

## ABSTRACT

**Dissertation for the Degree of Doctor of Philosophy (PhD) in the Specialty 6D030100  
"Jurisprudence"**

**By**

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**"Social protection of the family, motherhood, fatherhood and childhood in the Republic of  
Kazakhstan: theoretical and practical issues"**

**General.** The main idea of the dissertation is a theoretical study and preparation of scientific and practical recommendations, proposals aimed at improving the quality of legal regulation of social security in Kazakhstan in case risks as follows: the birth and upbringing of a child, the need to combine work and family responsibilities, caring for a disabled child, multi-child parenting, family with minimum income level for survival.

**Research rationale.** The relevance of the work is based on a real social contradiction between significant government spending, the existing system for parenting and childhood support on one hand, and the low standard of families and children living, social reports and numerous claims of the community, NGOs, representatives of parties on the other hand on resolving poverty issues of Kazakhstani citizens.

Within the framework of the study, we set out to determine how legal regulation and the legislation affect the guarantees of social rights of citizens today; to identify the existing shortcomings of the regulatory approach to the area; as well as assess the implementation of constitutional social guarantees in current laws. In order to solve the abovementioned, it was necessary to conduct a comprehensive study of the modern theoretical legal foundations of social security for motherhood, fatherhood, childhood, concepts for the development of Kazakhstani legislation on social security, to give a legal analysis of the past reforms and transformations.

As the analysis has shown, the main problem of the lack of integrity in the development of Kazakhstani social legislation as follows: insufficient elaboration of theoretical questions relating to the social risks components recognized by the state, the importance of social payments as the main sources of livelihood for disabled persons, imperfect development of legislation that decreases the level of social protection for families, children, parents.

The lack of a conceptual systematic approach to the formation of legislation on social security of the family, motherhood, fatherhood and childhood entails its low efficiency and unpredictable social consequences, and sometimes a violation of citizens' rights to social security. An assessment of the dynamics of changes in the content of the social protection system allows us to state a number of facts indicating the lack of integrity in the development of social security legislation, the elimination of social risks, their substitution and a decline in the level of social security. The existence of such a wide range of problems determined the scientific interest and prompted the author to study the Kazakhstani system of social security for family, motherhood, fatherhood and childhood.

**Degree of the scientific development of the issue.** When assessing the degree of development of the topic of this dissertation on a global scale and in comparison with the best world studies, it is necessary, first of all, to proceed from the originality of the social protection system of Kazakhstan, which does not have an exact model in any country. The Kazakhstani social assistance system belongs to the post-Soviet model, but the national system of social protection of parenting and childhood has little in common with the corresponding systems of the countries of the former Soviet Union or Eastern Europe. In this connection, the choice of the topic of this research is unique for the world social science, has novelty and can be compared only with the best Kazakhstani examples.

The cited theoretical sources, indexed in international scientific databases, analyze the genesis, causes, development of social protection systems for children, the fight against poverty, children in the works of R. Holzmann, S. Jørgensen, J. Espey, C. Harper, N. Jones, L. Aber, J. Brooks-Gunn, GJ Duncan et al; forms of social assistance to families - in the studies of J. Clasen, W. VanOorschot, B. Fuller. Much attention in the scientific works of J. Landsverk, P. Morris, G.J. Duncan, E. Clark-Kauffman, J. Waldfogel focused on the impact of social protection reforms on the

well-being of families and children; in the works of A. Barrientos, C. Santibáñez, A. Fiszbein, R. Kanbur, R. Yemtsov new forms of social protection are assessed; standards of certain forms of social protection of motherhood, fatherhood and childhood are considered in the studies of A.J. Smith, D.R. Williams, R. Beaujot, J. Liu, A. Acquisti, R. Gross; international standards in this area - in the publications F. Pennings, K. Roth; issues of parenting, family responsibilities and employment in the labor market - in J.C. Gornick, M.K. Meyers, J. Glass, V. Camarigg, J.L. Hook et al.

The development of theoretical aspects of the study, a generalization of modern problems of social protection was built in the dissertation on the basis and with the use of the well-established conclusions set out in the classic works of Soviet and Russian representatives of the school of social security law. These include: V.S. Andreev, E.G. Azarov, V.A. Acharkan, K.S. Batygin, I. V. Gushchin, T.V. Ivankina, R.I. Ivanova, A.M. Lushnikov, M.V. Lushnikova, N.L. Lyutov, E.E. Machulskaya, V.A. Tarasova, Ya.M. Vogel, V.Sh. Shaikhatdinov, M.L. Zakharov, E.G. Tuchkov.

The works of Kazakhstani researchers on the main issues of the dissertation are presented by separate articles, conclusions and conclusions in the scientific works of T.M. Abayeldinova, E.A. Buribaeva, S.A. Dimitrova, E.N. Nurgalieva, A.M. Nurmagambetova, K.A. Shaibekova, I. V. Mezhibovskaya, J.A. Khamzina, B.Kh. Olzhabaev.

In addition, the candidate dissertations were defended on jurisprudence in Kazakhstan, which included some aspects of the social rights of families, children, women: F.A. Kozhumratova "Women's rights in Kazakhstan: theory and practice" (2003), A.V. Kazakova "Constitutional and legal framework for the protection of motherhood and childhood in the Republic of Kazakhstan" (2003), S.M. Saparaliev "Constitutional and legal protection of women's rights in the Republic of Kazakhstan" (2005), B.A. Yessentemirova "State legal protection of the interests of children" (2005), B.A. Dzhandarbek "Legal regulation of marriage and family relations in the Republic of Kazakhstan" (2010), J. Zhailau "International legal aspects of the protection of children during armed conflicts" (2010), a dissertation by Z.Ya. Balieva "Legal problems of improving the legislation of the Republic of Kazakhstan on the implementation of the child's rights to upbringing in the family" (2015).

Several studies have been carried out on related topics to obtain a Doctor of Philosophy (PhD) degree in the specialty "6D030100 - Jurisprudence": G.G. Turysbekova "Theoretical problems of legal regulation of the institution of motherhood in the Republic of Kazakhstan (2017), S. Adilgazy" Legal mechanism for the protection of elderly people in the Republic of Kazakhstan: current state and development paths "(2019).

At the same time, the special issues of social security for parenthood and childhood were not the object of an independent comprehensive scientific study. An analysis of the available scientific developments indicates that the topic of dissertation research is poorly understood and the need for a new comprehensive view of the problem under consideration.

The difference between this study and the previous ones consists in a specialized systemic analysis of the essence of legal regulation of social security for parenthood and childhood; presentation of the mechanisms of constitutional and legal provision of social rights of the family and the child; in theoretical substantiation of the content of the social security system for maternity, paternity, childhood; in the analysis of retrospective and prospects for the development of types of social security; in substantiation of effective possibilities for increasing the efficiency of legal provision of social protection.

**The object** of the study is the essence, content and features of legal relations emerging in the field of social security.

**The subject** of scientific analysis is a set of legal norms in the field of mechanisms for the implementation of constitutional rights, guarantees of the individual for social security.

**The Objective and Scope of Study.** The objective of the study is a comprehensive analysis of the Kazakhstani social security system in connection with motherhood, fatherhood and childhood, as well as families with disabled members, with incomes below the poverty line. To achieve this goal, the following scopes are set:

- to substantiate the role of social security in supporting and strengthening the family, protecting motherhood, fatherhood and childhood on the basis of the provisions of international acts and norms of the Constitution of Kazakhstan;
- consider motherhood, fatherhood and childhood as the basis for the emergence of legal

relations and differentiation of legal regulation of social security;

- to analyze the reforms of social legislation that have taken place in recent years;
- to propose opportunities for the implementation of universal norms based on the analysis of international standards and national legislation;
- to analyze the system of state benefits and other social payments to families with children, as well as in connection with motherhood, fatherhood and childhood;
- to study the types of social security for families who have lost their breadwinner, the conditions and procedure for their provision;
- to assess the social, economic, legal consequences of changes in the format of providing targeted social assistance, benefits to large families, people raising children with disabilities;
- to analyze the content of legal relations on social services for families with children;
- to assess the state of Kazakhstani legislation on social security of the family, motherhood, fatherhood and childhood, to identify trends in its development;
- to systematize certain factors that impede the implementation of social protection measures, to make proposals for their neutralization;
- to argue the possibilities and methods of improving the quality of legal provision of social guarantees, as well as to make forecasting of the results of the proposed measures.

**The scientific novelty** of the dissertation is determined by the interest of the state and society in creating effective mechanisms for social protection in cases of parenting, childhood, families with disabled members, as well as those with incomes below the subsistence level.

The novelty is determined by the interest of the welfare state in providing starting opportunities for the development of each child, for education in any family, regardless of their material and financial situation. Universal social values oblige the states to provide Kazakhstanis with high standards of dignified life, dignity of a person, child, family.

Finally, the novelty of the study is dictated by the acuteness of public perception of modern problems of social security for families and children, which in some cases lead to protest activity, which, in turn, is an important symptom of imperfections in socio-economic policy, an indicator of citizens' dissatisfaction with the strategy and tactics of public administration in social sphere.

**The fundamental principles are submitted for presentation:**

1. The duty of the state - to ensure the existence, functioning of the system of social protection of the family, motherhood, fatherhood and childhood - is based on the totality of the following constitutional values, guarantees and rights: on the proclamation of Kazakhstan as a social state; guaranteed social security on legal grounds; the principle of economic development for the benefit of all people; the right of the individual to dignity; the constitutional value of family, parenting, childhood and ensuring their state protection.
2. Citizens who have children have a greater scope of constitutional obligations (duties - to take care, educate, support the child), in relation to citizens who do not have parental responsibilities. The additional responsibilities of the constitutional and legal status of the parents must be balanced by state assistance to the family. State protection of family, motherhood, fatherhood and childhood should presuppose a complex of socio-economic measures, an integral part of which is the social security system.
3. The development of social legislation should be carried out with the introduction of the principle of inadmissibility of reducing the level of social security as a core idea. The legal stability of the principle of inadmissibility of reducing the achieved level of social protection is possible only within the framework of the Constitution of the Republic of Kazakhstan as the embodiment of the concept of social statehood. It is necessary to state that when the legislation changes, the conditions for the provision of social security should not worsen; when the type (form of provision) of social security is canceled, the previously established social support measures must be provided for the entire period for which they were assigned. In addition, changes are in demand in the intersectoral law "On minimum social standards and their guarantees" in terms of the approval of provisions on the inadmissibility of lowering the level, reducing the previously fixed standards.

The level of social security, within the meaning of the constitutional provisions, should ensure a "dignified life" and "free human development". The legislator in this matter should proceed from the

fact that a relatively objective indicator of the level that can be nominated as a “decent living standard” is a level not lower than international standards recognized in the civilized world, in particular in the acts of the Ministry of Labor. None of the special MoL Conventions in the field of social security has been ratified by Kazakhstan for 27 years of membership in this international organization. The lack of ratified MoL conventions of a universal nature in the field of social security negatively affects the consistency and quality of Kazakhstani legislation, ratification will serve to further improve it.

International universal standards require the state to recognize parenting, childhood, parenting as unconditional social risks, which should provide for a state compensation system for reducing the standard of living of a family when a child is born, ensuring effective employment of parents and gender equality, reimbursing the costs of maintaining, raising and developing a child.

4. Kazakhstani legislation lacks a clear strategy to support families with children, the relevant regulatory sources are in a constant process of improvement, quality improvement, but this actually does not lead to a real increase in the standard of living of families. We proved the lack of commitment and unity in the development of legislation, as well as the low level of elaboration of the recent reforms in the social sphere, carried out in a short time. Such a movement "from one pole to the other" not only does not strengthen social support for families, but also reduces the authority of state bodies, which in some cases are not fully capable of carrying out systematic social transformations.
5. As a result of the research, discriminatory norms of social legislation were revealed in the following part: lack of differentiation of social payments from the State Social Insurance Fund, depending on the order of birth of a child; restrictions on the right of male fathers to register pension rights earlier, as well as when taking into account the periods of time included in the retirement record; when determining the amount of state social benefits for caring for a child, depending on the order of his birth at the recipient; determining the composition of the family that has lost the breadwinner, when assigning state benefits and payments from the State Social Insurance Fund.
6. When improving the legislation on benefits for children, including for large families, disabled children, one should proceed from the economic goal of these benefits as a type of social assistance to the family in the maintenance and upbringing of a child, consider them as the main source of livelihood. Accordingly, benefits should occupy a significant share of family income. With this approach, the state will be obliged to establish benefits for families with children not in the modern symbolic amount, but in an amount that contributes to the achievement of the goal of introducing the benefit, that is, to provide it with the subsistence minimum established by the state, otherwise the physical survival of children is simply impossible. Assignment of payments in monthly calculation indices should be excluded from social legislation, with replacement for a living wage. The MCI should be excluded from the methodology for determining the types of social security, since its size and structure have nothing to do with social indicators of the quality of life. PM should become the only parameter for assessing the standard of living of families and children, measures of provided social assistance and support.
7. The social security system does not in any way compensate parents of children with disabilities, carers of disabled parents, relatives for their missed opportunities in life, the inaccessibility of full employment, the minimum pension provision. The state is obliged to compensate families for the loss of professional and social opportunities, life in conditions of constant stress, lack of material resources. The maintenance of children with disabilities, orphans, as well as those left without parental care, in social institutions costs the state budget many times more expensive compared to the amounts paid as benefits to parents, guardians, trustees of the listed children. It is necessary to eliminate this deformed approach to the fulfillment of the functions of social protection of children, the voice of some of the most vulnerable members of our society must be heard, who must live in conditions that meet, primarily from a material point of view, human dignity, the requirements for ensuring their free and full development.
8. The study substantiates the relevance of reforming the content of systems of minimum social standards and risks covered by social insurance. The content of the standards should

include not only the norms and levels of material social protection in the event of social risks, but also the standard for the provision of special social services. It is proposed to reform the approach of state bodies to the realization of the right to social security, assistance, services from passively waiting for the application of an interested person (family) to actively search for and identify persons entitled to social protection who are in a difficult life situation, by imposing these obligations on the entities providing services. A clear algorithm for the provision of social services should be developed and implemented, as well as a specific result should be fixed. Prospects have been proven to revise the role of social payments in the system of support for parenting, childhood, family responsibilities, and the expansion of social risks.

**Theoretical and practical effect** of this study lies in the development of a scientifically grounded concept for the development of Kazakhstani legislation on social security of the family, motherhood, fatherhood and childhood. The results obtained by the author and the theoretical conclusions drawn on their basis add to the potential of the science of social security law, and can be used as the basis for further scientific developments.

Practical value is expressed in proposals aimed at improving the content and structure of legislation on social security of the family, motherhood, paternity and childhood. The results of this study can serve as the basis for rule-making activities in the field of regulation of social security for families, children, parents and their substitutes, as well as a useful tool for optimizing law enforcement. The results obtained by the author can be used in the educational process when developing teaching methods and the content of the training course "Social Security Law". As a result of the work carried out, scientific prerequisites and the basis for further improvement of the level and quality of life of the population of Kazakhstan, development of the sphere of application of social standards have been created. As a result of the study, conclusions and proposals were formulated aimed at improving the norms of the current legislation and law enforcement practice.

**Approbation of research results.** The dissertation research was prepared and discussed at the Department of Law of the Innovative University of Eurasia.

The results of work on the dissertation are:

- development of the draft Law of the Republic of Kazakhstan "Ata-ana men balany Aleumettik kamsydzandyru manselerini boyynsha Kazakhstan Respublikasynyq keibir zanama aktilireine uzgertuler men tolyktyrular engizu turaly" with accompanying documentation, explanatory documentation: The results of the study in the form of a draft law as a proposal for a legislative initiative were sent to the Ministry of Labor and Social Protection of the Republic of Kazakhstan (on purpose), the Senate of the Parliament of the Republic of Kazakhstan (through the function of sending the bill on the website of the Senate of the Parliament of the Republic of Kazakhstan: <http://senate.parlam.kz/ru> -RU / offer-law-project) (Appendix A, B); - registration of the Certificate of entry into the state register of rights to objects protected by copyright No. 5615, issued on 07.10.2019. RSE "National Institute of Intellectual Property" MJ RK (Appendix B);

- publication of two textbooks and two monographs.

The main content and results of the research are reflected in more than 20 articles published in scientific and scientific-practical publications, including 4 in publications included in the scientometric database Scopus, 5 in publications recommended by the Committee for Quality Assurance in Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan. The provisions and conclusions of the dissertation research were tested at seven scientific conferences. The conclusions and provisions of the dissertation research were applied by the author in the practice of teaching innovation and telecommunication systems at the Kazakhstan University. The results of the dissertation research are introduced into the educational process at the departments: "Law" of the Innovative Eurasian University, as well as "Jurisprudence" of the Abay Kazakh National Pedagogical University (Appendix D). Some of the results of the dissertation can be considered within the framework of legislative work in the Mazhilis Committee of the Parliament of the Republic of Kazakhstan (Appendix D).

**The structure and content of the thesis.** The structural elements of the thesis are the title page, content, designations and abbreviations, introduction, main part (consisting of 3 sections and including 10 subsections), conclusion, list of references, five appendices.