

## NEWS

OF THE NATIONAL ACADEMY OF SCIENCES OF THE REPUBLIC OF KAZAKHSTAN  
SERIES OF SOCIAL AND HUMAN SCIENCES

ISSN 2224-5294

<https://doi.org/10.32014/2019.2224-5294.42>

Volume 2, Number 324 (2019), 13 – 18

УДК 342.72/.73

МРПТИ 10.15.59

A.A. Tasbulatova, A.E. Zhatkanbayeva, Mariya Riekkinen

<sup>1</sup> Al-Farabi Kazakh National University, Almaty, Kazakhstan;<sup>2</sup> Al-Farabi Kazakh National University, Almaty, Kazakhstan;<sup>3</sup> Åbo Akademi University (Finland)Tasbulatova.Aliya@kaznu.kz, [Zhatkanbaeva.Ayzhan@kaznu.kz](mailto:Zhatkanbaeva.Ayzhan@kaznu.kz), [maria.riekkinen@abo.fi](mailto:maria.riekkinen@abo.fi)

## REVISITING THE ISSUE “POLITICAL RIGHTS OF THE CHILD” IN THE REPUBLIC OF KAZAKHSTAN

**Abstract.** The modern understanding of the phenomenon of “political rights” of a child is one of the most debated and controversial in the theory of modern constitutional law. The right of a child to participate in making decisions about the conditions of his life activity is, on the one hand, an important condition for making the right decisions, but on the other hand, causes a negative reaction from parents as legal representatives.

Analysis of the practice of countries with a developed system of protection of the rights of the child is of deep interest in domestic science and practice.

The presented research is aimed at analyzing the feasibility of introducing the phenomenon of “political rights” of a child into domestic practice. The concept and structure of this law is analyzed, the possibility of introducing into the national legislation and possible positive and negative consequences are investigated.

An analysis of various historical and legal sources suggests that certain elements of “political rights” existed and exist as types of administrative rights of children. At the same time, Kazakhstani children do not have full scope of political rights, like children of developed countries of the world. This should find its reasonable resolution in the current legislation of Kazakhstan.

**Keywords:** child, children, children's rights, political rights.

### Introduction

The Constitution of the Republic of Kazakhstan defines the republic as a democratic, secular, legal and social state where the rights and freedoms of every human being are the supreme value. (Art.1 The Constitution of the Republic of Kazakhstan dated 1995). Proclamation and demonstrative realization of political rights and freedoms is one of the most important ways and guarantees of implementing major principles declared in the constitution.

Institution of political rights and freedoms achieved high levels of development. Political rights and freedoms at their full variety of forms and richness are undisputable in any modern and developed country. Though establishment of institution faced problems that were mainly created by the system of public relationships. Kazakhstan lived through feudal system, socialist regime and was recognized as having modern democratic principles. It means living through total absence of political rights, complete disregard and substitution afterwards to acknowledgment of it in full. Our country's experience in relations connected with political rights is driven by later than in other countries implementation... and by soviet period in country's history that interrupted its implementation as well” [1].

The Constitution of the Republic of Kazakhstan provides for a full range of political rights and freedoms. From a theoretical perspective it can be divided into:

- political rights that provides citizen a means of participation in formation and exercising state powers. Such as voting rights, right to participate in a referendum, right to equal access to public service, delivery of justice;

- political rights that promotes expression of political stance, beliefs, allow to impact activities of public authorities, adoption and development of their decisions.

### **Methods**

Structural analysis method, analysis of the method of analysis, the analysis of the historical method, etc.

### **Results**

Both groups are represented in special normative acts. Though it shall be pointed out that they cover only the citizens who reach 18. Almost full range of political rights and freedoms become available at this age, so called political legal capacity. Meanwhile those who are below 18 are deprived of that capacity.

Along with over the last years the theory of children political rights has actively been promoting which means a child (under 18) as any other citizen possesses full range of rights and freedoms.

Historically theory starts from a suit Sederberg I.-Lappalainenvs Sweden dated 1987 concerning child's political rights. At that suit the Committee on human rights considered the case within the international human rights protection body. Despite the fact that the Committee expressed decisive opinion on psychological maturity of a certain aged child this legal incident generated so called institution of children political rights.

Subsequently adoption by the UN a Convention on children rights of 1989 signalized formation of new international legal standards of limited rights of minors despite the fact some countries signed it with the caveats of nonrecognition of the norms related to political rights.

Today the issue is not solved precisely yet.

It is worth joining the opinion of the Finnish scientist Riekkinen M.A. that "Despite the formation of a new standard of the international law, today there is no common consent related to children rights existence neither in judicial science nor in practice of any country. Taking into consideration the opinion of scientists who deny to enable children with political rights and of those who supports existence of political rights of the children it is proposed that children have limited political rights"[2].

In fact, if the child has political rights or he/she completely abandoned in expressing any interest towards state's powers. Actually even before being born the child interacts with the state: is under its protection (restriction of abortion); receives certain medical services (by mother is being served); his birth is being planned in a vicarious manner by records in financial and other documents (payments, reservation of place in a kindergarten, reservation of medical treatment etc.); also he/she gets a right to a living space and etc. Specifically, almost every direction of state policy directly or indirectly involves children (education, healthcare or social benefits affects children). So, children are beneficiaries of state aid and protection.

The abovementioned set of rights have socially provisional character, meanwhile the nature of political rights is determined by its direct relationship to regime as it is and state's regime in particular.

Analysis of political rights features showed that they are: a) mostly connected with citizenship, i.e. set of constitutional rights – right to elect and be elected, participate in referendum, right to justice, access to civil service – belongs to the citizens only; b) is intended for active and full participation of citizens in administration of state's and society affairs, so by using that rights citizens are able to exercise power directly or via representatives, formation and realization of state's policy, control state's activities; c) can be exercised personally (petition to the state's and local authorities in person) and in groups as well, via associations with other citizens (right to gather peacefully, freedom of assembly, associations, etc.) d) doesn't belong to absolute rights – certain categories of citizens are restrained of voting rights – right to elect and be elected; e) political rights security, implementation of them depends on the level of democracy in the state, political traditions, political culture, quality of political culture and system (presence or absence authoritative political party, developed institutions of civil society, etc.)" [3].

Abovementioned specific features of political rights can be attributed to adults and children as well and the key point is citizenship "as stable political and legal conjunction of a person with a state that express the set of mutual rights and obligations." [4]. The age matters but not for all political rights and freedoms and this fact is regulated by the current legislation.

National literature did not spot any works dedicated to political rights of the children. At the same time some rights of the children mentioned in the legislation are of obvious politically legal character. The survey of that rights nature is proposed.

The Law of the Republic of Kazakhstan dated 8 August 2002 #345 “On children’s rights in the Republic of Kazakhstan” supports aspiration of Kazakhstan to realize international obligations undertaken by signing the UN Convention on children’s rights adopted by the General Assembly #44/45 dated 20 November 1989.

The Convention set requirements for countries that signed it and it became the basic requirements for any legislation concerning the child’s rights.

The article 13 of the Convention sets that: “1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are: a) For respect of the rights or reputations of others; or; b) For the protection of national security or of public order (ordre public), or of public health or morals.” [5].

The article 62 of the Code of the Republic of Kazakhstan dated 26 December 2011 #518-IV “On the marriage and family” by setting the right of the child to express opinion understands it as right to express opinion during solving any issues in the family, connected to child’s interests and been heard during any court or administrative trial. At the same time the article sets that opinion of a child of age 10 is obligatory unless it contradicts child’s interests. Authorities that carry out functions of custody and guardianship or a court may undertake any decision only upon the consent of the child who reached the age of 10 and in the presence of legal representatives. Regulatory statute of the Supreme of Court of the Republic of Kazakhstan dated 28 April 2000 #4 “On usage by the courts of legislation during resolution of disputes connected to child rearing” determines the principle list of the cases that shall be settled such as: on place of residence of the child of separated parents (clause 2 of Article 73 of the Code); on practicing parental rights by a non-custodial parent (clause 3 of Article 73 of the Code); on the return to the parents of a child not held on the basis of the Code or a court decision (clause 1 of Article 73 of the Code);

on the return to guardians (Trustees) of the ward from any persons who keep the child without legal grounds (clause 2 of Article 126 of the Code);

on the return to the foster carer of a child held by other persons not on the basis of the Code or a court decision (clause 1 of Article 135 of the Code); deprivation of parental rights (clause 1 of Article 75 of the Code); about the restoration of parental rights (Article 78 of the Code); on the restriction of parental rights (Article 79 of the Code); on the abolition of restrictions on parental rights (Article 81 of the Code), on the abolition of the adoption (adoption) and its invalidation (Articles 103, 107 of the Code) and others. [6]

An analysis of the list of such cases shows that these are matters that mainly affect the vital aspects of a child’s life and his relationship with his family. While other issues of his life activity remain all fields of legal regulation of domestic legislation. For example, on various issues of the educational process, on certain events taking place in the country, relating to issues of childhood, or the problem of juvenile justice. The range of such issues, in our opinion, is quite wide, since the issues of protecting and ensuring a decent standard of living for children directly depend on the ongoing political, social and economic reforms and phenomena. For example, the reform of juvenile justice directly affecting the rights and legitimate interests of children proceeds almost without the participation of children, whose opinions are allegedly expressed by various human rights organizations. Why “ostensibly” - because a legitimate question arises - which of the children or which children’s organizations have entrusted this right to them?

There is no answer to this question. Adults take this responsibility on their own, while not paying due attention directly to the child’s right to an opinion. Currently, various non-governmental organizations are conducting various studies in the field of the protection of children’s rights, including on the issues of ensuring their rights and freedoms. The sociological surveys conducted by them are mainly aimed at determining the point of view of adult parents or their substitutes, whereas the survey of children themselves is extremely rare. Just as, and extremely rarely, children themselves turn to state bodies or non-governmental institutions to express their own position.

Thus, the only resonant appeal was a letter of 2nd grade school student Alikhan Zhumanov to the Republic of Kazakhstan Education Minister in 2010 about the quality of textbooks for secondary educational schools (textbook “Rules of the Road”), which was left without consideration, which subsequently grew into a civil suit.

But in the end, the lawsuit was withdrawn by the father of the child at the insistence of the leaders of the Ministry of Education and Science of the Republic of Kazakhstan. This example is quite indicative. Since then, all questions about the quality of education, the quality of textbooks, etc., have been discussed on the basis of the appeal of parents or human rights organizations. That is, in fact, children are excluded from their right to express their own opinion on certain issues that interest him or directly affect his rights, freedoms and legitimate interests.

At the same time, children and adolescents, in some way, are experts in matters of their own lives, and in order to have the opportunity to solve some problems, they must enjoy all their rights. In the most ideal variant, it is necessary to create conditions, so that they could really participate in the development of laws and plans of the state through polls, conversations, etc. It would be ideal if they had the right to vote at home, at school, in various communities and associations and in making other decisions that affect them (for example, regarding health care).

Thus, at the 70th session of the UN Committee on the Rights of the Child, the next country report of Kazakhstan (September 2015) was presented, based on the analysis of which and analysis of the Consolidated Report of the National Preventive Mechanism for 2014, substantial recommendations were given to improve the mechanism for the protection of children's rights among which it was pointed out the low level of taking into account the views of children in the development of legislation and programs, in making decisions regarding them. To this end, it is recommended to harmonize the legislation on ensuring the participation of children in decisions that affect them. This rule remains to this day at the conclusion of marriages that is, in our opinion, absolutely true. The role of parents in the creation «of conditions and stimulation of certain skills development which helping children to succeed is significant. Child will defiantly have some difficulties at school if student comes from abusive or toxic family (criminal pattern); one of his parents has mental health problems; family has poor housing conditions; when he has to live in foster family (Sameroff, Seifer, Baldwin & Baldwin, 1993). If we look at the parents of the children differing in achievements in school, we will find types of parental behavior which can realize practically any the father and mother irrespective of economic conditions» [7, p. 59].

## **Conclusion**

Promoting children's participation in such decisions at the local, national and international levels is one of the goals of the Council of Europe's Strategy for the Protection of Children's Rights for 2016–2021, according to which it is recommended to “strengthen the child’s participation in practice on a systematic basis and in all contexts, important for children. Based on the Recommendation on the participation of children and young people under the age of 18, the Council of Europe will support member states in using this Council of Europe tool to assess child participation as a means of measuring progress towards respecting children's right to participate in matters related to. Actions will be taken to promote the exchange of experience in the field of child participation, on the basis of respect for the rights of the child, in cooperation with the youth sector of the Council of Europe, children's and youth organizations authorized for children's rights and advisory bodies on children's issues, based on the principles of independence, representativeness, competencies, information and acceptability. “At the same time, it is indicated that it is necessary to give due respect to their views when developing, implementing and evaluating standards, policies and activities related to children, observing the principles outlined above.

Special attention will be paid to the participation of children in vulnerable situations, such as children with disabilities, children living in poverty, children in institutions, Roma children, children travelling or otherwise affected by migration, and children from minority groups. Efforts will be increased to reach children and those who deal with them and work with them through websites, apps, social media, games, publications and other tools adapted for children.” [8].

Preparing children and adolescents for independent living, forming a civic position among them is one of the priorities of modern education and upbringing. Traditionally, this method is to involve children in various children's movements. They contribute to the solution of such issues as “the presence in the organization of effective self-government; creating relationships in which interaction takes place within a single group of children of different ages; success in the activities of children, interest in this activity, positive emotions accompanying this activity; the account of age psychological features of children and



teenagers; the nature of the relationship between team members [9, p.319]. Today in the republic there are such children's associations as: "Bolashak", "Atameken", "Murager", etc. At the same time, they do not resolve the issue of real consideration of the views of children in solving social, social or political issues.

Kazakhstan still has much to do in this direction. Much effort is being made by various community organizations led by UNICEF. But it should also take into account the fact that public opinion among adults is not prepared for this. It is adults who most resist the introduction and direct implementation of this public law of children. In this regard, we believe that the initial task is to prepare the consciousness of parents, who should be aware of the importance of this objective right of the child and create conditions for the realization.

**А.А. Тасбулатова, А.Е. Жатканбаева, Mariya Riekkinen**

<sup>1</sup> Өл-Фараби атындағы Қазақ ұлттық университеті, Алматы, Қазақстан;

<sup>2</sup> Өл-Фараби атындағы Қазақ ұлттық университеті, Алматы, Қазақстан;

<sup>3</sup> Åbo Akademi университеті, Финляндия

### **ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ БАЛАНЫҢ «САЯСИ ҚҰҚЫҒЫ» ТҮСІНІГІНІҢ МӘСЕЛЕЛЕРІ**

**Аннотация.** Қазіргі заманғы баланың «саяси құқықтары» феноменін түсіну қазіргі конституциялық құқық теориясындағы даулы мәселелердің бірі болып табылады. Баланың өз өмірінің жағдайлары туралы шешім қабылдауға қатысуы, бір жағынан, дұрыс шешімдер қабылдаудың маңызды шарты болып табылады, екінші жағынан, ата-аналардан заңды өкілдер ретінде теріс реакция тудырады.

Дамыған елдердің бала құқықтарын қорғау жүйесіне жасалған талдау отандық ғылым мен тәжірибеге терең қызығушылық тудырады.

Ұсынылған зерттеу баланың «саяси құқықтарының» отандық тәжірибеге енгізілуінің орындылығын талдауға бағытталған. Осы құқықтың түсінігі мен құрылымына талдау жасалып, отандық заңнамаға енгізу мүмкіндігі және ықтимал оң және теріс салдары зерттелді.

Өртүрлі тарихи-құқықтық дереккөздерді талдау «саяси құқықтардың» кейбір элементтері балалардың әкімшілік құқығының түрлерінің бірі ретінде бар екенін көрсетеді. Сонымен қатар қазақстандық балалардың әлемнің дамыған елдерінің балаларымен салыстырғанда саяси құқықтары жоқ. Бұл мәселе Қазақстан Республикасының қолданыстағы заңнамасында тиімді шешім табу керек.

**Түйін сөздер:** балалар, балалар құқығы, саяси құқықтар.

**А.А. Тасбулатова, А.Е. Жатканбаева, Mariya Riekkinen**

<sup>1</sup> Казахский Национальный университет имени аль-Фараби, Алматы, Казахстан;

<sup>2</sup> Казахский Национальный университет имени аль-Фараби, Алматы, Казахстан;

<sup>3</sup> университет Åbo Akademi (Финляндия)

### **К ВОПРОСУ О ПОНЯТИИ «ПОЛИТИЧЕСКИЕ ПРАВА» РЕБЕНКА В РЕСПУБЛИКЕ КАЗАХСТАН**

**Аннотация.** Современное понимание феномен «политические права» ребенка являются одним из наиболее обсуждаемых и спорных в теории современного конституционного права. Право ребенка на участия в принятии решений об условиях своей жизнедеятельности является с одной стороны важным условием принятия правильных решений, но с другой стороны вызывает негативную реакцию со стороны родителей как законных представителей.

Анализ практики стран с развитой системой защиты прав ребенка вызывает глубокий интерес в отечественной науке и практике.

Представленное исследование направлено на анализ целесообразности внедрения феномена «политические права» ребенка в отечественную практику. Анализируется понятие и структура данного права, исследуется возможность введения в отечественном законодательстве и возможные позитивные и негативные последствия.

Анализ различных исторических и правовых источников позволяет сделать вывод о том, что отдельные элементы «политических прав» существовали и существуют как виды административных прав детей. Вместе с тем, казахстанские дети не обладают полным объемом политических прав, как дети развитых стран мира. Это должно найти свое разумное разрешение в действующем законодательстве Казахстана.

**Ключевые слова:** ребенок, дети, права детей, политические права.

**Information about authors:**

Tasbulatova A.A. - Ph.D. Doctoral student at the Faculty of Law of the Al-Farabi Kazakh National University; [Tasbulatova.Aliya@kaznu.kz](mailto:Tasbulatova.Aliya@kaznu.kz); <https://orcid.org/0000-0002-1754-785X>;

Zhatkanbayeva A.E. - Doktor of Law, Professor Al-Farabi the Kazakh National University; [Zhatkanbayeva.Ayzhan@kaznu.kz](mailto:Zhatkanbayeva.Ayzhan@kaznu.kz); <https://orcid.org/0000-0001-5407-672X>;

Mariya Riekkinen - Doctor PhD, professor Abo Academic University, Turku, Finland, [maria.riekkinen@abo.fi](mailto:maria.riekkinen@abo.fi); <https://orcid.org/0000-0001-5407-672X>.

**REFERENCES**

- [1] Vasilkov V.I. Formation of the institute of political rights and freedoms of citizens in Russia: 1905 - February 1917. Author. diss. on the competition master step Ph.D. M., 2007. p. 25.
- [2] M. Riekkinen. Restricted Political Rights of Minors: Theoretical and Legal Foundations, International Standards and Russian Experience // <https://elibrary.ru/item.asp?id=25959209>
- [3] Zaitseva M.V. Protection of political rights and freedoms in the Russian Federation. Author. diss. on the competition master step Ph.D. M., 2006. p. 25.
- [4] The Law of The Republic of Kazakhstan of December 20, 1991 No. 1017-XII "On Citizenship of The Republic of Kazakhstan" (with amendments and additions for 2017) // [online.zakon.kz/Document/?doc\\_id=1000816](http://online.zakon.kz/Document/?doc_id=1000816).
- [5] Convention on the Rights of the Child adopted by General Assembly resolution 44/25 of November 20, 1989.
- [6] Code of The Republic of Kazakhstan of December 26, 2011 No. 518-IV "On Marriage (Matrimony) and Family" (with changes and additions as of 07/11/2017).
- [7] A. A. Karabalina, Zh. A. Maydangalieva, G. B. Satygaliyeva G. A. Ahmetalina, DashqinMahammadli. Family pattern as key factor of primary school children academic performance // Bulletin of national academy of sciences of the Republic of Kazakhstan. Volume 6, Number 376 (2018), 58 – 66.
- [8] Council of Europe Strategy for the Rights of the Child (2016-2021) // <http://souchastye.ru/zakonodatelstvo/mezhdunarodnoezakonodatelstvo/evropa/strategii-soveta-evropy/>
- [9] Nikitina N.I. Glukhova M.F. Methods and technology of work of a social teacher. M., 2005.
- [10] Kosherbayeva N. A., Abdreimova K., Kosherba G., Anuarbek A. Synthesis of achievements of world mankind in humanity pedagogy. Procedia - Social and Behavioral Sciences 89, 2013. P.886-889. <https://doi.org/10.1016/j.sbspro.2013.08.950>