

**Abdul Mobin Alami<sup>1</sup>, Omirzhanov Ye.<sup>2</sup>, Zharmukhametova A.<sup>3</sup>**

<sup>1</sup>assistant professor, department of prosecutor and judgment, faculty of law and political sciences, Kunduz University, Afganistan, Kunduz, e-mail: abdulmobinalami@gmail.com

<sup>2</sup>candidate of jurisprudence, associate Professor, e-mail: yesbol\_1981@mail.ru

<sup>3</sup>2 year master student, e-mail: aida.erzhanovna@gmail.com  
Al-Farabi Kazakh National University, Kazakhstan, Almaty

**HISTORICAL ASPECTS OF LEGAL REGULATION  
OF PROTECTION OF THE RIGHTS OF CHILDREN-ORPHANS AND  
CHILDREN LEFT WITHOUT PARENTAL CARE IN KAZAKHSTAN**

Kazakh society has always cared for orphans, which is reflected in its legislation and customary law. The main purpose of this research is to examine the historical development of family law of Kazakhstan, in which special attention is paid to legal regulation of issues relating to children-orphans. At the result there was revealed its advantages and disadvantages, as well as the experience of the legal norms in respect of orphaned children, including their upbringing and adoption. This research traces the evolution of Kazakhstani laws on the protection of children-orphans and their interests, including adoption, guardianship and patronage since the moment of formation of the Kazakh Khanate and to the present day. There was examined the various historical events that have influenced the causes and consequences of the formation of customary law, the Kazakh Soviet family law and law of modern Kazakhstan. Article was reviewed such legal documents as the codes «On marriage and the family», and also used the method of historical comparison of these legal acts. In addition, there were considered the works of Kazakh, Russian and foreign scientists with the aim of obtaining more detailed information on the legal protection of the interests of orphans at each stage of the historical development of the Kazakh family law. Because, today, there are not many works concerning historical and legal overview of the regulation of the protection of orphans in Kazakhstan, this study will allow to briefly learning the history of Kazakhstan legislation about orphans in general.

**Key words:** orphan, adoption, guardianship, custom law, family law, Soviet Kazakhstan, Kazakhstan.

Абдул Мобин Алами<sup>1</sup>, Өміржанов Е.<sup>2</sup>, Жармухаметова А.<sup>3</sup>

<sup>1</sup>ассистент профессор, прокуратура және әділсот кафедрасы, құқық және саяси ғылымдар факультеті, Құндыз Университеті, Ауғанстан, Құндыз қ., e-mail: abdulmobinalami@gmail.com

<sup>2</sup>заң ғылымдарының кандидаты, доцент, e-mail: yesbol\_1981@mail.ru

<sup>3</sup>2 курс магистранты  
өл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

**Қазақстандағы жетім балалар мен ата-анасының қамқорлығынсыз қалған  
балалардың құқықтарын қорғау бойынша құқықтық реттеудің тарихи аспектілері**

Қазақ қоғамы әрқашан да жетім балаларға қамқор болған және бұл елдің заңнамасы мен әдет-ғұрыптық заңында көрініс алған. Берілген зерттеу жұмысының негізгі мақсаты Қазақстанның отбасы құқығының тарихи дамуын зерттеу болып табылады, оның ішінде көңілі жетім балаларға байланысты мәселелердің құқықтық реттеуіне аударылады, мұның нәтижесінде жетім балаларды тәрбиелеу мен асырап алуға байланысты заң нормаларына ықпал еткен оның артықшылықтары, кемшіліктері мен тәжірибелері анықталады. Бұл жұмыста Қазақ хандығының құрылуынан бастап қазіргі күнге дейінгі жетім балалар құқығы мен мүдделерін қорғауға байланысты, оның ішінде асырап алу, қамқорлық пен патронатқа байланысты қазақстандық заңдардың эволюциясы айқындалады. Әдет-ғұрып құқығы, кеңестік Қазақстанның отбасы құқығы мен заманауи заңнаманың пайда болуына әсер еткен тарихи оқиғалардың себеп-салдары

қарастырылады. Зерттеу жұмысында сонымен қатар, «Неке және отбасы» кодекстері секілді заң құжаттары зерттеледі және берілген заңнамалық актілерді қарастыруда тарихи салыстыру әдісі қолданылады. Сонымен қатар, Қазақстанның отбасы құқығы тарихындағы әр кезеңде жетім балалар мүдделерін қорғау бойынша көбірек нақты ақпарат алу мақсатында қазақстандық, ресейлік және шетелдік ғалымдардың жұмыстары қарастырылады. Қазақстандық жетім балаларды қорғау бойынша тарихи-заңнамалық шолу жұмыстарының саны аз болғандықтан, бұл жұмыс жалпы қысқаша осы мәселемен танысуға көмектеседі.

**Түйін сөздер:** жетім бала, бала асырап алу, қамқоршылық, әдет-ғұрыптық құқық, отбасы заңы, Кеңестік Қазақстан, Қазақстан.

Абдул Мобин Алами<sup>1</sup>, Омиржанов Е.Т.<sup>2</sup>, Жармухаметова А.Е.<sup>3</sup>

<sup>1</sup>ассистент профессора, кафедра прокуратуры и правосудий, факультет права и политических наук, Кундузский Университет, Афганистан, г. Кундуз, e-mail: abdulmobinalami@gmail.com

<sup>2</sup>кандидат юридических наук, доцент, e-mail: yesbol\_1981@mail.ru

<sup>3</sup>магистрант 2 курса, e-mail: aida.erzhanovna@gmail.com

Казахский национальный университет имени аль-Фараби, Казахстан, г. Алматы

### **Исторические аспекты правового регулирования защиты прав детей-сирот и детей, оставшихся без попечения родителей в Казахстане**

Казахское общество всегда заботилось о детях-сиротах, что отражено в его законодательстве и обычном праве. Основной целью данного исследования является изучение исторического развития семейного права Казахстана, в котором особое внимание обращено на правовое регулирование вопросов, касающихся детей-сирот. В результате были выявлены его преимущества и недостатки, а также рассмотрен опыт, действующих правовых норм в отношении детей-сирот, включая их воспитание и усыновление. В данной работе прослеживается эволюция казахстанских законов о защите детей-сирот и их интересов, включая усыновление, опеку и патронат, с момента образования Казахского ханства и до наших дней. Изучены различные исторические события, оказавшие влияние на причины и последствия образования обычного права, Советского казахстанского семейного права и современного права Казахстана. В исследовании были рассмотрены такие правовые документы, как кодексы «О браке и семье», а также использован метод исторического сравнения данных правовых актов. Кроме того, были рассмотрены работы казахстанских, российских и зарубежных ученых с целью получения более подробной информации по вопросам правовой защиты интересов детей-сирот на каждом этапе исторического развития казахского семейного права. Поскольку на сегодняшний день существует не так много работ касательно историко-правового обзора регулирования защиты детей-сирот в Казахстане, данное исследование позволит вкратце ознакомиться с историей казахстанского законодательства по поводу детей-сирот в целом.

**Ключевые слова:** сирота, усыновление, опека, обычное право, Семейное право, Советский Казахстан, Казахстан.

### **Introduction**

In every country and every society has always been, are and will be orphans and children who for various reasons left without parental care. In this case, the state and society takes care about the education of these children. (Children, Orphanages, and Families: a summary of research to help guide faith-based action, 2014) **The need to have a family, father and mother is one of the strongest needs of the child.**

Guardianship of orphans since ancient times was the main obligation in Kazakh society, because widows and orphans were the most vulnerable parts of society, and every man was obliged to help and protect them from the difficulties of life. Also such matrimonial norms of relations were settled in the

most important sources of customary law of the Kazakh khanate as «Kasym khannyn Kaska Zholy», «Esim hannyn Eski Zholy», «Zheti Zhargy» of Tauke Khan. The fostering and adoption of orphans were decided by «judges» of the Kazakh society, referred to as «bii». (The first laws in steppe, 2014)

### **Methodology**

The methodological basis of the scientific article is **historical analysis method and system of comparative analysis method**. Diachronic type of comparative research helped to understand development of legal system on protection of rights of orphans in Kazakhstan. For a complete reflection of reality materials were used, official documents, legal acts, published in various information resources.

## Literature review

There have been considered several works on finding out historical development of Kazakh legislation on the protection of orphan-children's rights. In this article there were used researches of Kazakh, soviet and Russian and foreign scholars.

Among Kazakh scholars academic Zimanov S.Z. had searched Kazakh history since ancient times and including family law of Kazakh society from its formation to nowadays. In 2003 with launching of program «Madeni Mura» Zimanov with other historians prepared research on customs with title «Kazaqtyn' otbasylyk adet-guryy kutygy [Kazakh family custom law] and it was reviewed in this article. In his book «Historical development of Soviet Kazakhstan» author gives detailed information about soviet Kazakhstan in 1938-1958 including legal development. Another legal scientist reviewed about adoption and children's rights is Dzhandarbek B. A. There were used three articles of this researcher. They occupy issues coincide with their titles like «Adoption in the Republic of Kazakhstan», «Historical aspects of family legislation of the Soviet period» and «On the form of foster parenting» (patronat).

On considering soviet legal system on family issues there were met many works of mostly soviet scholars like Vorozheikin and Alexandrov. Vorozheikin A. M. in his work «Family legal-relations in the USSR» has studied different legal acts on family issues that were existed in Soviet Union at that time. Alexandrov with other soviet legal scientists have reviewed family law in civil procedural law until 1948 in the book «Soviet law in the period of the great Patriotic war. Part I. Civil law».

There are several foreign scholars who have studied Kazakh and soviet family law in general. There are Bernice Madison and Dixon J. in accompany with other scholars have studied about children care in which Bernice compared about different state's policy on child care including Kazakhstan and Dixon and Hazard J.N. («The Child under Soviet Law») have searched about child care in soviet society. Goldman W.Z. in his work «Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936» mostly noticed women rights in post revolutionary Soviet until 1936. Karayanidi M. («Child care in Kazakhstan: Case for Accession to the Hague Maintenance Convention») was co-author of the book «The recovery of maintenance in the EU and worldwide» who directly has searched about Kazakhstan's policy on children support. Martin Virginia («Law and Custom in the Steppe: The

Kazakhs of the Middle Horde and Russian Colonialism in the Nineteenth Century Routledge») has studied Kazakh customary law as its title called. Mishina E. is actually Russian scholar worked in American scientific center and she wrote about «Soviet family law: women and child care (from 1917 to the 1940s)». Raymond E. Zickel is scientist worked on Soviet Union and his research «Evolution of the Soviet Family» considered legal development of family law until collapse of Soviet Union. Yassari Nadjma in work «Changing God's Law: The dynamics of Middle Eastern family law» has searched about Islamic states' family law where she tend to review about Islam's impact to those states' legislation in family issues.

## Results and discussion

According to the records of Russian scientists on family relations in Kazakh society, in custody after death of parents of young children entrusted until the age of fifteen relatives; if there will not be such people a society would give them to the education of a trustworthy and wealthy man who is joining them at the perfect age, boys releases, if they want, and the girl has to be given in marriage; in reward for the education of boys takes nothing, but the girl gets in the issuance of her marriage portion dowry, however, with the consent of her own. (Зима́нов, 2003: 51) Upon reaching the age of eight, the minor, if he is able to consciously relate to the property status, have the right to ask the relatives about the replacement appointed their guardian by another person from among the next of kin. However, the difference between guardianship and adoption was not as if every Kazakh adopted orphan, he was obliged to take him as your own child.

Adoption as a phenomenon that precedes modern relations of adoption in the Kazakh society existed in various forms. One of them is inseparably linked with the Institute of amengerlik – custody of children left without a father or both parents. (Abdimomynov, 2015) For example, to keep the children of the deceased men for the kind of applied amengerlik by which a widow upon the expiration of the annual memorial service for the husband was obliged to marry a second time for one of the brothers of her husband or one of the next of kin. Thus, children remain full members of the tribal community. The loss of the children one or both parents for various reasons, do not bring them to the plight of the disenfranchised and deprived of property in the community. The family was obliged to keep them alive, to grow and to give property. A widow with

children could refuse remarriage and often received the rights of the head of household until age sons, and if you stay among the relatives of the husband. (Абдақимова, 2015:172)

According to the writings of Makovetsky in 1882, childless and with children, was adopted by the majority of the children of close relatives from the male side. In the old days also there were cases of adoption of children of slaves by sultan-tulenguts. Adopted referred to the family of the adopter and enjoyed the same rights as children of the adoptive parent. (Зиманов, 2003: 122)

Adoption occurred in the presence of relatives or two witnesses. The transition of an adopted in adopter's yurt considered the moment of the legal termination of parental authority and the emergence of power adopter (of provides). Thus, the adoption as the birth of children generated family relationships, without regulation of personal rights. This is a feature of relations of children and parents not only in Kazakhstan but also in many other countries. (Джандарбек, 2007а: 15)

Under customary law, a person under the adoption of children was obliged to pay in favor of an adopted part of his cattle, which grazed in a common herd. The offspring belonged to the adopted. Also adopting other people's children, had a full paternal authority over them; his duties were to clothe, feed and care for orphans as their own children, and that is commonly performed, as the guardian does not separate orphans from his children as all parents cares about their education, marry them and give girls in marriage, the guardian receives the bride price, give a dowry, etc. (Зиманов, 2003: 24) But children have no rights the inheritance of such in cases of death of the adoptive parent, orphans could only get just that which they managed to acquire during the life of their benefactors, also those cattle that had been given to them for the installation. Similarly if adopted will drive or wish to separate the orphan all of his family, obliged to leave with the orphans all their acquired property. (Dixon, 2015:256)

According to the records of the Russian scientist N.I. Izraztsov about family relations of the Kazakh people, «Cattle at the time of the apportionment of married orphans, divided into equal parts in the number of orphans, with the youngest sometimes still leave a little more than others, well, the father's Yurt with the property. Daughters are not entitled to the property of the father, and if it happened, after the division of property, then they move to younger or other separated brothers; it can stay at the guardian, although it happens very rarely. In the latter case, the guardian does still not keep

livestock to feed the orphans; he leaves only a frock which would send with a dowry. The dowry in this case goes to the guardian, similarly as it arrives to brother, who took the sisters guardian. In short, the dowry goes to the one who raised and gave the girl. However, it is necessary to say here, rich and even the poor honest Kazakhs (at that time they're called Kyrgyz) convert dowry for orphan girl to her a dowry. Guardian for the care of orphans has no reward.» (Зиманов, 2003: 147)

In pre-revolutionary Kazakhstan joining to the Russian Empire, action of adat law was allowed by a number of acts of tsarism. For example, in Chapter 5 of the Charter on the management of foreigners of 22 July 1822 said, «§ 35. Nomadic the steppe are controlled by the laws and customs, peculiar to each tribe». However, considering the fact that customs were seen as too controversial, it was the responsibility of the local authority, to bring them into the system. In accordance with this requirement, periodically biys of several counties usually have held congresses. The guardianship was considered at the congress Shar Kushik (Decision N 19 from 16 August 1896), at the extraordinary congress of the people's judges of Ust-Kamenogorsk and Semipalatinisk districts, and others. (Hazard, 1938: 428)

Thus, the relationship between parents and children of the period of application of the rules adat law, except of some legal regulation, based on natural factors. Adat law had developed a set of norms governing property and non-property (it's about the duty of obedience of children to parents, the prohibition of abuse of a parent), the relationship of parents and children, but it did not draw attention on the legal aspects of their appearance. (Yassari, 2016:257)

September 16, 1918, there was adopted the «Code of laws on acts of civil status, marriage, family and guardianship law» of the RSFSR. It consisted of 4 chapters. It was adjusted children and children born in marriage. Therefore, we can conclude that the actual marriage also had some legal force, could serve as the basis of the family. With the changes in the sphere of family relations adopted the «Code of laws on marriage and guardianship» of the RSFSR, 1926. (Джандарбек, 2007: 75)

In the Soviet Kazakhstan the principal legislation governing marital relations was the Code «on marriage and family» of the RSFSR of November 12, 1926. The code had separate chapters on guardianship and guardianship and adoption. That meant the same thing in Kazakh society now had a very different function. Custody became increasingly public law character. The appointment of a guardian was regarded as an honourable duty, and guardian-

ship – a position for which a guardian is appointed body of guardianship (Кодекс о браке и семье РСФСР от 12.11.1926).

Guardianship is established over minors and the mentally ill. A minor is under 18 years of age for males and under 16 years of age female if they were not in the care of their parents. They could be considered adults only by special decision of the Department of social welfare minors, with their consent. (Mishina, 2017) The functions of custody and guardianship were exercised by the guardianship and trusteeship either by themselves or through guardians. Bodies of guardianship and guardianship were the social services departments. Their duties, besides the «general measures» the custody of minors and the handicapped, includes the establishment, implementation and lifting of the guardianship, appointment, dismissal of guardians and Trustees and the overall supervision of their activities.

Guardians were guarding all personal and property interests of the wards, as their legal representatives, and Trustees were appointed for making separate deals or were authorized to manage the property at all. On the need to establish guardianship over children under the care of parents, officials, and agencies to which this was become known, and also close the child was to inform the Department of social welfare at the place of residence of the minor. On the appointment of guardianship was given to the publication in local authority periodicals.

The guardian was appointed within a week from the time when the Department of social welfare became aware of the need of guardianship. A guardian could be appointed for one person, and over the group of people. Guardian was appointed adult who was able to perform the job.

There could not be guardians of the person:

Themselves under guardianship;

Deprived by the court of civil rights (good name, public trust, family and property rights);

Interests, which was contrary to the interests of the ward, and especially those who are with him in a hostile relationship (Кодекс о браке и семье РСФСР от 12.11.1926).

When appointing a guardian preference was given to the person who was selected those who were subject to custody (if he is not mentally ill and have reached the age of 14), his mother or father, and in the absence of such person, a close relative. When appointing a guardian, the Department of social welfare had to take into account the personal relations of the person appointed by the guardian and the person subject to guardianship, and the proximity of their place of residence. Every citizen, appointed by

a welfare guardian is obliged to take care of. The consent of the future guardian to his appointment was not required.

From taking custody could refuse the following individuals:

– who is 60 years old;

– as a result of bodily drawback could hardly execute the office of a guardian;

– has exercised parental rights with respect to more than 4 children;

– have already implemented at least one individual or collective custody.

Individuals, who did not rise of its refusal within one week to assume guardianship responsibilities, they were considered as accepted. If the refusal was on grounds defined by the law, the Department of social welfare was assigned to those who refused custody, to custody temporarily.

Custodial duties were terminated with the removal of guardianship, and the occurrence of conditions that impede the appointment of a guardian. In addition, a guardian could be dismissed from office if guilty of «negligence» or abuse of office, and also when he unsatisfactorily performed their functions, in results of which the interests of the ward were in danger (Кодекс о браке и семье РСФСР от 12.11.1926).

The duties of a guardian (Trustee) has classified the protection of personal and property interests of the ward, his education and preparation for useful activity. He performed these duties free of charge. However, the guardian (Trustee) was entitled to receive from the estate beneficiaries the reimbursement of all incurred costs of their upbringing, education and treatment, if these costs did not exceed the income of the ward. (Антокольская, 2002)

Adoption is allowed only in the interests of the children themselves and usually aims to fight homelessness. Such children in their personal, property rights and responsibilities was equated to the children of the adoptive parent (provides) at the origin. (Bernice 1972: 833) The family code of 1918, there was no institution of adoption and the main reasons for this were, first, the desire to prevent any possibility of exploitation of the labor of minors under the guise of adoption, and secondly, the abolition of inheritance. (Декрет РСФСР от 1917) All the children were declared state children and they were under the protection of the state. This provision was contained in article 183 of the Code: «Since the entry into force of this law, adoption is not allowed neither of their relatives nor other people's children. Any such adoption made after the deadline indicated in this article of moment, it does not

give rise to any obligations and rights for adoptive parents and adopted». (Кодекс законов об актах гражданского состояния, брачном, семейном и опекунском праве от 16.09.1918)

But it soon became clear that to prevent the adoption of traditional, time-tested method of placing a child in a family is meaningless. Especially in the 20-ies the number of children left without parents, grew steadily. Therefore, on March 1, 1926, appeared the Decree of all-Union Central Executive Committee, the Council of people's Commissars of RSFSR «On the change of the code of laws on acts of civil status, marriage, family and guardianship law» that the Code of 1918, was supplemented by Chapter, providing for adoptions (Raymond 1989). The code of 1926, on the one hand, recorded common provisions (adoption of minors solely in their best interests, the identity of the relationship arising from adoption, the relationship of relatives by descent, etc.), and with another — has focused on the list of persons who could not be adoptive parents (Кодекс о браке и семье РСФСР от 12 ноября 1926 года). In case of the conditions of adoption (consent of parents of the adopted minor under the age of 10, the spouse of the adoptive parent), there no exception on this matter did not exist. Adoption was made by a decision of bodies of guardianship and guardianship, and its abolition in any bodies of guardianship and tutorship or court (Bernstein, 1996: 9).

After World War II the growth of children-orphan had increased dramatically and this affected the settlement of guardianship over children-orphan Kazakh society. Because of this, the government has failed to arrange for all such a large number of homeless children in orphanages. The war years have left its mark on the rules governing marriage and family relations (Goldman, 1993: 117). Decree the Council of people's Commissars of USSR from January, 23rd, 1942 on the placement of children left without parents, provided the direction of street children in state institutions, i.e. orphanages (Джандарбек, 2007:76).

It was also pointed out the need for extensive development patterning of children in families of workers, employees and farmers. Patronage was carried out only on a voluntary basis. Individuals, who foster children in terms of patronage, received a monthly state allowance. Benefit patron is issued in the amount of 50 rubles per month for each child (Александров, 1948: 251). Soviet citizens helped the state in the education of children affected by the war, took them in the family and was surrounded by genuine parental care and attention (Ворожейкин, 1972: 95).

At that time according to this code in the judicial practice there was the solution by which a person had taken children on continuous education with the dependent, in case of refusal of their obligations had to pay child support (alimony) for minors and children in need in the event of:

- died if the parents of these children;
- if parents do not have sufficient funds for the maintenance of children.

However, such decisions were very rare and after the adoption of the Decree of 8 July 1944, this article (42-3) has been used for the recovery of maintenance for children born in unregistered marriage, with actual fathers, as the Decree prohibited the collecting of the alimony on grounds of consanguinity (Hazard 1938: 431).

And the adoption was made that adopted children could assign the name and surname of his adopter. This decision was attached to the Decree of the Presidium of the Supreme Soviet of the USSR from September 8, 1943, «On adoption», in order to further bring together adopted children with adoptive parents. Adopted (adopted) children were equal to native (Зиманов, 1965:203).

The theoretical feature of the family law of the Soviet Union republics that all its rules are imperative, coercive. D. M. Genkin noted that family law under socialism have the value of public duties that are imposed on parents by the state (Ворожейкин, 1972: 159). So the accumulation of experience in dealing with family relations, changing social realities led to the adoption of the basic legislation of the USSR and the Union republics on marriage and the family of 27 June 1968, which was introduced with effect from 1 October 1969.

In the preamble of the Fundamentals was emphasized that the concern for the Soviet family, which harmoniously combines public and private interests, is one of the objectives of the Soviet state. Thus, like other Soviet Republic, the Kazakh SSR is also adopted its law on family relations on the basis of the Code on marriage and family of RSFSR (Об утверждении Основ законодательства Союза ССР и союзных республик о браке и семье от 1968).

The code on marriage and family of the Kazakh SSR was adopted on 6 August 1969 and entered into force on 1 January 1970. It was 6 sections, which included a total of 25 chapters. All the code was 191 articles. In section 4 of the Code on marriage and family of the Kazakh SSR its norms regulating guardianship (Кодекс о браке и семье Казахской ССР, 1969). Code from 1969 carefully regulated civil-law obligations of guardians. They

must not have maintained wards as before. And finally, the Code contained one very important to wards the rule: «in the absence of sufficient funds for the maintenance of the ward the guardianship assign the benefit of its maintenance» (part 4 of article 132). So there were legal grounds for allocating special funds from the local budget, and the content of special category of children left without families of their own, without care from the parents. An independent place in the Code took, and rules that define the conditions of his release and dismissal of guardians (Trustees) of the performance of their duties.

The family code of 1969 introduced new rules to facilitate the protection of the rights of children through adoption. Now some individuals deprived of the right to be foster parents. They are minors, Persons recognized in the manner prescribed by law incompetent or of limited capacity; deprived of parental rights. The regulations governing the conditions of adoption had become more flexible and possible exceptions. So, on a number of issues had to reckon with the adopted who has reached 10 years of age (Об утверждении Основ законодательства Союза ССР и союзных республик о браке и семье от 1968). Law on adoption of the post-war period observed an interesting feature. A huge step in improving the legislation in this area had been the introduction of the confidentiality of adoption (Dixon, 2013: 256).

After November 1, 1969 cancellation of the adoption and the recognition of it invalid were allowed only in a judicial order. After that attention was drawn to the legal consequences of cancellation of adoption. All of this was a major step forward, allowing the line to more consistent protection of children's rights (Джандарбек, 2007а: 23).

Further, signing of the Declaration on social and legal principles relating to the protection and welfare of children, especially in foster care and adoption (adoption) at the national and international levels, adopted by resolution of the General Assembly 41/85 of 3 December 1986, the Convention on the rights of the child, adopted and opened for ratification and accession by resolution 44/25 of the UN General Assembly on 20 November 1989, and the Hague Convention of 1993 «On protection of children and international cooperation in respect of intercountry adoption (adoption)» had a great influence on the area law for the protection of children's rights in modern Kazakhstan.

The Constitution of the Republic of Kazakhstan of 1995, focusing on basic international legal documents, proclaimed the Supreme value of man, his

life, rights and freedoms. In the field of family relations constitutional provisions proclaim the state's protection of marriage and family, motherhood, fatherhood and childhood. For example, Article 27 of the Constitution also proclaims the care of children and their upbringing is a natural right and duty of parents (Джандарбек 2007а: 45).

Kazakhstan has started to pay more attention to contemporary problems concerning children. As an example, we can point out that children up to 18 years old are eligible to receive child support orphans too; also, those up to 21 years old and engaged in full-time study may be entitled to child support as well. All of it includes financial and other maintenance (Karayidi 2014). The main document of the family law is the Code of the Republic of Kazakhstan «On marriage (matrimony) and family», which was adopted on 26 December 2011 and replaced an earlier Law On «marriage and family» of 17 December 1998.

The code on marriage and family regulates important to society family relations, ensure the protection of the rights and interests of family members. For this reason and in virtue of Express provisions contained in subparagraph 4) of article 3-1 of the Law «On normative legal acts» of 24 March 1998, the corresponding critical group of public relations at the modern stage resolved codified normative legal act, which has provided a systematization of acts of family law.

The law of the Republic of Kazakhstan «On marriage and family» in 1998 envisaged the possibility of adoption in the court. However, the policy aimed at improving legal regulation of relations of adoption taking into account the interests of children aged not fully, in the law and in some other normative acts are omissions that adversely affect this goal. The main difference between contemporary adoption of that provided by the old legislation of the Soviet time this decision was made by the Executive Committee of district, city (regional) Council of people's deputies (article 100 of the Code on marriage and family of KazSSR), which became intolerable under modern conditions, subject to the provisions of the Constitution of the Republic of Kazakhstan (Абдакимова, 2015: 172).

Previous legislative act of 1998 was updated in 2011 and acquired a new change. In the Code of 283 articles, of which 110 are new. The structure of the code consists of two parts – General and special, which gives the opportunity to achieve the needed codification of law. The Code introduced such concepts as «marriage», and provides new definitions of «patronage» (the foster family), «foundling,» (aban-

doned child), «abandoned child», «children (child) orphans» and «surrogacy». It puts specific concepts on institutions such as «guardianship», «custody». There were established requirements for the selection of foster parents (article 135) and the procedure for the conclusion, the termination of the contract on the transfer of the child to education (Кодекс Республики Казахстан «О браке (супружестве) и семье», 2011).

The Code also specifies a number of articles aimed at protecting the interests of the family and child. For example, the new code contains a special Chapter 13, on adoption of a child, which will be divided into domestic and international. While international adoption of children of Kazakhstan is only possible in countries having equivalent with Kazakhstan's international obligations in the sphere of protection of rights and interests of children (paragraph 5 of article 84) (Кодекс Республики Казахстан «О браке (супружестве) и семье», 2011). And also, it should be noted that there is a mechanism to return the child to the country of origin if the adoption is not beneficial. (Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption) Agencies engaged in the search for adopters and registration of adoption procedures for official recognition of state authority will need to pass the accreditation in the authorized body in the field of protection of rights and interests of children (Кодекс Республики Казахстан «О браке (супружестве) и семье» от 2011).

In addition, the Code in terms of adoption provides for a separate article stating the duties of the persons applying for adoption (article 85), the rights and obligations of the adopter (article 86), the date of the rights and obligations of the adoptive parents (article 88).

And the Code expands the list of persons who cannot be adoptive parents. Persons with no permanent residence of males in a registered marriage (matrimony), with the exception of the actual education of the child for at least three years in case of the death of his mother, or of deprivation of her parental rights (sub-paragraphs 7, 11 paragraph 2, article 91).

Article 92 stipulates the difference in age between the adopter and the adopted child. She must be at least sixteen and not more than 45 years. For reasons recognized by the court as valid, the age difference can be reduced. When a child is adopted by stepfather (stepmother), availability of the age difference, established by paragraph 1 of this article, is not required (Yassari, 2016: 256).

If to talk about foster care, B. Dzhandarbek believes that this Institute is not so well developed. However, B. A. Dzhandarbek says that Kazakhstan still has not developed the legal and social mechanisms; due to better protect the legitimate rights and interests of the child at separation from parents (Джандарбек, 2007в: 34). **In addition, adoption issues are mainly engaged in commercial agencies servicing the foreign adoptive parents; no social services to deal with any conflict families to support them, strengthen the family and prevent child abandonment.**

### Conclusion

Dynamics of development of the legislation regulating the protection of the rights of children-orphans has passed a long historical way of its development. Various historical facts have shown that in the Kazakh society, special attention has always been paid to the issue of adoption of orphans. Improvement of the legislation of the state of any type is always closely dependent on the degree of development of the latter.

Exploring the historical aspects of children's homelessness and neglect, we can say that the phenomenon is closely linked to the allocation of the family institution as the Foundation of society. In tribal communities the supervision of children was a common task.

The beginning of the legislative policy of caring for orphans due to the adoption of the rule of Kasym the Khan, Esim Khan, Tauke Khan and. Before the advent of the Soviet Union, the people of Kazakhstan have long held customs in matters of guardianship and adoption of children (Martin, 2012: 24).

After a sharp rise in homeless children during the second world war, the Soviet government introduced changes and amendments, which established the employers, returned to the lawful adoption of children as methods brayboy of homelessness.

Since independence, Kazakhstan has joined the international community and the first step to this was to join the UN Convention on the rights of the child. So the legislation of Kazakhstan on the protection of children, orphans and children left without parental care (Convention on the Rights of the Child of 1989). The state passed a new law, that is, the Code «On marriage and family», which was modified further, and was also adopted legislation on adoption, which provides details on the procedure of adoption as citizens of Kazakhstan and foreigners.

## Литература

- 1 Абдакимова М.К., Кенжебаева С.К., Муликова С.А. Проблема сиротства в Казахстане: дисфункция и кризис духовности // *Международный журнал прикладных и фундаментальных исследований*. – 2015. – № 9-1. – С. 172-176.
- 2 Александров Н. Г. Советское право в период Великой Отечественной войны. Часть I. Гражданское право. — Трудовое право Юридического издательства министерства юстиции СССР. – М., 1948. – 431 с.
- 3 Антокольская Мария Вадимовна Семейное право: учебник. – М.: Юрист, 2002. – 336 с.
- 4 Биндер М.А., Зиманова С. З. История государства и права в Советском Казахстане Том 3. – 1965. – 432 с.
- 5 Ворожейкин Е.М. Семейные правоотношения в СССР. – М.: Юрид. лит., 1972. – 336 с.
- 6 Декрет ВЦИК, СНК РСФСР от 18.12.1917. о гражданском браке, о детях и о ведении книг актовъ состоянія. Право СССР. [Электронный ресурс]. – Режим доступа: <http://pravo.levonevsky.org/baza/soviet/sss7493.htm>
- 7 Джандарбек Б.А. Усыновление (удочерение) в семейном праве Республики Казахстан: монография. – Алматы: Издательство «Қазақ университеті», октябрь 2007. – 182 с.
- 8 Джандарбек Б.А. Исторические аспекты семейного законодательства советского периода // *Хабаршы Вестник Университета им. Д.А. Кунаева*. – № 3 (24). – 2007. – С. 75–77.
- 9 Джандарбек Б.А. О патронатной форме воспитания детей // *Журнал «Де-юре»*. – 2007. – С. 32–35
- 10 Зиманов С.З., Хайдаров Б.К., Қуандықов Б.Ж., Дауталиев Қ.Н. (2003) Қазақтың отбасылық әдет-ғұрып құқығы// URL: [http://kitap.kz/reader/qazaqyng\\_otbasylyq\\_adet\\_huryp\\_ququhy#](http://kitap.kz/reader/qazaqyng_otbasylyq_adet_huryp_ququhy#)
- 11 Кодекс законов об актах гражданского состояния, брачном, семейном и опекунском праве от 16.09.1918. [Электронный ресурс]. – Режим доступа: : [http://www.lawmix.ru/docs\\_cccp/8059](http://www.lawmix.ru/docs_cccp/8059)
- 12 Кодекс законов о браке, семье и опеке РСФСР от 19 ноября 1926 года. [Электронный ресурс]. – Режим доступа: [http://www.libussr.ru/doc\\_ussr/ussr\\_3124.htm](http://www.libussr.ru/doc_ussr/ussr_3124.htm)
- 13 Кодекс КазССР от 6 августа 1969 года № 4276 «О браке и семье», [Электронный ресурс]. – Режим доступа: [http://adilet.zan.kz/rus/docs/K690001000\\_](http://adilet.zan.kz/rus/docs/K690001000_)
- 14 Кодекс Республики Казахстан «О браке (супружестве) и семье» (с изменениями и дополнениями по состоянию на 18.04.2017 г.) [Электронный ресурс]. – Режим доступа: [https://online.zakon.kz/Document/?doc\\_id=31102748](https://online.zakon.kz/Document/?doc_id=31102748)
- 15 Об утверждении Основ законодательства Союза ССР и союзных республик о браке и семье (вместе с Основами законодательства): Закон СССР № 2834-VII от 27.06.1968 [Электронный ресурс]. – Режим доступа: [http://www.libussr.ru/doc\\_ussr/usr\\_6840.htm](http://www.libussr.ru/doc_ussr/usr_6840.htm)
- 16 Abdimomynov N., Askarbekkyzy N., Baktykhozhaev Zh., Imanbayev K. (2015) Islamic Obligation in Kazakh Customary Law (For Example, the Institution of Family and Marriage). *Asian Social Science* Vol. 11, No. 26. Retrieved from: <https://www.questia.com/library/p438549/asian-social-science>
- 17 Bernice Madison Social Services for Families and Children in the Soviet Union Since 1967 (1972) *Slavic Review*, Vol. 31, No. 4, Retrieved from: <http://www.jstor.org/>, pp. 831-852.
- 18 Bernstein Laurie Soviet Adoption Law (1996) NCSEER staff. Retrieved from: <https://www.ucis.pitt.edu/nceer/pre1998/1996-810-25-2-Bernstein.pdf>, P. – 24.
- 19 Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
- 20 Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Retrieved from: [www.hcch.net](http://www.hcch.net)
- 21 Children, Orphanages, and Families: a summary of research to help guide faith-based action (2014) The faith to action initiative. Retrieved from: <http://faithtoaction.org/wp-content/uploads/2014/03/Summary-of-Research4.pdf> . P. 32.
- 22 Dixon J., Kingsley J. Welbourne P. *Child Protection and Child Welfare: A Global Appraisal of Cultures, Policy and Practice*/ Publishers, 28 avr. 2013 г. – P. 288.
- 23 Goldman W.Z. (1993) *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936*. Cambridge: Cambridge University Press, P. 367.
- 24 Hazard J.N. (1938) *The Child under Soviet Law*, *University of Chicago Law Review* 424, 5(3), pp. 424-445. Retrieved from: <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1567&context=uclrev>
- 25 Karayanidi M. (2014) *Child care in Kazakhstan: Case for Accession to the Hague Maintenance Convention. The recovery of maintenance in the EU and worldwide*. P.-448.
- 26 Martin Virginia (2012) *Law and Custom in the Steppe: The Kazakhs of the Middle Horde and Russian Colonialism in the Nineteenth Century* Routledge, P. 244.
- 27 Mishina E. (2017) *Soviet family law: women and child care (from 1917 to the 1940s)*, *Independent Scholar* (Ann Arbor, USA) *Russian law Journal*, Volume V Issue 4. Retrieved from: <http://www.russianlawjournal.org/jour/article/view/380/182>
- 28 Raymond E. Zickel (1989) *Evolution of the Soviet Family*. Retrieved from: <http://www.country-data.com/cgi-bin/query/r-12555.html>
- 29 *The first laws in steppe* (2014) Retrieved from: [http://e-history.kz/en/project/view/9?type=publications&material\\_id=722](http://e-history.kz/en/project/view/9?type=publications&material_id=722)
- 30 Yassari Nadjma (2016) *Changing God’s Law: The dynamics of Middle Eastern family law*, Routledge P. 302.

## References

- 1 Abdakimova M.K., Kenzhebayeva S.K., Mulikova S.A. (2015) Problema sirotsva v Kazakhstana: disfunktsiya i krizis dukhovnosti. [The problem of orphans in Kazakhstan dysfunction and a crisis of spirituality]. *Международный журнал прикладных и*

- фундаментальных исследований (International journal of applied and fundamental research). – № 9-1. – pp. 172-176
- 2 Aleksandrov N.G., Amfiteatrov G.N., Astrakhan E.I., Bakhchisaraytsev Kh.E., Zimeleva M.V., Lunts L.A., Pasherstnik E.A., Polyanskaya G.N., Reykhel M.O., Fleyshits E.A., Shkundin Z.I. (1948) Sovetskoye pravo v period velikoy otechestvennoy voyny. Chast I. Grazhdanskoye pravo. — Trudovoye pravo Yuridicheskoye izdatelstva ministerstva yustitsii SSSR Moskva 1948 [Soviet law in the period of the great Patriotic war. Part I. Civil law]. Labour law. – Moscow, P.-431.
  - 3 Antokolskaya M. V., Kazakova L. A. (2002) Semeynoye pravo: Uchebnik. [Family law: Tutorial].-Moscow. Yurist, P. -336.
  - 4 Binder M.A., Zimanova S. Z. (1965) Istoriya gosudarstva i prava v Sovetskom Kazakhstane: 1938 – 1958 gg. [History of state and law in Soviet Kazakhstan: 1938 – 1958], Volume 3, P. – 432.
  - 5 Vorozheykin E.M. (1972) Semeynyye pravootnosheniya v SSSR [Family legal-relations in the USSR], – M.: Yurid. lit. – 336 c.
  - 6 Dekret VTsIK. SNK RSFSR ot 18.12.1917. O grazhdanskom brake. o detyakh i o vedenii knig aktov sostoyaniya. Pravo SSSR [The decree of all-Union Central Executive Committee, the Council of people’s Commissars of RSFSR from 18.12.1917. on civil marriage, on children and on the keeping of books of acts of state. Law of the USSR]. Retrieved from: <http://pravo.levonevsky.org/baza/soviet/sss7493.htm>
  - 7 Dzhandarbek B.A. (2007) Usynovleniye (udochereniye) v semeynom prave Respubliki Kazakhstan [Adoption (adoption) in the family law of the Republic of Kazakhstan]. – Monograph. Almaty. «Kazakh University», p. – 182
  - 8 Dzhandarbek B.A. (2007) Istoricheskiye aspekty semeynogo zakonodatelstva sovetskogo perioda [Historical aspects of family legislation of the Soviet period] Хабаршы Вестник Университета им. Д.А. Кунаева (Bulletin of the University. D. A. Kunayev), No. 3 (24), pp. 75-77
  - 9 Dzhandarbek B.A. (2008) O patronatnoy forme vospitaniya detey [«On the form of foster parenting] Де-Юре (Journal «De-jure»), pp. 32-35
  - 10 Zimanov S.Z., Hajdarov B.K., Kuandykov B.G., Dautaliev K.N. (2003) Kazaqtyn’ otbasylyk adet-guryp kuckygy [Kazakh family custom law] Retrieved from: [http://kitap.kz/reader/qazaqtyng\\_otbasylyq\\_adet\\_huryp\\_quqyhy#](http://kitap.kz/reader/qazaqtyng_otbasylyq_adet_huryp_quqyhy#)
  - 11 The Code of civil status, marriage, family and guardianship law from 16.09.1918 [Electronic resource] // Juridical site Law-Mix: [web site]. Retrieved from: [http://www.lawmix.ru/docs\\_cccp/8059](http://www.lawmix.ru/docs_cccp/8059).
  - 12 The code of laws on marriage, family and guardianship of RSFSR of November 19, 1926. [Electronic resource]. – Retrieved from: [http://www.libussr.ru/doc\\_ussr/ussr\\_3124.htm](http://www.libussr.ru/doc_ussr/ussr_3124.htm)
  - 13 The Code of the Kazakh SSR on August 6, 1969 No. 4276 «On marriage and family», [Electronic resource]. – Retrieved from: [http://adilet.zan.kz/rus/docs/K690001000\\_](http://adilet.zan.kz/rus/docs/K690001000_)
  - 14 The Code of the Republic of Kazakhstan «On marriage (matrimony) and family» (with changes and additions as 18.04.2017) [Electronic resource]. – Retrieved from: [https://online.zakon.kz/Document/?doc\\_id=31102748](https://online.zakon.kz/Document/?doc_id=31102748)
  - 15 About introduction of the Basic Laws of the USSR and union republics on marriage and family (with the Basic Laws): The Law of the USSR from 27.06.1968 № 2834-VII // Bulletin of USSR Supreme Soviet. 1968. № 27. Article 241.
  - 16 Abdimomynov N., Askarbekkyzy N., Baktykhozhaev Zh., Imanbayev K. (2015) Islamic Obligation in Kazakh Customary Law (For Example, the Institution of Family and Marriage). Asian Social Science Vol. 11, No. 26. Retrieved from: <https://www.questia.com/library/p438549/asian-social-science>
  - 17 Bernice Madison Social Services for Families and Children in the Soviet Union Since 1967 (1972) Slavic Review, Vol. 31, No. 4, Retrieved from: <http://www.jstor.org/> , pp. 831-852.
  - 18 Bernstein Laurie Soviet Adoption Law (1996) NCSEER staff. Retrieved from: <https://www.ucis.pitt.edu/nceer/pre1998/1996-810-25-2-Bernstein.pdf> , P. – 24.
  - 19 Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>
  - 20 Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. Retrieved from: [www.hcch.net](http://www.hcch.net)
  - 21 Children, Orphanages, and Families: a summary of research to help guide faith-based action (2014) The faith to action initiative. Retrieved from: <http://faithtoaction.org/wp-content/uploads/2014/03/Summary-of-Research4.pdf> . P. – 32.
  - 22 Dixon J., Kingsley J. Welbourne P. Child Protection and Child Welfare: A Global Appraisal of Cultures, Policy and Practice/ Publishers, 28 avr. 2013 г. – P. 288
  - 23 Goldman W.Z. (1993) Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936. Cambridge: Cambridge University Pres, P. -367
  - 24 Hazard J.N. (1938) The Child under Soviet Law, University of Chicago Law Review 424, 5(3), pp. 424-445. Retrieved from: <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1567&context=uclrev>
  - 25 Karayanidi M. (2014) Child care in Kazakhstan: Case for Accession to the Hague Maintenance Convention. The recovery of maintenance in the EU and worldwide. P.-448.
  - 26 Martin Virginia (2012) Law and Custom in the Steppe: The Kazakhs of the Middle Horde and Russian Colonialism in the Nineteenth Century Routledge, P.- 244
  - 27 Mishina E. (2017) Soviet family law: women and child care (from 1917 to the 1940s), Independent Scholar (Ann Arbor, USA) Russian law Journal, Volume V Issue 4. Retrieved from: <http://www.russianlawjournal.org/jour/article/view/380/182>
  - 28 Raymond E. Zickel (1989) Evolution of the Soviet Family. Retrieved from: <http://www.country-data.com/cgi-bin/query/r-12555.html>
  - 29 The first laws in steppe (2014) Retrieved from: [http://e-history.kz/en/project/view/9?type=publications&material\\_id=722](http://e-history.kz/en/project/view/9?type=publications&material_id=722)
  - 30 Yassari Nadjma (2016) Changing God’s Law: The dynamics of Middle Eastern family law, Routledge P. – 302