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## **PRACTICAL ASPECTS OF CHILD'S PROPERTY RIGHTS IN THE REPUBLIC OF KAZAKHSTAN**

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A precondition for a democratic state is granting citizens broad rights and freedoms, creating opportunities for a dignified life, as well as the recognition, observance and effective protection of these rights. Special care and protection needed by the children who suffer most from socio-economic instability. International legal acts ratified by the Republic of Kazakhstan (in particular, the UN Convention on the rights of the child "On the international enforcement of child support and other forms of family support and Protocol on the law applicable to maintenance obligations the world Declaration on the survival, protection and development of children [1] and others) impose on our country a serious commitment to improve state institutions that ensure the implementation and protection of the rights of minors, and property rights of minors are no exception. The state way should the external support, social policies concerning the family and childhood contributes to the formation of full citizens and the community as a whole. And, moreover, these subjects contribute to a minor in the realization of their rights.

Realizing their property rights, minors enter into various property relations, which are subject to regulation of civil legislation. Fundamentals of the participation of children in property relations are laid down precisely in civil legislation, which defines the concepts of legal capacity, capacity, fixed types of capacity and its characteristics in minors. At the same time, the legal regulation of certain types of property relations requires the application of regulations of various branches of legislation, civil, land, housing. The legal relationship between children and parents (other legal representatives), including the property rights of children in the family, attitudes of guardianship and trusteeship are also regulated by the rules of family and marriage law of the Republic of Kazakhstan. [2]

In the current economic conditions, juveniles may belong by right of ownership of significant property, including things and property rights acquired as a gift or by inheritance, but the property passed to him on the basis of other civil-legal transactions, for example, in the course of privatization of housing, the remuneration received for the creation of creative works (royalties), as well as purchased with his own funds (earnings from labor and entrepreneurial activities, income from securities, work in subsistence farming, etc p.).

Given these circumstances, Art. 66 of the Code of the Republic of Kazakhstan "On marriage (marriage) and family" establishes that "a child has the right of ownership of income received by him, property received by him as a gift or by inheritance, as well as any other property acquired with the child's funds" [2]. At the same time, the Code of the Republic of Kazakhstan "On Marriage (Marriage) and the Family" establishes a fundamentally important provision: "The child does not have the right to own property of parents, parents do not have ownership of the property of the child. Children and parents living together can own and use each

other's property by mutual consent. "This is a clear division between the property rights of adults and minor family members, without an establishment that is difficult to protect the property, quite independent interests of the child. The civil legislation provides for the possibility of limiting the incomplete (partial) capacity of minors. Thus, the Civil Code of the Republic of Kazakhstan Clause 3, Article 22, reinforcing the protection of minors in this field, allows the limitation of the legal capacity of minors aged 14-18 only by a court decision [3]. Chapter 35 of the Civil Procedure Code of the Republic of Kazakhstan [4] clearly prescribes the procedural order of this kind of restrictions. The restriction of legal capacity may be expressed in limiting or even depriving the minor of the right to independently dispose of earnings, scholarships or other incomes (in full or in part), the implementation of administrative actions only with the consent of parents, trustees. Moreover, the decision to limit the legal capacity of a minor between the ages of 14 and 18 can be taken by the court "in the presence of sufficient grounds" (purchase of alcohol, drugs, gambling, prostitution, etc. by minors).

The right to receive maintenance from parents is one of the inalienable rights of the child, which accompanies the child's right to education in the family. Parents are obliged to carry out the maintenance of the child and independently determine in what order and in what form they will provide the maintenance to the minor children. In the presence of grounds provided for by law, the child has the right to receive maintenance from other family members. The amounts due to the child as alimony, pensions, allowances are placed at the disposal of the parents (one of them) and spent for the maintenance, upbringing and education of the child. The duty of parents to support their minors, as well as adults who are unable to work, is a guarantee of observance of the child's right to secure his property interests [5, 23-24].

Aliment obligations are strictly personal and do not pass by inheritance, in case of death of an alimony-bound person, the child loses the right to receive alimony.

Unlike the Kazakh legislation in foreign countries (USA, Italy, Germany, France, etc.), maintenance obligations do not cease with the death of the obligated person, they are inherited and burdens the property of the debtor's heirs for alimony. Heirs are obliged to pay alimony from the value of inherited property. If the heirs voluntarily do not pay maintenance to the child, then the head of the body to which the institution is subject, where the child was placed, has the right to bring a claim to the heirs of the deceased parent in court to pay maintenance on the child from the value of inherited property.

In cases where parents do not provide the child, the maintenance costs are collected from them in court (maintenance obligations). The procedure for the recovery of alimony is regulated by the RK Law "On Enforcement Proceedings and Status of Bailiffs in the Republic of Kazakhstan" dated April 2, 2010 No. 261-IV, by the Order of the Minister of Justice of the Republic of Kazakhstan "On approval of the list of types of wages and (or) other income from which withholding of maintenance for the maintenance of minor children" of December 24, 2014 No. 372.

In Kazakhstan, during the last five years, a large-scale state policy has been implemented to protect the rights of children who need material support from their parents. Departments for the implementation of judicial acts in each region carried out various activities aimed at the effective collection of alimony: the shares are aimed at persuading debtors-non-payers, to manifest in them a sense of conscience to pay their debts; The Prosecutor General's Office of the Republic of Kazakhstan has created an Internet service "They are being looked for" by children, where the names and persons of citizens who evade the payment of the maintenance of their children are placed; The Committee for the Enforcement of Judicial Acts created the Uniform Register of Debtors, i.e. information about debtors are posted on the official Internet resource of the Ministry of Justice.

Despite the organizational measures taken, the improvement of the work of state judicial executors and the introduction of the institution of private execution, the problem of non-receipt of alimony remains very urgent and requires constant attention.

The main problem of non-enforcement of court decisions on the recovery of alimony is the lack of property of the debtor, including money, securities or income, which can be levied, and all measures provided by the judicial executor to identify his property or income are unsuccessful. Debtors rewrite their property to other people and as a result, the court executors have nothing to recover from them. In such cases, in accordance with Part 3 of Article 169 of the Code "On Marriage (Marriage) and the Family", if the person obliged to pay maintenance for the period during which the recovery of alimony was not performed, did not work or if documents confirming his earnings and other income, arrears owed on the basis of the average monthly wage in the Republic of Kazakhstan at the time of collection of debts [6, 103].

In the event of the formation of arrears in the case of alimony, as a result of evading the debtor from paying them for the amount of the debt, a penalty is charged in accordance with Article 353 of the Civil Code of the Republic of Kazakhstan. According to Article 171 of the Code of the Republic of Kazakhstan

"On marriage (marriage) and family", when a debt is created due to the fault of a person obliged to pay maintenance under a court decision, the guilty person pays a penalty to the recipient of alimony in the amount of one tenth of a percent of unpaid support for each day of delay [2 ].

Problems are exacerbated when it is difficult to recover alimony from debtors who have moved to a permanent place of residence in countries far abroad. Kazakhstan ratified the Convention on the International Procedure for the Collection of Alimony for Children and Other Forms of Family Maintenance and the Protocol on the Law Applicable to Support Obligations, done at The Hague on November 23, 2007. If agreements on legal assistance with foreign countries are not concluded, the situation is aggravated and it will be difficult to collect arrears on alimony. In such cases, it is worth paying attention to the legislative practice of foreign countries. For example, in Ukraine "if after the entry of a court decision into legal force, according to which alimony is collected from one of the parents, he leaves for permanent residence in a state with which Ukraine does not have an agreement on legal assistance, with him on the court's decision prior to his departure for limits of Ukraine may be collected child support for the entire period until the child reaches the age of majority "(paragraph 6 of Article 181 of the Family Code).

In the event that a parent evades his obligation to pay alimony in some foreign countries, the state assumes the obligation to maintain the child. For example, in European countries, the United States pays benefits to parents who do not receive alimony for a certain period of time. Thus, during the period of avoidance of the parent from the payment of alimony, the state assists the parent to support the child. For example, according to paragraph 8 of Article 181 of the Family Code of Ukraine "if the place of residence or the location of the parents is unknown or they evade the payment of alimony or are unable to support the child, the child is given a temporary state allowance, taking into account the financial situation of the family in which the child is raised child. Payment of the temporary state benefit is carried out at the expense of the State Budget of Ukraine. The sums of the temporary state allowance granted to the child shall be recovered from the payer of alimony to the State Budget of Ukraine in a judicial procedure "[7].

An effective mechanism for the effect on aliens of non-payers was the toughening of the responsibility of debtors on alimony. With a view to improving the mechanism for collecting alimony, the Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Improving Enforcement Proceedings" dated January 15, 2014 was adopted. Article 136 of the Criminal Code (currently inoperative) excluded the subjective notion of "maliciousness" of committed acts for failure to fulfill obligations to pay for the maintenance of children or disabled parents, and the sanction was changed - imprisonment for up to two years was imposed. The current Criminal Code of the Republic of Kazakhstan of July 3, 2014, in article 139, allows bailiffs for non-payment for more than three months of alimony to bring a defaulter to criminal liability by restricting freedom for up to two years or by imprisonment for the same period.

Also one of the problems in this area is the recovery of alimony for the maintenance of children held in state institutions, from debtors deprived of parental rights. Failure to enforce judicial acts is related to the following reasons, debtors do not work, abuse alcohol, do not have the means to support children. Compared with orphans, disabled people, who receive monthly benefits, these children, whose parents are deprived of parental rights, do not have the means to receive funds from the state. Having no means of subsistence, children suffer with living parents. An exit in this situation could be the creation of a Republican alimony fund for children held in orphanages. From the fund, the state would pay benefits to children, and later, debtors deprived of parental rights would be reckoned in recourse to the amounts of arrears in favor of the state. Thus, upon attaining the age of majority, orphanage pupils would have the initial material base necessary for admission to educational institutions, purchase of housing, etc.

Based on international experience, the need to create the Republican Aliment Fund was discussed for many years and was proposed to the Government. However, last year the Government refused to create an alimony fund because of the economic crisis in the country [9].

Paragraph 2 of Art. 25 of the Constitution of the Republic of Kazakhstan regulates: "Conditions are created in the Republic of Kazakhstan for providing citizens with housing". According to Art. 12 of the Law of the Republic of Kazakhstan No. 94-1 of 16.04.1997 "On Housing Relations" (hereinafter referred to as the Law on Housing Relations), the right to housing is provided by providing citizens with living quarters in houses of the state housing stock through privatization, construction, purchase and sale of housing [10]. With persons who have not reached the age of majority, or more precisely, do not have full legal capacity, contracts of hiring, buying and selling, or building housing can not be concluded. How can the right to housing granted to a child be realized?

Concerning the state housing fund, this right is realized by establishing in the legislation the provision that the members of the employer's family living together with him enjoy all rights as well as the employer

and fulfill the obligations arising from the contract for hiring a dwelling. According to paragraph 1 of Art. 21 of this law, members of the employer's family are cohabiting spouses and their children. Thus, the legislator enshrined the child's opportunity to use the living quarters on a par with the adult members of the family. An additional guarantee of the child's right to housing is the securing in art. 22 of the Housing Relations Act states that parents have the right to infuse children who have not reached adulthood.

The Law of the Republic of Kazakhstan "On Housing Relations" has strengthened the guarantees of the rights of underage orphans and disabled children. It is about giving a home from the public housing stock. So, dwellings from the state housing fund are provided for use by citizens of the Republic of Kazakhstan who need housing and socially protected layers of the population belonging to the poor. The socially protected layers of the population include families with and having children with disabilities, as well as orphans who have not reached the age of 20, who have lost their parents before they reach adulthood. The issue of the rights of minors in the case of alienation of a privatized dwelling, where these persons live, is a problem.

According to the explanations contained in Clause 6 of the Resolution of the Plenum of the Supreme Court of the Republic of Kazakhstan of 18.07.1997 No. 9 "On Practice of Application of the Legislation on Privatization by Citizens of Residential Premises", in the event of a dispute over the legality of the contract for transferring a dwelling to the property of one of its users, legal documents for such a dwelling at the request of interested persons may be recognized by the court as completely or partially invalid on the grounds established by the Civil Code of the RK for recognition transaction is invalid [9].

When concluding an agreement on the alienation of a home, the requirement of Art. 84 of the Law of RK "On Housing Relations" [10] that persons who have moved into a dwelling from the state housing fund as members of the family acquire the right to use this dwelling as well as the rest of the people living in it. Violation of this rule is a sufficient basis for recognizing the transaction as invalid. Thus, the Plenum of the Supreme Court of the Republic of Kazakhstan pointed to the inadmissibility of violations of the housing rights of minors in the privatization of housing. In accordance with the Law of the Republic of Kazakhstan "On Housing Relationships", citizens who become owners of residential premises own, use and dispose of them at their discretion. They have the right to sell, will, lease these premises and make other deals with them. However, the law establishes a number of restrictions to protect the interests of minors.

So, according to paragraph 3 of Art. 13 of the Law of the Republic of Kazakhstan "On Housing Relations", the alienation of a dwelling located in common joint ownership is allowed only with the consent of all its owners. If the transaction affects the interests of minors who own the home, the consent of the guardianship and trusteeship authority is required. As we can see, the legislator has taken certain measures to ensure that the right to housing granted to each citizen is exercised in the proper measure in relation to minors. Thus, when concluding transactions for the alienation of housing, we recommend paying special attention to the observance of the rights of children. It is necessary to insist on obtaining permission from the guardianship and trusteeship authority, even if the child does not own or use the premises. Most likely, a person will be refused permission to issue such permission. But the very fact of applying for the protection of the rights of the child will be an additional guarantee of the legality of concluding such an agreement.

Today, the issue of preserving the property of orphans and children left without parental care is also acute. During the stay of a child in a boarding school, a part of the housing premises for which he is entitled is simply sold. At the same time, he does not receive any compensation for part of the housing. In this connection, the Resolution of the Government of the Republic of Kazakhstan dated November 29, 2013 No. 1271 approved the Rules for the safety of the home of orphans, children left without parental care. Thus, control over the safety of children's homes is carried out by local executive bodies. Preservation of children's homes before their placement in custody or guardianship, foster care, education, medical and other organizations is provided by the authorities. When transferring children for custody or guardianship, foster care, education, medical and other organizations, the safety of their homes is ensured by legal representatives of children.

Housing from the public housing stock or housing leased by a private housing fund is retained by the children for the period of their stay in educational organizations, medical and other organizations, including providing temporary isolation from the community, under guardianship or guardianship, foster care their attainment of majority.

Analyzing the problems of realization of the property rights of the child in the Republic of Kazakhstan, we came to the following conclusions:

- despite the fact that the current legislation of the Republic of Kazakhstan provides for administrative, criminal liability of debtors for payment of alimony, this does not stimulate parents to fulfill maintenance obligations for the maintenance of children. This is proved by the facts of non-enforcement of judicial acts

from the information of the Prosecutor General's Office of the Republic of Kazakhstan, the Ministry of Justice of the Republic of Kazakhstan. Priority of the interests of the child requires the use of harsh measures in relation to the parent, who shies away from paying alimony for the maintenance of his minor child. It is proposed to establish in the legislation effective measures of influence on the debtor who are in arrears on alimony, for example, employment; Involvement in the performance of forced labor, the income from which must be spent to cover the arrears of alimony.

- in case of impossibility to find the location of the person obliged to pay alimony, a search is announced by the court. Also, in cases when there is no income from the debtor, and there is no possibility to execute a judicial act for the recovery of alimony for the maintenance of children due to the lack of property with the debtor, which can be levied. In such cases, the recovery of alimony is not carried out, and accordingly, the interests of the child are not protected. In this case, the child needs support from the state. The way out of this situation can be the creation of the State Aliment Fund. It is proposed to establish in the Law the minimum amount of the allowance for non-payment of alimony in the amount of the child's living wage.

- in order to protect the interests of a minor, we believe that it is unacceptable to apply for recovery to the dwelling in which the minor lives, his compulsory withdrawal and (or) sale from public auction. Investigating the existing housing legislation and acts of its official interpretation, we come to the conclusion that gradually acting legislation and law enforcement practice realize the social importance of protecting the interests of minor family members of the owner and tenant of a dwelling and defend their interests even against the priority of the interests of the owner.

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