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## LEGAL MECHANISM FOR PROTECTING THE RIGHTS AND INTERESTS OF ENTREPRENEURS

The authors have made an attempt to comprehensively study the problems of ensuring the rights and freedoms of businessmen. We are talking about state measures to protect the rights of businessmen. Comprehensive measures to support small and medium-sized businesses are provided by law in the Republic of Kazakhstan. In the context of the pandemic, the state canceled annual inspections of the activities of businessmen, introducing a moratorium. As you know, a three-year moratorium on inspections of small and microenterprises has been introduced in the Republic of Kazakhstan since 2020. This became an effective measure to protect businesses from government interference in their activities, which allowed individual entrepreneurs to build a successful business in difficult conditions. Civil scientists have been studying the legal mechanism for protecting the rights and interests of entrepreneurs for many years. Great importance is attached to mediation, pre-trial procedure for the consideration of various complaints and disputes. The education and awareness of the population, as well as the values of civil society: freedom, comprehensive development of the individual, the ability to protect their rights and comply with duties, should fulfill an enduring value in this. Do not forget about subsidies and benefits that can significantly reduce the tax burden for businessmen.

**Key words:** entrepreneurial activity, business, pre-trial procedure, mediation, supervision, monopolies, antimonopoly regulation, protection mechanism, legitimate interests, legal means.

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### Кәсіпкерлердің құқықтары мен мүдделерін қорғаудың құқықтық тетігі

Бұл мақалада кәсіпкерлердің құқықтары мен заңды мүдделерін қорғау механизмі қарастырылған. Бұл механизм құқықтық реттеу тетігінің ажырамас бөлігі болып табылады. Бұл қарастырылған нысандар мен қорғау әдістерін, кәсіпкерлердің жеке құқықтары мен заңды мүдделерін іске асыруды қамтамасыз ететін құқықтық құралдар жүйесі. Мемлекет кәсіпкерлік саласындағы қызметті бақылау және қадағалау мақсатында түрлі органдарға бақылау-қадағалау функцияларын берді. Қазіргі кезде тұрақты тексерулер кәсіпкерлер үшін кедергі болды, өйткені құжаттар алынып тасталады, кәсіп тоқталады, бұл заңды тұлғалар мен жеке кәсіпкерлер тарапынан көптеген шағымдарға әкелді. Сайып келгенде, кәсіпкерлердің құқықтары мен заңды мүдделерін қорғаудың реттелген тетігі құрылды. Қазіргі уақытта жеке кәсіпкерлер мен заңды тұлғалардың құқықтары мен заңды мүдделерін қорғау тәртібі Мемлекеттік бақылау және қадағалау органдарының іс-әрекеттері мен шешімдеріне дау айту мүмкіндігін көздейді. Кәсіпкерлердің құқықтары мен заңды мүдделерін қорғаудың нақты дамыған теориясы, механизмі жоқ, бұл мәселе ғылымда даулы болып қала береді. Құқықтық әдебиеттерде бұзылған құқықты қорғаудың өзі «механизм, құқықтық әдістердің жиынтығы» ретінде қарастырылады, оның көмегімен бұзылған субъективті құқықтарды қалпына келтіру қамтамасыз етіледі. Қорғау және күзет құқықтық қатынастары институтының қолданылу саласында дара кәсіпкерлер сотқа дейінгі тәртіпті пайдалануға және бақылау-қадағалау органдарының әрекеттеріне шағымдануға құқылы.

**Түйін сөздер:** кәсіпкерлік қызмет, бизнес, сотқа дейінгі тәртіп, медиация, қадағалау, монополиялар, монополияға қарсы реттеу, қорғау тетігі, заңды мүдделер, заңды құралдар.

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### **Правовой механизм защиты прав и интересов предпринимателей**

Авторы предприняли попытку всесторонне изучить проблемы обеспечения прав и свобод бизнесменов. Речь идет о государственных мерах защиты прав бизнесменов. В Республике Казахстан законодательно предусмотрены всесторонние меры поддержки малого и среднего бизнеса. В условиях пандемии государство отменило ежегодные проверки деятельности бизнесменов, введя мораторий. Как известно, в Республике Казахстан был введен с 2020 года трехлетний мораторий на проверки субъектов малого и микропредпринимательства. Это стало действенной мерой по защите бизнеса от вмешательства государственных органов в их деятельность, что позволило индивидуальным предпринимателям построить успешный бизнес в трудных условиях. Ученые-цивилисты на протяжении многих лет изучают правовой механизм защиты прав и интересов предпринимателей. Большое значение при этом уделяется медиации, досудебному порядку рассмотрения различных жалоб и споров. Непреходящую ценность в этом должны иметь образование и осведомленность населения, а также ценности гражданского общества: свободы, всестороннего развития личности, умения защищать свои права и соблюдать обязанности. В рамках института правоотношений защиты и безопасности индивидуальные предприниматели вправе применять досудебную дисциплину и обжаловать действия контролирующих органов.

**Ключевые слова:** предпринимательская деятельность, бизнес, досудебный порядок, медиация, надзор, монополии, антимонопольное регулирование, механизм защиты, законные интересы, юридические средства.

#### **Introduction**

It is well-known, that the protection mechanism, the elements of this mechanism constitutes an independent institution such as entrepreneurship. Whole system of administrative courts has been created in order to supply the institute of protection and protective legal relations, individual entrepreneurs. This demand the restoration of the situation, have the right to put forward a claim for damages, suppression of illegal activity. Administrative method of protecting civil rights contents the administrative protection of the person, whose rights were violated. Thus, the victim has the right to prepare compliance to the higher authority.

#### **Research methods**

The main method was the study of scientific and theoretical materials. The analysis method was used in the formulation of the proposed new Kazakh laws, during the independent development, as well as in the formulation of proposals for the development and adoption in the new circumstances. So were used the following methods: logical method; system method; legal method; historical method. The research methodology is based on the dialectical method, freed from materialistic or idealistic monism and based on the pluralistic, multilinear interdependence of all social phenomena. We also used the method

of dialectical interdependence and interaction of methods: theoretical and empirical, induction and deduction, analytical, comparative methods.

#### **Discussion**

*Justification of the novelty and significance of the topic of the article.* Using the principle of analogy, it is quite logical to small, medium and large-scale entrepreneurship to the education system in the country (Kumaneeva 2017: 5). Nowadays, all acting legislation in the law-abiding state must be legal and confirm to the objective qualities of law. We mean not only the formal equality of law and its understanding as the general and necessary form of the liberty in the social relations of the people, but the law as the universal justice. It is very important to add the new definition- the powerful obligatoriness of the law (positive law) in the definite time and in fixed social space (Kozhukhar 2018: 7).

The prospects for the formation and development of a civilized small business in Kazakhstan directly depend on the overall course of socio-economic reforms, on the direction of their impact on the state of society and the national economy.

The search for a domestic model of small business support shows the complexity of this scientific problem. Kazakhstan has already experienced the times of reckless liberalization of economic relations, shock therapy. And today

it has become obvious that these ideas have been rejected by the entire course of implementation of reforms. It has long been proven that in the modern scientific world and socio-political practice, theories of unlimited economic freedom compete equally with theories of market regulation (socially oriented market, social states, social partnership). The market is not only capable, but even in the interests of its own self-preservation and self-development; it must imperatively take into account social, cultural, ethnic and other factors of social and economic life.

Entrepreneurs have a variety of legal and technical means of protection at their disposal. For example, in order to preserve property, its accounting (Butnev 2019: 21). Procedural methods of protection are the implementation of the legally established competence of the jurisdictional bodies in the form of issuing acts aimed at establishing. The protection of industrial property objects of an entrepreneur registration of research developments performed (Vershinin 2020: 58).

All these measures are the manifestation of the subjective civil right. The state fights against economic crime are connected with the forces of law enforcement agencies and punitive institutions. As it is well known, the subjective right to protection is a right legally assigned to an individual legal entity and gives the opportunity to restore the violated rights (Balashov 2019: 64).

Entrepreneurs are provided with the right to protection on an equal basis with other subjects of legal relations; their activities are protected by the norms of constitutional, administrative, labor, civil and criminal legislation (Belyakov 2018: 40).

In the domestic concept of state support for small business, foreign experience is much more useful and far-sighted to use for the revival, recovery and activation of their own vital forces. At the same time, it should be borne in mind that the state is necessary for small businesses to the same extent as the latter is necessary for the state (Klein 2019: 27).

The development goals of this important sector of the economy cannot be reduced only to making a profit. Small business should be focused on improving the quality of life of citizens, radically changing the service sector, the whole way of life. In this case, forming the middle class and working for society as a whole, it acts as a structurally forming civil institution of society and performs its main functions – to ensure the stability and sustainability of the social system, social security and social protection of the population, as well as innovative development (Andreev 2017: 33).

Entrepreneurs are provided with the right to protection on an equal basis with other subjects of legal relations; their activities are protected by the norms of constitutional, administrative, labor, civil and criminal legislation (Mikshis 2018: 67).

The current priorities of the legal and financial policy of the state are taking people's consciousness away from the main thing: from creativity, business orientation to the development of production, and away from intermediary services in the field of financial and trade-intermediary operations, the vast majority of which are speculative, and even criminal in nature. Unfortunately, the most dangerous thing is increasing number of young people, who are involved in criminalized areas of entrepreneurship (Grachev 1993: 12).

There are two different forms of protection:

1. Judicial form is based on the activities of state-authorized bodies, when an entrepreneur applies in case of violation of his legal rights and interests by illegal actions.

2. Out-of-court form of entrepreneurs can also be carried out outside the framework of legal proceedings in the following forms: a. The Arbitration court. b. Notarial protection.

## Results

Famous Russian and Kazakh lawyers, such as G.A. Iliasova, M.A. Kumaneeva, A.N. Kozhukhar, V.V. Butnev, A.N. Vershinin, A.I. Balashov, V.G. Belyakov, Yu.N. Andreev, D.V. Mikshis made a big contribution into research of this problem.

It is impossible to clearly define the legal status of an individual entrepreneur in the form of the rights and obligations, because an individual entrepreneur remains a citizen, with the constitutional rights and obligations. In any country, any commercial activity is regulated by law. In our country this activity is regulated by the Special Law. It defines the forms of all economic categories. The law also specifies cases of preferential incentives for the achievements of new technologies (Eseyukolova 2003: 58).

Many entrepreneurs, either a group of entrepreneurs or a single entrepreneur from the actions of various entities have the right to be a businessman. Any citizen who plans to create a company must be legally capable, have legal capacity and at the time of registration must have a permanent or temporary registration in our country. Of conceptual importance is the idea that small business support cannot be reduced only to the state and only at the local level. In the sphere of national policy, there will continue to be a tendency

to decentralize and expand the rights and powers of regions, local communities, and village districts that have local resources to independently support small businesses that operate in this territory (Ermakov 2003: 64).

An individual entrepreneur creates an enterprise in order to make a profit. If the manager is legally capable, then he can use his legal rights and obligations. In the event that the activity requires licensing, the individual entrepreneur must obtain a license. In addition, an individual entrepreneur needs to conclude a contract with the partners. The contract must not contradict, as well as determine the consequences of a violation of the contract. An individual entrepreneur has the legal right to enter into profitable commercial unions, to carry out mergers and acquisitions. The owner can sell part of his business or the whole business (Muhamedzhanov 2003: 11).

The tax accounting period is one calendar year. The obvious advantages include not only the absence of important payment, but also the reduction of bureaucratic procedures. This means that the entrepreneur will not have to worry about the compliance of the documentation and the occurrence of a fine.

Microfinance enterprises and pawnshops cannot work on this tax system. Businessmen, who already use the simplified taxation system, should refuse to expand their enterprise. An entrepreneur, who is registered with the simplified taxation system, cannot refuse to pay tax (Dauranov 2003: 29).

Most important legal fact acquires the legal status of a business entity is the moment of state registration. One of the features of entrepreneurial activity has expressed a desire to engage in the relevant type of business, the following rights:

1. The right of a business entity to build a model of management of internal economic processes at its own discretion, based only on the requirements of the current legislation;
2. The right to independently carry out pricing in relation to the goods and services;
3. The right to enter into labor relations on the employer's side;
4. The right to judicial protection of violated rights and legitimate interests, including state authorities, local self-government bodies.

Entrepreneurs are characterized by a special regime of legal liability: on the one hand, an individual entrepreneur as a business entity is responsible regardless of guilt, from the other hand; an individual entrepreneur is responsible for obligations with all property belonging to him. Entrepreneurial activity has initiative and independent nature, also the purpose of making a profit (Ayupova 2018: 185).

The development of individual entrepreneurship has reached a new level. The Government is trying to support its development. However, there are cases, when the method of protection does not give the right to choose the type of protection mechanism. For example, according to the simplified procedure, the entrepreneur applies to the court and pays the state duty. Judicial practice has a sufficient number of cases with a favorable outcome. An entrepreneur should not be afraid to defend his own rights.

An individual entrepreneur engaged in entrepreneurial activity can enter into relationships with individuals, which can bring both profits to an individual entrepreneur, and to a certain extent create difficulties. An individual entrepreneur is a business entity that provides certain services, carries out trade in goods, which entails the conclusion of contracts, and may lead to legal proceedings.

## **Conclusion**

The appeal to the court begins with the preparation and filing of a statement of claim, which describes the essence of the dispute by itself and the petitioning part. In the future, the process of presenting evidence, petitions, requests, etc. takes place. The outcome of the trial may be: a settlement agreement, concluded between the sides, a ruling on the termination of the case under certain circumstances, or a court decision. In case of disagreement with the decision, one of the sides or both sides may appeal the decision to the cassation or appeal instances. In the conclusion we should note, that the entrepreneurs, are the violated rights by themselves. The subject should include the circumstances and conditions that caused or contributed to the violation. The claim procedure is widely used in business practice.

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