

ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ҰЛТТЫҚ ҒЫЛЫМ АКАДЕМИЯСЫНЫҢ

Х А Б А Р Ш Ы С Ы

ВЕСТНИК

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК
РЕСПУБЛИКИ КАЗАХСТАН

THE BULLETIN

THE NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN

PUBLISHED SINCE 1944

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JANUARY – FEBRUARY 2021

ALMATY, NAS RK

NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

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НАН РК сообщает, что научный журнал «Вестник НАН РК» был принят для индексирования в Emerging Sources Citation Index, обновленной версии Web of Science. Содержание в этом индексировании находится в стадии рассмотрения компанией Clarivate Analytics для дальнейшего принятия журнала в the Science Citation Index Expanded, the Social Sciences Citation Index и the Arts & Humanities Citation Index. Web of Science предлагает качество и глубину контента для исследователей, авторов, издателей и учреждений. Включение Вестника НАН РК в Emerging Sources Citation Index демонстрирует нашу приверженность к наиболее актуальному и влиятельному мультидисциплинарному контенту для нашего сообщества.

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«Қазақстан Республикасы Ұлттық ғылым академиясының Хабаршысы».

ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)

Меншіктенуші: «Қазақстан Республикасының Ұлттық ғылым академиясы»РҚБ (Алматы қ.).

Қазақстан Республикасының Ақпарат және коммуникациялар министрлігінің Ақпарат комитетінде
12.02.2018 ж. берілген № **16895-Ж** мерзімдік басылым тіркеуіне қойылу туралы куәлік.

Тақырыптық бағыты: *іргелі ғылымдар саласындағы жаңа жетістіктер нәтижелерін жария ету.*

Мерзімділігі: жылына 6 рет.
Тиражы: 2000 дана.

Редакцияның мекенжайы: 050010, Алматы қ., Шевченко көш., 28, 219 бөл., 220,
тел.: 272-13-19, 272-13-18, <http://www.bulletin-science.kz/index.php/en/>

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Типографияның мекенжайы: «NurNaz GRACE», Алматы қ., Рысқұлов көш., 103.

Главный редактор
д.х.н., проф. академик НАН РК
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«Вестник Национальной академии наук Республики Казахстан».

**ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)**

Собственник: РОО «Национальная академия наук Республики Казахстан» (г. Алматы).

Свидетельство о постановке на учет периодического печатного издания в Комитете информации Министерства информации и коммуникаций и Республики Казахстан № 16895-Ж, выданное 12.02.2018 г.

Тематическая направленность: публикация результатов новых достижений в области фундаментальных наук.

Периодичность: 6 раз в год.
Тираж: 2000 экземпляров.

Адрес редакции: 050010, г. Алматы, ул. Шевченко, 28, ком. 219, 220, тел. 272-13-19, 272-13-18.
<http://www.bulletin-science.kz/index.php/en/>

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Адрес типографии: «NurNazGRACE», г. Алматы, ул. Рыскулова, 103.

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Bulletin of the National Academy of Sciences of the Republic of Kazakhstan.

ISSN 2518-1467 (Online),
ISSN 1991-3494 (Print)

Owner: RPA "National Academy of Sciences of the Republic of Kazakhstan" (Almaty).

The certificate of registration of a periodical printed publication in the Committee of information of the Ministry of Information and Communications of the Republic of Kazakhstan No. **16895-Ж**, issued on 12.02.2018.

Thematic focus: *publication of the results of new achievements in the field of basic sciences.*

Periodicity: 6 times a year.

Circulation: 2000 copies.

Editorial address: 28, Shevchenko str., of. 219, 220, Almaty, 050010, tel. 272-13-19, 272-13-18,
<http://www.bulletin-science.kz/index.php/en/>

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Address of printing house: «NurNaz GRACE», 103, Ryskulov str, Almaty.

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**IMPROVING THE LEGISLATION OF THE KYRGYZ REPUBLIC
ON ORPHANS AND CHILDREN DEPRIVED OF PARENTAL CARE**

Abstract. Using analysis, synthesis, historical legal, law and sociological methods, unfavourable factors in Kyrgyz society are studied contribute to the appearance of orphans and children left without parental care, such as divorce of parents, growth of percentage of single-parent families, unemployment, poverty, alcohol and drug addiction, child violence in families (physical, psychological, sexual abuse), migration and others.

The most significant and relevant aspects of organizing the placement of orphans and children deprived of parental care, related to adoption and foster families in Kyrgyzstan, as well as the problems of state children's institutions of the Kyrgyz Republic are considered. The necessity of improving legislation on orphans, children deprived of parental care and the development of relatively new forms of device for orphans, children deprived of parental care (foster family) is being studied. The authors notes that in the Kyrgyz Republic insufficient attention is paid to the forms of placement of orphans in families, for example, over the eight years of the existence of foster families, their number was 57, and the number of children transferred was only 167, which is caused by insufficient material base and small wages foster parents paid by the state, which makes this institution unattractive. Transfer for adoption to a family is not always realized, since in such institutions 94% of children have parents. In this connection, it is not possible to completely eliminate or reduce the number of state-run children's institutions for orphans and children left without parental care in the Kyrgyz Republic.

Keywords: orphanage; boarding school for children, foster family; orphans; children deprived of parental care; social orphan, adoption, child rights, single-parent family, unemployment, poverty.

Introduction. Foster care of children and adolescents who have had their rights violated is being discussed both in the scientific literature and in agencies involved in the development of public policies (do Amaral Costa & Rossetti-Ferreira, 2009, p. 111). Rights of child arise from the moment of the birth and state is obliged to provide them, regardless of whether child is raised in family, state institution or is in prison, whether child is mentally, mentally or physically healthy, or he is found to be mentally or physically inferior. Child is a special right-holder. In the legal system, status of child is characterised by substantive rights that are typical only for children and by different means of exercising and safeguarding rights, i.e. the rights of child are exercised by custodians acting on behalf of child (Kudeikina, 2019, p. 1). Protection of rights of minors deprived of parental care should be considered as the integral part of the human rights system and, in the first place, deserves consideration. Rights of child include best interests, participation/respect for the child's views, non-discrimination and life, survival and development (Gillett-Swan & van Leent, 2019, p. 1).

Methods. Using analysis, synthesis, historical legal, law and sociological methods, unfavourable factors in Kyrgyz society are studied contribute to the appearance of orphans and children left without parental care, such as divorce of parents, growth of percentage of single-parent families, unemployment, poverty, alcohol and drug addiction, child violence in families (physical, psychological, sexual abuse), migration and others.

Results. Historically, in Kyrgyz society there is the tradition embodied eternal wisdom of the people – together, with all the people, to help a person in need. The life of the ancient nomads depended on one authority – custom, the only living source of law at that time. At the same time, the nomadic community was one of the forms of existence and functioning of all individuals, for survival of which it was necessary to establish the determined mode of coexistence based on the customs and the traditions. Kyrgyz nomad obeyed the law of his ancestors. This right, not being written, possessed steady force and constancy. History of the formation and the development of orphanages in Kyrgyzstan, in which there were orphans, children left without parental care, has its own root causes, its origins, i.e. there are certain patterns in the emergence and existence of very acute social problem of child neglect and homelessness. Kyrgyz custom law contains historically established rules for adoption of children, establishes guardianship of children left without parents. Orphanage, as social phenomenon, as we understand, is, unfortunately, inherent in every stage of development, every era of human life, but at all times they fought for children, tried to at least somehow soften blow of fate and create certain conditions for such children could become full members of society.

The initial idea of rights of child was formed in custom law of the Kyrgyz. Child of the Kyrgyz never remained without parents. If his parents were dying, he was adopted by close relatives. Adopted as orphaned children of relatives, and other children whose parents were not known. The mandatory rule included the adoption of thrown babies ("tashtandy bala"). Foster children, as indicated by N.I. Grodekov was called the "inciles bala" (Grodekov, 1889, p. 7). The adoption ceremony was carried out as follows, with adoption of witnesses was announced, relevant rites were carried out. At the same time, adoptive mother gave the child breasts, so adoptive son became a son. They were more readily adopted by their sons, since they were considered the successors of clan.

Adopted children had the same rights as relatives. For example, the Kyrgyz proverb says: "Child is not of one who gave birth, but of one who raised".

In Kyrgyz custom law, protection of trights of children deprived of parental care was expressed in the form of guardianship (asyrap aluu) and the adoption (bagyp aluu), there was no other form of protection in Kyrgyz society.

Kyrgyz custom law on adoption and guardianship have functioned for many centuries. Many scientists believe child homelessness is a result of the difficult socio-economic situation of the Republic, caused by war, famine and devastation (Karsakova et al., 2018, p. 46). However, during the years of devastation, civil war and social upheaval, serious-minded modifications were made to the regulation of family relations. The reason for this was in the second half of the XIX century, Kyrgyzstan was affiliated to Russia. Now, the legal acts of the Russian Empire were introduced into the social life of the Kyrgyz community. The legislative development of adoption was also formed in the beginning years of Soviet power, when the first separate family law was adopted - the Code of Laws of the RSFSR "On acts of civil status, marriage, family and guardian law". However, in connection with fear of "exploitation of child labor under the guise of adoption", Art. 183 of the Code did not define the institution of adoption. But life made its own adjustments: because of the Second World War, the devastation and hunger, the appearance of great percentage of children left without parental care, there was wide demand for legislative consolidation of adoption's institution.

Due to these circumstances, in order to better safeguard interests of orphans and children deprived of parental care, several normative legal acts have been adopted specifically dedicated to the institution of adoption, such as: The Ordinance of the Council of People's Commissars of the USSR of January 23, 1942 "On Ensuring Children without Parents"; Instruction of the People's Commissariat for Education of the RSFSR, People's Commissariat for Health of the RSFSR, People's Commissariat of Justice of the RSFSR, approved by the Council of People's Commissars of the RSFSR on March 8, 1943. "On patronage, guardianship and adoption of children without parents"; Decree of the Presidium of the Supreme Council of the USSR of September 8, 1943 "On adoption"; The Ordinance of the Plenum of the Supreme Court of the USSR of June 29, 1945 "On Procedure for Defining of Fact of Adoption after Death or Missing on War of Adoptive Parent or Adopted, if during their Lifetime Adoption was not Formalized". Due the adoption of these acts during the Second World War, many families in Kyrgyzstan willingly and lovingly

took up orphans: Russians, Ukrainians, Belarusians, Jews, Karachais, Chechens and other nationalities evacuated to our republic (Isakov, 1966, p. 21).

For many centuries, aspiration for social protection of children without parents has been formed and established in Kyrgyz custom law. At all times, the Kyrgyz sought child to remain in family and in clan. Brothers, in the event of the death of one of them, were obliged to marry on deceased brother's wife of in order to take care of orphans. The rules of adoption and establishment of guardianship of children without parental care contributed to conservation of clan and ensured survival and protection of rights and interests of orphans. There were other approaches in the countries of the Socialist camp, for example, in the Czech-Slovak Socialist Republic the origin practice can be traced to the 1950s, when foster families were cancelled by the communist regime and the ideology of collective upbringing triumphed (Vavreckova, Tichaticha & Ondrushova, 2017, p. 237).

Recently, context with street children is often said at the present stage to be very similar to the situation in the 20-30s of the 20th century. Only reasons for this context have changed. If in the 20-30s reasons for enlargement of percentage of street children were civil war and hunger, today at the heart of this unfavorable process for our society are such factors (Osmonalieva, 2009, p. 3):

- crisis phenomena in family (collapse of its structure and functions, growth of percentage of divorces (according to statistics, every sixth marriage breaks up, for example, compared to 2017, quantity of divorces increased by 846, amounting to 10,434 in 2018) and percentage of single-parent families (children born for women who were not registered in marriage amounted to 36,790 in 2018); unemployment (in republic of officially registered unemployed was women 49.9%, men 50.1%); poverty rate was 22.4%; asocial image lives of individual parents (alcohol addiction of women aged 20 to 45 and older was 128, men – 1045. Drug addiction for men and women was 282).

- dissemination of child abuse in families and boarding schools (in 2018 crimes against minors was registered 1,497, 412 times more than in 2017) – these are only official statistics, unofficially there are a lot more of them. Children in institutions for orphans practically do not contact law enforcement agencies. In 2018, 419 children suffered from domestic violence, including 143 physically, 11 psychologically, and 6 sexually. From their father 252, from their mother 11, from other relatives 272 children;

- commercialization of the education sector (according to unofficial data, monthly payment at school varies on average from 300 to 600 soms).

And, probably, the worst of all this is that large quantity of children become orphans with living parents (external migration for 2018 – 7077, internal – 22,551; according to media reports in Kyrgyzstan there are more than 200.000 children of migrants, some of parents have not seen them for years, some children live with relatives, some parents have completely abandoned them; in 2019, migrants living abroad abandoned 21 children, and in 2018 this figure was 96).

Due to the high growth dynamics of percentage of children who have lost parental care, it is hardly possible to determine the exact amount of orphans and children left without parental care in our country. According to media reports, in 2020 in children's institutions the percentage of children was about 9,783. According to the UNICEF, 94% of them have biological parents. At present, there are about 137 children's institutions in Kyrgyzstan for orphans and children left without parental care:

a) in the system of the Ministry of Education and Science of the Kyrgyz Republic:

- orphanage and boarding schools for orphans and children left without parental care - 735 children,
- mass and status boarding schools - 5023 children,

b) 414 children in boarding schools of the Ministry of Labor and Social Development of the Kyrgyz Republic,

c) boarding schools of the Ministry of Health of the Kyrgyz Republic - 98 children,

d) non-governmental boarding schools - 711 children.

e) religious boarding schools - 19 children,

f) municipal boarding schools - 160 children,

g) foster families - 46 children. In other countries, for example, Brazil, other structures taken orphans, for example, welcoming families, are used (Valente, 2012, p. 576).

Percentage of children in foster families is very few, in order to enlarge amount of family forms of assistance of children, it was proposed to close orphanages in the Kyrgyz Republic. For example, in 2018, the deputy of the Jogorku Kenesh of the Kyrgyz Republic M. Mavlyanova proposed to liquidate orphanage. In her opinion, children should be sent to foster families. In November of the same year, President of the Kyrgyz Republic S. Jeenbekov supported the idea of introducing a moratorium on opening orphanages. Chairman of the League of Defenders of the Rights of the Child, N. Turdubekova, proposed to liquidate boarding schools for 10 years. The project is currently under development.

In accordance with paragraph 4 of Article 36 of the Constitution of the Kyrgyz Republic, the State guarantees the provision, maintenance, upbringing, education of orphans and children left without parental care. The basic guarantees of the State are reflected in social security.

According to Article 43 of the Code of the Kyrgyz Republic on Children dated July 10, 2012 No. 100, children without parental care are subject to transfer to foster care (for adoption), guardianship), and in absence of such opportunities - in organizations for orphans or children without parental care of all types (educational, social welfare, medical and other analogical institutions).

Children who are left without parental care and reside in educational medical welfare and analogical institutions regardless of ownership, have right:

- 1) for maintenance, upbringing, education, comprehensive development, respect for their human dignity, ensuring their interests;
- 2) for alimony, pensions, allowances and other social payments due to them in personal deposit savings accounts until they reach age of 18;
- 3) to observe the right of ownership of a dwelling or the right to use a dwelling, and in the absence of a dwelling, to acquire a dwelling in accordance with housing legislation;
- 4) for benefits provided by labor legislation for employment upon termination of stay in these institutions.

On February 21, 2020, the deputy of the Jogorku Kenesh of the Kyrgyz Republic M. Mamataliev proposed the Government of the Kyrgyz Republic provide quotes for orphans to enter universities of the Kyrgyz Republic without entrance examinations. It should be noted each year the Kyrgyz Republic provides 5,700 budget places to universities. In 2020, the percentage of orphans in the republic amounted to 2,000, and 17,500 half-orphans.

It should also be noted the Law of the Kyrgyz Republic “On the Basics of Social Services for the Population in the Kyrgyz Republic” dated July 28, 2008 No. 177 guarantees social assistance to children left without parental care:

- for living in specialized organizations of social services and receiving free social services;
- assistance in form of social services in search for guardians, foster parents and foster families;
- getting education and profession;
- to receive material assistance;
- promoting the organization of summer recovery and recreation;
- for legal services;
- to receive consultations, carry out individual preventive work (Article 23).

In the Kyrgyz Republic, in accordance with the Model Regulation on State Boarding Educational Institutions for Orphans and Children Left without Parental Care dated December 21, 1995 No. 556 following types of state boarding schools for orphans and children left without parental care function:

- preschool orphanage;
- mixed-type orphanage (for children of preschool and school age, or only at collective or school age);
- boarding school for orphans and children left without parental care (mass and auxiliary);
- family-type orphanage.

In orphanage and boarding schools are constantly taken:

- orphans;
- children taken away by court decision from their parents;
- children left without parental care, whose parents were convicted, deprived of parental rights in manner prescribed by law, found to be incompetent with prolonged treatment, being wanted, whose whereabouts have not been established.

The disadvantages of these residential services are indicated children usually do not have meaningful contact with their families or friends; there have been revelations about physical and sexual abuse in residential care over several decades, and monitoring to ensure that children are safe, healthy and receiving proper services, appears as a permanent weakness of the system; at the same time, residential care for children is perceived as staffed by a largely unqualified workforce (Munoz-Guzman Fischer Chia & LaBrenz, 2015, p. 220).

Temporarily children from low-income large families can be taken to boarding schools for orphans.

In contrast to our legislation, the norm has been admitted in the Republic of Tajikistan since 2017 that only orphans or partially half-orphans are taken in orphanages, and “social orphans” are not taken in orphanages.

We believe there is the need to adopt the experience of the Republic of Tajikistan and also prohibit the admission of “social orphans” to orphanages. In addition, paragraph 11, according to which children with single parent, can be admitted to these institutions, should be removed from the Model Regulation on state boarding schools for orphans and children without parental care.

In this case, firstly, children will stay at home with their parents; secondly, the country's budget can be saved, according to the media, the state allocates from 6 to 11 thousand soms per month for maintenance of one child in orphanage, but child receives only 40 percent of these funds. Remaining money is spent on boarding, repairs, staff salaries. It is better to give these funds in the form of benefits to such families. There are alternative options, for example, in France, foster family is used for temporary custody of orphans (Poitras & Tarabulsky, 2017, p. 1). Another example is Slovakia, where space was created for adoption of children with disabilities (until then they were considered unsuitable for adoption) as well as adoptive parents and foster parents - individuals. (Shkoviera, 2015, p. 66).

Remind children without parental care, in addition to transferring to nurturing by family (for adoption), guardianship or foster care), are also transferred to orphanage, of all types (educational institutions, organs for social protection of the population, hospitals and other analogical bodies (Article 43 of the Code of the Kyrgyz Republic on Children). But, the legislation does not establish about taken of children in state orphanage, law focuses on placement of children in families. Perhaps the legislator, stepping forward, wants to show orphanage will not exist in modern times. Unfortunately, so far, due to a large number of orphans and children left without parental care, we cannot transfer them all to families. For example, in Kyrgyzstan from 2012 to 2018 6,713 children were adopted, of which 87 children were adopted by foreign citizens, and in 2019 – 207 children, 7 of them by foreigners. The reason a small amount of children are adopted from orphanage is because 94% of them have biological parents.

Since 2012, there have been 67 foster families in Kyrgyzstan and 157 children have been transferred to foster care. Currently, 25 families nurture 46 children – this is a scanty amount, compared with how many children are in orphanage. In 2018, 211 families wanted to be foster parents, of which 132 were trained and received certificates. Children under 16 years of age, no more than three children can be transferred to a foster family, total number of children in one foster family, including their own, should not exceed 5 children (Clause 4 of Article 1 of the Regulation on Foster Family of October 1, 2012 No. 670). The state pays 12,000 soms for parenting child in such family, of which 6,000 to parents and 6,000 to child. In our opinion, in order to develop foster family, you need to pay more, stimulate, and encourage future foster parents. For example, in Lithuania there is the general program of the preparation of foster parents and adoptive parents, who have completed introductory and continuous trainings (Gudzinskiene & Raudeliunaite, 2019, p. 8).

Results. Based on the foregoing, we conclude, while our society can not abandon orphanage. Therefore, it is necessary to fill lacuna and include in the 11th chapter of the Code of the Kyrgyz Republic on Children legal norms regulating taken of orphans and children left without parental care in child care facilities. Without including this type of orphanage in this code, we will not solve the problem, but rather create difficulties in using legal acts. All norms regarding orphans should be systematized in one code.

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**ҚЫРҒЫЗ РЕСПУБЛИКАСЫНЫҢ ЖЕТІМ БАЛАЛАР МЕН
АТА-АНА ҚАМҚОРЛЫҒЫНСЫЗ ҚАЛҒАН БАЛАЛАР ТУРАЛЫ
ЗАҢНАМАСЫН ЖЕТІЛДІРУ**

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**СОВЕРШЕНСТВОВАНИЕ ЗАКОНОДАТЕЛЬСТВА КЫРГЫЗСКОЙ РЕСПУБЛИКИ
О ДЕТЯХ-СИРОТАХ И ДЕТЯХ,
ЛИШЕННЫХ РОДИТЕЛЬСКОГО ПОПЕЧЕНИЯ**

Аннотация. С помощью анализа, синтеза, историко-правовых, правовых и социологических методов изучаются неблагоприятные факторы в кыргызском обществе, способствующие появлению детей-сирот и детей, оставшихся без попечения родителей, такие как развод родителей, рост процента неполных семей, безработица, бедность, алкоголизм и наркомания, детское насилие в семьях (физическое, психологическое, сексуальное насилие), миграция и другие.

Рассмотрены наиболее значимые и актуальные аспекты организации размещения детей-сирот и детей, лишенных родительской опеки, связанные с усыновлением и приемными семьями в Кыргызстане, а также проблемы государственных детских учреждений Кыргызской Республики. Изучается необходимость совершенствования законодательства о детях-сиротах, детях, лишенных родительской опеки, и разработки относительно новых форм устройства детей-сирот, детей, лишенных родительской опеки (приемная семья). Авторы отмечают, что в Кыргызской Республике недостаточное внимание уделяется формам устройства детей-сирот в семьи, например, за восемь лет существования приемных семей их количество составило 57, а количество переданных детей-всего 167, что обусловлено недостаточной материальной базой и небольшой заработной платой приемных родителей, выплачиваемой государством, что делает данное учреждение непривлекательным. Передача на усыновление в семью осуществляется не всегда, так как в таких учреждениях 94% детей имеют родителей. В связи с этим полностью ликвидировать или сократить количество государственных детских учреждений для детей-сирот и детей, оставшихся без попечения родителей, в Кыргызской Республике не представляется возможным.

Ключевые слова: детский дома; детские учреждения интернатного типа, приемная семья (фостерная), дети-сироты; дети, лишенные родительского попечения; социальная сирота, усыновление, права ребенка, неполная семья, безработица, бедность.

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ISSN 2518-1467 (Online), ISSN 1991-3494 (Print)

<http://www.bulletin-science.kz/index.php/en/>

Редакторы *М. С. Ахметова, Д. С. Аленов, А. Ахметова*
Верстка на компьютере *А.М. Кульгинбаевой*

Подписано в печать 10.02.2021.
Формат 60x881/8. Бумага офсетная. Печать – ризограф.
20,17 п.л. Тираж 500. Заказ 1.