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## ИЗВЕСТИЯ

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК  
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## NEWS

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**INSTITUTE OF PATERNITY AS COMPONENT  
OF THE INSTITUTION OF THE FAMILY:  
HISTORICAL AND LEGAL ASPECT**

**Abstract.** Modern understanding of a phenomenon of paternity is caused by social, political, information influences that makes direct impact on styles and forms of family as public institute, predetermines social practitioners of education, and, therefore, designs new understanding of paternity.

The modern understanding of the phenomenon of paternity due to social, political, informational influences, which has a direct impact on the styles and forms of the family as a public institution, predetermines the social practices of education, and, therefore, constructs a new understanding of fatherhood.

The Institute of Paternity in its modern sense has come a long way of becoming and developing. In order to understand its modern essence and content, it is necessary to trace the causal relationships of its formation. Therefore, it seems objectively necessary to consider the formation of this institution in the historical and legal aspect at different stages.

The analysis of various historical and legal monuments of human thought allows us to conclude that paternity as a separate element of family relationships is not specifically highlighted anywhere, about the father and his functions of maintenance, family support, parenting is not specifically fixed. For the most part, in ancient legal acts, the family was considered as a whole. The father's role was meant as a matter of course, the conscious state of the man - the breadwinner and the caregiver. Such a man's role was determined not only by his social position, customs and traditions, upbringing, but also religious dogmas.

**Keywords:** paternity, legal status of the father, family constitutional law, equality.

**Introduction**

Kazakhs throughout the history of existence and development of the basic social relations were regulated by the rules of customary law. Sources of customary law of the Kazakhs were:

- oral custom (adat or zan);
- the practice of a big court or a judicial predecessor;
- the position of the congress biys (erezhe).

It should be noted that attempts were made repeatedly to codify customary law, namely, the Establishment of Kasym Khan in the first half of the 16th century and Yesim Khan in the 17th century. Better known is the codification of customary law undertaken during the reign of Tauke Khan at the end of the seventeenth century, known as “Zhety Zhargy” (seven rules). In all codifications, an important place was given to family and marriage relations. The codes governed marriage and divorce, the rights and duties of spouses, and the property rights of family members.

The customary law of the Kazakhs was the object of study by Russian scientists, since “Kazakh lands were rather early in the sphere of interests of Russia and already in the XVIII century partly as part of the empire, so the study of the culture of the Kazakhs began relatively early. As a consequence, by the beginning of the 20th century Russian researchers and representatives of the local intelligents have accumulated and summarized considerable factual material covering various aspects of the nomadic life

and ritual life of the Kazakhs” [1]. Nazarov F., Bronevsky N., Levanevsky M., Arandarenko G. A., Zavatsky A., Plotnikov V., Dobromyslov A., Grodekov are among such pre-revolutionary Russian scientists who made a significant contribution to the study of the customs and traditions of the Kazakh people. N., Makovetsky P.E., Samokvassov D.Ya.

After the revolution, the customary law of the Kazakhs was studied by a group of talented Soviet scientists, such as S.L. Fuchs, L.F. Balluzek, T.M. Kultelev, S.Z. Zimanov, A.N. Taukelev, Z.ZH. Kenzhaliev, K.A. Zhirenchin and others.

It should be noted that all researchers, both pre-revolutionary and Soviet, considered the Kazakh family mainly from the point of view of its general characteristics, as well as property issues and problems of inheritance of family property.

### **Methods**

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

### **Results**

“In her domestic situation, a Kazakh woman was freed from many degrading issues that fell on the shoulders of women among sedentary peoples in Central Asia, for example, from the burqa, seclusion, and haggling in the harem. However, this slight softening of the slave, disenfranchised position of a woman, caused by the Kazakhs to the conditions of a cattle breeding farm, does not mainly change her position as an object of property. Daughters - the wealth of their parents. Being sold for a slaughter husband, they constitute the property of the husband, which after his death is inherited by his brothers” [2, p. 185-187].

According to the famous researcher and the expert on the Kazakh common law S.Z. Zimanov “... rules of exogamic family were followed, ... in general was forbidden to take in the wife of girls from families some kind of up to the seventh knee ... With crushing and a shrinking of childbirth and their resettlement in parts among other childbirth observance of rules of exogamic family was not difficult business” [3, p. 69-70]. This rule remains to this day at the conclusion of marriages that is, in our opinion, absolutely true.

According to tradition, marriage was considered not just as a union of two people, but as a long-term union of two family-related groups, continuing even in the event of divorce or death of one of the spouses. Therefore, during marriage, the determining factors were social and national-religious affiliation of the bride and groom families.

Traditional Kazakh customs that have a clear pre-Islamic origin include marriages by the right of levirate («amengerlic») and sororat («baldyz alu»).

Amengerlic is the marriage custom of the Kazakhs, according to which the widow had the right or was obliged to remarry only with the closest relatives of her deceased husband, first of all with his brother. Amengerlic was one of the means of continuing the lineage of the deceased by close relatives.

The right of amengerlic in relation to even the bride passed to the brother or closest relative in the event of the death of the groom [4, p. 356].

“The meaning of Amengerlic was as follows: ... In the steppe, as you know, living conditions were extremely harsh, and it was almost impossible for a widow to live alone with young children. Kazakhs lived by cattle breeding, constantly migrating from one locality to another, and male power played a primary role here. Without a strong male shoulder, without a breadwinner and a defender it was simply not possible to survive. A woman without a husband could not return to her relatives either - she was already considered an integral part of her husband’s family” [5].

The purpose of this custom was:

1. Preservation of property in the family;
2. The arrangement of the widow (she is not with strangers, the financial situation has not changed much).

3. Full adaptation of the widow’s child with other children of the new husband (he or she is among her own, they are all blood brothers, sisters, they have a common ancestor, there is no tearing away of children in the family),

4. When orphans grow within a kind of (tribe), the likelihood of incest between blood relatives decreases (if a representative of one kind can marry only with a representative of another kind, there is no risk in the other kind to meet their blood relatives) [6, p. 83].

In contrast to the levirate marriage, marriage according to the custom of sororate was not always obligatory. After the death of his bride or wife, the man had the right to declare his father-in-law that he would like to marry the unassigned younger sister of the deceased. But the father-in-law, without giving reasons, could refuse the request to his son-in-law. In modern Kazakhstan society, in our opinion, in the conditions of the changed economic, political, cultural and mental reality, the revival of levirate and sororate institutions is not possible, despite their positive assessment, mainly in the past.

As notes in his scientific works S.L. Fuchs, exploring the property relations within the family in the XVIII-XIX centuries. "The wife's dowry is inviolable; the husband cannot encroach upon him even during a divorce; his wife's parents also have no rights to dowry. The dowry goes only to children from this wife, they inherit it after death. From the dowry they get a portion of the sons that they donated". [7, p. 40]. However, by the end of the XIX century the family is characterized by a gradual absorption of the property rights of the wife where they are still preserved, the rights of the husband as the sole individual owner of all family property ... The materials of Kazakh law leave no doubt that in the patriarchal Kazakh family the wife, being generally deprived, did not use during her husband's life no property rights that such rights belonged only to individual wives of the rich and that the further development of private ownership did not weaken, but even more strengthened the powerlessness wives and despotism of husbands. [7, p.40-41].

The revolutionary events of the early twentieth century could not but affect the political and legal views of the Kazakh intelligentsia, which led to the creation of the Alash Party in 1917, in the Program of which questions were raised: a) liberating the country from colonial enslavement; b) the withdrawal of the Kazakh society from the medieval state and the entry into the community of civilized countries; c) implementation of fundamental changes in the socio-economic and socio-political life of the Kazakh society; d) improving the situation of a Kazakh woman.

The program of the Alash Party had a significant impact on the formation of the civic position of the progressive representatives of the Kazakh people.

In the Soviet period, the issues of family development, upbringing of the younger generation, the formation of patriotism and devotion to their homeland were of great importance. However, priorities in matters of family development and attitudes toward motherhood and fatherhood in this period are distinguished by certain specifics at each of the stages of development of the Soviet state.

The social institution of the family on the territory of the former Russian Empire in the post-revolutionary period underwent significant changes, which was determined by the ideological attitude of a fundamental change in all the foundations of social life, including the family. "First of all, family policy was based on the ideas of class and gender equality and the rejection of bourgeois forms of marriage and family, it focused on the regulation of marriage and family relations of working women, issues of protection and material support for motherhood and childhood. The Bolshevik government, which came to power in October 1917, condemned the family as a bourgeois institution and promised to free women from marriage, regarding it as the main obstacle to women's emancipation" [8]. So, in 1923 the Soviet statesman and diplomat A.M. Kollontai declared that the Soviet government "would remove the burden of motherhood from the women's shoulders and transfer it to the state". She also added that "the family in its bourgeois sense will die out" [9, 162 p.]. This point of view, of course, was very specific and did not find support from the leaders of the Soviet state. Since the first decrees, the Soviet state more and more consistently put into practice the idea of F. Engels "The family is the cell of society"[10].

Based on the idea of the socialization of the means of production and the fundamental reform of all state functions on this basis, the state in the early years of Soviet power assumed the "primary responsibility for raising children" [11, p. 303], which was also caused by the socio-economic situation in the country, the consequences of the First World War, civil war, devastation, famine, the death of many parents, etc.

In contrast to such harsh statements of some revolutionary figures, such as A. Kollontai, representatives of the traditional pedagogical school, really assessing the process of upbringing and the role of the family in it, emphasized that "modern children are future parents, and sometime they will educate their children therefore, the foundations of paternity are laid in childhood. One of the foundations for this is the behavior of their father and mother, who daily, hourly set the example for their children and an example of how to be parents [12, p. 3-15].

A well-known Russian teacher and writer V. Sukhomlinsky adhered to the same opinion about the role of the family in the process of educating the younger generation. not all parents are ready to perform parental duties [13].

An analysis of these points of view leads to the conclusion that in the early years of Soviet power there was no single position on the role of the family in the development of society, while in practice the main task was to raise the country from the ruins and feed the hungry.

The ideas of ensuring the interests of children, both married and non-married, were reflected in one of the first acts of Soviet power in the Decree of the CEC and the Council of People's Commissars of December 31 (18), 1917 "On civil marriage, on children and on maintaining state books" where it is emphasized that the Russian Republic henceforth recognizes only civil marriages, and children born out of wedlock are equalized with marriages with respect to the rights and duties of both parents to children and children to parents. (SU 1917, No. 11, Art. 160). We note here one of the characteristics of the first decrees of the Soviet government and subsequent Soviet legislation: the institution of paternity as a special institution was not distinguished at all, the entire emphasis was shifted to the protection of the interests of motherhood and childhood.

The Constitution (Basic Law) of the RSFSR, adopted by the All-Russian Congress by the Council on July 10, 1918, did not say anything about family and marriage, these issues were settled by a special act.

The Code of Acts on Civil Status Acts, Marriage, Family and Custodial Law of October 22, 1918, proclaiming the absolute equality of spouses in the family, their complete independence, enshrined the equal rights of mother and father in relation to children and the joint exercise of parental rights. Thus, the centuries-old tradition of the sole authority of the father in family-marriage relations was put an end. The code also established a simple way to establish paternity by filing a simple statement to the mother, which was enough for the legal recognition of the named man as the father of the child. This method of determining paternity was due to the actual difficulties in establishing the paternity of a particular man. In addition, the Family Code in Art. 144 secured the new institution of family law, the so-called "collective paternity", securing the possibility of recognition not only by the person who is called the mother the father of the child, but also by other persons who were in relations with the child's mother. The court ruled to bring the latter as defendants and imposed on all of them the "duty to participate" in the necessary expenses, thereby ensuring the material security of the mother and child. But this, ultimately, entailed a violation of the rights of the child, since the child, according to the law, had several fathers (collective paternity), who were hardly engaged in his upbringing. This situation also infringed upon the rights of male fathers, as it obliged them to educate and sometimes provide other people's children. Draft, notes that as a result of this provision, family relations were not protected from the encroachments of another woman, since the recognition of an illegitimate child in a voluntary or judicial process could lead to the destruction of an existing marriage, deterioration of the financial situation of the family because of the need to pay child support, to support the child and his mother [14, P. 105-113., P. 146].

In Kazakhstan, on October 6, 1920, the Constituent Congress of the Soviets of the Kyrgyz ASSR adopted the Declaration of the Rights of the Workers of the Kyrgyz (Kazakh) ASSR, in which, in paragraph II) clause 4 of Article V, it was fixed that the First Congress of Soviets that a society cannot consider itself liberated as long as a woman remains enslaved, a Kyrgyz woman who is still a slave in public and family life and at the same time an uncomplaining female worker in the household, is now considered an equal member of society with all their civil rights, which are the conquest and property of the whole mass of working people" [15, p. 235-236]. This provision was later fully reflected in the Draft Constitution (Basic Law) of the Kyrgyz Soviet Socialist Republic, adopted by the First All-Kyrgyz Congress of Soviets in 1926.

The Basic Law (Constitution) of the USSR, adopted by the II Congress of Councils of the USSR on January 31, 1924, the main task of which was to secure the formation of the first Soviet federal state consisting of four previously independent states, to specialize in family, maternity and paternity issues.

At the same time, the Family Code on Marriage, Family and Guardianship of the RSFSR of 1926, which was adopted to develop the provisions of the USSR Constitution of 1924 and the Constitution of the RSFSR of 1925, proclaimed the family equality of women and their independent status: a common marriage regime was established relationship equated to a registered marriage.

As a result of the recognition of the legal meaning of the actual marriage, the establishment of paternity was simplified. So, L.N. Zavadskaya notes that "the ease with which a woman could prove the

existence of actual marital relations with all the ensuing consequences made men completely defenseless against unscrupulous partners claiming both the area and part of the property of their “ spouse ” that often required paternity in relation to children to whom these men had nothing to do. With time in practice, this led to the fact that men became generally wary of women and were afraid to enter into any intimate relations with them [16, p. 104].

With the strengthening of the Soviet state, with the development of the economic and political foundations of society, the subject of constitutional regulation is expanding. The Constitution (Basic Law) of the USSR, approved by the Extraordinary VIII Congress of the Soviets of the USSR on December 5, 1936, Chapter X of Article 122 confirmed that “women in the USSR are granted equal rights with a man in all areas of economic, state, cultural and socio-political life. The possibility of exercising these rights of women is ensured by providing women with equal rights to work, pay, rest, social insurance and education, state protection of the interests of the mother and child, state assistance to mothers of many children and single mothers, providing women with pregnancy during holidays with maintenance, a wide network maternity homes, nurseries and kindergartens” [17, p.88].

The Constitution (Basic Law) of the Kazakh SSR, adopted at the 10th All-Kazakh Congress of Soviets on March 26, 1936 in Chapter VIII Art. 100 enshrined the same provisions, supplementing the article with part 3: “resistance to the actual emancipation of women (marriage of minors and marriage with them, pensions, polygamy, organization of resistance to the involvement of women in school, agricultural and industrial production, public administration, social and political life ) - punishable by law. As can be seen, the constitutional legislator emphasizes the equality of men and women, considers only motherhood and childhood, establishes guarantees for their normal development, but does not pay any attention to the institution of paternity. Objectively, there is a situation when the legal status of the father as an equal member of the family is not considered at all.

But the development of family and marriage relations in practice, the irresponsible attitude of fathers to their duties, and the need to improve the demographic situation in the country necessitated a reform of the legal regulation of the family, strengthening motherhood, childhood and the legal status of the father. So, in 1936, the Resolution of the CEC and the Council of People’s Commissars of the USSR banned abortion. The decree of the Presidium of the Supreme Soviet of the USSR of July 8, 1944 on state assistance to mothers fixed the fundamental need for the official registration of marital relations between spouses. It was established that “only a registered marriage gives rise to the rights and duties of spouses. Actual marital relations were no longer equal to a registered marriage”. [18]. Article 20 of this Decree completely abolished “the right of a mother to go to court with a claim to establish paternity and collect alimony for the maintenance of a child born of a person with whom she was not in a registered marriage”. Thus, a man living with a woman in a civil marriage and having children from her could not directly acquire parental rights and duties in relation to his own common children.

Unfortunately, in practice, these acts had negative consequences. So, according to Zarapayeva Z.P. and Novoselova V.M. “As a result, polygamy and the irresponsibility of husbands became one of the central problems of family relations in Soviet society, men were given almost complete freedom in sexual relations - they did not fear that women who had given birth to a child would require paternity. The next problem of this period was that women, having no means to support a child, the opportunity to have a medical abortion, as well as to go to court with a claim to establish paternity, were forced to transfer children to the state for upbringing. Negative social consequences of this kind of “state support of the family” have affected entire generations of Soviet citizens [19].

In addition to the above mentioned circumstances, it is impossible not to take into account the fact that during the Great Patriotic War in the USSR, a significant number of men died, which led to some idealization of their role and image in the family. Also, the number of orphans who got into state maintenance has increased immeasurably. All these circumstances, as well as the consequences of family policy in the country, had a negative impact on the worldview of several generations of Soviet citizens, both men and women.

Since the mid-1950s, mainly to improve the demographic situation and strengthen the institution of the family, the state’s policy in the area of marriage and family is aligned: in 1955, abortion was legalized again, in 1965 alimony obligations.

In the Constitution (Basic Law) of the USSR, adopted at the extraordinary seventh session of the Supreme Soviet of the SSR of the ninth convocation on October 7, 1977 for the first time in Art. 53 is

fixed that the family is under state protection. Marriage is based on the free consent of a woman and a man; spouses are completely equal in family relationships. As a guarantee, this article provides for the state's care of the family through the creation and development of a wide network of childcare facilities, the organization and improvement of consumer services and catering, the payment of benefits on the occasion of the birth of a child, the provision of benefits and benefits to large families, as well as other types of benefits and family assistance. In addition to these constitutional provisions in Chapter 6 "Citizenship of the USSR. Equality of citizens" in Article 35 enshrined: "Women and men in the USSR have equal rights". The exercise of these rights is ensured by providing women with equal opportunities in education and vocational training, in work, in remuneration and advancement in work, in socio-political and cultural activities, as well as by special measures for the protection of women's work and health; the creation of conditions that allow women to combine work with motherhood; legal protection, material and moral support of motherhood and childhood, including the provision of paid holidays and other benefits to pregnant women and mothers, a gradual reduction in the working time of women with young children [20].

The Constitution (Basic Law) of the Kazakh SSR adopted at the extraordinary seventh session of the Supreme Council of the Kazakh SSR of the ninth convocation on April 20, 1978, reflects the same provisions as in the Federal Constitution, however, the article on equality of men and women is supplemented by the provision that violation of equality of women related to the infringement of their rights to education, choice of profession, participation in state, public and cultural life, as well as in family and everyday life, is punishable by law [21].

The Fundamentals of Legislation of the USSR and Union Republics on Marriage and Family, adopted by the Supreme Soviet of the USSR on June 27, 1968, with amendments and additions introduced by the Decree of the Presidium of the Supreme Soviet of the USSR on October 9, 1979, secure equal personal and property rights of women and men in family relations (Article 3). In Article 5 The foundations are particularly secured by the protection of the family of the state, the protection and promotion of motherhood. Maternity in the USSR is surrounded by national honor and respect, protected and encouraged by the state. The protection of the interests of mother and child is ensured by special measures for the protection of women's labor and health, and the creation of the necessary conditions. Again, one can observe the emphasis on the special importance of motherhood for family development and ignoring the institution of paternity, which reflects the position of the legislator on this issue and, in our opinion, did not have a positive impact on the real development of the family institution and the worldview of all family members. It was during this period, according to researchers, that the so-called institute of "hidden fatherlessness" flourishes, which means "that fathers, living in a family, do not or hardly take part in the upbringing of their children" [22, p. 317]. In fact, there was a situation when the father self-excluded from the process of raising children. Behind him, only the function of the formal breadwinner was preserved, which did not help to strengthen the institution of paternity. A negative image of the father was formed - not engaged in raising children, abandoned his family, evading payment of alimony. "From this period began the tradition of paternity alienation, which was supported by state policy" [22].

Zh.V. Chernova, believed that in the USSR a model of a special type of parenting was formed - "Soviet" paternity, involving mainly "the fulfillment by a man of economic obligations to his wife and children: giving them wages, and also paying alimony and dividing property in case of divorce" [23, p. 166].

Sectoral regulations adopted in the Union republics, in particular, the Code of the Kazakh SSR of August 6, 1969 No. 4276 "On Marriage and Family" changed or completely abolished most of the normative acts of the Stalin period. Thus, he restored the possibility of establishing paternity, the resolution of maintenance obligations, the resolution of family property disputes and disputes about the upbringing of children in a voluntary and judicial manner.

Article 4 of the Code establishes the principle of equality in family relations, which means the inadmissibility of any direct or indirect limitation of rights, establishment of direct or indirect benefits in joining marriage and family relations depending on the origin, social and property status, and the national dimension, education, language, attitude to religion, the nature and nature of employment, place of residence and other circumstances.

Article 64 of the Code establishes that parents have the right and the obligation to raise their children, take care of their health, physical, spiritual, and legal development, education, prepare them for socially

useful work, and put them on worthy members of society. All activities concerning children are carried out jointly by the parents.

Consequently, it can be concluded that the policy pursued in the USSR in relation to family and marriage at different stages of development of the state and society was not stable and at certain periods looked one-sided. The emphasis in the law was placed on protecting and guaranteeing the rights of mother and child, which was explained by objective factors of the need to improve the demographic situation, the emancipation of the woman and her involvement in the economic, political and cultural life of the country. However, having directed all efforts to safeguard the interests of a woman and a child, the legislator relegated his father to the background, having diminished his role in the family as an educator, custodian of tradition, chief authority and teacher.

In our opinion, it is necessary to agree on the conclusions of Zarapayeva Z.P. and Novoselova V.M. about the consequences of family policy in the USSR:

1) at the beginning of all transformations, the Soviet government, on the one hand, equalized mothers and fathers in parental rights, on the other hand, significantly restricted the rights of male fathers, leaving them only the family breadwinner function and thus changing the relations of men themselves for the worse to parenting, understanding the role of the father;

2) family policy of the 1940s - mid-1950s. (the abolition of the right to establish paternity, not the recognition of de facto marital relations, the prohibition of abortion) further removed men from the family, raising children, and contributed to the distortion of moral ideas about the parental duty not only of fathers, but also of mothers;

3) the liberalization of family policy, the abolition of the Stalinist norms (mid-1950s -1980s), in general, increased the social significance of the institution of paternity, but negative stereotypes and ideas about the role of the father, which were previously formed in Soviet society, remained [19].

It should be noted that this policy has had a significant impact on the development of post-Soviet and modern family legislation in sovereign republics and in Kazakhstan, including the functioning of the paternity institution at present. Problems in the development of the institution of paternity, which are taking place now are largely formed, conditioned and have roots from the Soviet past.

The problems of paternity have received even more acute resonance in connection with the general family policy of the USSR. So according to A.R. Mikheeva “men’s reassessment of their paternal and marital roles, orientations, and ideas took place in Russia (and in the USSR) as a result of specific historical conditions. First of all, this is the abolition of the right to inherit property, which largely affected the weakening of the “fundamental” male interest in relatives, beloved heirs. Secondly, it is the legal non-recognition of biological paternity outside a registered marriage, which operates in the USSR in 1944-1968. Third, the feminization of the upbringing and education of boys, which, in turn, is due both to Soviet ideological stereotypes (division of labor) and to objective situations — post-war disparities in the numbers of men and women” [24].

Before the collapse of the USSR in the early 90s, in the conditions of economic stagnation, political, social and spiritual crisis, deputies, scientists, public figures raised the problems of social and economic development of society, including the crisis of the institution of family and marriage, upbringing and lack of security of the child. As a deputy to the Congress of People’s Deputies of the USSR in his speech at a meeting of the Security Committee in October 1990, G.S. Sapargaliev emphasized: “The number of divorce proceedings and incomplete, dysfunctional families is growing in the country. A significant part of parents are unable or unwilling to raise children, for example, in Chimkent, only one percent of the 500 surveyed families include children in work. Women mothers and only 20 minutes a day have the opportunity to communicate with children. The family loses its main function - parenting. Many parents believe that education is the business of the state. A new social phenomenon has arisen - parental cruelty. The teaching community began to say that the child must be protected from the evil parent. The root of evil is in our reality ... It is necessary to radically change the attitude towards children. Apparently, it is necessary to begin in the development of the Concept on State Policy in the USSR on the Protection of the Rights of Children. The concept must proceed from the fact that, first of all, the special activity of the state is to create the necessary social, material, legal and organizational conditions and guarantees for the healthy growth and development of children, allowing them to develop physically, mentally, morally, and spiritually. In this Concept, secondly, it is necessary to emphasize that almost all directions of state activity are related to children, their rights, destinies” [25, P. 18-21].

In the process of the collapse of the Soviet Union, of course, the first acts, which consolidated the sovereignty and independence of Kazakhstan, did not mention the family and marriage directly. However, in the Declaration of State Sovereignty of the Kazakh SSR of October 25, 1990, it was fixed that citizens living in the territory of the Republic are guaranteed all rights and freedoms ... without regard to their ... gender and religion, occupation, and place of residence [26]

The Constitution of the Republic of Kazakhstan, adopted at the ninth session of the Supreme Council of the Republic of Kazakhstan of the twelfth convocation on January 28, 1993, is, in our opinion, a historical document, the first Constitution of the sovereign state of Kazakhstan. In matters of family and marriage, it can be considered as a breakthrough and of historical significance, since for the first time in Section II “Society, the foundations of its structure”, Chapter 9 “The Family” is highlighted, which consists of only three articles, but lays the foundations for the development of the family institution many years to come. For the first time, the term “paternity” is enshrined in this Constitution at a high constitutional level. For the first time in the rank of the principle of family law in Art. 52 of the Constitution of the Republic of Kazakhstan stipulated that the family, motherhood, fatherhood and childhood are under the protection of society and the state [27]. Whereas in previous constitutions in force in our country it was proclaimed that the family is under the protection of the state, and legal protection, material and moral support are guaranteed for motherhood and childhood. The term “fatherhood” in these constitutions was not used at all.

Allocation of a special chapter in the Constitution was the result of the fact that Kazakhstan was recognized as a sovereign, democratic, secular and social state, built on the principle of separation of powers, taking the direction of the deployment of democratic processes in all spheres of the state and society. In the preamble, the 1993 Constitution of the Republic of Kazakhstan proclaimed the Foundations of the Constitutional System. Furthering these provisions, based on adherence to major international legal acts on human rights, such as the UN Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, adopted by the UN General Assembly in 1966 year, realizing the role and place of the family in upbringing the patriotic, civil convictions of the younger generation, the legislator consciously singled out the chapter on family and marriage, laying the foundations for legal regulation and state policy in the field of family and marriage relations. The inclusion of the institution of paternity in the subject of constitutional regulation meant giving this issue extremely important importance and raising it to the level of specific political and state objectives. Accordingly, the guarantee mechanism of the institute of paternity automatically includes the whole range of constitutional guarantees, guarantees enshrined in the current legislation, as well as political and economic guarantees.

According to the national constitutionalist V.A. Malinovsky The Constitution of the Republic of Kazakhstan of 1993 played the role of a stabilizing factor in the formation of Kazakhstan’s statehood and is characterized as “a significant milestone in the way of Kazakhstan’s constitutional construction and laid down the basic structures of statehood, representing one main direction for all subsequent stages of the country's evolution” [28].

The ideas embodied in the 1993 Constitution on family, marriage, motherhood, fatherhood and childhood were developed in the provisions of the 1995 Constitution of the Republic of Kazakhstan.

### **Conclusion**

Summarizing the above, it can be noted that the institution of the family throughout its development was subject to state influence from different perspectives, which did not always have a positive impact on its practical development. Various authors have offered their own positions on the question of the staging of the development of this institution over the centuries.

In this matter, you should rely on the methodological foundations proposed by the Head of State, President of the Republic of Kazakhstan N.A. Nazarbayev said that “we are talking about the history of Kazakhstan, which is common to many ethnic groups living on our territory for a long time. This is our common history, the contribution to which was made by many prominent figures of different ethnicity. Today we need a positive view on our own history” [29].

I period - the ancient era of the Steppe civilization - the birth of the family institution, in which the paternity institute was given a special role in accordance with the Kazakh customary law;

II period - the Soviet period, when the state, on the one hand, proclaimed support for the family, parents and children, and on the other - its policy was mainly aimed at ensuring the interests of

motherhood and childhood, resulting in a violation of the integrity and autonomy of the family, giving priority to the public institutions of education and the devaluation of the role of the father in the family;

III period - the transition period from the moment Kazakhstan gained independence and the operation of the 1993 Constitution, which is characterized by securing for the first time at the constitutional level the institution of paternity on an equal basis with the institutions of motherhood and childhood;

IV period - the modern period of family development, motherhood, fatherhood and childhood is characterized by the reflection of global tendencies to strengthen the role of the family and father in raising the younger generation, in implementing Kazakhstan's state policy on spiritual revival, self-development, strengthening patriotism and assessing the role of Kazakhstan's society in the world history of humanity.

Summarizing the above, we can conclude that the institution of paternity went through different periods during the history of its development, was subjected to state influence, which did not always give a positive result. However, in recent times there is a reevaluation of values, the paternity institution in the literature is evaluated positively and prospectively, but, unfortunately, not always the legislation is duly reflected and guaranteed.

In our opinion, fatherhood is the natural state and the basic function of an adult man, aimed at continuing his own kind, bringing up the next generation of worthy citizens of his homeland.

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#### **ОТБАСЫ ИНСТИТУТЫ ӘКЕЛІК ИНСТИТУТЫНЫҢ ҚҰРАМЫ РЕТІНДЕ: ТАРИХИ-ҚҰҚЫҚТЫҚ КӨЗҚАРАС**

**Аннотация.** Қазіргі заманда әке болу институтының қалыптасуы мен дамуды ұзақ болды. Қазіргі заманғы әке болу институтының мазмұны мен мәнін түсіну үшін оның қалыптасуының себеп-салдарын талдау қажет. Сондықтан да осы институттың тарихи-құқықтық аспектісін әртүрлі деңгейде қарастыру объективті түрде қажет.

Адам ойының әртүрлі тарихи-құқықтық ескерткіштерін талдау отбасылық қарым-қатынастың жеке элементі ретінде әке болуды ешбір жерде қамтымайды және ол ата-ана мен оның функцияларын қолдау, отбасын қолдау, бала тәрбиесі мәселелері нақты белгіленбейді деген тұжырым жасауға мүмкіндік береді.

Негізі ежелгі құқықтық актілерде отбасы бір бүтін ретінде қаралды. Әке орны өз бетінше асыраушы және қамқоршы ретінде түсіндірілді.

Мұндай адамның ролі тек қана әлеуметтік қарым-қатынас пен дәстүрлі, тәрбиелеу емес сондай-ақ діни догмаларменде анықталған.

**Түйін сөздер:** әке болу, әке болудың құқықтық мәртебесі, отбасылық конституциялық құқық, теңдік

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#### **ИНСТИТУТ ОТЦОВСТВА КАК СОСТАВЛЯЮЩАЯ ИНСТИТУТА СЕМЬИ: ИСТОРИКО-ПРАВОВОЙ АСПЕКТ**

**Аннотация.** Современное понимание феномена отцовства из-за социальных, политических, информационных влияний, которое оказывает непосредственное влияние на стили и формы семьи как публичного института, предопределяет социальные практики воспитания и, следовательно, создает новое понимание отцовства.

Институт отцовства в его современном понимании прошел долгий путь становления и развития. Чтобы понять его современную сущность и содержание, необходимо проследить причинно-следственные связи его формирования. Поэтому представляется объективно необходимым рассмотреть становление этого института в историко-правовом аспекте на разных этапах.

Анализ различных исторических и правовых памятников человеческой мысли позволяет сделать вывод о том, что отцовство как отдельный элемент семейных отношений нигде конкретно не освещено, об отце и его функциях по содержанию, поддержке семьи, воспитании детей конкретно не закреплено. По большей

части в древних правовых актах семья рассматривалась как единое целое. Роль отца подразумевалась как само собой разумеющееся состояние человека - кормильца и опекуна. Роль такого человека определялась не только его социальным положением, обычаями и традициями, воспитанием, но и религиозными догмами.

**Ключевые слова:** отцовство, правовой статус отца, семейное конституционное право, равенство.

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