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LEGAL AND ADMINISTRATIVE OPERATING CONCEPT OF THE BASIC INSTITUTIONS OF THE JUVENILE JUSTICE SYSTEM IN THE REPUBLIC OF KAZAKHSTAN

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Abstract: Present article considers the establishment of the basic institutions of the juvenile justice system in the Republic of Kazakhstan. Special attention is given to the problems of the juvenile justice system foundation and development. The issue of the development of the children's ombudsman institute in Kazakhstan is studied. The juvenile justice institute being a framework for protecting the minors' rights is substantiated. The best overseas experience, related to the children's rights protection, is recommended to be explored and implemented into the national human rights machinery.

Key words: minors' rights, juvenile, juvenile justice, ombudsman, juvenile police.

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Introduction

Statistics reveal that one third of the population of Kazakhstan is constituted by children, and the government should take it into account when implementing its policy. In particular, as at 2019 there are 5,804,593 children of 0 to 17 years living in the Republic of Kazakhstan, accounting for 31 percent of overall population [1]. Among them - 25,916 orphans and those deprived of parental care (17,720 are under guardianship, 2,240 are whether in foster care or foster home, 5,087 stay in the institutions, 404 study in colleges and universities) [2].

The other figures reveal number of important problems in the examined field, above all corresponding to the rapid growth of the juvenile delinquency, crime, neglect and homelessness. Just in 2018, 6,953 juveniles passed through the Juvenile Adaptation Centers (JACs), of which 970 (14

percent) were deprived of parental care; 5,830 (84 percent) were neglected and homeless; 103 (1.5 percent) were to be delivered to the special education institutions for children, displaying delinquent behavior, and those with a special custodial regime; 50 (0.7 percent) were those living in difficult circumstances [2].

The Republic of Kazakhstan certainly attaches great importance to the children's rights protection, undertakes socially significant activities in the field of the juveniles' rights, and has achieved positive results in establishing its juvenile justice system. The state policy for protecting minors' rights is based on the mutually agreed actions of the government, community and international non-governmental organizations, aimed on protecting the child's rights in order to form the child's well-integrated personality.

It is, however, worth drawing attention to certain problems in the field of the juveniles' rights protection, being indicative of the children's rights system inefficiency. This situation clearly illustrates that the system of the institutions, designed to protect the juveniles' rights, cannot be considered fully established. There is an obvious need to continue updating the government administration of the juveniles' legal protection. In other words, protection of children and minors' rights in Kazakhstan should become one of the main national security priorities, since the quality of the children's life, not meeting the relevant humanitarian international standards, decrease in the level of educational attainment, poor state of legal culture jeopardize the future of Kazakh society.

Research methods

Following the research objectives and tasks, set of common and special scientific methods of inquiry had been applied, which served for the full examination of the research object. With the help of analysis and synthesis the nature of the juvenile justice was identified; system approach method served for achieving fundamental integrity of the theoretical and cognitive framework for understanding the system and structure of the juvenile justice institutions; technical method in combination with logical analysis served for the full study of the existing legal regulations in the juvenile justice sector, as well as identification of the areas of the relevant law improvement.

Results and discussion

The protection of the child's rights is one of the main tasks of the Republic of Kazakhstan, as the society's attitudes toward children, their rights and freedoms, respect of their human dignity clearly reflect the degree of the society's civilization and humanness. In this regard, Kazakhstan, since its independence, started its consistent and deliberate policy for the child legal protection. Since ratification of the Convention on the rights of the child in 1994 until present, in line with international standards and regulations the relevant legal framework is continuing to evolve step by step; legal proceedings, applicable to the cases involving minors, have been

introduced, new agency and children ombudsman established, the juveniles' rights protection mechanism enhanced. Nevertheless, the Republic of Kazakhstan is still facing many challenges in its juvenile legal policy, designed to improve the entire system of the juvenile justice.

The intense phase of the establishment of the juvenile justice in the Republic of Kazakhstan started in 2002, after the adoption of the Child's rights act [3].

From 2001 to 2006 the "Juvenile Justice in Kazakhstan" international pilot project was carried out in Kazakhstan. It identified general approaches to establishing the juvenile justice institutions, and initiated creation and approbation of the juvenile justice in the country.

Following Kazakh researcher G.Zh. Suleimenova, the decision on this project was conditioned by the need for new methods for the proceedings in respect of the crimes, committed by minors, and new effective mechanisms for protecting rights and legal interests of minor suspects and defendants.

Thus, the project was aimed on creating and introducing specialized justice system for minors, being suspected to have committed or charged for a crime, as well as clarifying whether it is adjustable to Kazakh legal environment and may bring any success [4].

The "Juvenile Justice in Kazakhstan" project called for the improvement of law, introduction of the world-class methods, completion by the government institutions of the development of the specialized child justice model, which includes: juvenile justice, juvenile prosecution service, juvenile legal advice, juvenile court/judges, probation service (inspectories).

Following the recommendations of this international project, on 23 August 2007 the President of the Republic of Kazakhstan signed the decree on establishing the first two specialized juvenile courts in Almaty and Astana [5].

The researchers noted, that the settlement of the issue of establishing the juvenile courts in Kazakhstan goes back to the performance of the experimental juvenile courts in Auezovsky and Karasaisky regions in Almaty oblast, where in 2004 had started the "Juvenile Justice in Kazakhstan" pilot project [6, p. 81].

The juvenile courts experiment in Kazakhstan had been successful. Having in focus non-legal specific knowledge, those courts applied individual approach to each case, thoroughly investigated the children's social, living and psychological conditions. Legal community had highly appreciated their performance, which served for the further development of the juvenile justice system.

On 19 August 2008, the President of the Republic of Kazakhstan signed the decree "On the concept of the juvenile justice development in the Republic of Kazakhstan for 2009-2011" [7].

This legal act has become a logical consequence of the started reform of the minors legal protection in Kazakhstan. This concept served for the continued construction of the juvenile justice system on the basis laid by the "Juvenile Justice in Kazakhstan" project.

The concept of the juvenile justice development has fixed the statement that all aspects of the children's life, i.e. education, healthcare, labor, social support, leisure, should be covered by legal protection [7]. The state, therefore, expanded the concept of the juvenile justice, placing it beyond the stereotype of being just a minor justice. Following this principle, the wider approach to the establishment of the juvenile justice institutions started to evolve, which covered the entire system of the specialized legal agencies, bodies and institutions, serving for preventing the neglect, homelessness and offences, committed by minors, and engaging prosecution service, public organizations and human rights agencies.

The Concept of the juvenile justice development in the Republic of Kazakhstan for 2009-2011 had enhanced the outcomes of the "Juvenile Justice in Kazakhstan" international project and conditioned the structure of the Juvenile justice system.

It is as follows:

1. Specialized (minor) juvenile courts, which are the most essential element of the juvenile justice system, having ample opportunities for considering the issues, related to the minors' rights and legal interests protection.

The specialized inter-region juvenile court is competent in the criminal cases, involving minors, except for those referred to the jurisdiction of the oblast and equivalent courts. Besides, the specialized inter-region juvenile courts consider the civil cases on determining the child residence, depriving (restricting) and restoring parental rights, adopting children, disputes arising from the minors custody and guardianship (patronage) in accordance with the marital and family law of the Republic of Kazakhstan.

2. Specialized (juvenile) prosecution service, represented by the specialized divisions, supervising the prosecution offices' compliance with the juvenile law, and having the following functions:

- 1) supervising the investigation of the criminal cases involving minors;
- 2) participating in all phases of proceedings on criminal, civil and administrative cases involving the minors' interests;
- 3) ensuring the legality of the judicial acts on criminal, civil and administrative cases;
- 4) protesting, in accordance with the procedure established by law, the illegal judicial acts with respect to juveniles;
- 5) supervising compliance with law of the enforcement proceedings, with the special focus on the timely collection of the child maintenance;
- 6) inspecting the government institutions' activities on applying the juvenile law;

7) considering and satisfying the natural and legal persons' addresses related to the juveniles;

8) analyzing practices and formulating recommendations on the law improvement and settlement of the issues, arising from the social relationships involving minors.

3. Specialized (juvenile) police responsible for prevention, detection and investigation of the crimes involving minors. These functions are to be performed by the district juvenile inspectors of the administrative police; juvenile criminal police officers; detectives investigating the offences, committed by minors or with respect to them.

Besides, within the internal affairs agencies system were established the centers for the temporary confinement, adaptation and rehabilitation of the juveniles, having a status of the specialized institutions for minors.

4. Specialized (juvenile) prosecution service, focused on the protection of the children's rights with the help of professional defenders. Besides, the minors are to be supported by the specialized juvenile legal advice offices in the cities and oblast centers all around the country.

5. Specialized criminal inspectorates serving for punishment of minors without imprisonment.

6. Regional centers for the children's rights protection, i.e. residential institutions for minors, including orphans and those deprived of parental care; children's homes; residential institutions for disabled children; centers for the temporary confinement and rehabilitation of minors; special schools for children and adolescents in need of special care; schools for the children displaying delinquent behavior; family-type homes for orphans and children deprived of parental care; youth homes for graduates of orphanages, residential schools for orphans and children deprived of parental care.

7. System of the minors social support, composed by the special social officers competent in specific issues related to the juveniles, such as:

- 1) social psychologists form the specialized juvenile legal advice offices;
- 2) juvenile courts social workers;
- 3) specialized police inspectors;
- 4) inspectorates' specialized officers;
- 5) regional juvenile government institutions' officers [7].

The Republic of Kazakhstan, therefore, through the Concept declared its ambitious and large-scale goal on setting an extensive network of the juvenile justice institutions in order to improve the minors protection. Having acknowledged the juvenile courts' being the core of this system and captured the successful performance of the two experimental juvenile courts, similar institutions were established by the Decree of the President of the Republic of Kazakhstan of 4 February 2012 [8] in all oblast centers and some big cities.

Nowadays, there are 19 juvenile courts in the Republic of Kazakhstan: 2 courts in Almaty oblast, 2 - in East-Kazakhstan oblast, 2 - in Karagandy oblast, plus per 1 court in each oblast center, Astana and Almaty cities. Kazakhstan was the first country in Central Asia to establish the juvenile courts.

Inter-region juvenile courts are the courts of a complex jurisdiction, competent in criminal, civil and administrative cases.

Of course, juvenile courts have their own features due to the sensitivity of their proceedings. That is why they are to apply an individual approach to protecting the minor's interests, which takes into consideration all the minor's motives for the offence commission or the reasons for him/her to become a victim.

To date, the proceedings are conditioned by the additional safeguards in respect of the juvenile defendant's right to protection, ensuring the trials' educative and preventive impact, identifying to the maximum extent the features characterizing the adolescent's personality and behavior, education and work environment. The following must be identified: 1) the minor's age - day, month and year of birth (for this purpose, the copy of the birth certificate or record must be enclosed); 2) the adolescent's health status (in case of any information on the adolescent's mental retardation, not related to any mental illness, it must be identified whether he/she is able to understand the significance of his/her actions and to what extent he/she can manage them, for which purpose an expertise must be ordered, involving the experts in the field of the child and adolescent psychology, or psychiatrists); 3) conditions of life, education, the minor's behavior, information on his/her family; 4) circumstances having negative impact on the minor's education, possible influence of the adults, having involved him/her in criminal activities; 5) the minor's attitude toward his/her offence, as well as study and work.

Special attention is attached to the thorough examination of the minor's social life and education conditions, child's and his/her parents' personal characteristics, as well as specifics of their relationships. Thus, psychologists play a very important role in the juvenile courts' performance. In this regard, starting from 2014, one contract inspector-psychologist position was established in each juvenile court in the Republic of Kazakhstan. Special rooms, serving for the comfortable dialogue, were furnished for the psychologists' work with minors.

Special approach to furnishing and equipping the juvenile courts' offices and facilities (both inside and outside) is one of the aspects, affecting their performance and efficiency. There is no any relevant regulations nor standards; the only thing required is creating the environment most favorable and comfortable for the children involved in proceedings. For example, there must be no any isolated spaces, separating the child from the other

proceeding participants. Psychologists also suggest on the curtains, pot plants, padded chairs etc. to be a part of an interior in order to prevent the child's feeling of tension, fear and depression.

Much attention should be paid to the ordering of seats for the trial procedure to be maximum informal. All participants can share one table, and through the judge's mediation try to achieve an optimal result in the interest of the minor. The participants should avoid wearing uniforms, judge's robe or weapon.

Besides, it is desirable to arrange conciliation or so called mediation rooms, where the negotiations for the conciliation agreements should be held.

Bearing in mind the widespread introduction of information technologies, the international experts call for using video links (video monitors) so that a child could participate in the process remotely, beyond the courtroom. It would enable a child to answer the questions out of any psychological pressure, while staying in another room together with a legal representative and psychologist.

The main mission of the juvenile court is not punishing, but educating, which requires a wide range of the restorative justice measures to be taken. For example, the court is entitled to impose on the minor the obligation to obtain psychological therapy.

Special attention is paid to the special training of the trial participants, i.e. judges, prosecutors and lawyers. It is one of the important elements of working with children, since the juvenile justice demands special knowledge and high degree of professionalism in the children sector. Depending on the age the children belong to, they bear distinctive personal characteristics, which should be considered by the participants in the course of their performance.

It should be noted, that the juvenile courts' performance conditions the more profound examination of materials, personalization of the approaches to sentencing, which can be proved by the decrease in the number of the convicted minors and increase in the number of conciliation and proceeding dismissal cases.

However, there are some concerns requiring the performance of the juvenile courts to be improved.

1. The state is good enough at training the juvenile judges, while that of the lawyers and prosecutors to work with the minors, involved in the juvenile procedures, is not that sufficient yet. The advanced training programs for such specialists must be implemented.

2. Besides the psychological programs, the juvenile justice professionals must study the international law regulating the minors' rights protection.

3. Standards on furnishing and equipping the juvenile courts' offices, based on the best practices, should be adopted at the Supreme Court of the Republic of Kazakhstan.

4. Methodological recommendations and specialized educational programs should integrate the best justice practices on preventing the juvenile crimes.

Apart from the juvenile justice, which undoubtedly dominates the legal mechanisms of a state, we should not forget the other ways of protecting rights and legal interests, practiced by any country in the world. The level of their efficiency depends on many factors, including the level of the society's culture and the state's political and legal traditions.

Conclusions

In general, the existing juvenile justice institute in the Republic of Kazakhstan responds to its society's needs. It represents the system of protecting rights, freedoms and legal interests of minors through the close collaboration of the juvenile courts, various specialized offices of public bodies and law enforcement agencies, institutions for preventing the minors neglect and offences, prosecutor offices, human rights organizations and social services.

The system of the juvenile justice in the Republic of Kazakhstan is represented by the following entities: juvenile courts, specialized (juvenile) prosecution service, specialized (juvenile) police, specialized inspectorates, regional centers for the children's rights protection, and the system of the minors social support.

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