

D.M. Mutubayeva, G.Z. Kozhakhmetov

*Ye.A. Buketov Karaganda State University, Kazakhstan
(E-mail: www.721-1514@sud.kz)*

The legislation regulating the activities of juvenile courts in Kazakhstan

The article considers the specifics of the application of the legislation regulating the activities of juvenile courts of Kazakhstan, in accordance with international standards in the resolution of family disputes. The analysis of the application of civil law in civil cases of this disputes category, if the property and personal non-property relations between family members are not regulated by the marriage and family legislation of Kazakhstan. And the possibility of applying the rules of marriage and family and (or) civil legislation of the Republic of Kazakhstan, regulating similar relations (analogy of the law). The modern period is characterized by a change in the place of family law in the system of law of the Republic of Kazakhstan and a change in its ideology. In conclusion, marriage and family law is the basis for the protection of the rights and interests of children, parents and the family as a whole, regulating disputes arising from marriage and family relations.

Keywords: Convention, UN, the Beijing rules, Juvenile court, Constitution, Code.

Introduction

Talking about the educational role of the court in the life of a minor, imply the fight against the offenses committed by him, while this educational functions of the court, in relation to children, are not limited. The court often has to consider claims, the resolution of which depends on the child, teenager fate. And it is sometimes about complicated, contradictory, difficult from all points of view life situations. When for some reason, the family can not or simply does not fulfill its educational functions. Then there are disputes about children, a remarkable feature of which is their inextricable connection with education. In other words, the court has to resolve disputes arising in extraordinary circumstances, related to the breakdown of the existing way of life of a minor, due to the need to radically change it for the better, which, as a rule, involves deep children's experiences. That is why for the least painful, wise in essence, combined with the vision of the prospect of resolving the dispute about children, it is not enough to know the law well, but it is necessary to be guided in matters of pedagogical nature, in the basics of child psychology. And this kind of knowledge should always be combined with careful attitude to parental rights, feelings of parents, when they deserve it. It is no coincidence, that disputes about children have always been considered the most difficult [1].

Methods and Materials

The methodology of the research is based on general scientific and general theoretical principles: objectivity, concreteness, comprehensive approach, cognition (analysis, synthesis, etc.). While studying the theme of the research work, the following methods have been used: historical, comparative and legal, logical, legalistic, systematic and structural.

Results

The problems that exist in dealing with cases involving the upbringing of children should not be left on the sidelines. Thus, in accordance with the norms of the UN Convention «on the rights of the child» (hereinafter-the Convention), the Republic of Kazakhstan must provide the child with such protection and care as are necessary for his well-being [2, paragraph 2 of article 3 of the Convention]. Paragraph 5.1 of the Beijing rules states that «the juvenile justice system is primarily aimed at ensuring the well-being of the minor»; «the trial shall be in the interests of the minor and shall be conducted in an atmosphere of understanding» (paragraph 14.2 of the Rules); «in the case of a minor, the question of his or her well-being shall be the determining factor» [3, sub-paragraph «d» of paragraph 17.1 of the Rules].

United Nations standard minimum rules for the administration of juvenile justice (Beijing rules). Adopted on November 29, 1985 by UN General Assembly Resolution 40/33 [1].

Family law is strongly influenced by state law. The aims and principles of legal regulation of family relations are related to the provisions of the Constitution, which define the basic rights and freedoms of citizens. Family law is based on the need to strengthen the family.

Respect for human rights begins with respect for the child rights. The lack of due attention on the part of the state to the problem of children may well be qualified as Kazakhstan's non-compliance with certain provisions of the universal Declaration of human rights and the Convention on the rights of the child.

In accordance with article 27 of the Constitution of 30 August 1995 (Constitution), marriage and the family, motherhood, fatherhood and childhood are protected by the state, which is a fundamental point in the legal regulation of family relations [4].

Marriage and family legislation of the Republic of Kazakhstan is based on the principles of:

- 1) voluntary marital (matrimonial) union of a man and a woman;
- 2) equality of the rights of spouses in the family;
- 3) the inadmissibility of arbitrary interference in the family affairs;
- 4) resolution of family issues by mutual agreement;
- 5) priority of family education of children, care of their development and welfare;
- 6) priority protection of the rights and interests of minors, elderly and disabled family members;
- 7) ensuring the unimpeded exercise by family members of their rights, the possibility of judicial protection of these rights;
- 8) maintain a healthy lifestyle for all family members [5].

According to the Code, marriage and family legislation of the Republic of Kazakhstan is based on the Constitution of the Republic of Kazakhstan and consists of this Code and other normative legal acts of the Republic of Kazakhstan. If an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in this Code, the rules of the international treaty shall be applied [5].

In accordance with article 5 of the Code, the civil legislation of the Republic of Kazakhstan shall apply to the property and personal non-property relations between family members not regulated by the marriage and family legislation of the Republic of Kazakhstan. As this does not contradict the essence of marriage and family (matrimonial) relations. The norms of marriage and family and (or) civil legislation of the Republic of Kazakhstan regulating similar relations (analogy of the law) are applied. In cases, where the relations provided in article 3 of the Code, are not directly regulated by the legislation of the Republic of Kazakhstan or the agreement of the parties and there are no customs applied to them, such relations, since this does not contradict their essence. If it is impossible to use the analogy of the law in these cases, the rights and obligations of the subjects of marriage and family (matrimonial) relations are determined on the basis of the General principles and meaning of marriage and family or civil legislation of the Republic of Kazakhstan and the requirements of good faith, reasonableness and justice (analogy of law). Also in compliance with the principles of the law in time, space and in the circle of persons [5].

Thus, marriage and family law is aimed at protecting the rights and interests of children, parents and the family as a whole. The law regulates disputes arising from marriage and family relations [5].

The difference between the current code «on marriage and family» of the Republic of Kazakhstan from the previously existing family legislation is that the issues of legal technique are better established. The general approaches to the regulation of marriage and family relations are outlined. In particular, article 1 defines the basic concepts [5].

Discussion

The family has many functions. Among them are specific, that is, arising from the essence of the family, reflecting its features as a social phenomenon and inherent in all stages of historical development. And non-specific the implementation, of which the family was forced or adapted in certain historical circumstances [6; 46]. V.V. Chikin classes specific functions of the family: birth (reproductive function), maintenance of children (existential function) and children upbringing (socialization function). Other functions (recreational, leisure, health and well-being of family members, accumulation of property, etc.) are non-specific for the family and depend on the specific historical conditions in which the family operates.

The range of relations regulated by marriage and family law is outlined in the code of the RK «on marriage (matrimony) and family» [5]. The code establishes the rights and obligations, property and personal non-property relations between family members: spouses, parents and children. And in cases and within the limits provided for by the marriage and family legislation of the Republic of Kazakhstan, between other relatives and other persons, establishes the conditions and procedure for entering into marriage (matrimony), termination of marriage (matrimony) and its invalidation. The code determines the forms and procedure for placing orphans and children left without parental care in the family, regulates the procedure for state regis-

tration of acts of civil status, and defines the functions of state bodies carrying out state registration of acts of civil status [5].

The authors E.B. Nikolaev and L.I. Nosenko report marriage to be the basis of the family, which is primarily the education of children and care about their future, which can not affect the interests of society. Therefore, both the condition of marriage and the grounds for its dissolution cannot be considered a private matter of the spouses. This explains why the state still retains the right to clearly define the conditions under which divorce is possible [7; 65].

Marriage (matrimony) is an equal union between a man and a woman, concluded with the free and full consent of the parties in accordance with the law of the Republic of Kazakhstan. The aim of marriage presents creating a family, generating property and personal non-property rights and obligations between the spouses [5].

In accordance with article 1 of the code of the Republic of Kazakhstan «on marriage (matrimony) and the family», the family is a circle of persons associated with property and personal non-property rights and obligations arising from marriage (matrimony), kinship, property, adoption (adoption) or other form of children adoption and designed to strengthen and develop family relations.

As reported by authors A.V. Zaryaeva and V.D. Malkova, family is a union of people based on marriage, kinship, children adoption, characterized by community of life, interests, and mutual concern [8; 320].

Sovereignty of family law as a branch of law and defend other authors, in particular A.M. Nechaeva [9; 94].

In the modern theory of law, it is noted that family law has emerged as an independent branch phenomenon from civil law in the process of deepening and expanding the specialization of legal norms [10; 242]. N.I. Matuzov also considers family law to be an independent law branch [11; 364, 365].

In modern conditions, when the strengthening of the family is one of the important priorities in the development of Russian society, state and law, the statement that family law is part of civil law, recognized by scientists to be inappropriate, untimely and inadequate essence of the case [9; 96]. N.M. Kostrova agrees with this, who notes that the specifics of the subjects of family relations, is significantly different from the relations between the subjects of civil relations [12; 39].

Family law is strongly influenced by state law. The aims and principles of legal regulation of family relations are related to the provisions of the Constitution, which define the basic rights and freedoms of citizens. Family law is based on the need to strengthen the family [13; 84].

Respect for human rights begins with respect for the child rights. The lack of the due attention on the part of the state to the problem of children may well be qualified as Kazakhstan's non-compliance with certain provisions of the universal declaration of human rights and the Convention on the child rights. The problem of creating juvenile justice in Kazakhstan is becoming increasingly urgent, although the term «justice that protects the rights, freedoms and legitimate interests of minors» is more understandable and accurate [14].

In fact, the rights of minors must be protected in all cases. And if they are violated, they must be restored. Thus, the norms of family law should contain a highly effective mechanism for protecting the rights and interests of subjects with family law relations [5].

A special place in the questions solution of the system of law in general and the system of private law, in particular, belongs to M.K. Suleimenov works. According to B.A. Jandarbek, they constitute one of the important bases of the reinterpretation of the place and role of family law in the theory of civil law of the Republic of Kazakhstan [13; 112].

As stated in the law «on the rights of the child», the child has the right to live and be raised in the family. The legal institution, the right to live and be brought up in a family consists of several powers of the child: the right to know one's parents. This mainly concerns the process of obtaining information about their parents, i.e. the use of all available and statutory methods [15].

And this right of the child is included in the law «on the rights of the child» [15], in accordance with article 7 of the international Convention «on the rights of the child» [2].

In B.A. Jandarbek opinion, the norms of family law are now more a regulator of private law relations than those relations, that can be recognized by their public nature. Therefore, he completely disagrees with the categorical G.V. Bogdanova statement. She writes that «family law, unlike civil law, is a public law». Private law elements are possible only as exceptions. The publicity of the rules of family law is fundamental. Family law cannot be considered as a sub-sector of civil law, it is an independent branch of law [16; 18]. Belarusian author V.I. Penkrat also calls family law an independent branch of law [17; 87].

In the 60s, O.S. Ioffe took the position of recognizing family law as a part of civil law: «the vast majority of Soviet scientists, who studied this problem consider family law as an independent branch of Soviet law. And only some of them come to the conclusion that family law is a part of civil law» [18; 6].

In his work he also justifies his position and shows the failure of method separation and subject matter of family and civil law [18; 181–186].

L.M. Pchelintseva notes: «family law as a branch of law is characterized by a special subject and method of legal regulation» [19; 11]. B.A. Jandarbek brings his arguments concerning the subject and method of regulation of family law, subject and method of civil law as sub-branch categories [13; 98].

B.M. Gongalo does not directly indicate the place of family law in the law system. It is limited to the following statements. First, family law is referred to as a set (system) of rules governing family relations. Second, sometimes family law is a set of (system) regulations that contain family law rules, i.e. «family law» [20; 9]. Nevertheless, the nature of the presentation of the material in the cited work indicates that its author is likely to stand on the position of recognition of the expressed specificity of family law [13; 105].

B.A. Jandarbek also points to the fact, that the need to revise existing views is also due to the fact that the modern family law is significantly different from the previous one. Its norms now contribute to the full implementation of the full range of both personal non-property rights and property rights of all persons, who are involved in the orbit of marriage and family relations [13; 116].

Thus, according to the amendments and additions to some legislative acts on the specialized inter-district juvenile courts dated July 14, 2008 to disputes on children related to the upbringing of children [21], include:

- disputes on determining the place of residence of the child;
- adoption cancellation;
- deprivation (restriction) and restoration of parental rights;
- adoption;
- disputes arising from custody and guardianship (patronage) over minors, in accordance with the marriage and family legislation of the Republic of Kazakhstan [21].

Later, amendments and additions to the Civil procedure code of the Republic of Kazakhstan transferred to juvenile courts and other categories of disputes:

- about establishment of paternity of the minor and collecting from it the alimony;
- on the announcement of the minor completely capable (emancipation);
- about establishment of paternity and about collecting the alimony as a percentage or the firm sum of money for the maintenance of the child;
- about reduction of the alimony size;
- protection of labour and housing rights of minors;
- on compensation for damage caused jointly by minors and adults, including with the participation of incapacitated or partially capable adults [22].

The modern period is characterized by a change in the place of family law in the system of law of the Republic of Kazakhstan and a change in its ideology. Only recently, without much doubt, family law was mentioned as an independent branch of law. Apart considered the subject of legal regulation of family law, its principles and method.

In this regard, taking into account the accumulated theoretical views related to the rethinking of the place and role of family law in the legal system of Kazakhstan and some other States. It is necessary to draw further conclusions regarding the definition of the place of family law in the Kazakhstan legal system. This will allow further consideration of the relationship between civil and family law, in order to clarify the characteristics of the latter.

Due to the specifics, the presence of practical activities and the deployment of the court in the capital, the court is actively involved in the discussion of bills. Proposals were made to the draft laws «on probation service in the Republic of Kazakhstan», «on amendments to legislative acts on the protection of children's rights». Significant proposals on the use of alternative penalties made by the juvenile court. They took part in the discussion of the draft law «on mediation» in the Parliament.

In connection with the introduction of the January 18, 2012 code of the RK «on marriage (matrimony) and family», the Supreme Court of the Republic of Kazakhstan in the first half of 2012. Normative resolution of the Supreme Court of Kazakhstan «on application by courts of the legislation on the settlement of disputes related to the upbringing of children», about some questions of application by courts of the legislation on

«marriage and family» in cases on adoption (adoption) of children», in accordance with the requirements of the new legislation.

Now, family courts may appear in Kazakhstan, considering criminal, civil, administrative cases involving minors and the family. The creation of such courts is expected on the basis of juvenile courts with the expansion of their jurisdiction. It could be a modern family court.

As a part of the pilot project «Family court», the district courts dealing with civil cases have started to update the role of pre-trial settlement of disputes (conflicts) with the relevant work to resolve family conflicts.

The purpose of this pilot is the preservation of the family, improvement of family environment, the contending parties with the elucidation of valid reasons.

Following the results of the round table on the implementation of the pilot, held in the Karaganda district court on September 19, 2018 by the courts of General jurisdiction to consider civil cases together with the KSU «Kogamdyk kelisim» of the Karaganda region akim. The establishment of the center for social, psychological, legal support of minors «Chance» of the Karaganda region signed a Memorandum of understanding and mutual cooperation.

Specified courts in cooperation with association «Center», the Center of reconciliation, measures of compulsory education, including:

- consultations for parents with explanation of legal consequences of divorce and its influence on further development of the child (minor children) with implementation of psychological support of young parents;

- lectures (classes) on «resolution of family disputes» in organizations, educational institutions;

- in the case under consideration, the study of the agreed plan of the parties on the upbringing of the child (minor children) on its content and place of residence, the procedure for communicating with parents after divorce, if there is an agreement;

- carrying out mass media propaganda in support of traditional values of family and marriage, morality and morality; adhere to the adoption of measures for the settlement of disputes within the framework of conciliation procedures at all stages of the process. Including at the stage of the pilot project «Conciliation procedures in court»;

- in cases of divorce, the creation of conditions for the reconciliation of the disputing parties, finding out the real reasons for the initiation of cases of divorce, which may not coincide with the motives specified in the statements of claim.

Conclusions

In general, the category of marriage and family disputes provides for its specificity in the consideration of cases, primarily the interests of minors. Cases of this category need a special approach and attitude. There is a need for careful study of the family environment.

Analysis of the situation of families leads to the conclusion that families need to undergo a preliminary consultation with a psychologist. In order to improve the family environment, the preservation of the family with the involvement of social workers, mediators.

The norms of family law should contain a highly effective mechanism to protect the rights of participants in marriage and family relations from any violations. In private law, as a General rule, the rights of subjects are protected at the initiative of the rights holders themselves. In a situation where the rights of minors, persons with disabilities and persons with disabilities are at stake, this rule should not be applied. The rights of these categories of persons in the family should be protected in all cases where there is a real violation of their rights and there is a need to restore them.

Family law establishes and regulates marriage and family relations in the Republic of Kazakhstan. As well as guarantees of their implementation, protects the rights and interests of the family, defining its development as a priority direction of the state social policy of the Republic of Kazakhstan.

Referenses

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Д.М. Мутубаева, Ғ.З. Қожахметов

Қазақстанның кәмелетке толмағандардың істері жөніндегі сотының қызметін реттеуші заңнамалар туралы

Мақалада Қазақстандағы және отбасылық дауларды шешу барысында халықаралық нормаларға сәйкес кәмелетке толмағандардың ісі жөніндегі соттардың жұмысын реттеуші заңнамаларды қолданудың ерекшеліктері туралы айтылған. Отбасы мүшелерінің арасында мүліктік және жеке мүліктік емес қатынастар Қазақстанның неке-отбасылық заңнамасымен реттелмеген жағдайда неке-отбасылық заңнамасын немесе осыған ұқсас қатынастарды реттеуші (заңның баламасы) Қазақстан Республикасының азаматтық заңнамаларын аталған санаттағы даулар бойынша істерді қарау барысында қолдануға талдау жүргізілді. Авторлар заманауи кезең Қазақстан Республикасындағы құқық жүйесіндегі отбасылық құқықтардың өзгеруінің орын алуымен және оның идеологиясының өзгеруімен сипатталады деп атап көрсетті. Қорытындылай келе, неке-отбасылық заңнамалар жалпы отбасының, ата-аналардың, балалардың құқығы мен мүддесін қорғаудың, неке-отбасылық қатынастардан туындайтын дауларды реттеудің негізі болып табылады деген тұжырым жасалды.

Кілт сөздер: Конвенция, БҰҰ, Пекин ережелері, ювеналды сот, Конституция, Кодекс.

Д.М. Мутубаева, Г.З. Кожакметов

Законодательство, регулирующее деятельность ювенальных судов Казахстана

В статье рассмотрена специфика применения законодательства Казахстана, регулирующего деятельность судов по делам несовершеннолетних в соответствии с международными нормами при разрешении семейных споров. Проведен анализ применения гражданского законодательства при рассмотрении гражданских дел данной категории споров в случае, если имущественные и личные неимущественные отношения между членами семьи не урегулированы брачно-семейным законодательством Казахстана, и о возможности применения норм брачно-семейного и (или) гражданского законодательства Республики Казахстан, регулирующих сходные отношения (аналогия закона). Авторы утверждают, что современный период характеризуется изменением места семейного права в системе права Республики Казахстан и изменением его идеологии. В заключение авторы пришли к выводу, что брачно-семейное законодательство является основой защиты прав и интересов детей, родителей и семьи в целом, регулирует споры, вытекающие из брачно-семейных отношений.

Ключевые слова: Конвенция, ООН, Пекинские правила, ювенальный суд, Конституция, Кодекс.

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