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## National and international aspects of the protection of the rights and interests of the child

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### Abstract

**Relevance.** The protection of children's rights remains a critical concern globally, acknowledging the enduring vulnerability of this demographic. The creation of the Convention on the Rights of the Child signifies a pivotal step in addressing this issue, establishing binding international standards for safeguarding children's rights.

**Purpose.** This article aims to examine the current status of children's rights protection internationally and in the Republic of Kazakhstan, comparing them to identify areas of concern.

**Methodology.** The study employs historical, comparative, and legal analysis methods, along with synthesis, to comprehensively explore the topic.

**Results.** The study delves into the Declarations of the Rights of the Child and the UN Convention on the Rights of the Child, exploring international mechanisms and state responsibilities in ensuring children's rights. It underscores that prioritizing children's rights is essential at both national and international levels. Additionally, it suggests that measures such as removing children from dysfunctional families require careful consideration, as they can have long-lasting psychological implications. The involvement of children in decision-making processes concerning their rights is advocated, alongside their participation in governance structures. Legislative frameworks must not only recognize children's rights but also provide avenues for enforcement and redress against violations.

**Conclusions.** The article highlights global challenges and violations of children's rights, emphasizing the need for ongoing efforts to promote and protect these rights. It underscores the imperative of enhancing mechanisms for children's rights protection both internationally and nationally, in alignment with evolving global trends.

**Keywords:** international protection; legislative regulation; enforcement; vulnerable population; children's rights.

### Introduction

The issue of protecting those population groups who are most susceptible to the negative influence and/or limitations of other actors is always acute in a democratic society. At the same time, the most vulnerable are those who, due to certain objective circumstances, cannot protect themselves properly (physical or psychological illness, age). Therefore, the state always strives in one way or

another to create conditions for these population groups, under which they can fully exercise their rights and protect their interests, or appoint an authorized subject who must exercise the rights of such a group and protect its interests. Children are recognized as the most unprotected in the world community, since they are completely dependent on their parents due to their age and in most cases are subject to negative influence on their part. In such cases, children

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are unable to protect themselves on their own, since the person who is supposed to perform this task (the parent) is the one, from whom the child needs to be protected. In order to solve this problem, the state is empowered to deal with parents, particularly in the area of deprivation of parental rights. Many scholars have researched the field of protecting children's rights.

For example, N.T. Dzhainakbaev et al. [1] conducted a study of the psychological state of children who grew up in an orphanage in Kazakhstan. The research result is that they were able to indicate the propensity for suicidal behavior in such children. However, it should be noted that the research did not look at the life of the children before the orphanage, namely to see whether suicidal tendencies appeared due to living in the orphanage or not, as this could be the result of childhood traumas when still living with their biological family. K.Zh. Kapsalyamov et al. [2] studied accessibility of pre-school and school education in Kazakhstan. They revealed that the level of accessibility cannot be called satisfactory, because due to financial insecurity of parents, many children simply cannot get access to quality pre-school and school education. At the same time, the authors did not analyze whether there are other circumstances that create barriers to obtaining the above benefits (bullying, administrative barriers, health problems, including mental).

A.B. Tursunov [3] and G.A. Alibaeva et al. [4] analyze children from dysfunctional families and the sphere of prevention of juvenile delinquency by criminal law, talking about ways to identify dysfunctional families, adaptation of children. However, they miss the fact that according to many scientists, the adaptation of a child (temporary removal of a child from a dysfunctional family) cannot always help to solve the problem. Although P. Dolan et al. [5] indicate an undoubtedly progressive position on the protection of children's rights in their paper, emphasizing that the family is the primary element that must be protected, they miss the fact that this can come into conflict with the actions of the state, which forcibly removes parental rights of parents in a dysfunctional family.

Thus, it is clear that all of the research that has been conducted solely on one side according to the author's profile. At the same time, such a complex issue requires a comprehensive approach and the involvement of specialists from different fields, which together will be able to form not only a clear problem, but also ways to solve it. In this regard, the need for constant monitoring of the current state of international aspects of children's rights protection, their implementation in the national legislation of different countries, including Kazakhstan, as well as the identification of problematic aspects and non-obvious trends in this sphere, become obvious.

## **Materials and methods**

The historical method was used to study the evolution of international law concerning the protection of the rights of the child. The documents adopted at international conferences and congresses as well as their transformation over time were examined in order to understand what principles and standards were established in the past and how they have changed over time. The comparative method was used for a comparative analysis of international conventions and legislation of different

countries in the field of protection of the rights of the child. The research compared the provisions that had been adopted in international law in different periods of time, as well as those of Kazakhstan and Turkey, and pointed to common trends and differences in approaches to the protection of children's rights. Legal analysis was used to examine international conventions and national legislation on the protection of children's rights. The authors of the research examined the legal framework of children's rights, including their definition, basic principles, and protection mechanisms. They also analysed various cases involving violations of children's rights and evaluated the effectiveness of existing protection mechanisms.

The article analysed international acts in the sphere of protection of children's rights, their influence on the national legislation of the Republic of Kazakhstan, regulations of the Republic of Kazakhstan in the sphere of protection of children's rights, the current situation in the country regarding protection of children's rights, scientific papers of scientists of Kazakhstan and other countries in the sphere of protection of children's rights, reports of international organizations on protection of children's rights. The comparative analysis was conducted to identify similarities and differences in regulations and policies aimed at protecting the rights of children in the world and in Kazakhstan. In addition, the positions of specialists in different areas of scientific knowledge were analysed, and different positions of scientists on the same issue were revealed. The systemic approach was used to examine a comprehensive approach to protecting children's rights, which includes not only legislative measures, but also social programs, medical care, as well as educational programs. The systemic approach also enabled considering the international system for the protection of children's rights as a holistic system comprising various elements. A critical approach was used to analyze international norms and standards for the protection of children's rights, allowing identifying the strengths and weaknesses of existing approaches to the protection of children's rights.

The method of synthesis is one of the key methods of research. It allows combining data collected from different sources to produce new knowledge. It can be useful in this article, as this topic includes many aspects and concepts that are related to various international documents, legislation of Kazakhstan and practice. Various sources, such as academic articles, government reports, legislation, reports of non-governmental organizations, and international documents, have been used in the context of this article. The information obtained from these sources was combined and then analysed to produce new knowledge that can help in understanding the topic. As the protection of children's rights in scientific papers has always been viewed solely in terms of the profile of the author/authors (with the majority of authors always being of the same profession), it was necessary to combine disparate professional opinions to create a more comprehensive picture regarding the current state of protection of children's rights and interests in the world and in Kazakhstan.

## **Results and Discussion**

In the modern world, more and more attention is paid to socially unprotected layers of the population: retirees,

refugees, disabled people, women and, of course, children. The latter are the most unprotected layer of society due to their immaturity, inexperience and lack of understanding of what they are entitled to and how to protect this right. In this connection, the international community has been working for more than a century to ensure international standards and rules to protect the rights and interests of children.

In particular, in the early twentieth century, the International Congress for the Protection of Children launched a campaign to protect children by singling them out as a separate entity; the Declaration of the Rights of the Child was adopted, which for the first time indicated the existence of such rights separately from human rights; the Universal Declaration of Human Rights was drafted; and, finally, the Convention on the Rights of the Child was adopted. As can be seen, the international community throughout the twentieth century sought to comprehensively protect the children and their rights, to protect them from violence, discrimination and any other negative circumstances, which prompted individual countries to improve their legislation in this area in order to adhere to international standards. The United Nations Declaration on the Rights of the Child in 1959 [6] was the first international document that recognized the rights of the child as a separate social group. The Declaration contains 10 basic rights that must be guaranteed to all children without exception. These include the right to life, the right to education, the right to freedom of thought and expression, the right to health, and many others. The Declaration became the basis for the creation of the UN Convention on the Rights of the Child in 1989. Today the declaration remains an important symbol of the protection of children's rights and a reminder of the need to respect and protect their rights throughout the world.

The most ambitious in terms of law is the Convention on the Rights of the Child [7]. It is a set of rules that establishes that children are individuals who have their own rights to life, medicine, protection, development, non-discrimination, and so on. J. Tobin and S. Varadan [8] note that the Convention on the Rights of the Child is revolutionary in that it attempts to establish the child as a separate bearer of rights at the international level. Also, the convention emphasizes that the child is not the property of the parents, the state, or even a mere object of custody, which means a clear separation between parental authority over the child, state powers, and the children's right to exercise their rights.

In his work on the Convention on the Rights of the Child, E. Sutherland [9] focuses on the fact that the document recognizes the evolving capacities of the child as one of the main aspects of ensuring the rights of the child (physical, spiritual and mental development). At the same time, knowledge of such a category as "the evolving capacities of the child" indicates the establishment of protection against arbitrary and unrestricted control by the family over the child. As it can be seen, the Convention on the Rights of the Child has acquired quite a significant place both in theoretical law, establishing standards and vectors of direction for states in the protection of the rights of the child, as well as in practical law, since it has led to enormous changes in the national legislation of many countries. However, even with such a fundamental

document, it does not provide absolute protection of children's rights. One such reason is that, according to D. Reynaert et al. [10], even in democratic countries that have ratified the Convention on the Rights of the Child, education professionals simply do not know how this document should (and whether at all) be applied to their direct activities. For a variety of reasons, the legislation of countries has lagged and continues to lag behind international standards for the protection of children's rights and interests for many years, which entails the deprivation of both personal inalienable rights (to life, inviolability, freedom of speech/movement) and other, collateral rights (political, economic, social rights) [11].

Meanwhile, with the COVID-19 pandemic, the protection of children's rights has been overshadowed by the epidemiological focus of each country's policies, leaving children without adequate protection, resulting in massive violations of children's rights [12]. According to the United Nations International Children's Emergency Fund (UNICEF) for the year 2020 [13], there was an unprecedented scale of violation of children's rights, despite the existence of international agreements, which were ratified and/or implemented by countries: about 150 million children at the end of 2020 crossed the bottom line of poverty, every third child could not study remotely, 200 thousand children were stillborn, and another 80 million did not receive timely vaccines through the untimely delivery of medical services. Furthermore, the World Health Organization [14] reported in 2022 that about 1 billion children worldwide aged 2-17 have experienced physical, emotional, or sexual abuse and/or neglect of their rights (including to life, medicine) in the past year. There have also been violations in the field of education. Thus, according to the UNICEF [15], 145 thousand children in Kazakhstan did not attend school classes in 2020, which is an 11-fold increase compared to 2019.

It should be noted that this report does not talk about not providing children with educational services due to certain objective circumstances, such as pandemics, but instead talks about those children who have the opportunity to attend school, but leave it unrealized. The international community is sure that any negative attitude towards children, such as negative discipline, humiliation, domination is harmful and even dangerous for the health and well-being of the child [16], which is incompatible with the old habits of raising children, especially in the former Soviet Union. At the same time, parents in Kazakhstan actively oppose to the tightening of laws on domestic violence that would completely prohibit any type of domestic violence against a child, which suspends the legislative process in this direction [17]. It is obvious that children, being mostly unable to enforce their own rights, need the support of parents, guardians, the state and other actors (authorized bodies, international organizations, ombudsmen and others), whose purpose is to protect the rights of children.

A similar position is held by P. Alderson [18] who points out that adult capable people are much better than children at protecting their rights both publicly and privately, because they have the necessary information, experience and social skills to do so. However, as is clear from this information, even with the appropriate actors and structures in place to protect children's rights, their rights

have been violated, including their rights to food, housing, education, and life. Moreover, during the entire period of the pandemic around the world, approximately 5 million children have lost a parent or a guardian, with more than 2 million children orphaned [19]. Thus, it is clear that these children are made more vulnerable by the fact that they have lost one or all of the entities that are supposed to ensure that the rights and interests of such children are properly realized [20].

At the same time, the state has an important role in the sphere of protection of children's rights, since state activity in this sphere should be aimed not only at policy formation, but also at the formation of a qualitative legal and regulatory framework in the sphere of protection of children's rights. P. Dolan et al. [5] believe that the family is the most important institution in the state, which it must protect, because it is the family that makes the greatest contribution to the full development of the child. They point out that family support should be considered as ensuring the basic rights of the child. At the same time, J. Doek [21] argues that efforts to end violence against the child cannot and should not be limited to physical, psychological and sexual violence, because there are also facts of neglect, which is a clear violation of children's rights. However, the existence of international instruments is not a guarantee for the protection of children's rights. In order to implement such a policy, countries must ratify the convention and bring their national legislation in line with international policy in this sphere. In turn, since it is impossible to create perfect legislation (i.e., legislation that covers all possible situations), once legislation is formed, legal practitioners must contribute by completing the cycle of forming an appropriate system of national legislation to protect the rights of children. Furthermore, this process must be continuous, as circumstances in the world are constantly changing, creating a need for updating legislation and judicial practice.

According to Article 6 of the Law of the Republic of Kazakhstan No. 345 "On the Rights of the Child in the Republic of Kazakhstan" [22], the purposes of state policy of the Republic of Kazakhstan in the interests of children include: ensuring the rights and legitimate interests of children, preventing discrimination against them; strengthening the basic guarantees of children's rights and legitimate interests, as well as the restoration of their rights in cases of violations; establishing a legal framework to guarantee children's rights, creating appropriate bodies and organizations to protect children's rights and legitimate interests; promoting the physical, intellectual, spiritual and moral development of children, encouraging patriotism, citizenship and peace, as well as the realization of children's personality in the interests of society and the traditions of nations.

On the basis of the foregoing, it may be concluded that Kazakhstan's policy is aimed at the full protection of the rights and interests of children, in accordance with international standards. As of today, such laws as the Law No. 345 "On the Rights of the Child in the Republic of Kazakhstan" [22], "On family-type children's villages and youth homes" [23], "On social and medical and pedagogical correctional support for children with disabilities" [24], "On the prevention of delinquency among minors and the prevention of child neglect and

homelessness" [25], as well as a number of other by-laws and regulations apply in the sphere of protection of children's rights in Kazakhstan. For the proper implementation by the state bodies of Kazakhstan of the powers and objectives stipulated by the Law of the Republic of Kazakhstan No. 345 "On the Rights of the Child in the Republic of Kazakhstan" [22], numerous government decrees were issued, including "On Special Social Services" [26], "On toy safety" [27], and others, a number of decrees of the President of the Republic of Kazakhstan, including "On the Concept of development of the juvenile justice system in the Republic of Kazakhstan for 2009-2011" [28], "On the formation of specialized inter-district juvenile courts" [29].

All of these regulations, adopted both before and after the independence of Kazakhstan, contributed to the development of the sphere of protecting children's rights in the country and ensuring proper oversight of the provision of all the necessary benefits that are recognized as minimally necessary. It should be noted that despite the existence of an extensive legal base in the matter of protecting the rights and interests of children, this problem has not yet been completely solved. In particular, K.Zh. Kapsalyamov et al. [2] believe that the worst situation in Kazakhstan is considered that in the sphere of preschool institutions, schools, summer camps, because due to the poor financial situation of parents, their children cannot attend such institutions. Also, they assert that though the state undertakes urgent measures in the sphere of reduction of social tension in the sphere of youth, struggle against youth alcoholism and drug addiction, and asocial behavior, all these measures are not always effective and in this connection cause only concern on the part of the corresponding subjects whose competence includes protection of children's rights. This is justified by the fact that there is no comprehensive approach to providing assistance to children. Each field of science looks at the issue exclusively from its own side (psychologists from the psychological side, sociologists from the sociological side, lawyers from the legal side), pointing out what they believe should be done for a child in a particular situation. Moreover, when analysing both international and Kazakh legislation, one can conclude that there is one serious theoretical and practical problem, namely the status of the child.

The Convention on the Rights of the Child points out that the child is an individual, i.e., a separate subject who has his or her own (separate from parents, guardians, or any other people) rights, freedoms, and interests, which must be maintained at an appropriate level [1]. Law of the Republic of Kazakhstan No. 345 "On the Rights of the Child in the Republic of Kazakhstan" [22] sets a similar tendency to the individuality of a child, own list of rights and duties. However, in both cases it is stipulated that the child does not exercise any of his/her rights independently and does not decide how he/she wants to exercise them and whether he/she wants to exercise them at all. This must be done by parents, guardians, the family, and other authorized persons, which somewhat contradicts the initial position on the child's separateness as a subject of law, since the child is not given any authority whatsoever to exercise his or her own rights. For example, the world community takes actions that aim to involve children in the

process of protecting their own rights through various surveys, expert opinions, and direct contact with children [30].

However, in Kazakhstan, as in most other countries, this approach has not been introduced in any adequate form. It is of the greatest importance when children's rights are protected in the most serious way – by removing a child from a dysfunctional family. The process is quite simple – if the family meets certain criteria, they are taken on the register by the relevant authorities, but they are given the opportunity to improve. If the situation is critical and the bodies authorized to protect the rights of children come to the conclusion that the children must be removed, they go to court, where an important decision is made. At the same time, it should be noted that for the most part, all of the actors involved in this process approach the problem solely from a formal-legal perspective, which implies that if there are some formal criteria, then there must be consequences for them. At the same time, no one takes into account the need to use such a radical method as removing the child from the family.

J. Jackson [31] believes that removing a child from a dysfunctional family is too important a decision to be taken by one judge and other people for the child in principle. Moreover, he argues that often a child who has succumbed to abuse ends up being made worse off by being removed from a biological family, regardless of whether he or she stays in institutions like residential homes or ends up in foster care. Thus, on the one hand, the legislation indicates that the child is an independent subject and that none of his or her rights and freedoms can be violated or restricted, but on the other hand, the state, indicating that parents are the persons who exercise the rights of the child, puts itself even higher in the sphere of realization of such rights, which may result in the eventual removal of the child from a biological family. It is well known that children who are raised in orphanages have a harder time psychologically and financially, so they are at greater risk of psychological illness or the development of deviant and antisocial behavior.

For example, a study by N.T. Dzhainakbaev et al. [1] indicate that on average, children who were raised in orphanages have a “pronounced deviation” in the Luscher test, which means that they require correction of psychological, volitional and emotional status, more often have low self-esteem than high, half of the children have a mild hopelessness and about 20% have a moderate hopelessness, all of which together result in increased risk of suicidal behavior. In addition, the Report on the human rights situation in Kazakhstan for 2020 [32] notes that children that attend regular schools and those that attend closed-type schools reported being exposed to violence in 18% and 40%, respectively. The same survey found that 75% of adults fully approve of parents using some form of physical punishment on children. In addition, the report described how each year about 1000 people in Kazakhstan are deprived of parental rights, which results in the permanent removal of a child from a biological family. The information published by the Bureau of National Statistics of the Agency for Strategic Planning and Reforms of the Republic of Kazakhstan [33] confirms this. In particular, 2081 cases of deprivation of parental rights were considered in 2021. For comparison, there were only 1687

similar cases in 2010, which indicates an increase of 23%. Thus, one can say that there is a statistical trend to increase the number of cases of termination of parental rights under consideration by the courts of Kazakhstan.

However, this situation also shows a different trend. As noted, there were 1687 cases of deprivation of parental rights in 2010, of which 1446 were satisfied, representing 85% of all cases. Thus, 85% of the cases of deprivation of parental rights that were brought to court in 2010 resulted negatively for the parents. As of 2021, there were 2081 cases of termination of parental rights, of which 1481 ended up with a decision to grant the claim of termination of parental rights. Quantitatively, the number has increased (by 35 units), but in 2021, only 71% of the parental rights cases (15% less than in 2010) that went to court ended up with the suit being granted. As a result, the number of cases referred to court for deprivation of parental rights has increased over the past decade, but the proportion of decisions satisfying the claims decreased, indicating that the judges began to put more emphasis directly on the interests of the child, rather than following the formal prescriptions of the law. 71% of the cases of deprivation of parental rights that are brought to court result in the deprivation of parental rights and in the removal of children from their family and their placement in state care or in foster care. Such removal, in turn, leads to the fact that the child, even though being in a formally dysfunctional family, moves from the category of children who are exposed to violence in 18% of cases to the category of children who are exposed to violence in 40% of cases. Such consequences can in no way be described as certainly improving a child's life and protecting his or her rights.

The above indicates that a child who has been subjected to domestic violence, when actually removed from a biological family, risks being placed in more psychologically and socially difficult conditions, which he or she will not be able to cope with independently due to lack of experience and trusted persons. In this regard, instead of the desired result, namely, ensuring the rights of the child, there can often be a situation where the child receives double psychological abuse, since in most cases, even in the presence of domestic violence or other signs of a dysfunctional family, the child will not want to leave that family. This indicates that in making such a serious decision as to remove a child from a dysfunctional family, the authorities risk not protecting the rights of such a child, but rather exacerbating the problem, since the child is not involved in the decision-making process.

A similar situation occurs in Turkey, where certain formal criteria are also established for the well-being of the family and the proper development of the child. Violation of these criteria results in the removal of the child from the family. In this country, as in many other countries, children are viewed as “individuals with equal rights with adults,” i.e., not as property of their parents, for which they are responsible, but as bearers of subjective rights, given some restrictions due to their age. Turkish civil law [34] defines 18 years as the age at which a person becomes an adult, which leads to the fact that persons under the age of 18 are considered minors. Similar provisions are also enshrined in Child Protection Law [35], according to which “children” are persons who have not reached the age of 18.

It should be noted that in addition to Turkish children, Turkey also has many refugees from Syria. As of 2022, there were 3.7 million Syrian refugees in Turkey, of which 1.7 million were children [36]. This indicates that the issue of protecting the rights of children in Turkey is acute, because the country is also responsible for the children that Turkey shelters as refugees. Given the fact that the legislation of most countries does not protect foreigners as fully, the international community is very closely monitoring the protection of children's rights, including refugees. Turkey's Child Protection Law was enacted for provisions regarding the establishment, duties and powers of special juvenile courts and measures to be taken in relation to children in need of protection. This law also covers the procedures and principles of security measures to be applied to juvenile offenders. In the same year, two related regulations were issued to implement this law. In particular, the main regulations in this area in Turkey are Child Protection Law [35] and Social Services Law [37]. These laws stipulate that if a child's physical, mental, moral, social and/or emotional development is threatened in the family, or if he or she is neglected or abused, then the child is subject to state protection. However, if a child's physical and psychological condition can be determined through appropriate examinations that can lead to informed decisions, then the criteria for a child's moral and social development remain highly questionable [38].

In any case, discretionary authority is a good tool in public administration, because it allows the authorized persons/authorities not to be enclosed in a tight legislative framework, but to be given the right to choose from several legitimate decisions. However, when the grounds for such decisions are highly abstract/formal/fuzzy, then this leads to great opportunities for abuse of power by the actors involved. Scientific papers investigating the problems that arose at an early age and their further impact on the life of such a person also testify in favour of the above information. For example, A. Cole-Albäck [39] points out that research into the rights of children has focused entirely on talking children (i.e., children who can not only make individual sounds and assemble them into words, but also express their thoughts with words because of their age), although many scientific papers point out that early childhood plays a decisive role in the formation of the future person. One such paper is the study of M.S. Tarsha and D. Narvaez [40] who indicate that any unfavourable experience in early childhood (which includes the time when the child is not able to communicate verbally) can lead to long-term detrimental consequences for such a child throughout his or her life. Also, one of the problems with Kazakhstan's legislation to protect the rights of children is its incompleteness.

The incompleteness lies in the fact that the legislation clearly describes the existence of fundamental rights and their protection, while other rights that are secondary (the right to choose a religion, to express one's opinion including who the child wants to stay with after a divorce, and others) may not be enshrined in the legislation or have no direct mechanism for their use and, therefore, protection [11]. While some of the rights of children in Kazakhstan are beyond the protection of legislation, there is talk in a number of countries that children should also be given political rights. Although there is no unanimous opinion

about this yet, including the scope of rights, their implementation, protection, but the presence of such conversations indicates that the legal thought of such countries is much further than in Kazakhstan [41]. Children's political rights are one of the most important aspects of children's rights that have been established in international law. They include the right to freedom of thought, conscience and expression, participation in decisions related to their lives, as well as the right to participate in peaceful activities. International instruments, such as the Convention on the Rights of the Child, recognize that children have the right to freedom of expression and to participate in decisions that affect their lives. It affirms that children should be able to express their opinions freely and that their opinions should be taken into account in decisions that affect their lives [7].

The results of the analysis show that international conventions and standards play an important role in guaranteeing children's rights. In particular, the UN Convention on the Rights of the Child recognizes children's universal rights to survival, development, protection, and participation, and obligates state parties to protect and promote these rights. With this in mind, it can be concluded that the protection of children's rights is one of the most important tasks facing the international community. International conventions and agreements aim to protect and secure the rights and interests of children. However, children in different countries, including Kazakhstan, continue to face violations of their rights, including violations of their rights to life, health, education, and protection from violence and exploitation. These violations can be caused by a variety of factors, such as poverty, social and cultural discrimination, conflict and war, as well as inadequate implementation of state obligations to protect children's rights.

Kazakhstan has legislative acts regulating the rights and interests of children, as well as existing mechanisms for protecting these rights. However, despite the existing framework, the protection of children's rights in the country faces some problems. One of the main problems is the lack of public awareness of children's rights. Parents and teachers are often unaware of children's rights and are unable to ensure that they are protected. In addition, in some cases children do not know their rights and cannot protect them if they are violated. It is also important to note that the mechanisms in place to protect children's rights do not always function properly. Some children are left without help and protection when their rights are violated. It is therefore necessary to improve the work of professionals involved in the protection of children's rights, as well as mechanisms for monitoring their activities. For example, acting within the authority granted by the state, individuals are empowered to address the issue of termination of parental rights of parents from dysfunctional families. At the same time, as shown by the paper of J. Jackson [31] who conducted a study of children who were removed from dysfunctional families, such children only feel worse from the fact of removal in most cases.

The similar emphasis is made by A. Cole-Albäck [39] and also M.S. Tarsha and D. Narvaez [40], namely that early childhood (the period when the child cannot talk meaningfully) and everything that happens in it plays an

important role in the final formation of the child during growing up. These scholars point out that taking a child away from his or her biological parents can itself be detrimental to the child's physical and psychological health. At the same time, such consequences can be both overt and hidden throughout a child's growing up period. Thus, in wanting to protect the child from an unfavourable situation in the family, the state eventually creates problems of a different nature for the child, which are more harmful than those that the child could have been inflicted by the unfavourable environment. However, it should be noted that none of them have suggested how to strike a balance between the power to terminate parental rights and the interests of the child. On the contrary, this article points out that in order to strike the right balance, the interests of the child must be put first, rather than the formal welfare criteria established by the state. In addition, a very effective way to ensure the rights of the child is to directly involve such a child in solving immediate problems. This leads to the following aspect – the inconsistency of the legislation of Kazakhstan.

As of today, the legislation of Kazakhstan in the sphere of protection of children's rights is quite extensive and provides the necessary minimum to protect children as the most vulnerable part of the population. While the main international aspects of children's rights protection have been implemented into the national legislation of Kazakhstan, this has not ensured their enforcement, and those rights which have not been enshrined in the legislation have been left out of the sphere of protection altogether. In addition, despite the legislative guarantees, not all children in Kazakhstan can freely express their opinions or participate in political processes in practice. This is especially true of children who live in socially disadvantaged areas or ethnic minorities. This is confirmed by the paper of K.Zh. Kapsalyamov et al. [2], who analysed in detail the accessibility of pre-school and school institutions, as well as the accessibility of children's camps. As a result, it was found out that the right to education, although enshrined in the legislation of Kazakhstan, is not provided in full, and therefore the rights of children are violated. Unfortunately, the authors in the area under consideration have not analysed the impact of dysfunctional families on further ensuring children's rights in education, namely, whether the lack of access to preschool and school institutions is the result of disadvantaged families (inadequate material condition and intra-family situation), which means that other rights of children are also violated (to health care, freedom and others), or the problem lies exclusively in realization of the right to education. Such an analysis would make it possible to find a solution to eliminate violations of children's rights.

In addition, the issue of the status of the child in international and national law is very important. This is due to the fact that, while granting some autonomy to the child as a separate subject, he or she, on the other hand, is not involved in making decisions concerning his or her life. In international law, the status of the child is regulated by several documents, the most important of which is the UN Convention on the Rights of the Child adopted in 1989. This document establishes the basic rights that should be ensured to all children without exception, including the

right to life, health, education, freedom of expression and protection from violence and exploitation. Also, the status of the child in international law implies that children must be respected and taken into account in decisions that affect their lives and well-being. This means that children must be able to express their opinions and be heard, as well as participate in the processes that affect their lives. In general, the status of the child in international law is the recognition that children are full members of society and deserve special protection and respect. This is a principle that must be taken into account in the development and implementation of legislation and policies aimed at protecting the rights and interests of children throughout the world.

Ensuring the protection of children's rights is one of the most important aspects of modern society. Children are the most defenceless members of society. Their physical and mental well-being depends on adults who must guarantee their right to life, health, education, freedom of expression, protection from violence and exploitation. The protection of children's rights is an important task of the state, society and each individual, because it is directly linked to the future of society. Ensuring children's rights promotes their development, creates conditions for the formation of personality, development of talents and abilities, improvement of self-esteem and confidence in their abilities. Moreover, the protection of children's rights affects the stability of society and international security. Violation of children's rights can lead to conflicts and tensions in society, as well as to the emergence of new threats to national and international security. It is important to understand that the protection of children's rights is an integral part of the sustainable development of society and the realization of all its potentialities.

Thus, it can be concluded that the protection of children's rights is a multifaceted and complex task, requiring the joint efforts of the international community, states and society as a whole. It is important to continue working in this direction and to achieve concrete results in the field of protection of children's rights and interests. Taking all of the above into account, in order to ensure an adequate level of protection of children's rights in Kazakhstan, it is necessary not only to make legislative changes (to directly fix a number of secondary rights of children, as well as mechanisms of their realization and protection from abuse), but also to change the approach to the child in general, since the removal of the child from the process of making decisions that affect his or her life is a direct violation of the child's rights and in most cases brings the child only harm.

## **Conclusions**

On the basis of the above, it can be concluded that securing the rights of children is a social policy priority for the state in particular, and for the international community in general. Due to the dynamic conditions of life in the world, it is necessary to periodically radically revise the provisions that have been normatively established in the sphere of children's rights protection. One such provision is the unconditional removal of a child from a dysfunctional family.

As research shows, the removal of a child from biological parents can lead to great psychological problems

as an adult, for the resolution of which the child (then an adult) will be obliged to seek help from specialists. This clearly indicates that when a decision is made to terminate parental rights, children should be involved in that process in the first place (if possible), and should also be involved in any process, in which decisions regarding his or her rights and interests are made. Moreover, in order to ensure the greatest level of protection of children's rights and freedoms, minors should be involved to some extent in the political governance of the state. For example, a variety of youth committees can help to identify a problem, its scope, as well as suggest certain directions for solving such a problem. All of this requires proper legislative regulation, procedural meaningfulness, as well as legal and social awareness of the authorized persons who will deal with these issues. However, the formal enshrinement of certain procedures and norms in national legislation will not result in the protection of children's rights and freedoms, since it is necessary not only to enshrine a child's right to a certain benefit, but also to provide for a procedure for securing that right and the possibility of appealing against the actions of those who violate that right.

As it can be seen, the international community has been pointing to the priority of protecting children's rights for decades. At the same time, international legislation on this issue at the very beginning of its formation provided the impetus for all countries to begin to maintain an appropriate level of children's rights and freedoms. As of today, international legislation is only a general vector of development, while the main importance is played directly

by national legislation, which must not only be dynamic enough to ensure an adequate level of protection of children's rights, but also create tools for the actual implementation of the enshrined rights.

Further research in this area requires a number of empirical studies, which are related to the enforcement of legislation for the protection of children's rights in each of the countries. This will make it possible to identify effective and ineffective ways of national protection of the most vulnerable population group and, as a result, to eventually correct the negative aspects. In addition, it is also necessary to conduct research from other spheres of scientific knowledge, namely the impact on the rights and interests of children of the application of national remedies for the protection of minors. It is necessary to find out how children of all ages are affected by temporary removal from the family, as well as the deprivation of parental rights and the further placement of the child in an institution. This is necessary in order to establish a more acceptable legal framework for the use of such means of national protection, so that the harm from their use is less than the harm from the circumstances in a dysfunctional family.

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#### Conflict of Interest

None.

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## **Національні та міжнародні аспекти захисту прав та інтересів дитини**

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### **Анотація**

**Актуальність.** Захист прав дітей залишається критично важливим питанням у всьому світі, визнаючи постійну вразливість цієї демографічної групи. Створення Конвенції про права дитини стало важливим кроком у вирішенні цього питання, встановивши обов'язкові міжнародні стандарти захисту прав дітей.

**Мета.** Ця стаття має на меті дослідити сучасний стан захисту прав дитини на міжнародному рівні та в Республіці Казахстан, порівняти їх для виявлення проблемних питань.

**Методологія.** У дослідженні використано методи історичного, порівняльного та правового аналізу, а також синтезу для всебічного вивчення теми.

**Результати.** Дослідження заглиблюється в Декларацію прав дитини та Конвенцію ООН про права дитини, досліджуючи міжнародні механізми та обов'язки держав у забезпеченні прав дитини. У ньому підкреслюється, що пріоритетність прав дитини має важливе значення як на національному, так і на міжнародному рівнях. Крім того, в ньому зазначається, що такі заходи, як вилучення дітей з неблагополучних сімей, потребують ретельного розгляду, оскільки вони можуть мати довготривалі психологічні наслідки. Пропагується залучення дітей до процесів прийняття рішень, що стосуються їхніх прав, а також їхня участь в управлінських структурах. Законодавча база повинна не лише визнавати права дітей, але й забезпечувати шляхи для їх дотримання та відшкодування у разі порушення.

**Висновки.** Стаття висвітлює глобальні виклики та порушення прав дітей, підкреслюючи необхідність постійних зусиль для просування та захисту цих прав. Вона підкреслює необхідність посилення механізмів захисту прав дітей як на міжнародному, так і на національному рівнях відповідно до глобальних тенденцій, що розвиваються.

**Ключові слова:** міжнародний захист; законодавче регулювання; правозастосування; вразливе населення; права дітей.