bodies provided by the Concept does not allow to fully implement the tasks set before the juvenile system for the re-education of juveniles[1].

The court knows from the inside and sees the problems of juveniles. Every day it faced with their seemingly intractable problems, takes all possible measures to accompany such children, trying to change the situation and circumstances within the still poorly functioning juvenile system. Various activities are carried out to enhance this activity in all structures, by sending private definitions, submissions, various information to government agencies. Also to attract international organizations to conduct outreaches and assist in the development of the juvenile justice system in Kazakhstan.

References:

- 1 Yuvenalnaya Yusticiya [Juvenile system] Available at: <http://www.google.ru/>
- 2 ZHurnal Voprosy yuvenalnoj yustitsii No.3 12.2007 Metody i tekhnologii/ neofitsialnyj perevod / Zashchita prav nesovershennoletnih vo Frantsii. Istoriya voprosa/ Uvetta Bertrand, Komissar militsii, direktor po zashchite nesovershennoletnih pri Prefektуре (MVD) [Journal of juvenile justice No. 3 12.2007 / Methods and technologies /unofficial translation/ protection of the rights of minors in France. Background / Uvetta Bertrand, police Commissioner, Director for the protection of minors in the Prefecture (MIA)]
- 3 Robert Lutes sudya Korony Kanadskaya sistema yuvenalnoj yustitsii [Robert Lutz, a judge of the Crown, the Canadian juvenile justice system] Available at:<http://www.canada.justice.gc.ca/en/ps/yj/>
- 4 Voprosy yuvenalnoj yusticii [Juvenile system problems] Available at: <http://www.google.ru/>
- 5 Konventsiya o pravah rebenka Respublika Kazahstan ot 12 avgusta 1994 goda, baza dannyh "Adilet" // Available at: <http://zan.kz/rus/search/docs/fulltext> [Convention on the rights of the child of 12 August 1994, database "Adilet"]
- 6 Zakon Respubliki Kazahstan O vnesenii izmenenij i dopolnenij v nekotorye zakonodatelnye akty po voprosam spetsializirovannyh mezhrajonnyh sudov po delam nesovershennoletnih ot 14 iyulya 2008 goda, baza dannyh "Adilet" // Available at:<http://zan.kz/rus/search/docs/fulltext>. [Law of the Republic of Kazakhstan "on amendments and additions to some legislative acts on specialized inter-district juvenile courts" dated 14 July 2008, database "Adilet"]
- 7 Kontseptsii razvitiya sistemy yuvenalnoj yustitsii v Respublike Kazahstan // Available at: [kzdocs.docdat.com/ docs/index-20419.html](http://kzdocs.docdat.com/docs/index-20419.html) [Concepts of development of juvenile justice system in the Republic of Kazakhstan]

8 Kontseptsiya pravovoj politiki Respubliki Kazahstan na period s 2010 do 2020 goda.// Kazahstanskaya Pravda. – 2009. - 27 avgusta. [The concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 // Kazahstanskaya Pravda. - 2009. - August 27.]

9 Konstitutsiya Respubliki Kazahstan ot 30 avgusta 1995 goda izdatelstvo YUrist Almaty 2010 goda [Constitution of the Republic of Kazakhstan of August 30, 1995, publishing house "Lawyer", Almaty, 2010]

ПРАВОМЕРНОЕ И НЕПРАВОМЕРНОЕ ПОВЕДЕНИЕ

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Проблема исследования правомерного поведения заняла свое место в курсе теории государства и права сравнительно недавно. Основную массу поступков людей в сфере права составляют правомерные деяния, в виде положительного действия или бездействия, выступающие основой нормального функционирования любого общества. О правомерном поведении можно говорить лишь в той степени, в коей оно совпадает с моделью, зафиксированной в норме права. Последняя выступает основным нормативным регулятором поведения личности, коллектива. Она отражает интересы народа, отдельных социальных групп, задает (предписывает, разрешает) определенные формы поведения, характер отношений, а также цели и способы их достижения.

Правовая норма регулирует только такое поведение, которое имеет общественный характер, т.е. связано с взаимоотношениями между личностями, коллективами, классами, с обществом в целом. Нормы определяют основные цели, границы, условия и формы поведения в наиболее важных для общества или социальной группы областях жизни. Их можно рассматривать как образцы, модели реального поведения людей, программы их практической деятельности в связи с возникновением той или иной конкретной ситуации. Следовательно, одной из функций права является регулирование общественных отношений путем воздействия на поведение субъектов права. Исследуя определенные общественные отношения, несомненно, изучаются и их носители — конкретные личности, из действий которых и слагаются эти отношения. [1]

Регулируемое нормами права поведение должно являться юридически значимым, либо соответствующим требованиям правовых норм, либо не соответствующим им. Право призвано запрещать поведение, наносящее ущерб общественным отношениям.

Государство, будучи официальным представителем и гарантом безопасности всех членов общества, устанавливает своеобразные границы социально значимого поведения своих граждан, коллективных объединений, должностных лиц.

Следует отметить подвижность данных границ. Они достаточно динамичны и изменяются под влиянием объективных и субъективных факторов.

Свою объективированную форму оценки общественно значимого поведения получают, как правило, в правовых нормах. Отражая степень важности тех или иных вариантов поведения, данная разновидность социальных норм одни поступки поощряя другие, напротив, ограничивает или вовсе запрещает под страхом наказания за совершенные деяния.

Оценивая поступки человека через призму права, государство декретирует три основных варианта его поведения — юридически безразличное, правомерное и неправомерное.

В представленной работе нами будут рассмотрены понятие, виды, факторы стимулирования правомерного поведения субъектов права, а также правовая активность личности.

Поведение людей с юридической точки зрения может быть правомерным, неправомерным и юридически безразличным. Последнее никаких правовых последствий не порождает и никаким юридическим оценкам не подлежит. К правовому поведению относятся только два вида: правомерное и противоправное, и суть их состоит в следовании требованиям правовой нормы или же ее нарушении. Признаками правового поведения являются:

- 1) социальная значимость;
- 2) подконтрольность сознанию и свободной воле лица;
- 3) вхождение в правовую сферу;
- 4) подконтрольность государству;