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<https://doi.org/10.48081/BHJV9513>***O. B. Dubovitskaya¹, Z. Z. Talipova², A. S. Beksultanov³**

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e-mail: o.b.d.1970@mail.ru**PROTECTION OF PERSONAL DATA OF CHILDREN
IN MIGRATION PROCESSES**

Personal data is used in various areas of our society, but in this article, we would like to analyze the collection, use and storage of personal data in migration processes. And we would like to pay special attention to the protection of personal data of children involved in migration processes. So in our state there is a program «Protection of children in migration processes in Kazakhstan», implemented by the UNICEF Representative Office in the Republic of Kazakhstan with the assistance of the Committee for the Protection of Children's Rights of the Ministry of Education and Science of the Republic of Kazakhstan (and later – the Ministry of Education of the Republic of Kazakhstan), as well as the Public Fund «Kazakhstan International Bureau for Human Rights and Rule of Law», Public Fund «Legal Center for Women's Initiatives «Sana Sezim», Public Fund «Center for Social and Psychological Rehabilitation and Adaptation for Women and Children «Rodnik». The concept of «children in migration processes» includes children applying for refugee status, refugee children and children who have been victims of human trafficking, except for candases (oralmans). The term «Child» means an individual between the ages of 0 and 18 years.

Keywords: personal data, law, protection, migration, children, program.

Introduction

In the context of the total digitalization of the information society, the protection of personal data has to be improved, and, as you know, there is no limit to improvement. Liability for violating localization requirements is being tightened, multimillion-dollar fines are being introduced, close attention is being paid to the transfer of personal data abroad, company checks are becoming more thorough, etc. and so on.

Modern society is increasingly meeting with information exchange in their daily lives. Each of us regularly provides information about ourselves that allows us to directly or indirectly identify and identify us. The current legislation of the Republic of Kazakhstan classifies such information as personal data, and some of them require confidentiality.

The very concept of personal data is expanding: for example, courts now consider geo-identifiers and data that allow tracking user activity on the Internet as personal data. Digitalization, on the one hand, creates opportunities for optimizing many company processes, and on the other hand, numerous risks associated with the collection, storage and transfer of personal data [1].

Personal data can be considered as information relating to an identified or identifiable person. Personal data includes medical records, criminal or civil investigations and litigation, financial institutions and their transactions, biological characteristics (genetic material), geolocation, web surfing and user preferences using cookies, etc. [2].

According to the definition contained in the Law of the Republic of Kazakhstan dated May 21, 2013 No. 94-V «On Personal Data and Their Protection» (hereinafter referred to as the Law), personal data is information related to a certain or determined on their basis subject of personal data, recorded on electronic, paper and (or) other material carrier [3]. The issues of personal data protection are also contained in the Labor Code of the Republic of Kazakhstan and in the Civil Code of the Republic of Kazakhstan (general part), etc. [4; 5].

In addition to national, regional and international laws on the protection of personal data, there are guidelines and principles that have been developed by countries and intergovernmental organizations and implemented by public and private sector institutions around the world, such as the Guidelines for the protection of privacy and the transfer of personal data across borders. Organization for Economic Cooperation and Development (OECD) (1980; 2013).

It should also be noted that Kazakhstan is a party to various international human rights conventions that guarantee the protection of children, as well as special protection of migrant children, thereby ensuring the organization and operation of an effective child protection system that prevents violence, exploitation and abuse of children. children, as well as timely response to such phenomena.

Materials and methods. The methodological basis of the research was based on the following general scientific methods: synthesis, analysis, induction, deduction; general conclusion, transition from abstraction to precision; theoretical methods, including the compilation of actual searches (in comparable statistical data).

Results and discussion. The tested result of the conducted comparative legal analysis on the protection of personal data of children involved in migration

processes (hereinafter referred to as DMP) allows us to highlight the main aspects of this area.

1) Children in migration processes are:

a) children who are international or internal migrants, either traveling alone or with their families;

b) children who remain on the territory of Kazakhstan while one or both of their parents or legal representatives migrate to another place;

c) children born in Kazakhstan from migrant parents;

d) children repatriated to Kazakhstan or returned to Kazakhstan as their country of origin.

2) Risks and difficulties that may be faced by the DMP:

a) barriers to access to education and health services;

b) barriers to access to legal services;

c) barriers to access to social security, as basic social security services, especially those provided to children and families in difficult life situations, apply only to citizens of Kazakhstan or foreign or stateless persons permanently residing in Kazakhstan [6], leaving a gap in the legislation regarding the provision of social security services temporarily residing in Kazakhstan or in a situation of illegal migration;

d) children left without parental care: studies show that children placed with relatives or family friends during the migration of their parents are subsequently moved by the authorities and placed in institutions due to the lack of a power of attorney formalizing the custody agreement with a relative or family friend;

e) risk of exploitation (referring to the link between irregular migration, lack of documentation and children's experience in work and other forms of exploitation, as well as begging on the streets).

In addition, attention should be paid to the fact that the fragmentation of the child protection system and the absence of a designated child protection authority lead to the fact that CCH in need of care and protection are referred to various interested authorities without any clear lines of coordination and direction. Where the DHR refers to the child protection system, participants' responses indicate that children do not have meaningful participation in this matter, which is contrary to Article 12 of the CRC on the child's right to be heard. This can lead to the child feeling helpless and embarrassed in the current situation or in the future.

3) Kazakhstan has obligations under international law to protect the rights of the DMP. These obligations stem primarily from the Convention on the Rights of the Child (hereinafter referred to as the CRC) (Kazakhstan ratified this Convention on August 12, 1994), its Optional Protocol on the involvement of children in armed conflict (ratified by the RoK on April 10, 2003), and the Optional Protocol

to concerning the sale of children, child prostitution and child pornography (Kazakhstan ratified this protocol on August 24, 2001).

4) Kazakhstan is also a party to other international human rights conventions that guarantee the protection of children, as well as special protection for migrant children. These treaties include: International Covenant on Civil and Political Rights (ratified by the Republic of Kazakhstan on January 24, 2006); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, etc.

5) In accordance with international standards, child protection systems at the state and local levels should include migrant children in their programs, regardless of whether the state is the country of origin, transit, destination or return of the child.

6) In accordance with international standards, Kazakhstan must ensure the integration of all HCWs and their families into the local community by ensuring the exercise of their rights and access to services on an equal basis with other citizens [7]. This standard derives from the right of the child to life, survival and development, in accordance with Article 6 of the CRC, as well as from a number of economic, social and cultural rights enshrined in the CRC, to which children are entitled without discrimination based on their migratory status.

Let us consider the essence of these conclusions.

Thus, in particular, in accordance with Article 2 (1) of the CRC, Kazakhstan is obliged to respect and ensure the rights contained in the CRC, every child within its jurisdiction without any discrimination, regardless of race, color, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or «other status» of the child or his parents or legal representatives. «Other status» includes statelessness, citizenship and immigration status (United Nations (UN) Committee on the Rights of the Child (CRC Committee), General Comment No. 6, paragraph 12; CRC Committee, General Comment No. 22, paragraph 12).

Thus, the obligations of the Republic of Kazakhstan under the CRC apply not only to children in migration processes (CMT) who are citizens of Kazakhstan, but also to all CMT under the jurisdiction of Kazakhstan, regardless of the citizenship, nationality or migration situation of the child.

International Covenant on Civil and Political Rights (ratified by the Republic of Kazakhstan on January 24, 2006). International Covenant on Economic, Social and Cultural Rights (ratified by the Republic of Kazakhstan on January 24, 2006), Convention on the Elimination of All Forms of Discrimination against Women (Kazakhstan became a party to this convention on August 26, 1998), Convention on the Rights of Persons with Disabilities (Kazakhstan became a party to this convention 21 April 2015), Convention Relating to the Status of Refugees 1951

(Kazakhstan became a party to this convention on January 15, 1999 without any reservations), Protocol on the Status of Refugees 1967 (Kazakhstan became a party to this protocol on January 15, 1999 without any reservations), Convention on the Minimum Age 1973 (Kazakhstan ratified this Treaty on May 18, 2001 and established a minimum age of 16 years for the purposes of this Treaty; according to the site https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283, November 1, 2019), the 1999 Convention on the Worst Forms of Child Labor (Kazakhstan ratified this treaty on February 26, 2003), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Kazakhstan became a party to this treaty on August 26, 1998 .) and its optional protocol (Kazakhstan ratified this document on October 22, 2008).

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is also an important treaty protecting the rights of WMD. The United Nations (UN) Committee on the Rights of the Child (CRC) and the UN Committee on the Protection of the Rights of All Migrant Workers emphasize the primacy of children's rights in the context of migration and the need for states to integrate this treaty and the CRC into migration-related frameworks (CRC Committee, General Comment order No. 22, paragraph 13. However, we note that Kazakhstan is not a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families).

Kazakhstan's international obligations are developed within the framework of a number of soft law standards. These include general comments issued by UN human rights watchdogs and guidelines developed by UN agencies and multilateral organizations (General Comment No. 6 (2005) of the CRC Committee on the Treatment of Unaccompanied and Separated Children outside their Country of origin; Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and General Comment No. 22 (2017) of the Committee of the CRC On general principles relating to the human rights of children in the context of international migration; Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) CRC Committee on State Obligations with regard to the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return; and Recommended Principles for Guiding Action on Displaced Children and Other Children in Migration Processes, according to the website <http://un-act.org/publication/view/recommended-principles-to-guide-actions-concerning-children-on-themove-and-other-children-affected-by-migration> / dated November 1, 2019.). In addition, the safe migration of all people,

including children, is a key part of the Sustainable Development Goals (SDGs) that Kazakhstan aims to achieve by 2030.

With the support of the UNICEF Office in Kazakhstan, the Program «Protection of Children in Migration Processes in Kazakhstan» (hereinafter referred to as the Program) was implemented. Within the framework of this Program, it was envisaged to provide legal assistance to children involved in migration processes. «Legal assistance» refers to the provision of legal advice or advocacy services, depending on the needs of the client. In other words, within the framework of this Program, explanations are provided on how and which law applies to a particular factual situation, as well as the best protection of the interests of the client during the trial, both in the courtroom and outside it.

The implementation of the Program is carried out by non-governmental organizations (hereinafter referred to as NGOs), which can provide legal assistance to an individual on the following issues:

- a) legalization of the migration status of the child or documentation of the DMP;
- b) the inability of the MHP to access public education, health care, birth registration, or social security services on an equal basis with a citizen of Kazakhstan; and
- c) any administrative or criminal offense against a child based solely on his migration status; or
- d) at the request of the Center for the Adaptation of Minors or the Center for Support for Children in Difficult Life Situations in Astana (hereinafter referred to as CAC / CRC), providing support to a separated and unaccompanied child and his family in order to organize his safe return to his homeland or to a third country in order to family reunification after assessing his needs and determining his best interests.

It should be noted that the activities of the Program for the Protection of Children in Migration Processes in Kazakhstan require the strictest confidentiality when working with children and their parents. Confidentiality is important for building trusting relationships with the child and parents during the implementation of the Program. Without guarantees of confidentiality, a child or parents (legal guardians) may not want to participate in the Program. In particular, children or their parents (legal representatives) may be particularly concerned that information regarding their migration status will be turned over to the police. This often prevents socially vulnerable migrant children and families from seeking help in the first place.

Thus, the personal data of persons participating in the Program are confidential and cannot be disclosed to anyone outside of the NGOs working under this

program. A word of caution must be made here: it must be remembered that «personal data» means any information or combination of information that can reveal an individual's identity. This includes images, photographs, and videos of the child or family members. That is why, in cases where disclosure is allowed, only the information necessary for the purposes of disclosure is disclosed.

An NGO working under the Program we are reviewing may disclose personal information about a child or parent to a government agency if required by law. However, the case manager should explain to the child/parent/legal guardian of the child the following before disclosing the information:

- what personal information will be transferred;
- reasons for disclosure of information and legal provisions requiring disclosure of information;
- how information will be disclosed;
- to whom this information will be disclosed.

If the disclosure concerns a child, the case manager should explain this to the child/parent/legal representative of the child.

However, employees must obtain the child's written consent or, if the child is not of sufficient maturity or understanding, obtain the consent of the child's parent or legal guardian before disclosing information. Written marks, fingerprints, or oral recordings are allowed if the person has a sensory impairment or physical disability and is unable to give written consent. A record of consent must be kept in the child's file.

Personal files are confidential and must be kept secure by employees. As a general rule, children have the right to have access to their case files. However, employees must not disclose any documentation or information to a child unless disclosure is prohibited by law or is not in the best interest of the child.

In such cases, staff may remove or edit protected or potentially harmful information from the file prior to granting access to the child if doing so would comply with the law or remove the risk to the child (as the case may be).

Employees may provide parents or legal guardians with access to their child's case file if it is in the best interest of the child. It is possible that, during the course of the Program, a child has disclosed personal information about their parents or other relatives that would put the child in a difficult position or put the child at risk of harm if this information were disclosed. Therefore, staff should exercise particular care in deciding whether disclosure is in the best interests of the child.

At the same time, it should be noted that an effective child protection system implies the immediate identification, within the framework of border control and other migration control procedures within the jurisdiction of the state, of all children involved in migration processes, taking into account that any person who claims

to be a child must be treated as such and immediately referred to child protection authorities and other relevant authorities [8].

An important part of the implementation of an effective child protection system is case management, which can be defined as «a process carried out by social workers that supports or regulates the provision of social assistance to socially vulnerable children, families and other groups in need» [9, с. 7].

In addition, special attention should be given to unaccompanied and separated children, including family tracing and family reunification.

Taking into account the best foreign experience and the obligation of the state to protect children in need of care and protection, the functions of protecting children within the framework of case management, in our opinion, should remain the responsibility of the government [10, с. 6].

Conclusions.

Thus, firstly, Kazakhstan is actively engaged in the development of legal means for the protection of personal data. And in doing so, in addition to national, regional and international laws on the protection of personal data, guidelines and principles that have been developed by countries and intergovernmental organizations and implemented by public and private sector institutions around the world are guided. And, secondly, within the framework of the Program «Protection of children in migration processes in Kazakhstan», all measures are taken to provide the necessary assistance to children involved in migration processes and to protect the personal data of all participants in this Program.

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КӨШІ-ҚАН ПРОЦЕСТЕРІНДЕ БАЛАЛАРДЫҢ ЖЕКЕ ДЕРЕКТЕРІН ҚОРҒАУ

Жеке деректер біздің қоғамның әртүрлі салаларында қолданылады, бірақ бұл мақалада біз көші-қон процестерінде жеке деректерді жинау, пайдалану және сақтауды талдағымыз келеді. Ал біз көші-қон процестеріне тартылған балалардың жеке деректерін қорғауға ерекше назар аударғымыз келеді. Сонымен, біздің мемлекетте Қазақстан Республикасындағы ЮНИСЕФ өкілдігі ҚР Білім және ғылым министрлігі Балалардың құқықтарын қорғау комитетінің көмегімен жүзеге асырылатын «Қазақстандағы көші-қон процестеріндегі балаларды қорғау» бағдарламасы бар. Қазақстан Республикасы (кейінірек – Қазақстан Республикасы Білім министрлігі), сондай-ақ «Адам құқықтары және заңдылықты сақтау жөніндегі қазақстандық халықаралық бюро» Қоғамдық қоры, «Сана сезім» әйелдер бастамаларының құқықтық орталығы» қоғамдық қоры. «Родник» әйелдер мен балаларға арналған әлеуметтік-психологиялық оңалту және бейімдеу орталығы» қоғамдық қоры. «Көші-қон процестеріндегі балалар» түсінігі босқын мәртебесін алуға өтініш білдірген балаларды, босқын балаларды және қандастардан (оралмандардан) басқа адам саудасының құрбаны болған балаларды қамтиды. «Бала» термині 0 бен 18 жас аралығындағы жеке тұлғаны білдіреді.

Кілтті сөздер: әсеке деректер, заң, қорғау, көші-қон, балалар, бағдарлама.

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ЗАЩИТА ПЕРСОНАЛЬНЫХ ДАННЫХ ДЕТЕЙ В МИГРАЦИОННЫХ ПРОЦЕССАХ

Персональные данные используются в различных сферах нашего общества, но мы бы в этой статье хотели проанализировать вопросы сбора, использования и хранения персональных данных в процессах миграции. И особое внимание мы хотели бы уделить вопросам защиты персональных данных детей, вовлеченных в миграционные процессы. Так в нашем государстве действует программа «Защиты детей в миграционных процессах в Казахстане», реализуемой Представительством ЮНИСЕФ в РК при содействии Комитета по охране прав детей Министерства образования и науки Республики Казахстан (а в последствии – Министерства просвещения Республики Казахстан), а также Общественного Фонда «Казахстанское международное бюро по правам человека и соблюдению законности», Общественного Фонда «Правовой центр женских инициатив «Сана Сезім», Общественного Фонда «Центр социально-психологической реабилитации и адаптации для женщины и детей «Родник». Понятие «дети в миграционных процессах» охватывает детей, претендующих на получение статуса беженца, детей-беженцев и детей, ставших жертвами торговли людьми, кроме кандасов (оралманов). При этом под термином «Ребенок» понимается физическое лицо в возрасте от 0 до 18 лет.

Ключевые слова: персональные данные, закон, защита, миграция, дети, программа.

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