O‘ZBEKISTON RESPUBLIKASI SUDYALAR OLIY KENGASHI HUZURIDAGI SUDYALAR OLIY MAKTABI HUZURIDAGI ILMIY DARAJALAR BERUVCHI PhD.37/27.02.2020.Yu.107.01 RAQAMLI ILMIY KENGASH

O‘ZBEKISTON RESPUBLIKASI SUDYALAR OLIY KENGASHI HUZURIDAGI SUDYALAR OLIY MAKTABI

NURALIYEVA ZULFIYA ALISHEROVNA

BOLALAR HUQUQLARINING OILAVIY-HUQUQIY KAFOLATLARINI TAKOMILLASHTIRISH

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

yuridik fanlar bo‘yicha falsafa doktori (PhD) dissertatsiyasi AVTOREFERATI

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Content of the abstract of the doctoral (PhD) dissertation

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Ilmiy rahbar:	**Samarxodjayev Batir Bilyalovich** yuridik fanlar nomzodi, professor
Rasmiy opponentlar:	**Baratov Mirodil Xomudjonovich** yuridik fanlar doktori (DSc), professor
	Djoldasova Saxibjamol Djalgasovna yuridik fanlar doktori (DSc), dotsent
Yetakchi tashkilot:	**O‘zbekiston Respublikasi Adliya vazirligi qoshidagi Yuristlar malakasini oshirish markazi**

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Dissertatsiya bilan Sudyalar oliy maktabining Axborot-resurs markazida tanishish mumkin (___raqam bilan ro‘hatga olingan). (Manzil: 100197, Toshkent shahar, Mirzo Ulug‘bek tumani, Intizor ko‘chasi, 68-uy. Tel.: (99871) 265-22-52.

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I.I.Nasriyev
Ilmiy darajalar beruvchi ilmiy kengash raisi, yuridik fanlari doktori, professor

D.Artikov
Ilmiy darajalar beruvchi ilmiy kengash ilmiy kotibi, yuridik fanlar bo‘yicha falsafa doktori (PhD), dotsent

N.F.Imomov
Ilmiy darajalar beruvchi ilmiy kengash qoshidagi Ilmiy seminar rais muovini, yuridik fanlar doktori, professor

KIRISH (falsafa doktorlik (PhD) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda bola huquqlarining qonunchilik kafolatlarini belgilashga alohida e’tibor qaratiladi. Chunki, inson huquqlari bola huquqlaridan boshlanadi va bolalar huquqlarini kafolatlash orqali har bir davlat o‘z kelajagini ta’minlaydi. Hozirgi kunga kelib dunyo aholisining 8 milliarddan oshiqroq bo‘lib, shundan 34% ni 14 yoshgacha bo‘lgan kichik yoshdagi bolalar tashkil qiladi va 2023-yil yanvar oyi holatida 447 586 ta bola tug‘ilgan[1]. Shunday ekan bola huquqlarini yetarli darajada kafolatlash, ularning oilaviy huquqlarini ta’minlash hamda realizatsiya qilishning tashkiliy-huquqiy mexanizmlarini belgilash dolzarb tusga ega hisoblanadi. Zero, bola huquqlarning kafolatlanganligi ularning tarbiyasi va rivojlanishi uchun asosiy mezon sanaladi. Bugungi globallashuv sharoitida hamda virtual olamning sezilarli darajada bolalar hayotiga kirib kelishi munosabati bilan bolalar huquqlarining kafolatlari masalasidagi muammoli jihatlar ko‘zga tashlanmoqda. Shu bois bola huquqlarining bugungi chaqiriq va xavflarga qarshi tura oladigan, bolalarning tarbiyasi va kamolotini ta’minlashga munosib hissa qo‘shadigan kafolatlar tizimini yaratish dolzarbdir.

Jahonning ko‘plab mamlakatlarida bola huquqlarini kafolatlashning muayyan tizimlari yaratilgan. Xususan, Fransiyada bolalarning oilaviy huquqlarini kafolatlash maqsadida ikkita vositaga ya’ni, profilaktika hamda himoyaga tayanilsa, Buyuk Britaniyada “foster tarbiyachi”lik insituti amal qiladi, Germaniyada bola huquqlarini buzish yoki to‘sqinlik qilishga nisbatan qat’iy jazo choralari tizimi qo‘llanilsa, AQSHda bolaning o‘z huquqlarini himoya qilishi uchun keng imkoniyatlar belgilangan[2]. Bu esa o‘z navbatida, bola huquqlarining qonunchilik darajasidagi kafolatlarining haqiqatda ishlaydigan tizimi, mexanizmi va usullarini ishlab chiqilishini taqozo etadi. Ayni paytda bu davlatlarda bola huquqlarining kafolatlari tizimida Internet orqali muammoli bolalarni aniqlash, ularning oilaviy-huquqiy kafolatlari bo‘yicha muayyan tarmoqlarni yaratish hamda ota-onalar bilan tezkorlikda muloqot qilish kabi vositalar faol qo‘llanilmoqda. Shuning barobarida xorijiy mamlakatlari sivilistikasida bola huquqlarining kiber makonda ta’minlashga oid qoidalarni yaratish, bunda bola huquqlariga rioya qilmagan yoki ularni buzayotgan shaxslarga nisbatan amalda ishlaydigan ta’sir choralari tizimini yaratishning qonunchilik asoslarini yaratish borasida tadqiqotlar amalga oshirilishiga e’tibor qaratilmoqda.

O‘zbekistonda bola huquqlarining oilaviy-huquqiy kafolatlari qonunchilik darajasida mustahkamlangan. Bunday bolalarning oilada yashash va tarbiyalanish, o‘z fikrini ifoda etish, ota-ona va qarindoshlari bilan ko‘rishish huquqlari hamda bir qator mulkiy huquqlarining kafolatlari normativ-huquqiy hujjatlarda nazarda tutilgan. Shunga qaramasdan bola huquqlarining amalga oshirish, ularni qo‘llash, himoya qilish, kafolatlarning ta’minlanishi masalalari bir qator ilmiy-nazariy va amaliy muammolar mavjud. Bular jumlasiga ota-onasi ajrashganida bolaning

[1] https://countrymeters.info/ru/World

[2] https://www.interesnie-fakty.ru/nauka/obrazovanie/o-pravah-rebenka-v-raznyh-stranah/

yashash joyi va ota-onasidan qaysi biri bilan qolishini aniqlash, bolaning fikrini inobatga olinishi, ota-onalik huquqidan mahrum etilganida bola huquqlarining kafolatlanishi, ota-onasi tomonidan boshqa shaxs qaramog‘iga vaqtincha qoldirib ketilgan bolalarning huquqlarining ta’minlashi kabi masalalar qonunchilik darajasida hal qilinmog‘i zarur.

Mazkur dissertatsiya tadqiqoti O‘zbekiston Respublikasining 1995-yil 21-dekabrdagi Fuqarolik kodeksi, 2018 yil 22 yanvardagi Fuqarolik protsessual kodeksi, 2008-yil 7-yanvardagi “Bola huquqlarining kafolatlari to‘g‘risida”gi, 2014-yil 2-yanvardagi “Vasiylik va homiylik to‘g‘risida”gi qonunlari, O‘zbekiston Respublikasi Prezidentining “Bola huquqlarini himoya qilish tizimini takomillashtirish bo‘yicha qo‘shimcha chora-tadbirlar to‘g‘risida” 2020-yil 29-maydagi PQ-4736-son, “2022 – 2026 yillarga mo‘ljallangan Yangi O‘zbekistonning Taraqqiyot strategiyasi to‘g‘risida” 2022-yil 28-yanvardagi PF–60-son, “Inson huquqlari bo‘yicha O‘zbekiston Respublikasining milliy strategiyasini tasdiqlash to‘g‘risida” 2020-yil 22-iyundagi PF–6012-son farmonlari, “Sun’iy intellekt texnologiyalarini jadal joriy etish uchun shart-sharoitlar yaratish chora-tadbirlari to‘g‘risida” 2021-yil 17-fevraldagi PQ–4996-son Qarori va mavzuga oid boshqa qonunchilik hujjatlarida belgilangan ustuvor vazifalarning amalga oshirilishida muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo‘nalishlariga bog‘liqligi. Mazkur dissertatsiya respublika fan va texnologiyalar rivojlanishining I. “Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy, ma’naviy-ma’rifiy rivojlantirishda innovatsion g‘oyalar tizimini shakllantirish va ularni amalga oshirish yo‘llari” ustuvor yo‘nalishiga muvofiq bajarilgan.

Muammoning o‘rganilganlik darajasi. Bola huquqlarining oilaviy-huquqiy kafolatlarining ayrim jihatlari ayrim milliy mualliflarning asarlarida yoritilgan. Xususan, F.M.Otaxo‘jayev, M.X.Samarxodjayeva, U.Sh.Shoraxmetova, Z.N.Esanova, Sh.R.Yuldasheva, I.B.Djurayeva, G.Inomjanova. R.Matkurbanov, N.Ashurova[3] va boshqa huquqshunos olimlarning asarlarida bolaning huquqlari masalalari u yoki bu darajada yoritilgan. Biroq olib borilgan ilmiy tadqiqot ishlarida bola huquqlarining oilaviy-huquqiy kafolatlari bilan bog‘liq muammolar alohida tadqiq etilmagani ko‘rinadi.

Xorijiy mamlakatlarda L.Trinder, Caplan B. Locke, Laura Stovel va Marta Valiñas, U.Kilkelly, C.Geuzaine, M.Debry, V.Liesens[4] va boshqalar tomonidan bola huquqlari va ularni amalga oshirish hamda himoya qilish masalalari tahlil qilingan.

MDH davlatlari olimlaridan: V.I.Abramov, Yu.F.Bespalov, T.V.Lobanova, N.A.Temnikova, L.V. Krasitskaya, V.P.Mironenko, M.V.Geller, V.D.Kravchuk, Ye.N.Dushkina, S.A.Sorokin[5] kabi olimlar tomonidan bola huquqlarining oilaviy-huquqiy masalalari yoritilgan.

[3] Ushbu olimlarning asarlari dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatidan keltirilgan
[4] Ushbu olimlarning asarlari dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatidan keltirilgan
[5] Ushbu olimlarning asarlari dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatidan keltirilgan

Garchi tadqiqot mavzusi doirasida muayyan ilmiy ishlanmalar mavjud bo‘lsa-da, bugungi kunda O‘zbekistonning rivojlanish sharoitida fuqarolik qonunchiligi, huquqni qo‘llash amaliyoti yuzasidan bola huquqlarining oilaviy-huquqiy kafolatlari masalalari ilmiy-nazariy va amaliy jihatdan alohida tadqiqot obyekti sifatida o‘rganilmagan.

Dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan bog‘liqligi. Dissertatsiya tadqiqoti Sudyalar oliy maktabining “Bolalar huquqlarining oilaviy-huquqiy kafolatlarni ustuvor yo‘nalishlarini ishlab chiqish” ilmiy-tadqiqot ishlari rejasiga muvofiq ustuvor yo‘nalishlar doirasida bajarilgan.

Tadqiqotning maqsadi bolalar huquqlarining oilaviy-huquqiy kafolatlarini takomillashtirishga oid taklif va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

bolalar huquqlariga nisbatan oila qonunchiligining umumiy tavsifini amalga oshirish;

oila huquqining subyekti sifatida bolalar huquqlarining asosiy kafolatlarini tahlil qilish;

bolalar huquqlariga oid oilaviy-huquqiy kafolatlariga oid qonunchilikning rivojlanish genezisini tadqiq qilish;

zamonaviy voqe’liklar negizida bolalar nasl-nasabi belgilashning huquqiy masalalarini yoritish

voyaga yetmagan bolalar shaxsiy nomulkiy huquqlarining kafolatlarini asoslash;

oilada bolalarning mulkiy huquqlari kafolatlarini amalga oshirish muammolari va ularning yechimlarini taklif qilish;

xorijiy mamlakatlar qonunchiligiga ko‘ra oilada bolalar huquqlarining kafolatlariga nisbatan yondashuvlarni tahlil qilish

oilada bolalar huquqlari kafolatlarini himoya qilishni tadqiq qilish;

oilaviy-huquqiy munosabatlarda bolalar huquqlari kafolatlariga oid qonunchilikni takomillashtirish istiqbollariga oid taklif va tavsiyalarni ishlab chiqishdan iborat.

Tadqiqotning obyekti bolalar huquqlarining oilaviy-huquqiy kafolatlariga oid fuqaroviy-huquqiy munosabatlar hisoblanadi.

Tadqiqotning predmeti bolalar huquqlarining oilaviy-huquqiy kafolatlariga qaratilgan normativ-huquqiy hujjatlar, huquqni qo‘llash amaliyoti, ayrim xorijiy mamlakatlar qonunchiligi, amaliyoti hamda yuridik fanda mavjud bo‘lgan konseptual yondashuvlar, ilmiy-nazariy qarashlar va huquqiy kategoriyalardan iboratdir.

Tadqiqotning usullari. Tadqiqot davomida tarixiy, taqqoslash-qiyoslash, analiz va sintez, induksiya va deduksiya, aniq sotsiologik, statistik ma’lumotlar tahlili kabi usullar qo‘llanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

FHDYO organi tomonidan otalikni belgilash rad etilganda, o‘z otaligini tan olgan shaxs ma’muriy sudga shikoyat berishi mumkinligi va bu esa o‘z navbatida

bolaning nasl-nasabini belgilash bo‘lgan huquqini himoya qilish mexanizmini kuchaytirishi asoslantirilgan;

farzandlikka oluvchilar bo‘la olmaydigan shaxslar jumlasiga oilaga va yoshlarga qarshi jinoyat sodir etganlar kirishi va bu o‘z navbatida bolalar tarbiyasini to‘g‘ri yo‘lga qo‘yishning muhim omili ekanligi asoslangan;

bola huquqlarini himoya qilishda aniq terminlarni ishlab chiqish va ularni to‘g‘ri talqin etish zaruratidan kelib chiqib “nogironligi bo‘lgan bolalar (bola); terminining ta’rifi ishlab chiqilib qonunchilik darajasida belgilanishi asoslantirilgan;

yordamga muhtoj bo‘lgan sobiq xotin (er) agar o‘rtadagi nogironligi bo‘lgan bolani 18 yoshgacha parvarishlashni amalga oshirgan bo‘lsa sud tartibida aliment talab qilish huquqiga ega ekanligi asoslangan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

bolaning oilaviy-huquqiy kafolatlari sifatida sud protsessida bolaning fikrini ifodalashni amalga oshirish mexanizmi sifatida muayyan soha mutaxassislari ishtirokida uning fikrini so‘rash zarurligi, bunday bolaning fikrini so‘rashda yosh senzini qayta ko‘rib chiqish zarurligi ilgari surilgan;

bolaning oilaviy munosabatlardagi ishtirokiga nisbatan belgilangan qoidalar, ota-onaning o‘z bolasiga nisbatan huquqlari va vakolatlarini suiiste’mol qilishi, ayniqsa qarindoshlar yoki tanishlarga vaqtincha qoldirib ketilgan bolaning huquqlarini himoya qilishda mahalla va vasiylik va homiylik organlarining vakolatlari doirasini kengaytirishga oid taklifi ishlab chiqilgan;

zamonaviy huquqiy voqe’liklar, xususan, surrogat onalik negizida bolaning nasl-nasabini belgilash, turli huquq tizimlarida farzandlikka olishning huquqiy jihatlarining ta’siri hamda milliy qonunchilikda farzandlikka olishni takomillashtirishga oid takliflari ilgari surilgan;

bolaning nikohda tug‘ilganligi yoki nikohda tug‘ilmaganligidan qat’iy nazar ularning tengligini belgilash fikri ilgari ilgari surilgan.

Tadqiqot natijalarining ishonchliligi. Tadqiqot natijalari xalqaro huquq va milliy qonunchilik normalari, rivojlangan davlatlar tajribasi, huquqni qo‘llash amaliyoti, o‘tkazilgan ijtimoiy so‘rovnomalar bo‘yicha statistik ma’lumotlarni umumlashtirib, olingan natijalar vakolatli davlat hokimiyati organlari tomonidan tasdiqlangan va amaliyotga joriy etilgan. Xulosa, taklif va tavsiyalar aprobatsiyadan o‘tkazilib, ularning natijalari yetakchi milliy va xorijiy nashrlarda e’lon qilingan.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy-nazariy xulosalar, taklif va tavsiyalardan kelgusi ilmiy faoliyatda, qonun ijodkorligida, huquqni qo‘llash amaliyotida, fuqarolik qonun hujjatlarining tegishli normalarini sharhlashda, milliy qonunchilikni takomillashtirish hamda fuqarolik huquqi, shartnoma huquqi fanlarini ilmiy-nazariy jihatdan boyitishga xizmat qiladi. Tadqiqot natijalaridan yangi ilmiy tadqiqotlar olib borishda foydalanish mumkin.

Tadqiqot natijalarining amaliy ahamiyati qonun ijodkorligi faoliyatida, xususan, normativ-huquqiy hujjatlar tayyorlash hamda ularga o‘zgartish va

qo‘shimchalar kiritish jarayonida, huquqni qo‘llash amaliyotini takomillashtirishda hamda oliy yuridik ta’lim muassasalarida xususiy huquq sohasidagi fanlarni o‘qitishda xizmat qiladi.

Tadqiqot natijalarining joriy qilinishi. Tadqiqot ishi bo‘yicha olingan ilmiy natijalaridan quyidagilarda foydalanilgan:

FHDYO organi otalikni belgilash rad etganda, o‘z otaligini tan olgan shaxs tomonidan ma’muriy sudga shikoyat berilishi mumkinligiga oid taklifdan O‘zbekiston Respublikasi Oliy sudi Plenumining 2023 yil 20 fevraldagi “O‘zbekiston Respublikasi Oliy sudi Plenumining fuqarolik ishlari bo‘yicha ayrim qarorlariga o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi 5-sonli qarori 2-bandi ikkinchi xatboshisini ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Oliy sudining 2023-yil 13-sentyabrdagi 11-14-23-sonli dalolatnomasi). Ushbu taklif otalikni belgilash tizimini aniqlashtirishga xizmat qilgan;

oilaga, yoshlarga va axloqqa qarshi jinoyatlarni sodir etgan shaxslar farzandlikka oluvchi bo‘lishlari mumkin emasligiga oid taklifdan O‘zbekiston Respublikasi Oliy sudi Plenumining 2023-yil 20-fevraldagi “O‘zbekiston Respublikasi Oliy sudi Plenumining fuqarolik ishlari bo‘yicha ayrim qarorlariga o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi 13-bandining ikkinchi xatboshisini ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Oliy sudining 2023-yil 13-sentyabrdagi 11-14-23-sonli dalolatnomasi). Mazkur taklif farzandlikka oluvchilar doirasini qat’iy belgilashga zamin yaratgan;

nogironligi bo‘lgan bolalar(bola) tushunchasiga oid taklifdan O‘zbekiston Respublikasining 2022-yil 17-maydagi “O‘zbekiston Respublikasida tibbiy-ijtimoiy xizmatlar tizimi takomillashtirilishi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartishlar kiritish to‘g‘risida”gi O‘RQ-770-son Qonunining 23-moddasini ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Senatining 2023-yil 19-sentyabrdagi 28-sonli dalolatnomasi). Ushbu taklif nogironligi bo‘lgan bolaning huquqiy maqomini aniqlashtirishga xizmat qilgan;

o‘rtadagi nogironligi bo‘lgan bolani u o‘n sakkiz yoshga to‘lguniga qadar parvarishlashni yoki bolalikdan I guruh nogironligi bo‘lgan o‘rtadagi bolani parvarishlashni amalga oshirgan er yoki xotin aliment olish huquqiga ega ekanligi haqidagi taklifdan O‘zbekiston Respublikasining 2022-yil 17-maydagi “O‘zbekiston Respublikasida tibbiy-ijtimoiy xizmatlar tizimi takomillashtirilishi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga o‘zgartishlar kiritish to‘g‘risida”gi O‘RQ-770-son Qonunining 17-moddasini ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Senatining 2023-yil 19-sentyabrdagi 28-sonli dalolatnomasi). Ushbu taklif nogironligi bo‘lgan bolani parvarishlayotgan er yoki xotinning aliment olish huquqini mustahkamlashga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 3 ta xalqaro va 3 ta respublika miqyosida o‘tkazilgan ilmiy-amaliy konferensiya hamda seminarlarda sinovdan o‘tgan.

Tadqiqot natijalarining e'lon qilinganligi. Dissertatsiya mavzusi bo'yicha jami 9 ta ilmiy ish, jumladan, 6 ta ilmiy maqola (2 tasi xorijiy nashrlarda) chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, uchta bob, xulosa, foydalanilgan adabiyotlar ro'yxatidan iborat. Dissertatsiyaning hajmi 188 betni tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning **kirish** qismida mavzuning dolzarbligi va zarurati asoslangan, tadqiqotning maqsadi, vazifalari, obyekt hamda predmeti tavsiflangan, O'zbekiston Respublikasi fan va texnologiyalar rivojlanishining ustuvor yo'nalishlariga mosligi ko'rsatilgan, ilmiy yangiligi va amaliy natijalari bayon qilingan, olingan natijalarning nazariy va amaliy ahamiyati ochib berilgan, ularning natijalarini amaliyotda joriy etilish holati, shuningdek nashr etilgan ishlar va dissertatsiya tuzilishi bo'yicha ma'lumotlar keltirilgan.

Dissertatsiyaning birinchi bobi **"Oila qonunchiligi bo'yicha bolalar huquqlari kafolatlari mohiyatining ilmiy-nazariy tahlili"** deb nomlangan bo'lib, unda bolalarning maqomi va ularning huquqlariga nisbatan oila qonunchiligining umumiy tavsifi, oila huquqining subyekti sifatida bolalar huquqlarining asosiy kafolatlari, bolalar huquqlariga oid oilaviy-huquqiy kafolatlariga oid qonunchilikning rivojlanish genezisi kabi masalalar yoritilgan.

"Inson huquqlari bola huquqlaridan boshlanadi" - bu falsafiy shior bo'lib, uning zamirida huquqiy demokratik davlat va undagi huquq ustuvorligini ta'minlovchi organlar o'z faoliyatini amalga oshiradi. Biroq, bolalar huquqlar, erkinliklar va qonuniy manfaatlardan tashqari, muayyan majburiyatlarga ham ega. Bolalarning huquqlari, erkinliklari va majburiyatlari muhimligini hisobga olgan holda, bolaning huquqiy holatini aniqlashga yondashuvlarni tahlil qilish va tizimlashtirish, shuningdek, bolaning huquqiy maqomi elementlarining mazmunini tahlil qilish va ochib berishni talab etiladi.

Dissertatsiyada bolalarning huquqiy maqomiga oid huquqshunos olimlar (N.M.Onishenko, O.F.Skakun, Z.V.Romovskaya)ning fikrlari tahlil qilinib, huquqiy maqom murakkab va ko'p o'lchovli kategoriya bo'lib, u izchillik, murakkablik, universallik bilan ajralib turadi va huquq subyektliligi, huquqlar, erkinliklar va majburiyatlar kabi elementlardan iborat ekanligi ta'kidlanadi. BMT Bosh Assambleyasining 1989-yil 20-noyabrdagi 44/25-sonli rezolyutsiyasi bilan qabul qilingan Bola huquqlari to'g'risidagi Konvensiya, "Bola huquqlarining kafolatlari to'g'risida"gi qonun normalari tadqiq qilish asnosida bola huquqiy maqomining o'ziga xos xususiyati sifatida uning dinamik tusi (shaxslar bolaning huquq va majburiyatlarini tug'ilishi bilan oladi va bunday shaxs voyaga yetganida bolalik to'xtaydi, lekin bolalik davrida huquq va majburiyatlar doirasi o'zgarib turadi) asoslantiraladi.

Bolaning huquqiy maqomini tavsiflovchi huquqlar doirasi va ularning mazmuni borasidagi olimlar (R.J.Matkurbanov, Yu.F.Bespalov, V.P.Mironenko, N.M.Kononchuk)ning fikrlari o'rganilib, bolaning oilaviy huquqlari - bu bola

tug‘ilishidan yoki qonun hujjatlarida belgilangan paytdan boshlab shaxs o‘n sakkiz yoshga to‘lgunga qadar tegishli bo‘lgan huquqlar bo‘lib, ular oilaviy tarbiya va shaxsiy rivojlanish imkoniyatlarini ta’minlashga qaratiladi, degan xulosaga kelinadi.

Xususiy-huquqiy munosabatlar doirasida shaxsning o‘z harakatlari bilan huquq va majburiyatlarga ega bo‘lish, ularni amalga oshirish, shuningdek shaxsiy javobgarlikni o‘z zimmasiga olish qobiliyati nafaqat ma’lum bir yoshga yetish bilan, balki uning sog‘lig‘i, mulkiy holati bilan ham bog‘liq. O‘zbekiston Respublikasi qonunchiligi bolalikni himoya qiladi, kelib chiqishidan, shuningdek, ular nikohda yoki undan tashqarida tug‘ilganligidan qat’i nazar bolalarning huquqlarida tengligini kafolatlaydi, bolagan nisbatan har qanday zo‘ravonlikni va uning ekspluatatsiya qilishni taqiqlaydi.

Dissertatsiyada qonunchilik qoidalarini ham, ilmiy tadqiqotlarni ham tizimli tahlil qilish asosida, FKda “bola” tushunchasi nafaqat oila qonunchiligiga xos bo‘lgan psixofiziologik (yosh) va ijtimoiy jihatlarning o‘ziga xos xususiyatlarini inobatga olgan holda belgilangan, balki jismoniy shaxsga tegishli bo‘lgan huquq va majburiyatlarning xususiyatlari ham hisobga olingan degan xulosaga kelinadi. Bola tashuvchisi bo‘lgan huquq va majburiyatlar doirasini, shuningdek, javobgarlik choralarini aniqlashga tabaqalashtirilgan yondashuv bola ishtirokchisi bo‘lgan fuqarolik huquqiy munosabatlarining o‘ziga xos turiga bog‘liq. Fuqarolik huquqida homila holidagi, ammo tug‘ilmagan bolaning huquq va manfaatlari himoya qilinadi, biroq tug‘ilishdan oldin qonun homila holidagi bolani subyekti sifatida tan olinmaydi. Amalga oshirilgan tahlillar asosida OKni “Bola” deb nomlanadigan 4^2-modda bilan to‘ldirish taklifi ishlab chiqiladi.

Dissertatsiyada “ota-onalar o‘zlariga yuklatilgan vazifalarni rad etishlari mumkinligi” masalasi e’tibor qaratilib, bolaning rad etilishi qonuniy bo‘lgan holatlarni qonunchilik darajasida aniq belgilash lozimligi ilmiy adabiyotlar va normativ-huquqiy hujjatlar tahlilidan kelib chiqib asoslantiriladi.

Bola huquqlarining rivojlanishi o‘zining tarixiy ildizlariga ega, chunki har bir jamiyat o‘zining rivojlanib borishi bilan bolalar huquqlarini himoya qilishga alohida e’tibor qaratgan. Sivilizatsiya rivojlanishi bilan sodir bo‘lgan ijtimoiy jarayonlar bolaning jamiyatdagi mavqeini o‘zgartirdi va ularga nisbatan davlat va jamiyatning munosabati ijobiy tomonga o‘zgarib borishini ta’minladi.

Dinining tarqalishi bolaning jamiyatdagi mavqeiga sezilarli ta’sir ko‘rsatdi. Bir tomondan, bu juda ijobiy edi, chunki din bolada ruhning borligini tan oldi. Bu bolaning jamiyatdagi mavqeini sezilarli darajada o‘zgartirdi. Ruhi bor jonzotni diniy me’yorlarga ko‘ra o‘ldirish taqiqlangan. Bolani o‘ldirish jinoyat deb hisoblangan, uning hayoti qonun bilan himoyalangan. Ammo dinning tarqalishi bilan birga nikohsiz tug‘ilgan bolalarning huquqiy maqomi yomonlashdi.

Tadqiqot ishida avestodagi bola huquqlariga oid qoidalar qoidalart va qarashlar tahlil qilinib, bolalarning huquq va manfaatlari avvalo, ularning ota-onalari, qarindoshlar hamda tegishli qabila tomonidan ta’minlanganligi bu esa bolalarning tarbiyasi va rivojlanishi uchun ijobiy ahamiyat kasb etishi tahlil qilinadi.

Islom huquqi bo‘yicha homila holatidagi bolaning huquqlari va bolaga nisbatan ota-onaning majburiyatlari masalalari dissertatsiyada tahlil qilingan. Ishda keltirilishcha, musulmonning farzandi tug‘ilganidan musulmon bo‘ladi va shu dinda tarbiyalanish huquqiga ega. Bundan tashqari, yangi tug‘ilgan musulmon yaxshi ism olish huquqiga ega, xususan, musulmoncha ism. Chaqaloq tug‘ilgandan ko‘p o‘tmay, ota-onalardan biri bolaning qulog‘iga ibodat so‘zlarini pichirlashi kerak. Tug‘ilgandan keyingi yettinchi kuni qo‘y yoki echki qurbon qilinishi kerak, uning go‘shti qarindoshlar va kambag‘allarga bo‘linishi kerak. Emizish – bu yangi tug‘ilgan chaqaloqning yana bir huquqi, bu chaqaloqning hayoti va sog‘lig‘ini himoya qilish uchun zarur shartdir, shuningdek, ozuqa moddalari bilan birga uni infeksiyadan himoya qiladi. Bu borada Qur’oni karimda shunday oyatlar keltiriladi: “Onalar bolalarini to‘liq ikki yil emizadilar. (Bu hukm) emizishni benuqson qilmoqchi bo‘lgan kishilar uchundir. Ularni (ya’ni onalarni) yaxshilik bilan yedirib-kiydirish otaning zimmasidadir”.

Islom bolaning asosiy manfaatlarini himoya qiladi, oilani unga sevgi, e’tibor va xavfsizlikni ta’minlaydigan tabiiy muhit sifatida himoya qiladi. Ota-onalarga bolaning jismoniy va axloqiy ehtiyojlarini e’tiborsiz qoldirishga ruxsat berilmaydi. Ikkala ota-ona ham bolaning eng yaxshi tarbiyasi uchun javobgardir, u uchun yaxshi xulq-atvor namunasi hisoblanadi. Bolalar ota-onalari tomonidan teng munosabatda bo‘lish huquqiga ega. Rashkdan qochish uchun bitta bola ota-onadan opa-singillari va akalaridan ko‘ra ko‘proq afzallik va e’tibor olmasligi kerak, chunki Payg‘ambar sollallohu alayhi vasallamning quyidagi so‘zlariga amal qilish lozim: “Allohdan qo‘rqinglar va bolalaringizni tenglik va adolatli tarbiya qilingizlar”.

Dissertatsiyada Birlashgan Millatlar Tashkilotining Bosh Assambleyasi tomonidan 1989-yil noyabrda imzolangan, 1990-yilda kuchga kirgan va dunyoning aksariyat davlatlari tomonidan ratifikatsiya qilingan hujjat - bola huquqlari to‘g‘risidagi Konvensiya va O‘zbekiston Respublikasining “Bola huquqlarining kafolatlari to‘g‘risida”gi qonuni normalari tahili qilinadi.

“Oila huquqining turli institutlarida bolalar huquqlari kafolatlarining ifodalanishi muammolari” – deb nomlangan dissertatsiyaning ikkinchi bobida zamonaviy voqe’liklar negizida bolalar nasl-nasabi belgilashning huquqiy masalalari, voyaga yetmagan bolalar shaxsiy nomulkiy huquqlarining kafolatlari, oilada bolalarning mulkiy huquqlari kafolatlarini amalga oshirish kabi masalalar tadqiq qilingan.

Har bir bolaning mavjudligi fakti rasman tan olinishi kerak. Ismga va fuqarolikkka bo‘lgan huquqning amalga oshirilishi bolaga o‘z huquqlaridan foydalanish imkoniyatini beradi. Bolaning tug‘ilishi ro‘yxatga olinganidan keyin davlat bolaning mavjudligini rasman tan oladi, bundan tashqari, ro‘yxatga olish asosida bolaning kelib chiqishi, ya’ni nasl-nasabi va ota-onasi (onasi va otasi) bilan qarindoshligi o‘rnatiladi.

Dissertatsiyada bolaga nisbatan otalikni belgilashga oid xorijiy mamlakatlar (Germaniya, Buyukbritaniya, AQSH, Niderlandiya, Indoneziya, Hindiston, Tunis, Eron, Livan, Falastin) qonunchiligi tahlil qilinib, bola huquqlari qonunchilik

darajasida davlat tomonidan kafolatlanligini ta’kidlanadi. Shuningdek, ishda bolaning nasl-nasabini belgilashda “surrogat onalik”ning huquqiy maqomini belgilashga oid Ukraina qonunchiligi o‘rganilib, farzandli bo‘lish borasida qonuniy nikohdagi er-xotinning yordamchi reproduktiv vositalaridan foydalanishi hamda bu masalada boshqa ayol bilan shartnomaviy munosabatlarga kirishishi o‘zaro rozilik bilan amalga oshirilishidan kelib chiqib, bolaning ota-onasi yordamchi reproduktiv texnologiyalardan foydalanishga rozilik bildirgan er-xotin bo‘lishini ko‘rsatishi, bunda surrogat onaning roziligi taraflar o‘rtasida tuzilgan surrogat onalik shartnomasida belgilanishi asoslantirildi.

Tadqiqotda bolaning shaxsiy nomulkiy huquqlari kafolatlari borasida huquqshunos olimlar (H.Rahmonqulov, I.I.Nasriyev, I.B.Yakubova)ning fikrlari tahlil qilinib, bolaning quyidagi shaxsiy nomulkiy huquqlari tadqiq qilingan: bolaning oilada yashash va tarbiyalanish huquqi; bolaning ota-onasi va boshqa qarindoshlari bilan ko‘rishish huquqi; bolaning himoyaga bo‘lgan huquqi; bolaning o‘z fikrini ifoda etish huquqi; bolaning ism, ota ismi va familiya olish huquqi; bolaning ismi va familiyasini o‘zgartirish huquqi.

Muallifning fikricha, jismoniy shaxsning “yashash huquqi” konstitutsiyaviy normalarda belgilangan bo‘lib, ushbu huquq egasi bo‘lgan fuqaroning mazkur huquq (yashash huquqi)ni realizatsiya qilish chegaralari, shartlari va asoslari fuqarolik qonunchiligida ifodalanishi o‘rinlidir. Bunda jismoniy shaxsning “yashashga bo‘lgan huquqi” haqidagi qoidalar FKda o‘z ifodasini topishi lozim.

Voyaga yetmagan bolalarning oilada yashash va tarbiyalanish huquqiga oid bir qator mualliflar (Yu.F.Bespalov, S.V.Bukshina, M.V.Geller)ning fikrlari o‘rganilib, bolaning oilada yashash va tarbiyalanish huquqi bevosita bolaning o‘z ota-onasi bilan birga yashash, ota-onasining qaramog‘i va g‘amxo‘rligida tarbiyalanish vakolatini anglatishi keltiriladi. Bolalarning huquqlarini himoya qilish muayyan vositalar va huquqiy mexanizmlarga asoslanadi. Bunda ota-onalar, ularning o‘rnini bosuvchi qonuniy vakillar hamda vakolatli davlat organlari va ularning mansabdor shaxslari tomonidan bola huquqlari buzilganda zudlik bilan tegishli choralar ko‘rilishi, qonunchilikda belgilangan tartibda bola huquqlarini himoya qilishning yuridik va amaliy usullari qo‘llanilishi lozim bo‘ladi.

Bolaga ism tanlash yoki uning familiyasini aniqlashdagi kelishmovchiliklarni vasiylik va homiylik organi emas, balki sud qarori bilan hal etilishi maqsadga muvofiqdir. Shu munosabat bilan OKning 69-moddasi uchinchi qismida nizo sud tomonidan hal etilishi haqidagi qoidani kiritish lozim. Tadqiqot ishida amalga oshirilgan tahlillardan kelib chiqib, quyidagilar bolaga ism sifatida ishlatilmasligini taklif qilingan: 1) raqamli belgilar; 2) formulalar, kimyoviy, fizik, matematik belgilar; 3) qisqartmalar; 4) axloqsiz so‘zlar, haqoratli so‘zlar va iboralar (masalan, ahmoq, galvars va boshqalar.); 5) sifatlar (masalan, chiroyli, dahshatli va hokazo.), fe’llar; 6) jug‘rofiy nomlar; 7) hayvonlar, o‘simliklar, zamburug‘lar va viruslarning nomlari (asosiy qirolliklarning ilmiy tasnifiga ko‘ra); 8) unvonlar, martabalar, darajalar; 9) yuqoridagi elementlarning kombinatsiyasi.

Voyaga yetmagan bolalar ham muayyan mulkiy huquqlarga ega bo‘ladilar. Oilada voyaga yetmagan bolalarning mol-mulki ota-onalarning mol-mulkidan

alohida hisoblanadi hamda ota-onalar o‘z bolalarning mol-mulki mulkdori sanalamaydilar. Shunday bo‘lsada ota-onalar bolalarning qonuniy vakili sifatida ushbu mol-mulkka nisbatan mulkdor vakolatini amalga oshiradilar. Biroq bunda qonunchilik bolalarning mol-mulkini tasarruf etish ularning huquq va manfaatlariga zid ravishda amalga oshirilmasligi talabini nazarda tutadi.

Dissertatsiyada OKning 13-bobi voyaga yetmaganlarning oilaga mansubligi va oilaviy huquqiy munosabatlardan kelib chiqadigan quyidagi huquqlari tahlil qilinadi: 1) ta’minoit uchun; 2) daromad va meros uchun; 3) ota-onalar mol-mulki uchun (ular bilan birga yashayotgan bo‘lsa); 4) uning mol-mulkini tasarruf etishda qonunga rioya etilishini talab qilish.

Uy-joy sohasida bola huquqlari eng kam himoyalangan. Agar nikoh tugatilganidan keyin bola ota-onasi bilan boshqa uyda yashasa, bola ota-onalardan biriga tegishli yashash maydonidan foydalanish huquqini saqlab qolishi kafolatlanmaydi.

Muallifning fikricha, voyaga yetmaganning fuqarolik-huquqiy munosabatlar ishtirokchisi sifatidagi irodasini uning huquq subyektliligining o‘ziga xos xususiyatlari sababli hisobga olish mumkin emas. Faqat qonuniy vakil tomonidan tuzilgan tasarruf etuvchi bitimning voyaga yetmagan mulkdorning mulkiy manfaatlariga muvofiqligi mol-mulkni uning qonuniy vakilidan haq evaziga insofli sotib olgan taqdirda, bunday mulkdorning mulkidan mulkni tasarruf etish uchun asoslarni baholash mezoni bo‘lishi kerak.

Dissertatsiyaning uchinchi bobi **“Oilada bolalar huquqlariga oid xorijiy mamlakatlar tajribasi va bolalar huquqlarining kafolatlariga oid qonunchilikni takomillashtirish”**ga bag‘ishlangan bo‘lib, unda xorijiy mamlakatlar qonunchiligiga ko‘ra oilada bolalar huquqlarining kafolatlariga nisbatan yondashuvlar tahlili, oilada bolalar huquqlari kafolatlarini himoya qilish muammolari, oilaviy-huquqiy munosabatlarda bolalar huquqlari kafolatlariga oid qonunchilikni takomillashtirish istiqbollari kabi masalalar tahlil qilingan.

Bolalarni himoya qilish sohasidagi davlat siyosatining asosiy tarkibiy qismlaridan biri qonunchilik bazasini takomillashtirish, xususan, xalqaro huquq normalarini hayotga tatbiq etishdan iborat. Bu boradagi ishlar samarasi sifatida bugungi kunda O‘zbekiston bola huquqlarini ta’minlash sohasida qator xalqaro hujjatlarga a’zo bo‘ldi. Bolalar huquqlarini himoya qilish sohasidagi huquqiy me’yorlarni belgilovchi asosiy hujjat bo‘lgan BMTning Bola huquqlari to‘g‘risidagi konvensiyasi O‘zbekiston tomonidan 1992-yil 9-dekabrda ratifikatsiya qilingan. Bugungi kunda bolalar huquqlariga oid “Bolalarni boshqa mamlakatlarga o‘g‘irlab olib ketishning fuqarolik jihatlari to‘g‘risida”gi konvensiya (1980-yil); Bolalar huquqlarini amalga oshirish to‘g‘risidagi Yevropa konvensiyasi (1996-yil); Ota-onalarning javobgarligi va bolalarni himoya qilish choralari bo‘yicha yurisdiksiya, qo‘llaniladigan huquq, tan olish, ijro etish va hamkorlik to‘g‘risidagi konvensiya (1996-yil); Bolalar bilan muloqot qilish to‘g‘risidagi konvensiya (2003-yil); Chet elda aliment undirish to‘g‘risidagi konvensiya (1956-yil) va Ta’minot bo‘yicha majburiyatlar to‘g‘risidagi qarorlarni tan olish va ijro etish to‘g‘risidagi konvensiyalar (1973-yil) mavjud. Shuningdek,

bolalar huquqlari sohasida Bolalarga nisbatan vasiylik sohasidagi qarorlarni tan olish va ijro qilish va bolalarga nisbatan vasiylikni tiklash to‘g‘risidagi Yevropa konvensiyasi (1980-yil), Nikohdan tashqari tug‘ilgan bolalarning huquqiy maqomi to‘g‘risidagi Yevropa konvensiyasi (1975-yil): Yevropa Kengashining Bolalarni jinsiy ekspluatatsiya va jinsiy zo‘ravonlikdan himoya qilish to‘g‘risidagi konvensiyasi (2007-yil), Farzandlikka olish to‘g‘risidagi Yevropa konvensiyasi (qayta ko‘rib chiqilgan, 2008-yil) va Bolalarni himoya qilish va davlatlararo farzandlikka olish bo‘yicha hamkorlik to‘g‘risidagi konvensiyalar (1993-yil) ham amal qiladi.

Dissertatsiyada bir qator xorijiy mamlakatlarning (AQSH, Germaniya, Avstriya, Bolgariya, Vengriya, Kuba) bola huquqlarining kafolatlariga oid qonunchiligi tahlil qilinib, bola huquqlari inson huquqlarining bir qismi sifatida alohida kafolatlanishi lozimligi keltiriladi.

Oila huquqlarini himoya qilishning sud va suddan tashqari shakllarining mavjudligi va takomillashtirilishi zamonaviy huquqiy davlatning asosiy xususiyatlaridan biridir. Huquqni himoya qilish shaklini tanlash sudlar, ma’muriy organlar faoliyati va ularning qarorlaridan xabardor bo‘lish bilan belgilanadi.

Ishda ko‘plab huquqshunos olimlar (V.D.Kravchuk, Ye.N.Dushkina, Yu.F.Bespalov, A.M.Nechayeva, S.A.Sorokin)ning bolaning himoyaga bo‘lgan huquqiga oid fikrlarini tahlil qilib, bola huquqlarini himoya qilishda sudga murojaat qilishni takomillashtirishga oid fikrlar ilgari surilgan.

Oila qonunchiligini tahlil qilish shuni ko‘rsatadiki, u bolalarning huquq va manfaatlarini to‘liq himoya qilmaydi. Bolalar jamiyatining eng zaif qismi bo‘lgan va shunday bo‘lib qolmoqda. Bolalar huquqlarini himoya qilish nomuvofiq ravishda amalga oshiriladi va qonunchilikda bo‘shliqlar mavjud. Shunday qilib, bolalarni himoya qilish milliy huquqiy tartibga solishda ularning oila va jamiyatga qaram bo‘lgan va fuqarolarning o‘ta zaif toifasiga mansubligidan kelib chiqqan holda alohida ahamiyatga ega bo‘lishi kerak.

Dissertatsiyada “Bola huquqlarilarni kafolatlari to‘g‘risida”gi Qonunining 7-moddasida bolalarning qonun oldida teng huquqligiga oid qoidani kiritish zarurati asoslantirilgan. Shuningdek, “bolalar ularning ota-onalari bir-biri bilan nikohda bo‘lganligi yoki bo‘lmaganligidan qat’iy nazar ota-onalariga nisbatan teng huquq va majburiyatlarga ega”ligiga oid qoidalar OKning 65^1- modda sifatida o‘z ifodasini topishi lozimligi ishda keltirilgan. Bundan tashqari, OKni “Bolalarning ota-onalariga nisbatan huquq va majburiyatlari” nomli 65^2-modda bilan to‘ldirish taklif qilingan.

OKda oila huquqlarini himoya qilish usullari borasida aniq qoidalar va normalar nazarda tutilmagan. Mazkur bo‘shliqni to‘ldirish maqsadida OKning 11-moddasini yangi tahrirda belgilash zarurligi ishda asoslantirilgan. Shuningdek dissertatsiyada OKning 65, 80, 153-moddalariga qo‘shimcha va o‘zgartish kiritish hamda “Oilaviy munosabatlarni tartibga solishning umumiy tamoyillari” nomli 5^1-modda bilan to‘ldirish takliflari ilgari surilgan.

XULOSA

Bola huquqlarining oilaviy-huquqiy kafolatlarini takomillashtirish mavzusidagi tadqiqot ishi natijasida quyidagi ilmiy-nazariy hamda amaliy taklif va xulosalar ishlab chiqildi:

I. Ilmiy-nazariy taklif va xulosalar:

1. Bola huquqlarining huquqlarining kafolatlari “bolalar farovonligi prinsipi”, “ikkala ota-ona bilan muloqot qilish huquqi” “bolaning eng yaxshi manfaatdorligi prinsipi, “zo‘ravonlik va suiiste’molikdan himoya qilinish”, ota-onalarning tengligi”, “bolaning fikrini inobatga olish”, “ota-onalik majburiyatlarining taqsimlanishi” kabi prinsiplar va qoidalar orqali ta’minlanishi asoslantirildi;

2. Bolalarning nasl-nasabini belgilash oila qonunchiligidagi muhim vazifa bo‘lib, ota-onalarning huquq va majburiyatlarini belgilashda, shuningdek, bolaning manfaatlarini ta’minlashda muhim ahamiyatga egaligi va bu genetik yondashuv, yuridik yondashuv, ijtimoiy-psixologik yondashuv, ko‘p o‘lchovli yondashuvdan kelib chiqishi asoslangan.

3. Bola huquqlarining kafolatlarini belgilashda ularning otasi yoki onasi, shuningdek qarindoshlari bilan ko‘rishib turishini ta’minlashning huquqiy asoslarini kuchaytirish zarurligi asoslantirilgan. Bunda muloqotni kengaytirish, ya’ni agar ota-ona yoki boshqa qarindoshlar bola bilan ko‘rishish va muloqot qilishni davom ettirishda qiyinchilikka duch kelsa, aloqa vaqtini uzaytirish yoki telefon qo‘ng‘iroqlari, vedio qo‘ng‘iroqlar yoki xatlar kabi qo‘shimcha kontaktlarni kiritish maqsadga muvofiq ekanligi asoslangan.

4. Bolaning himoyaga bo‘lgan huquqini amalga oshirish va ta’minlashda himoya tizimining integratsiyalashuvi, erta ogohlantirish va ta’sir ko‘rsatish, bolada ishda ishtirok etishi va uni tinglanishi, tarmoqlararo yondashuv va hamkorlik, tabaqalashtirilgan yondashuv kabi tamoyillarni qo‘llash zarurligi asoslantirildi;

5. So‘nggi yillarda bolaning huquqiy maqomiga, xususan, uning huquqlariga qonunchilik darajasida katta e’tibor qaratilmoqda. Bu milliy qonunchilikda bir qator xalqaro huquqiy hujjatlarning amalga oshirilishi bilan tasdiqlanishi mumkin. Xalqaro huquqiy hujjatlar darajasida konvensiyaga a’zo davlatlarning majburiyatlarini yuklash orqali bola huquqlarini yuqori darajada sifatli muhofaza qilish va himoya qilish ta’minlanadi. Fikrimizcha, bolaning oilasi va huquqiy holatini o‘rganmasdan, umuman shaxsning huquqiy holatini o‘rganish mumkin emas, chunki inson boladan, bola esa oiladan boshlanadi.

6. Amaldagi milliy qonunchilik otalikni belgilashning yuridik yondashuvidan kelib chiqadiki, bu holat bolaning haqiqiy biologik otasini aniqlashga to‘sqinlik qilishi mumkin. Bu esa milliy qonunchilikda otalikni belgilashga nisbatan nizoli vaziyatdan genetik yondashuvni tanlash zaruratini ko‘rsatadi. Chunki, otalikda belgilashdagi birlamchi omil genetik yondashuv bo‘lishi lozim. Bu o‘z navbatida haqiqatni aniqlashga ham yordam beradi. Bunda bolaning ota-onasi o‘zaro nikohda ekanligi yoki nikohdan emasligi ahamiyat kasb etmaydi. Zero, bugungi fan va texnikaning rivojlanishi, haqiqatni aniqlashda

qo‘llanilayotgan turli ilmiy ekspertizalar, xususan DNK ekspertizasi otalikni belgilashda turli ijtimoiy omillar, sabablar va dalillarni yo‘qqa chiqardi, ko‘p hollarda esa ijtimoiy omillarning noto‘g‘ri bo‘lishi mumkinligini ko‘rsatdi. DNK ekspertizaning aniqlik darajasi o‘ta yuqori ekanligidan kelib chiqiladigan bo‘lsa otalikni belgilash bilan bog‘liq ishlarni ko‘rishda uni qo‘llash har tomonlama qulay va sudda nizo keyingi tortishuvlarsiz hamda turli instansiyalarsiz hal qilishga imkon beradi. Shu sababli qonunchilik otalikni belgilashning genetik yondashuvni tanlashi maqsadga muvofiqdir.

7. FKning normalariga muvofiq, shaxs voyaga yetgunga qadar oilaviy-huquqiy munosabatlarning ishtirokchisi sifatida bolaning huquqiy maqomiga ega hisoblanadi. Shu bilan birga, Kodeks bolalarning yoshini farqlashni belgilaydi: o‘n to‘rt yoshga to‘lgunga qadar kichik yoshdagi bola; o‘n to‘rt yoshdan o‘n sakkiz yoshgacha bo‘lganlar esa voyaga yetmagan bola hisoblanadi. Fikrimizcha, bunday ta’rif oila huquqida to‘g‘ridan to‘g‘ri qo‘llanilishi turli istisnolarni yuzaga keltiradi, chunki bunda bolaning asosiy xususiyati sifatida uning ma’lum bir yoshga yetishi belgilanadi, zero fuqarolik huquqiy munosabatlarda yosh mezoni o‘z-o‘zidan yetarli emas, shaxsning o‘z harakatlarining ahamiyati tushunish va ularni boshqarish hal qiluvchi ahamiyatga ega hisoblanadi.

8. Qonunchilik qoidalarini ham, ilmiy tadqiqotlarni ham tizimli tahlil qilish asosida, FKda “bola” tushunchasi nafaqat oila qonunchiligiga xos bo‘lgan psixofiziologik (yosh) va ijtimoiy jihatlarning o‘ziga xos xususiyatlarini inobatga olgan holda belgilangan, balki jismoniy shaxsga tegishli bo‘lgan huquq va majburiyatlarning xususiyatlari ham hisobga olingan degan xulosaga kelish mumkin. Bola tashuvchisi bo‘lgan huquq va majburiyatlar doirasini, shuningdek, javobgarlik choralarini aniqlashga tabaqalashtirilgan yondashuv bola ishtirokchisi bo‘lgan fuqarolik huquqiy munosabatlarining o‘ziga xos turiga bog‘liq. Fuqarolik huquqida homila holidagi, ammo tug‘ilmagan bolaning huquq va manfaatlari himoya qilinadi, biroq tug‘ilishdan oldin qonun homila holidagi bolani subyekti sifatida tan olinmaydi.

9. Farzandli bo‘lish borasida qonuniy nikohdagi er-xotinning yordamchi reproduktiv vositalaridan foydalanishi hamda bu masalada boshqa ayol bilan shartnomaviy munosabatlarga kirishishi o‘zaro rozilik bilan amalga oshirilishidan kelib chiqib, bolaning ota-onasi yordamchi reproduktiv texnologiyalardan foydalanishga rozilik bildirgan er-xotin bo‘lishini ko‘rsatadi. Bunda surrogat onaning roziligi taraflar o‘rtasida tuzilgan surrogat onalik shartnomasida belgilanadi.

10. Fuqarolik qonunchiligidan jismoniy shaxsning yashashga bo‘lgan huquqi, ya’ni o‘z hayotini davom ettirish yoki tugatishga ta’sir qilishi mumkin bo‘lgan qanday vakolatlarga, huquqlarga ham imkoniyatlarga egaligini belgilash o‘rinli va asosli yondashuvdir. Chunki, jismoniy shaxsning “yashash huquqi” konstitutsiyaviy normalarda belgilangan bo‘lib, ushbu huquq egasi bo‘lgan fuqaroning mazku huquq (yashash huquqi)ni realizatsiya qilish chegaralari, shartlari va asoslari fuqarolik qonunchiligida ifodalanishi o‘rinlidir. Bizningcha

jismoniy shaxsning “yashashga bo‘lgan huquqi” haqidagi qoidalar FKda o‘z ifodasini topishi lozim.

11. Bolaga ism tanlash bo‘yicha ota-ona o‘rtasida kelishmovchiliklar yuzaga kelganda nizo vasiylik va homiylik organi tomonidan emas, balki sud tartibida hal etilishi lozimligi, bolaning ota-onasi noma’lum bo‘lganda unga ism tanlash huquqi tegishli vakolatli organlari tomonidan amalga oshirilishi zarurligi asoslantirilgan.

12. Ota-onalarning ism tanlashda imkoniyatlarini oqilona chegaralar doirasida cheklash zarur deb hisoblashadi. Chunki qonunchilikdagi bu o‘zgarishlar ota-onalarning o‘z farzandiga ism tanlash huquqini amalga oshirishga to‘sqinlik qilishga emas, balki bola huquqlarini himoya qilishga qaratilgan. Bu holda asosiy muammo-bu nom tanlashda taqiqlar aniqlanadigan mezonlarni ishlab chiqish. Yuqoridagi fikrlarni tahlil qilib, quyidagilar ism sifatida ishlatilmasligini taklif qilishi mumkin: 1) raqamli belgilar; 2) formulalar, kimyoviy, fizik, matematik belgilar; 3) qisqartmalar; 4) axloqsiz so‘zlar, haqoratli so‘zlar va iboralar (masalan, ahmoq, galvars va boshqalar.); 5) sifatlar (masalan, chiroyli, dahshatli va hokazo.), fe’llar; 6) jug‘rofiy nomlar; 7) hayvonlar, o‘simliklar, zamburug‘lar va viruslarning nomlari (asosiy qirolliklarning ilmiy tasnifiga ko‘ra); 8) unvonlar, martabalar, darajalar; 9) yuqoridagi elementlarning kombinatsiyasi.

13. Oila huquqida bola huquqlarini himoya qilishning ota-ona huquqlaridan mahrum qilish, ota-ona huquqlarini cheklash, ota-ona huquqlarini tiklash va cheklovlarni bekor qilish, farzandlikka olish va boshqa ko‘plab usullari qo‘llaniladi, ammo ularning fuqarolik huquqi bilan o‘xshashliklari yo‘q, deb aytish, bizning fikrimizcha o‘rinli emas. FKning 11-moddasi bilan taqqoslash orqali OKda oilaviy huquqlarni himoya qilish usullari ro‘yxati yo‘qligi, ularning maxsus va alohida tabiatidan ko‘ra huquqiy tartibga solishning kamchiliklarini ko‘rsatadi. OKning 11-moddasi birinchi qismiga binoan oilaviy huquqlarni himoya qilish sud tomonidan fuqarolik protsessual qoidalariga muvofiq amalga oshirilganligi sababli, ushbu huquqlarni himoya qilish usullari FKning 11-moddasida ko‘rsatilgan fuqarolik-huquqiy himoya usullaridan kelib chiqadi. Garchi, birinchi navbatda, bolaning shaxsiy nomulkiy huquqlarini himoya qilishni hisobga olsak, biz FKning 11-moddasida belgilangan barcha himoya usullaridan foydalanish mumkin emas deb hisoblaymiz.

14. Voyaga yetmaganlarning manfaatlariga daxldor bo‘lgan oilaviy nizolarni sud muhokamasiga kelsak, bu xususiyatlar, masalan, sudda nikoh bekor qilinganda, sud o‘z tashabbusi bilan voyaga yetmagan bolalar ajralishdan keyin ota-onasining qaysi biri bilan yashashini, shuningdek agar er-xotin aliment masalalari hal qilish bo‘yicha sudga kelishuv taqdim qilmasalar yoki bunday kelishuv bolalar manfaatlarini buzgan bo‘lsa bolaga to‘lanishi lozim bo‘lgan to‘lov miqdorini belgilashi lozim. Shunday qilib, da’volarni birlashtirish tashabbuskori bo‘lib, garchi protsessual qonunchilikning umumiy qoidalariga ko‘ra, da’volarni birlashtirish tashabbusi faqat da’vogarga tegishli bo‘lsada protsess tomoni emas, balki sud hisoblanadi. Bundan tashqari, fuqarolik protsessual qonunchiligi sudga tomonlar taqdim qilinmagan talablarni ko‘rib chiqish vakolatini bermaydi, OKning 44-moddasi esa, aksincha, sudga tegishli vazifalarini yuklaydi.

15. Oila qonunchiligida bolalar huquqlari kafolatlarini takomillashtirishga qaratilgan quyidagi konsepsiyalar asoslantirildi:

1) Bolaning ishtirok etish huquqlarini kengaytirish: ushbu konsepsiya bolalarning huquqlari va manfaatlariga oid jarayonlarda faol ishtirok etish muhimligini ta'kidlaydi. U bolaning o‘z fikrini bildirish va unga ta'sir qiladigan barcha qarorlarda eshitish imkoniyatiga ega bo‘lishini ta'minlashga intiladi.

2) Bolalarga do‘stona munosabatda bo‘lish: ushbu konsepsiya bolalarning rivojlanish xususiyatlari va ehtiyojlarini hisobga olgan holda bolalarga do‘stona yustitsiya va oila qonunchiligini yaratishni o‘z ichiga oladi. Bu aniq va tushunarli tildan foydalanishni, ma'lumot va maslahatlarning mavjudligini ta'minlashni, shuningdek, bolalar va ularning oilalarini resurslar va qo‘llab-quvvatlashni o‘z ichiga oladi.

3) Bolalarning huquqlarini himoya qilishga nisbatan kompleks yondashuv: ushbu konsepsiya bolalar huquqlarini himoya qilishni ta'minlash uchun turli muassasalar va mutaxassislar birgalikda ishlaydigan tizimni yaratishni nazarda tutadi. Bu oilaviy muhitda bolalarni har tomonlama qo‘llab-quvvatlash va himoya qilishni ta'minlash uchun oilaviy adolat, ijtimoiy xizmatlar, sog‘liqni saqlash, ta'lim va boshqa sohalar o‘rtasidagi hamkorlikni o‘z ichiga oladi.

4) Oiladagi zo‘ravonlikdan bolalarning huquqlarini himoya qilish: ushbu konsepsiya bolalarni oilaviy zo‘ravonlikdan himoya qilish va bunday holatlarning oldini olishga alohida e'tibor beradi. Bu oiladagi zo‘ravonlikni aniqlash, oldini olish va ularga javob berishga, shuningdek, bunday zo‘ravonlikdan aziyat chekkan bolalarning xavfsizligi va qo‘llab-quvvatlanishini ta'minlashga qaratilgan mexanizmlar va siyosatni ishlab chiqishni nazarda tutadi.

5) Xalqaro hamkorlik va standartlar: ushbu konsepsiya turli mamlakatlar o‘rtasidagi hamkorlikni va oila qonunchiligida bola huquqlari kafolatlarini takomillashtirish bo‘yicha xalqaro standartlar va ko‘rsatmalardan foydalanishni nazarda tutadi.

II. Tadqiqot natijalari bo‘yicha qonunchilik normalarini takomillashtirishga qaratilgan quyidagi taklif va xulosalar ishlab chiqildi:

1. O‘zbekiston Respublikasi Konstitutsiyasining 65-moddani quyidagi qoidalar bilan to‘ldirish maqsadga muvofiqdir:

Bolalar kelib chiqishi, nikohda yoki nikohsiz tug‘ilganligidan qat'iy nazar o‘z huquqlarida tengdirlar. Bolaga nisbatan har qanday turdagi zo‘ravonlik va uning ekspluatatsiya qilinishi qonun bilan ta'qib etiladi.

2. OKni "Bola" deb nomlanadigan 4^2-modda bilan to‘ldirish va uni quyidagi tahrirda belgilash maqsadga muvofiqdir:

"Bola huquqiy maqomiga shaxs voyaga yetguniga qadar ega bo‘ladi.

O‘n to‘rt yoshgacha bo‘lganlar kichik yoshdagi bolalar hisoblanadi. O‘n to‘rt yoshdan o‘n sakkiz yoshgacha bo‘lganlar voyaga yetmaganlar hisoblanadi".

3. OKning "Oilaviy munosabatlarni tartibga solishning umumiy tamoyillari" nomli 5^1- modda bilan to‘ldirish va uni quyidagi tahrirda ifodalash taklif etiladi:

"5^1- modda. Oilaviy munosabatlarni tartibga solishning umumiy tamoyillari

Oilaviy munosabatlar ushbu Kodeks va boshqa normativ-huquqiy hujjatlar bilan tartibga solinadi.

Oilaviy munosabatlar ularning ishtirokchilari o‘rtasidagi kelishuv (shartnoma) asosida hal qilinishi mumkin.

Oilaviy munosabatlar faqat ularning ishtirokchilari manfaatlari va jamiyat manfaatlari nuqtayi nazaridan ruxsat etilgan va mumkin bo‘lgan darajada tartibga solinadi.

Oilaviy munosabatlarni tartibga solish ularning ishtirokchilarining shaxsiy hayot siri, shaxsiy erkinlik huquqi va oilaviy hayotga o‘zboshimchalik bilan aralashishga yo‘l qo‘yilmasligini hisobga olgan holda amalga oshiriladi.

Oilaviy munosabatlar ishtirokchisi irqi, terisining rangi, jinsi, siyosiy, diniy va boshqa e’tiqodlari, etnik va ijtimoiy kelib chiqishi, moddiy holati, yashash joyi, tili va boshqa xususiyatlariga qarab imtiyoz yoki cheklovlarga ega bo‘lishi mumkin emas.

Erkak va ayol oilaviy munosabatlar, nikoh va oilada teng huquq va majburiyatlarga ega.

Bolaga qonunchilik va xalqaro shartnomalari bilan belgilangan huquqlaridan foydalanish imkoniyati taqdim etilishi lozim.

Oilaviy munosabatlarni tartibga solish bola, nogiron oila a’zolarining manfaatlarini yuqori darajada hisobga olgan holda amalga oshirilishi kerak.

Oilaviy munosabatlar jamiyatning axloqiy asoslariga muvofiq adolat, vijdonan va mulohazakorlik tamoyillari asosida tartibga solinadi.

Oilaviy munosabatlarning har bir ishtirokchisi sud himoyasi huquqiga ega”.

4. OKning 11-moddasini qo‘yidagi tahrirda belgilash lozim:

“O‘n to‘rt yoshga to‘lgan oilaviy munosabatlarning har bir ishtirokchisi o‘z huquq yoki manfaatlarini himoya qilishni so‘rab sudga murojaat qilish huquqiga ega.

Sud qonunda belgilangan yoki tomonlarning kelishuvi (shartnomasi)da nazarda tutilgan himoya usullarini qo‘llaydi.

Oilaviy huquq va manfaatlar quyidagi usullar bilan himoya qilinadi:

1) huquqiy munosabatlarni o‘rnatish;

2) ixtiyoriy ravishda bajarilmagan majburiyatni majburiy bajarish;

3) huquqiy munosabatlarni tugatish, shuningdek uni bekor qilish;

4) oila huquqlarini buzuvchi harakatlarni tugatish;

5) huquq buzilishidan oldin mavjud bo‘lgan huquqiy munosabatlarni tiklash;

6) agar ushbu Kodeks yoki shartnomada nazarda tutilgan bo‘lsa, moddiy va ma’naviy zararni qoplash;

7) huquqiy munosabatlarni o‘zgartirish;

8) davlat organlari yoki mahalliy o‘zini o‘zi boshqarish organi, ular mansabdor shaxslarining harakatlari yoki harakatsizligi, qarorlarini noqonuniy deb topish”.

5. OKning 62-moddasini quyidagi mazmunda belgilash lozim: otalikni belgilash manfaatdor shaxslarning arizasiga ko‘ra sud tomonidan tibbiy ekspertiza xulosasi asosida aniqlanadi.

6. OKga quyidagi tahrirda yangi moddani kiritish lozim:

“65^1-modda. Ota-onaning bolaga nisbatan teng huquq va majburiyatlari

Ona, ota bolasiga nisbatan ular nikohda turganliklaridani qat’iy nazar teng huquq va majburiyatlarga ega.

Ota-ona tomonidan nikohdan ajralish, ularning boladan alohida yashashlari ularning huquqlari ko‘lamiga ta’sir qilmaydi va bolaga nisbatan majburiyatlaridan ozod qilmaydi, qonunchilikka muvofiq bolaga vasiy yoki homiy tayinlangan hollar bundan mustasno”.

7. OKni “Bolalarning ota-onalariga nisbatan huquq va majburiyatlari” nomli 65^2- modda bilan to‘ldirish va uni quyidagi mazmunda belgilash zarur:

“65^2-modda. Bolalarning ota-onalariga nisbatan huquq va majburiyatlari

Bolalar ota-onasiga nisbatan ular o‘zaro nikohda turganligidan qat’iy nazar teng huquq va majburiyatlarga egadirlar.

Bolalar va o‘spirinlarning huquqlarini huquqiy himoya qilish ularning qonuniy vakillari – ota-onalar, vasiylar, homiylar, ijtimoiy xizmatlar va muassasalar, shuningdek bolalar va o‘spirinlarning o‘zlari tomonidan amalga oshirilishi mumkin. Bolalar va o‘smirlarning o‘z huquqlarini mustaqil himoya qilish huquqi ham xalqaro, ham ichki huquqiy hujjatlarda nazarda tutilgan”.

8. OKning 69-moddasi uchinchi qismidagi “vasiylik va homiylik organi” so‘zlarini “sud” so‘zi bilan almashtirish hamda quyidagi tahrirdagi to‘rtinchi qism bilan to‘ldirish maqsadga muvofiqdir:

“Agar bolaning ota-onasi noma’lum bo‘lsa bolaning ismi, ota ismi va familiyasi vasiylik va homiylik bo‘yicha vazifalarni amalga oshiruvchi organ, tibbiy yoki turar joy bo‘yicha bolaning huquqlarini himoya qilish vazifasini bajarayotgan boshqa muassasa tomonidan qo‘yiladi”.

9. OKning 80-moddasi ikkinchi qismiga ota-onalik huquqidan mahrum to‘g‘risida da’vo qo‘zg‘atish huquqiga ega shaxslar doirasiga “shuningdek o‘n to‘rt yoshga to‘lgan bola” iborasini kiritish maqsadga muvofiq. Chunki, OKning 67-moddasi to‘rtinchi qismida bolaning o‘z huquqlarini himoya qilishni so‘rab sudga mustaqil ravishda murojaat qilishi mumkinligi belgilangan va bu holatda 14 yoshli bolaning muayyan asoslar vujudga kelganda ota-onalik huquqidan mahrum qilish bo‘yicha sudga da’vo qo‘zg‘atishi bilan to‘ldirilishi o‘rinli hisoblanadi.

10. OKning 153-moddasini quyidagi mazmundagi to‘rtinchi qism bilan to‘ldirish lozim:

“Farzandlikka olingan shaxs o‘n to‘rt yoshga to‘lganidan keyin o‘zining farzandlikka olinganligi haqida axborot olish huquqiga ega”.

11. FKni “Yashashga bo‘lgan huquqi” deb nomlangan 20^1- modda bilan to‘ldirish lozim:

“Jismoniy shaxs yashashga bo‘lgan ajralmas huquqqa ega.

Jismoniy shaxs hayotdan mahrum etilishi mumkin emas. Jismoniy shaxs o‘z hayoti va sog‘lig‘ini, shu jumladan boshqa jismoniy shaxsning hayoti va sog‘lig‘ini har qanday huquqqa xilof tajovuzlardan himoya qilish huquqiga ega.

Tibbiy, ilmiy va boshqa tajriba faqat voyaga yetgan muomalaga layoqatli jismoniy shaxsning erkin roziligi bo‘yicha o‘tkazilishi mumkin. Dori vositalarining klinik sinovi qonunga muvofiq o‘tkaziladi.

Jismoniy shaxsning o‘z hayotini tugatish haqidagi iltimosini qanoatlantirish taqiqlanadi.

Sterilizatsiya qilish faqat voyaga yetgan jismoniy shaxsning istagi bo‘yicha amalga oshiriladi.

Homilani sun’iy tushirish, agar homila o‘n ikki haftadan oshmagan bo‘lsa, ayolning istagi bo‘yicha amalga oshiriladi. Qonunchilikda belgilangan hollarda homilani sun’iy tushurish homilaning o‘t ikki havftadan yigirma ikki haftalik muddatigacha amalga oshirilishi mumkin. Yigirma ikki haftalikdan keyin homilani tushurishga imkon beruvchi holatlar ro‘yxati qonunchilik bilan belgilanadi.

Voyaga yetgan ayol tibbiy ko‘rsatkichlar bo‘yicha o‘ziga nisbatan yordamchi reproduktiv texnologiyalar davolash dasturlarini qonunchilikda belgilangan tartib va shartlarga muvofiq o‘tkazilish huquqiga ega”.

12. O‘zbekiston “Bola huquqlarining kafolatlari to‘g‘risida” gi Qonunining 7-moddasini quyidagi tahrirda belgilash maqsadga muvofiqdir: “O‘zbekiston hududidagi barcha bolalar, irqi, terisining rangi, jinsi, tili, dini, siyosiy yoki boshqa e’tiqodlaridan qat’i nazar, milliy, etnik yoki ijtimoiy kelib chiqishi, mulkiy holati, sog‘lig‘ining ahvoli va bolalar tug‘ilishi va ularning ota-onalari (yoki shaxslar ularni almashtirish) yoki har qanday boshqa holatlardan qat’iy nazar ushbu Qonun va boshqa normativ-huquqiy hujjatlar bilan belgilangan teng huquq va erkinliklarga ega”.

III. Huquqni qo‘llash amaliyotini takomillashtirishga oid takliflar:

1. O‘zbekiston Respublikasi Oliy Sudi plenumining “Bolalar tarbiyasi bilan bog‘liq nizolarni hal qilishda sudlar tomonidan qonunlarni qo‘llash amaliyoti to‘g‘risida”gi qarorining 28-bandini quyidagi tahrirdagi ikkinchi-uchinchi xatboshilar bilan to‘ldirish maqsadga muvofiqdir:

Agar bolalar tarbiyasi bilan bog‘liq ishlarni ko‘rishda sud voyaga yetmagan bolani ko‘rib chiqilayotgan ish bo‘yicha fikrini aniqlash uchun sud majlisida so‘rashni zarur deb topsa, oldin vasiylik va homiylik organining bolani sudda ishtirok etishi unga salbiy ta’sir ko‘rsatmasligi to‘g‘risidagi fikri aniqlashtirilishi lozim. Bunday so‘rovni bolaning yoshini va rivojlanganligini e’tiborga olib, pedagog qatnashuvida, unga manfaatdor shaxslar ta’sir etmaydigan vaziyatda amalga oshirish lozim.

Bolani so‘rashda sud bolaning fikri ota yoki onadani birining yoki boshqa manfaatdor shaxslarning ta’siri natijasida shaklanmaganligini, bola o‘z fikrini ifoda etishda o‘z manfaatlarini anglab yetganligini va buni qanday asoslantirganligini hamda shunga o‘xshash boshqa vaziyatlarni aniqlashtirishi zarur.

2. O‘zbekiston Respublikasi Oliy Sudi plenumining “Bolalar tarbiyasi bilan bog‘liq nizolarni hal qilishda sudlar tomonidan qonunlarni qo‘llash amaliyoti to‘g‘risida”gi qarorining 31-bandi to‘rtinchi xatboshisi sifatida quyidagi normani kiritish va tegishincha to‘rtinchi xatboshini beshinchi xatboshi deb hisoblash lozim:

Agar ushbu toifadagi ishlarni ko‘rib chiqishda ota-onalarning, bolalar tarbiyasida bo‘lgan boshqa shaxslarning harakatlarida voyaga yetmaganlarning hayoti, sog‘lig‘i, jinsiy daxlsizligini buzadigan jinoyat belgilari yoki voyaga yetmaganlarning jinoiy faoliyatga jalb qilingan harakatlari aniqlansa, sud bu haqida prokurorga xabar berishi lozim.

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SUPREME SCHOOL OF JUDGES UNDER THE SUPREME JUDICIAL COUNCIL OF THE REPUBLIC OF UZBEKISTAN

NURALIYEVA ZULFIYA ALISHEROVNA

IMPROVING FAMILY AND LEGAL GUARANTEES OF CHILDREN'S RIGHTS

12.00.03 - Civil law. Business law.
Family law. International private law

ABSTRACT
of dissertation for Doctor of Philosophy (PhD) in Legal Sciences

Tashkent – 2024

The theme of the doctoral dissertation (PhD) is registered at the Supreme Attestation Comission under the Ministry of Higher Education, Science and Innovations of the Republic of Uzbekistan under number B2023.1.PhD/Yu937.

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Scientific adviser:	**Samarxodjayev Batir Bilyalovich** Candidate of Legal Sciences, Professor
Official opponents:	**Baratov Mirodil Khomudjonovich** Doctor of Science in Law, Professor
	Djoldasova Saxibjamol Djalgasovna Doctor of Science in Law, Associate professor
The leading organization:	**Lawyers' training center under the Ministry of Justice of the Republic of Uzbekistan**

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The doctoral dissertation (PhD) is available at the Information Resource Center of the Supreme School of Judges (registered under No …). (Address: 100097, Tashkent city, Mirzo Ulugbek district, Intizor street, 68. Phone: (99871) 265-22-52.

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I.I.Nasriev
Chairman of the Scientific Council for awarding scientific degrees, Doctor of Science in Law, Professor

D.R.Artikov
Academic Secretary of the Scientific Council for the Awarding of Academic Degrees, Doctor of Philosophy in Legal Sciences (PhD), Associate Professor

N.F.Imomov
Chairman of the Scientific Seminar under the Scientific Council for awarding scientific degress, Doctor of Science in Law, Professor

INTRODUCTION (**Abstract of the Doctor of Philosophy (PhD) dissertation**)

Relevance and necessity of the dissertation theme. Special attention is paid to establishing legislative guarantees for children's rights worldwide. Because human rights begin with children's rights, and every country secures its future by guaranteeing children's rights. Today there are more than 8 billion people living on Earth, 34% of them are children under the age of 14, and as of January 2023, 447,586 children were born[6]. Therefore, it is important to adequately guarantee the rights of children, ensure their family rights, and define organizational and legal mechanisms for their realization. After all, guaranteeing children's rights is considered the main criterion for their education and development. In the conditions of modern globalization and in connection with the significant penetration of the virtual world into the lives of children, problematic aspects of guaranteeing children's rights have been highlighted. Therefore, it is essential to create a system of guarantees of children's rights, which will be able to withstand today's challenges and threats and will contribute to the education and development of children.

In many countries around the world, specific systems for guaranteeing children's rights have been established. In particular, in France, two main approaches are employed to ensure children's family rights: prevention and protection. In Great Britain, the "foster care" system is in place, while Germany has a strict system of penalties for violations or hindrances of children's rights. In the United States, there are extensive opportunities for children to protect their own rights[7]. This, in turn, requires the development of effective systems, mechanisms, and methods for guaranteeing children's rights at the legislative level. Currently, these countries actively use tools such as identification of problem children through the Internet, creation of special networks of their family-legal guarantees, quick communication with parents. Additionally, in the civil law systems of foreign countries, there is a focus on creating regulations to ensure children's rights in cyberspace. Research is being conducted on establishing legislative foundations for an effective system of sanctions against individuals who violate or fail to respect children's rights.

In Uzbekistan, the family-legal guarantees of children's rights are strengthened at the legislative level. These guarantees include the rights of children to live and be raised in a family, express their opinions, meet with their parents and relatives, and possess certain property rights, all of which are stipulated in normative-legal documents. However, there are several scientific-theoretical and practical issues related to the implementation, application, protection, and ensuring of these guarantees. These include determining the child's place of residence and with which parent he or she will remain in the event of the parents' divorce, taking into account the child's opinion, ensuring the child's rights in the event of deprivation of parental rights, and protecting the rights of children temporarily left

[6] https://countrymeters.info/ru/World

[7] https://www.interesnie-fakty.ru/nauka/obrazovanie/o-pravah-rebenka-v-raznyh-stranah/

by their parents in the care of another person, it is necessary to resolve such issues at the legislative level.

This dissertation research serves to a certain extent in the implementation of the priority tasks outlined in the Civil Code of the Republic of Uzbekistan dated December 21, 1995, the Civil Procedural Code dated January 22, 2018, the Law "On Guarantees of Children's Rights" dated January 7, 2008, the Law "On Guardianship and Custodianship" dated January 2, 2014, the Presidential Decree "On Additional Measures to Improve the System of Protection of Children's Rights" dated May 29, 2020, No. PQ-4736, the Presidential Decree "On the Development Strategy of New Uzbekistan for 2022-2026" dated January 28, 2022, No. PF-60, the Presidential Decree "On the Approval of the National Strategy of the Republic of Uzbekistan on Human Rights" dated June 22, 2020, No. PF-6012, the Resolution "On Measures to Create Conditions for the Accelerated Implementation of Artificial Intelligence Technologies" dated February 17, 2021, No. PQ-4996, and other relevant legislative documents.

Correspondence of the research to the priorities of the development of science and technology of the republic. This dissertation has been completed in accordance with the priority direction of the republican science and technology development I. "Formation of a system of innovative ideas and ways of their implementation in the social, legal, economic, cultural, spiritual and educational development of the information society and the democratic state."

The degree to which the problem has been studied. Certain aspects of the family-legal guarantees of children's rights have been highlighted in the works of various national authors. Specifically, F.M. Otakhojayev, M.Kh. Samarkhodjayeva, U.Sh. Shorakhmetova, Z.N. Esanova, Sh.R. Yuldasheva, I.B. Djurayeva, G. Inomjanova, R. Matkurbanov, N. Ashurova[8], and other legal scholars have addressed children's rights issues to some extent in their works. However, it appears that scientific research on the problems related to the family-legal guarantees of children's rights has not been separately investigated.

In foreign countries, researchers such as L. Trinder, Caplan B. Locke, Laura Stovel, Marta Valiñas, U. Kilkelly, C. Geuzaine, M. Debry, V. Liesens[9], and others have analyzed the issues of children's rights, their implementation, and protection.

Among the scholars from CIS countries, V.I. Abramov, Yu.F. Bespalov, T.V. Lobanova, N.A. Temnikova, L.V. Krasitskaya, V.P. Mironenko, M.V. Geller, V.D. Kravchuk, Ye.N. Dushkina, and S.A. Sorokin[10] have addressed family-legal issues related to children's rights.

Although there are specific scholarly works within the research topic, the issues of family-legal guarantees of children's rights in Uzbekistan have not been thoroughly studied as a separate research object from both theoretical and practical perspectives in the context of the country's development conditions and legal practices.

[8] Ushbu olimlarning asarlari dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatidan keltirilgan
[9] Ushbu olimlarning asarlari dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatidan keltirilgan
[10] Ushbu olimlarning asarlari dissertatsiyaning foydalanilgan adabiyotlar ro‘yxatidan keltirilgan

The relatedness of the research to the research plans of the scientific organization or educational institution where the dissertation was completed. The dissertation research was carried out within the framework of priorities in accordance with the plan of scientific work of the Supreme School of Judges "Development of priority areas of family-legal guarantees of children's rights."

The aim of the research is to develop proposals and recommendations for improving family-law guarantees of children's rights.

The research objectives are to:

- elaborate the general description of family legislation regarding children's rights;
- analyze the fundamental guarantees of children's rights as the subject of family law;
- investigate the developmental genesis of legislative provisions concerning family-legal guarantees of children's rights;
- highlight legal issues related to determining children's lineage in contemporary contexts;
- address the establishment of personal non-property rights guarantees for unaccompanied minors in families;
- propose solutions to issues and recommend solutions for ensuring children's property rights guarantees within families;
- analyze international legal comparisons of family-legal guarantees of children's rights based on foreign legislation;
- explore the protection of family-legal guarantees of children's rights within families;
- develop recommendations for the future development of legislation on family-legal guarantees of children's rights in family-legal relationships.

The object of the research is civil-legal relations on family-legal guarantees of children's rights.

The subject of the research is normative-legal documents related to family-legal guarantees of children's rights, the practical implementation of law, foreign legislation and practices, as well as existing conceptual frameworks, theoretical approaches, and legal categories in legal science.

Research methods. During the research methods such as historical, comparison-comparison, analysis and synthesis, induction and deduction, specific sociological and statistical data analysis were used.

Scientific novelty of the research is as follows:

it is substantiated that when the civil registry office refuses to establish paternity, the person who recognizes his paternity can file a complaint with the administrative court, and this, in turn, strengthens the mechanism of protection of the child's right to determine paternity;

it is based on the fact that the list of persons who cannot become adoptive parents includes persons who have committed crimes against the family and young people, which in turn is an important factor in the proper upbringing of children;

based on the need for clear terms and their correct interpretation in the protection of children's rights, "children with disabilities (child); the definition of the term has been developed and defined at the legislative level;

it is based on the fact that a former wife (husband) in need of maintenance has the right to claim alimony in court if he was caring for a disabled child until he reached the age of 18.

Practical results of the research are as follows:

as family-legal guarantees of the child, as a mechanism for expressing the child's opinion in court proceedings, the need to ask the child's opinion with the participation of specialists in a certain field, the need to reconsider the age when asking for the opinion of such a child is put forward;

established rules regarding the child's participation in family relations, the abuse of the rights and powers of the parents in relation to their child, especially the proposal to expand the scope of powers of the neighborhood and guardianship and guardianship bodies in protecting the rights of the child temporarily left to relatives or acquaintances;

modern legal realities, in particular, the determination of the child's lineage on the basis of surrogate motherhood, the influence of the legal aspects of adoption in different legal systems, and the proposals for improving adoption in national legislation are put forward;

the idea of establishing the equality of children regardless of whether they were born in marriage or not.

The reliability of research results. The results of the study were generalized by international law and national legal norms, experience of developed countries, practice of law application, statistical data of conducted social surveys, and the obtained results were approved by competent state authorities and put into practice. Conclusions, proposals and recommendations were approved, and their results were published in leading national and international journals.

The scientific and practical significance of the research results. Scientific significance of the research results is based on scientific-theoretical conclusions, proposals and recommendations in further scientific activity, lawmaking, law enforcement practice, interpretation of relevant norms of civil legislation, improvement of national legislation, etc. scientific-theoretical enrichment of the sciences of civil law and contract law. The results of the research can be used in conducting new scientific research.

Practical significance of the research results lies in law-making activities, in particular, in the process of preparation of normative legal documents and in the process of making amendments and additions to them, in improving the practice of law application, in teaching subjects in the field of private law in higher law schools.

The implementation of the research results. Scientific results of the study were used:

decision of the Plenum of the Supreme Court of the Republic of Uzbekistan of February 20, 2023 “Some decisions of the plenum of Supreme court of the

republic of Uzbekistan in civil cases” concerning the proposal that a person who acknowledged his paternity may lodge an appeal to the administrative court in the case of the refusal of the body of the civil registry office to establish paternity. In the drafting of the second paragraph of paragraph 2, decision No. 5 “On amendments and additions” (Decree of the Supreme Court of the Republic of Uzbekistan No. 11-14-23 of 13 September 2023). This sentence was used to clarify the system of paternity;

the proposal that persons who have committed crimes against the family, youth and morality cannot become adopters for the Plenum of the Supreme Court of the Republic of Uzbekistan of February 20, 2023 “Amendment to certain decisions of the Plenum of the Supreme Court of the Republic of Uzbekistan on civil cases and on making additions” was used in the development of the second paragraph of paragraph 13 (Decree No. 11-14-23 of 13 September 2023). This proposal created the basis for a strict definition of the circle of adoptive parents;

from the proposal on the concept of children with disabilities (children) of the Republic of Uzbekistan of 17 May 2022 "On amendments to certain legislative documents of the Republic of Uzbekistan in connection with the improvement of the system of medical and social services in the republic" was used in the drafting of article 23 of the Law of the Republic Uzbekistan No. 770 (Act No. 28 of the Senate of the Republic of Uzbekistan on 19 September 2023). This proposal served to clarify the legal status of a child with a disability;

the proposal regarding the right to alimony for a husband or wife caring for a child with a disability until the child reaches eighteen years of age, or caring for a child with a Group I disability from childhood, was used in the drafting of Article 17 of the Law of the Republic of Uzbekistan No. LRU-770 dated May 17, 2022, "On Amendments to Certain Legislative Acts of the Republic of Uzbekistan in Connection with the Improvement of the Medical and Social Services System in the Republic of Uzbekistan" (Protocol No. 28 of the Senate of the Republic of Uzbekistan dated September 19, 2023). This proposal served to strengthen the right of a husband or wife who takes care of a child with a disability to receive alimony.

Approbation of the research results. The research results were approved at 3 international and 3 national scientific-practical conferences and seminars.

Publication of the research results. A total of 9 scientific papers have been published on the subject of the dissertation, including 6 scientific articles (2 in foreign editions).

The structure and volume of the dissertation. The dissertation consists of an introduction, three chapters, a conclusion, and a list of references. The volume of the dissertation is 188 pages.

THE MAIN CONTENT OF THE DISSERTATION

In **the introduction** of the dissertation, the relevance and necessity of the topic are substantiated, the purpose and objectives of the research are described, as well as the object and subject of the study, its compatibility with the priority directions of science and technology development of the Republic of Uzbekistan its

scientific novelty and practical results are described, the theoretical and practical significance of the obtained results revealed, the state of implementation of their results in practice, as well as information on the published works and the structure of the dissertation.

The first chapter of the dissertation is entitled **"Scientific-theoretical analysis of the essence of guarantees of children's rights under family law"**, which includes a general description of family legislation in relation to the status of children and their rights, the main guarantees of children's rights as a subject of family law, family issues such as the genesis of the development of legislation on legal guarantees are covered.

"Human rights begin with the rights of the child" is a philosophical slogan, on the basis of which the legal democratic state and the bodies that ensure the rule of law in it carry out their activities. However, in addition to rights, freedoms and legal interests, children also have certain obligations. Taking into account the importance of the rights, freedoms and obligations of children, it is required to analyze and systematize the approaches to determining the legal status of the child, as well as to analyze and reveal the content of the elements of the legal status of the child.

In the dissertation, the opinions of legal scholars (N.M. Onishenko, O.F. Skakun, and Z.V. Romovskaya) on the legal status of children are analyzed, emphasizing that it consists of such elements as freedoms and obligations. The special legal status of the child in the context of the study of the Convention on the Rights of the Child, adopted by the UN General Assembly Resolution No. 44/25 of November 20, 1989, "On the Guarantees of the Rights of the Child" its dynamic nature (individuals acquire the rights and obligations of a child at birth, and childhood ceases when such a person reaches adulthood, but the range of rights and obligations changes during childhood) is justified.

The opinions of scientists (R.J. Matkurbanov, Yu.F. Bespalov, V.P. Mironenko, N.M. Kononchuk) regarding the scope of rights describing the legal status of the child and their content have been studied, and the family rights of the child are the rights of the child from the birth or from the moment specified by law. It is concluded that these are the rights that belong until the age of eighteen, and they are focused on providing opportunities for family education and personal development.

In the framework of private-law relations, the ability of a person to acquire rights and obligations through their actions, to realize them, and to assume personal responsibility is not only related to reaching a certain age but also to their health and property status. The legislation of the Republic of Uzbekistan protects children, guarantees equal rights of children regardless of their origin, whether they were born in or out of wedlock, prohibits any violence against children and their exploitation.

In the dissertation, based on a systematic analysis of both legislative provisions and scientific research, it is concluded that the term "child" in the Civil Code (CC) is defined not only considering the psycho-physiological (age) and

social aspects characteristic of family law but also the features of the rights and obligations applicable to an individual. The differentiated approach to determining the scope of rights and obligations, as well as the measures of responsibility, for a child depends on the specific type of civil legal relations in which the child is involved. In civil law, the rights and interests of a fetus are protected, but the law does not recognize the fetus as a subject before birth. Based on the analyses, it is proposed to amend the OC by adding Article 42 titled "Child."

In the dissertation, attention is paid to the issue of "parents can refuse the tasks assigned to them", and the need to clearly define the circumstances in which the child's refusal is legal at the legislative level is justified based on the analysis of scientific literature and normative legal documents.

The development of children's rights has its historical roots, for every society in its development paid special attention to the protection of children's rights. The social processes that took place with the development of civilization changed the position of the child in society and ensured that the attitude of the state and society towards them changed in a positive direction.

The spread of religion has had a significant impact on the position of the child in society. On the one hand, it was very positive because religion recognized the presence of a soul in the child. This significantly changed the position of the child in society. According to religious rules, it is forbidden to kill a living being that possesses a soul. Killing a child was considered a crime and its life was protected by law. But with the spread of religion, the legal status of children born out of wedlock deteriorated.

In the research work, the rules, regulations and views on children's rights in the Avesta are analyzed, and it is analyzed that the rights and interests of children are primarily provided by their parents, relatives and the relevant tribe, which is of positive importance for children's education and development.

According to Islamic law, the issues of the rights of the fetus and the obligations of the parents towards the child are analyzed in the dissertation. According to the case, a child of a Muslim becomes a Muslim from birth and has the right to be brought up in this religion. In addition, a newborn Muslim has the right to a good name, especially a Muslim name. Shortly after the birth of the baby, one of the parents should whisper words of prayer in the child's ear. On the seventh day after birth, a sheep or a goat should be sacrificed, and its meat should be distributed to relatives and the poor. Breastfeeding is another right of the newborn baby, it is a necessary condition to protect the baby's life and health, and also protects it from infection along with nutrients. In this regard, the following verses are mentioned in the Holy Qur'an: "Mothers breastfeed their children for two full years. (This ruling) is for those who want to perfect breastfeeding. It is the father's responsibility to feed and clothe them (that is, mothers) well."

Islam protects the basic interests of the child and defends the family as the natural environment that provides love, attention and security for the child. Parents are not allowed to neglect the physical and moral needs of the child. Both parents are responsible for the best upbringing of the child for whom they are good

examples of behavior. Children have the right to be treated equally by their parents. In order to avoid jealousy, one child should not receive more priority and attention from his parents than his siblings, for the following words of the Prophet (peace and blessings of Allah be upon him) should be followed: "Fear Allah and treat him with respect. your children with equal rights" and bring them up fairly.

In the dissertation document signed by the UN General Assembly in November 1989, entered into force in 1990 and ratified by most countries of the world - the Convention on the Rights of the Child and the Republic of Uzbekistan "On guarantees of the Rights of the Child" The norms of the law are implemented.

In the second chapter of the dissertation, entitled **"Problems of guaranteeing children's rights in various institutions of family law",** the legal issues of establishing children's genealogy, guarantees of minor children's personal property rights, implementation of guarantees of children's property rights in the family are studied on the basis of modern realities.

The existence of each child must be officially recognized. The realization of the right to a name and citizenship enables the child to enjoy his or her rights. Once a child's birth is registered, the state officially recognizes the child's existence; moreover, on the basis of registration, the child's origin, i.e., lineage and kinship with his or her parents (mother and father), is established.

The dissertation analyzes the legislation of foreign countries (Germany, Great Britain, the USA, the Netherlands, Indonesia, India, Tunisia, Iran, Lebanon, Palestine) regarding the establishment of paternity in relation to the child, and emphasizes that the rights of the child are guaranteed by the state at the legal level. In addition, the case examines the Ukrainian legislation on the definition of the legal status of "surrogacy", in determining the lineage of the child on the basis of its implementation, it was reasoned that the parents of the child will be a couple who agreed to the use of assisted reproductive technologies, and the consent of the surrogate mother must be defined in the surrogacy contract concluded between the parties.

The study analysed the opinions of law scientists (H.Rakhmonkulov, I.I.Nasriyev, Y.B.Yakubov) regarding guarantees of the personal property rights of the child, and also studied the children's rights: the child's right to life and to receive education in the family; the right of a child to see his parents and other relatives; the child’s right to protection; the rights of children to express their opinion; the children's rights to name, paternity and surname; and the right to change the name and last name of the children.

In the opinion of the author, the "right to life" of the individual is defined in constitutional norms, and the limits, conditions and grounds for the realization of this right (the right to life) of the citizen who has this right should be expressed in the norms of the Constitution. At the same time, the provisions on the “right to life” of the individual must be expressed in the CC.

The views of a number of authors (Y.F.Bespalov, S.V.Bukshin, M.W.Geller) on the right of minor children to live and be raised in a family, as well as the rights of the child to be lived and raised, were examined. Family upbringing is directly

the right of the child to live with his or her parents; it means the right to be brought up under the care and care of the mother. The protection of children's rights is based on certain instruments and legal mechanisms. Parents, their legal representatives and authorized state authorities and their officials should immediately take appropriate measures in case of violation of the rights of the child, and apply legal and practical means to protect the children's rights in accordance with the law.

Disagreements in the choice of the child's name or name should not be resolved by the guardianship authority, but by a court decision. It is therefore necessary to include in the third part of article 69 of the FC the rule that the dispute shall be settled by the court. On the basis of the analysis carried out in the research work, it is suggested not to use as the name of the child: 1) numerical characters; 2) formulas, chemical, physical, mathematical symbols; 3) abbreviations; 4) obscene words, insulting words and expressions (e.g., idiot, galvars, etc.); 5) adjectives (eg, beautiful, terrible, etc.), verbs; 6) geographical names; 7) names of animals, plants, fungi and viruses (according to the scientific classification of the main kingdoms); 8) titles, titles and degrees; 9) a combination of the above elements.

Minors also have certain property rights. The property of minors in the family is treated separately from the property of the parents and the parents are not considered to be the owners of their children's property. At the same time, the parents, as the legal representatives of the children, exercise the authority of the owner in respect of this property. However, the law provides that the disposal of the property of children must not be contrary to their rights and interests.

In the dissertation, Chapter 13 of the Civil Code analyzes the following rights of minors arising from family legal relations: 1) for maintenance; 2) for income and inheritance; 3) for the property of parents (if living with them); 4) for demand compliance with the law in the disposal of his property.

Children's rights are the least protected in the housing sector. If after the termination of marriage the child lives with his parents in another house, it is not guaranteed that the child will retain the right to use the living space belonging to one of the parents.

According to the author, the will of a minor as a participant in civil-legal relations cannot be taken into account due to the specific features of his legal subjectivity. Compliance with the property interests of the minor owner of the disposal agreement concluded only by the legal representative should be the criterion for evaluating the grounds for disposal of the property from the property of such an owner in case of fair purchase of the property from his legal representative for a fee.

The third chapter of the dissertation is devoted to "Experience of foreign countries regarding the rights of children in the family and improvement of the legislation on the guarantees of children's rights", in which the analysis of approaches to the guarantees of the rights of children in the family according to the legislation of foreign countries, the problems of protecting the guarantees of children's rights in the family, issues such as prospects for improving the

legislation on guarantees of children's rights in family-legal relations were analyzed.

One of the main components of the state policy in the field of child protection is the improvement of the legal framework, in particular, the implementation of international legal norms. As a result of the work in this regard, today Uzbekistan has become a member of a number of international documents in the field of ensuring children's rights. The UN Convention on the Rights of the Child, which is the main document defining legal norms in the field of protection of children's rights, was ratified by Uzbekistan on December 9, 1992. Today, the Convention on the Civil Aspects of Child Abduction (1980) concerning children's rights; European Convention on the Implementation of the Rights of the Child (1996); Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Child Protection Measures (1996); Convention on Communication with Children (2003); There are the Convention on the Recovery of Maintenance Abroad (1956) and the Convention on the Recognition and Enforcement of Maintenance Obligations (1973). Also, in the field of children's rights, the European Convention on the Recognition and Enforcement of Decisions in the Area of Custody of Children and the Restoration of Custody of Children (1980), the European Convention on the Legal Status of Children Born Out of Wedlock (1975 -year): Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Violence (2007), European Adoption Convention (revised, 2008) and Children Conventions on Protection and Cooperation in Intercountry Adoption (1993) also apply.

The dissertation analyzes the legislation of a number of foreign countries (USA, Germany, Austria, Bulgaria, Hungary, Cuba) on guarantees of children's rights and points out that children's rights should be guaranteed separately as part of human rights.

The existence and improvement of judicial and extrajudicial forms of family rights protection is one of the main features of the modern state of law. The choice of the form of legal protection is determined by knowledge of the activities of courts and administrative bodies and their decisions.

The work analyzed the opinions of many legal scholars (V.D. Kravchuk, Ye.N. Dushkina, Yu.F. Bespalov, A.M. Nechayeva, S.A. Sorokin) regarding the child's right to protection, and opinions on improving the appeal to the court in the protection of the child's rights are put forward.

Analysis of family legislation shows that it does not fully protect the rights and interests of children. Children were and remain the most vulnerable part of society. Protection of children's rights is inconsistently implemented and there are gaps in the law. Thus, the protection of children should be of special importance in the national legal regulation, based on the fact that they are dependent on the family and society and belong to the extremely vulnerable category of citizens.

The dissertation substantiates the need to include a provision on children's equal rights before the law in Article 7 of the Law "On Guarantees of Children's Rights". The case also states that the provisions that "children have equal rights

and obligations towards their parents regardless of whether their parents are married or not" should be expressed in Article 651 of the Civil Code. In addition, it was proposed to supplement the CA with Article 652 entitled "Rights and duties of children towards their parents".

The FC does not provide for specific rules and regulations on how family rights can be protected. In order to fill this gap, the case justifies the need to define Article 11 of the CA in a new wording. In addition, the thesis puts forward proposals to supplement and amend Articles 65, 80, 153 of the Civil Code and supplement them with Article 51 entitled "General Principles of Regulation of Family Relations".

CONCLUSION

The following scientific-theoretical and practical proposals and conclusions have been developed as a result of research work on improving family and legal guarantees of children's rights:

I. Scientific-theoretical proposals and conclusions:

1. It is substantiated that the guarantees of children's rights are ensured through principles and rules such as the "principle of children's welfare," the "right to communicate with both parents," the "principle of the best interests of the child," "protection from violence and abuse," "equality of parents," "consideration of the child's opinion," and the "distribution of parental responsibilities."

2. Determining children's lineage is an important task in family law, as it plays a crucial role in defining the rights and obligations of parents and ensuring the child's best interests. This is based on various approaches, including genetic, legal, socio-psychological, and multi-dimensional perspectives.

3. It is substantiated that in ensuring the guarantees of children's rights, it is necessary to strengthen the legal foundations for maintaining their relationships with their father, mother, and other relatives. This includes expanding communication, such as extending contact time if parents or other relatives face difficulties in seeing and communicating with the child, and introducing additional means of contact like phone calls, video calls, or letters.

4. To implement and ensure the child's right to protection, it is necessary to apply principles such as the integration of the protection system, early warning and intervention, involving the child in proceedings and listening to their views, intersectoral approaches and cooperation, and a differentiated approach.

5. In recent years, much attention has been paid to the legal status of the child, in particular, to his rights at the legislative level. This can be confirmed by the implementation of a number of international legal documents in the national legislation. At the level of international legal documents, high-quality protection and protection of children's rights is ensured by imposing the obligations of member states on the convention. In our opinion, without studying the family and legal status of the child, it is impossible to study the legal status of a person in general, because a person starts with a child, and a child starts with a family.

6. The current national legislation is based on a legal approach to establishing paternity, which may hinder the identification of the true biological father of the child. This shows the need to choose the genetic approach from the contradictory situation of paternity determination in the national legislation. Because the main factor in determining paternity should be the genetic approach. This in turn helps to establish the truth. It does not matter whether the parents of the child are married or not. Because the development of today's science and technology, the various scientific knowledge used to establish the truth, especially DNA examination, has eliminated the various social factors, reasons and evidence in determining paternity, and in many cases the social factors can be wrong. Due to the extremely high level of accuracy of DNA expertise, its use in paternity cases is convenient in all respects and allows the dispute to be resolved in court without further arguments and without recourse to different authorities. Therefore, it is advisable by law to choose the genetic approach to paternity determination.

7. In accordance with the norms of the CC, a person is considered to have the legal status of a child as a party to family law relations until he or she reaches the age of majority. At the same time, the Code defines the age distinction of children: a minor child under the age of fourteen; and persons between the ages of fourteen and eighteen are considered minors. In our opinion, the direct application of such a definition in family law creates various exceptions, since the main characteristic of a child is that he or she has reached a certain age, whereas in civil legal relations the age criterion is not self-evident. It is essential to understand the importance of one's own actions and to control them.

8. Based on a systematic analysis of both legislative provisions and scientific research, the concept of "child" in the CC is defined not only taking into account the peculiarities of psycho-physiological (age) and social aspects peculiar to family law, but also refers to an individual person, we can conclude that the peculiarities of rights and obligations are also taken into account. A differentiated approach to determining the range of rights and obligations of the child's carrier, as well as measures of responsibility, depends on the specific type of civil legal relations to which the child is a party. Civil law protects the rights and interests of a fetus, but not yet born child, but before birth the law does not recognize the fetus as a subject.

9. Assuming that the use of assisted reproductive technologies by a couple who are legally married and entering into a contractual relationship with another woman in this regard is by mutual consent, the consent of the parents of the child to the use of assisted reproductive technologies shall be confirmed. In this case, the consent of the surrogate mother shall be defined in the surrogacy contract concluded between the parties.

10. It is a reasonable and prudent approach to determine a person's right to life from civil law, i.e., what powers, rights, and capacities can affect the continuation or termination of his or her life. Since the "right to life" of a person is defined in the constitutional norms, the limits, conditions and grounds for the realization of this right (right to life) of a citizen possessing this right are appropriately expressed

in the civil legislation. In our opinion, the provisions on the "right to life" of the individual should be reflected in the CC.

11. In case of disagreement between the parents regarding the choice of a name for the child, the dispute shall be resolved not by the guardianship and custody body, and the need for realization shall be justified in court.

12. They believe that it is necessary to limit the possibilities of parents in choosing a name within reasonable limits. Because these changes in the legislation are aimed at protecting the rights of the child, not preventing the parents from exercising their right to choose a name for their child. In this case, the main problem is the development of criteria for determining prohibitions in choosing a name. Analyzing the above points, one can suggest that the following should not be used as nouns: 1) numerical characters; 2) formulas, chemical, physical, mathematical symbols; 3) abbreviations; 4) obscene words, insulting words and expressions (for example, idiot, galvars, etc.); 5) adjectives (for example, beautiful, terrible, etc.), verbs; 6) geographical names; 7) names of animals, plants, fungi and viruses (according to the scientific classification of the main kingdoms); 8) titles, ranks, degrees; 9) a combination of the above elements.

13. In family law, deprivation of parental rights, restriction of parental rights, restoration of parental rights and cancellation of restrictions, adoption and many other methods are used to protect the rights of children, but their civil rights To say that there are no similarities, in our opinion, is not appropriate. By comparison with Article 11 of the CC, the absence of a list of methods of protection of family rights in the FC indicates the shortcomings of the legal regulation rather than their special and separate nature. Since the protection of family rights according to the first part of Article 11 of the FC is carried out by the court in accordance with the rules of civil procedure, the methods of protection of these rights derive from the methods of civil legal protection specified in Article 11 of the CC. Although, first of all, taking into account the protection of the child's personal property rights, we believe that it is not possible to use all the methods of protection specified in Article 11 of the CC.

14. As for the consideration of family disputes affecting the interests of minors, these peculiarities, for example, in the dissolution of marriage by judicial procedure, the court on its own initiative determines with whom of the parents will live minor children after the dissolution of marriage, as well as in the case of spouses receiving alimony should be determined the amount of payment to be paid to the child, if they do not submit to the court an agreement to resolve their issues or if such an agreement violates the interests of children. Thus, the initiator of the consolidation of claims, although according to the general rules of procedural law the initiative to consolidate claims belongs only to the plaintiff, is not a party to the process, but the court. In addition, the civil procedural law does not authorize the court to consider claims not brought by the parties, while Article 44 of the CA, on the contrary, imposes its duties on the court.

15. The following concepts aimed at improving guarantees of children's rights in family legislation were justified:

1) Expanding the participation rights of the child: this concept emphasizes the importance of active participation in processes related to the rights and interests of children. It seeks to ensure that the child has the opportunity to express his or her opinion and be heard in all decisions that affect him or her.

2) Child-friendly: this concept involves creating child-friendly justice and family law, taking into account the developmental characteristics and needs of children. This includes using clear and understandable language, making information and advice available, and providing resources and support to children and their families.

3) An integrated approach to the protection of children's rights: this concept envisages the creation of a system in which various institutions and experts work together to ensure the protection of children's rights. It involves collaboration between family justice, social services, health, education and other sectors to ensure comprehensive support and protection for children in family settings.

4) Protection of children's rights from domestic violence: this concept pays special attention to the protection of children from domestic violence and the prevention of such situations. This involves developing mechanisms and policies to identify, prevent and respond to domestic violence, as well as to ensure the safety and support of children affected by such violence.

5) International cooperation and standards: this concept envisages cooperation between different countries and the use of international standards and guidelines for improving guarantees of children's rights in family law.

II. Based on the results of the research, the following proposals and conclusions aimed at improving the legal norms were developed:

1. It is appropriate to supplement Article 65 of the Constitution of the Republic of Uzbekistan with the following provisions:

Children have equal rights regardless of their origin, whether they are born in wedlock or out of wedlock. Any type of child abuse and exploitation is prosecuted by law.

2. It is appropriate to supplement the OK with Article 42, which is called "Child", and define it in the following wording:

"A child has the legal status until a person reaches adulthood.

Children under the age of fourteen are minors. People between the ages of fourteen and eighteen are considered minors."

3. It is proposed to supplement Article 51 of the OC entitled "General principles of regulation of family relations" and express it in the following version:

"Article 51. General principles of regulation of family relations

Family relations are regulated by this Code and other legal documents.

Family relations can be resolved on the basis of an agreement (agreement) between their participants.

Family relationships are regulated only to the extent permitted and possible from the point of view of the interests of their participants and the interests of society.

Regulation of family relations is carried out taking into account the privacy of their participants, the right to personal freedom and the inadmissibility of arbitrary interference in family life.

A participant in family relations cannot have privileges or restrictions based on his race, skin color, gender, political, religious and other beliefs, ethnic and social origin, financial status, place of residence, language and other characteristics.

Men and women have equal rights and obligations in family relations, marriage and family.

The child should be given the opportunity to use the rights established by legislation and international agreements.

Regulation of family relations should be carried out taking into account the interests of children and disabled family members.

Family relations are regulated on the basis of the principles of justice, conscientiousness and discretion in accordance with the moral foundations of society.

"Every participant of family relations has the right to judicial protection."

4. Article 11 of the OK should be amended as follows:

"Each participant of a family relationship who has reached the age of fourteen has the right to apply to the court for the protection of his rights or interests.

The court shall use the methods of protection established by the law or stipulated in the agreement (contract) of the parties.

Family rights and interests are protected in the following ways:

1) establishing legal relations;

2) compulsory performance of an obligation not fulfilled voluntarily;

3) termination of legal relations, as well as its cancellation;

4) ending actions that violate family rights;

5) restoration of legal relations that existed before the violation of rights;

6) compensation for material and moral damage, if provided for in this Code or the contract;

7) change of legal relations;

8) finding the actions or inactions and decisions of state bodies or local self-government bodies, their officials, illegal.

5. Article 62 of the OK should be defined as follows: determination of paternity shall be determined by the court on the basis of the conclusion of the medical expert upon the application of the interested persons.

6. A new article should be added to the OK in the following wording:

"Article 651. Equal rights and obligations of parents towards the child

Mother and father have equal rights and obligations to their child regardless of whether they are married.

Divorce by the parents, their living apart from the child does not affect the scope of their rights and does not release them from their obligations towards the child, except for the cases when a guardian or sponsor is appointed for the child in accordance with the law.

7. It is necessary to supplement the OC with Article 652 entitled "Rights and obligations of children in relation to their parents" and define it as follows:

"Article 652. Rights and obligations of children towards their parents

Children have equal rights and obligations to their parents regardless of whether they are married to each other.

Legal protection of the rights of children and adolescents can be carried out by their legal representatives - parents, guardians, sponsors, social services and institutions, as well as by children and adolescents themselves. The right of children and adolescents to independently protect their rights is stipulated in both international and domestic legal documents.

8. It is appropriate to replace the words "guardianship and guardianship body" with the word "court" in the third part of Article 69 of the OK and to supplement it with the fourth part in the following version:

"If the child's parents are unknown, the child's name, patronymic and surname shall be given by the body performing guardianship and sponsorship duties, medical or other institution performing the task of protecting the child's rights in terms of housing" .

9. In the second part of Article 80 of the OK, it is appropriate to include the phrase "as well as a fourteen-year-old child" in the circle of persons who have the right to file a claim for deprivation of parental rights. Because the fourth part of Article 67 of the OC stipulates that the child can independently apply to the court for the protection of his rights, and in this case, a 14-year-old child can sue for deprivation of parental rights when there are certain grounds. it is appropriate to fill it with a trigger.

10. Article 153 of the OK should be supplemented with the following fourth part:

"An adopted person has the right to receive information about his adoption after reaching the age of fourteen."

11. Article 201 entitled "Right to Life" should be added to FC:

"A natural person has an inalienable right to life.

A physical person cannot be deprived of life. An individual has the right to protect his life and health, including the life and health of another individual, from any unlawful encroachment.

Medical, scientific and other experiments can be conducted only with the free consent of an adult individual. Clinical trials of drugs are conducted in accordance with the law.

It is forbidden to satisfy the request of an individual to end his life.

Sterilization is carried out only at the request of an adult individual.

Artificial abortion is performed at the woman's request if the fetus is not more than twelve weeks old. In the cases established by the legislation, artificial abortion of the fetus can be carried out from the period of twenty-two weeks to twenty-two weeks. The list of cases that allow abortion after twenty-two weeks is determined by legislation.

An adult woman has the right to undergo assisted reproductive technology treatment programs in accordance with the procedures and conditions established by law.

12. It is appropriate to define Article 7 of the Law of Uzbekistan "On Guarantees of Children's Rights" in the following version: regardless of beliefs, national, ethnic or social origin, property status, health status and birth of children and their parents (or persons replacing them) or any other circumstances, regardless of this Law and have equal rights and freedoms defined by other regulatory legal documents".

III. Proposals to improve law enforcement practice:

1. Paragraph 28 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of applying laws by courts in resolving disputes related to child upbringing" is appropriate to be supplemented with the following second-third paragraphs:

If the court deems it necessary to ask a minor child at a court session to determine his opinion on the case under consideration, the presence of the child in court by the guardianship and guardianship authority will have a negative effect on him. his opinion about not showing should be clarified. Taking into account the child's age and development, such a request should be carried out in the presence of a pedagogue and in a situation where interested parties do not influence him.

When asking the child, the court must clarify that the child's opinion was not formed as a result of the influence of one of the parents or other interested parties, that the child understood his interests in expressing his opinion and how he justified it, and other similar situations.

2. Clause 31 of the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the practice of applying laws by courts in resolving disputes related to child upbringing" as the fourth paragraph, to introduce the following norm and, accordingly, the fourth paragraph should be considered as the fifth paragraph:

If during the consideration of cases of this category, the actions of parents, other persons involved in the upbringing of children reveal signs of crime that violate the life, health, sexual integrity of minors, or the actions of minors involved in criminal activities, the court will inform the prosecutor about this. should be given.

НАУЧНЫЙ СОВЕТ PhD/37/27.02.2020.Yu.107.01 ПО ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ ВЫСШЕЙ ШКОЛЕ СУДЕЙ ПРИ ВЫСШЕМ СУДЕЙСКОМ СОВЕТЕ РЕСПУБЛИКИ УЗБЕКИСТАН

ВЫСШАЯ ШКОЛА СУДЕЙ ПРИ ВЫСШЕМ СУДЕЙСКОМ СОВЕТЕ РЕСПУБЛИКИ УЗБЕКИСТАН

НУРАЛИЕВ ЗУЛФИЯ АЛИШЕРОВНА

СОВЕРШЕНСТВОВАНИЕ СЕМЕЙНО-ПРАВОВЫХ ГАРАНТИЙ ПРАВ ДЕТЕЙ

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АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

Ташкент – 2024

Тема диссертации доктора философии (PhD) зарегистрирована Высшей аттестационной комиссией при Министерстве высшего образования, науки и инноваций Республики Узбекистан за № B2023.1.PhD/Yu937.

Диссертационная работа выполнена в Ташкентском государственном юридическом университете.

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Научный руководитель:	**Самарходжаев Батир Билялович** доктор юридических наук, профессор
Официальные оппоненты:	**Баратов Миродил Хомуджонович** доктор юридических наук, профессор
	Джолдасова Сахибжамол Джалгасовна доктор юридических наук, доцент
Ведущая организация:	**Центр повышения квалификации юристов при Министерстве юстиции Республики Узбекистан**

Защита диссертации состоится «___» _____ 2024 года в _____ на заседании Научного совета PhD/37/27.02.2020.Yu.107.01 по присуждению ученых степеней при Высшей школе судей при Высшем судейском совете Республики Узбекистан. (Адрес: 100097, г.Ташкент, Чиланзарский район, улица Чупонота, 6. Тел.: (99855) 501-01-89; факс: (998955) 501-01-89; e-mail: sudyalaroliymaktabi @ umail. uz).

С диссертацией (PhD) можно ознакомиться в Информационно-ресурсном центре Высшей школе судей при Высшем судейском совете Республики Узбекистан (зарегистрировано за № ____). Адрес: 100097, г.Ташкент, Чиланзарский район, улица Чулпонота, д.6. Тел.: (99855) 501-01-89; факс: (99855) 501-01-89; e-mail: sudyalaroliymaktabi @ umail. uz.

Автореферат диссертации разослан «___» _____ 2024 года.
(протокол реестра № _____ от «____» _____ 2024 года).

И.И.Насриев
Председатель Научного совета по присуждению ученых степеней, доктор юридических наук, профессор

Д.Р.Артиков
Ученый секретарь Научного совета по присуждению ученых степеней, доктор философии по юридическим наукам (PhD), доцент

Н.Ф.Имомов
Председатель Научного семинара при Научном совете по присуждению ученых степеней, доктор юридических наук, профессор

ВВЕДЕНИЕ (Аннотация докторской (PhD) диссертации)

Цель исследования является разработка предложений и рекомендаций по совершенствованию семейно-правовых гарантий прав детей.

Объектом исследования являются гражданско-правовые отношения по семейно-правовым гарантиям прав детей.

Научная новизна исследования:

обосновано, что при отказе органа ЗАГС в установлении отцовства лицо, признающее свое отцовство, может подать жалобу в административный суд, а это, в свою очередь, усиливает механизм защиты права ребенка на определение отцовства;

оно основано на том, что в список лиц, которые не могут стать усыновителями, включены лица, совершившие преступления против семьи и молодежи, что в свою очередь является важным фактором надлежащего воспитания детей;

исходя из необходимости четкого определения термина и его правильного толкования при защите прав детей «дети-инвалиды (ребенок); определение этого термина разработано и определено на законодательном уровне;

оно основано на том, что бывшая жена (муж), нуждающаяся в содержании, имеет право требовать алименты в судебном порядке, если он осуществлял уход за ребенком-инвалидом до достижения им 18 летнего возраста.

Внедрение результатов исследования. Научные результаты исследования были использованы следующим образом:

постановление Пленума Верховного суда Республики Узбекистан от 20 февраля 2023 года «Некоторые решения пленума Верховного суда Республики Узбекистан по гражданским делам» о предложении лицу, признавшему свое отцовство, подать апелляционную жалобу в административный суд в случае отказа органа ЗАГС в установлении отцовства. В редакции абзаца второго пункта 2 решения № 5 «О внесении изменений и дополнений» (Постановление Верховного суда Республики Узбекистан от 13 сентября 2023 года № 11-14-23). Это предложение было использовано для разъяснения системы отцовства;

предложение о том, что лица, совершившие преступления против семьи, молодежи и нравственности, не могут стать усыновителями на Пленум Верховного Суда Республики Узбекистан от 20 февраля 2023 года «Внесение изменений в некоторые решения Пленума Верховного Суда Республики Узбекистана по гражданским делам и о внесении дополнений» был использован при разработке абзаца второго пункта 13 (Постановление от 13 сентября 2023 года № 11-14-23). Это предложение создало основу для строгого определения круга усыновителей;

из предложения о концепции детей-инвалидов (детей) Республики Узбекистан от 17 мая 2022 года «О внесении изменений в некоторые законодательные документы Республики Узбекистан в связи с

совершенствованием системы медицинского и социального обслуживания в республике» » использовано при разработке статьи 23 Закона Республики Узбекистан № 770 (Закон Сената Республики Узбекистан от 19 сентября 2023 года № 28). Это предложение послужило разъяснению правового статуса ребенка-инвалида;

при разработке статьи 17 было использовано предложение о праве на алименты мужа или жены, осуществляющих уход за ребенком-инвалидом до достижения им восемнадцатилетнего возраста или осуществляющих уход за ребенком с инвалидностью I группы с детства. Закон Республики Узбекистан от 17 мая 2022 года № ЗРУ-770 «О внесении изменений в некоторые законодательные акты Республики Узбекистан в связи с совершенствованием системы медицинского и социального обслуживания в Республике Узбекистан» (Протокол № 28 Сената Республики Узбекистан от 19 сентября 2023 года). Данное предложение послужило укреплению права мужа или жены, воспитывающих ребенка-инвалида, на получение алиментов.

Объем и структура диссертации. Диссертация состоит из введения, трёх глав, заключения и списка использованной литературы. Объем диссертации составляет 188 страниц.

E’LON QILINGAN ISHLAR RO‘YXATI
СПИСОК ОПУБЛИКОВАННЫХ РАБОТ
LIST OF PUBLISHED WORKS

I bo‘lim (I часть; I part)

1. Нуралиева З. Замонавий воқеликлар негизида болалар насл-насабини белгилашнинг ҳуқуқий масалалари. Жамият ва инновациялар – Общество и инновации – Society and innovations журнали. 1-сон, 2023. 86-97 б.;

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6. Нуралиева З. Болалар ҳуқуқларига нисбатан оила қонунчилигининг умумий тавсифи. Тошкент давлат юридик университетининг ихтисослаштирилган филиалида ўтказилган ҳалқаро илмий-амалий конференциясига оид мақолалар тўплами. 2022. Тошкент 2020, 137-144 б.;

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