

BASIS FOR DETERMINING THE PLACE OF RESIDENCE OF CHILDREN AS A RESULT OF DIVORCE

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| Abstract: | Keywords |
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| <p>Family and civil legislation indicate that children are also full participants in these relations. Unlike adult children, the procedure for exercising their rights and freedoms by minors is carried out based on their legal status. These norms also cover relations related to the child's place of residence.</p> <p>While the child's personal non-property rights serve as a guarantee of his normal development, one of the rights affecting his physical and mental healthy development is the right to his place of residence.</p> | |

Introduction

According to the current legislation, minors cannot independently exercise their rights arising from relations related to their place of residence. For this, their legal representatives or relevant institutions designated as responsible for dealing with their rights are authorized. Although the legislation clearly establishes the rights of children under 14 years of age regarding their place of residence, the issue of the place of residence of children aged 14 to 18 is left open. However, it is established in national and foreign legislation that all citizens under the age of 18 are considered minors.

K. Sindarov and A. Yarashev specifically address this issue and emphasize that the legal norm refers, first of all, to a minor citizen under the age of 18, and it is appropriate to provide for this content in the legislation.

We, agreeing with the opinion of the above legal scholars, propose to revise the second part of Article 21 of the Civil Code of the Republic of Uzbekistan in the following wording in order to eliminate the mutual ambiguities between the definition of "child" in Article 3 of the Law of the Republic of Uzbekistan "On Guarantees of the Rights of the Child" and international law norms, the definitions of the child's "place of residence" provided for in Article 19 of the Law, the address where he/she may live, and the norms of Article 21 of the Civil Code regarding the child's "place of residence":

"The place of residence of minors (minor children) or citizens under guardianship, who have not reached the age of eighteen (except in cases of emancipation), is the place of

residence of minors or citizens under guardianship, where their legal representatives - parents, adoptive parents or guardians - live.”

In the event of a divorce, the issue of the child’s place of residence is certainly not left out of consideration. Questions about who and where a minor child should live can be resolved in two ways: by mutual agreement between the spouses and, if no agreement is reached, by resolving the issue through the court.

Although family law is based on the norms based on the equality of husband and wife, in practice, courts mainly determine the place of residence of the mother as the place of residence of the child. In this case, of course, taking into account the future psyche of the child, it is concluded that he is directly attached to the mother.

Article 66 of the Family Code of the Republic of Uzbekistan establishes the right of a child to see his or her parents. Failure to comply with this provision directly leads to liability of persons guilty of violating the legislation on guarantees of the rights of the child in accordance with the requirements of Article 31 of the Law of the Republic of Uzbekistan “On Guarantees of the Rights of the Child” and Articles 47, 471, 472, 474, 491 of the Code of the Republic of Uzbekistan on Administrative Responsibility.

Judicial practice regarding the consideration and resolution of disputes between divorcing spouses regarding who the child should live with or remain with after the divorce shows that the decision is made taking into account the financial situation and place of residence of the mother (or father) claiming to keep the child with her, the child's attachment to one of the family members, the moral and other personal qualities of the parents.

In addition, the court must conduct the necessary examinations and take into account their conclusions¹.

For example, in the civil case of the plaintiff I.T. against the defendant I.D., which was completed by the Fergana Inter-District Court on February 18, 2020, the plaintiff I.T. supported her claim in court, stating that she entered into a legal marriage with the defendant D.I., that she has 1 minor child from their joint marriage, named I.I., that she has been living with the defendant since August 2019 due to family disagreements, that her child is in her care, that in January 2020, the defendant D.I. asked for visitation, took her child away and did not return it, and that she has sufficient conditions at home for the child to be raised well in all respects, and that she asked the court to grant I.I. asked to determine the place of permanent residence of his child named D.I. with him. The defendant D.I. did not recognize the claim in court, but stated that he had sufficient conditions for the child to be raised well in all respects at home, and asked the court to refuse to satisfy the claim. The representative of the “Guardianship and Guardianship” body of the Fergana city XTB stated in court that he had studied the family circumstances of the defendant, indicated that all conditions were sufficient for the child to live and be raised normally in the father’s

¹ O‘zbekiston Respublikasi Oliy sudi Plenumining 1998-yil 11-sentyabrdagi 23-sonli “Bolalar tarbiyasi bilan bog‘liq bo‘lgan nizolarni hal qilishda sudlar tomonidan qonunlarni qo‘llash amaliyoti to‘g‘risida”gi qarorining 7-bandini // <https://lex.uz/docs/1447402>

house, and asked the court to resolve the claim legally, taking into account the interests of the minor child.

As established in the court and from the case documents, the parties entered into a legal marriage in the FXDY department of the Khamza district of Tashkent city, and they have been living divorced since August 2019. The parties have 1 child named I.I. from their joint marriage. The couple did not divorce from their legal marriage. I.I. The child named T.I. has been living with his mother T.I. since August 2019 in apartment 2 of house 1, Munavvar street, Yashnabad district, Tashkent city. The defendant D.I., during the next visit with the child in January 2020, took his child with him to apartment 2 of house 32, Pushkin street, Fergana city and did not return the child to his mother. According to the conclusion drawn up by the "Guardianship and Guardianship" body of the Yashnabad district of Tashkent city on February 14, 2020, there are no grounds for the mother T.I. to take away her minor child. A positive opinion was given by T.I. from his place of residence and place of work about his morals and personal qualities.

The conclusion drawn up by the "Guardianship and Patronage" body of the Fergana City Criminal Investigation Department on February 6, 2020, stated that the father D.I. is of positive character, has sufficient living conditions, has created conditions for his minor child in his apartment, and there are no factors that negatively affect the interests of the child. The court, while determining the permanent place of residence of a minor child with either father or mother, protected the interests of the child, not the parents, and also considered that the child was not yet 5 years old, the child had not been separated from his mother until he was 5 years old, and he should continue to be raised with the love of his mother, and also that when the couple decided to live together after a divorce in August 2019, the father also agreed to let the minor child live with his mother, the child was being raised in the Yashnabad district MTM No. 425, and the mother did not have any negative defects that would prevent her from raising her child, and based on special circumstances, it found it appropriate to leave the minor child at the mother's place of residence until the situation changes (reconciliation of the spouses, determination of a new place of residence for the child based on the consent of the spouses, the formation of strong relationships between the father and son as the child grows up, etc.).

The court, in accordance with Article 254 of the Criminal Procedure Code of the Republic of Uzbekistan, in order to protect the interests of a minor child and to resolve the dispute between the parties regarding the child's visitation with his father, on its own initiative, departed from the scope of the claim filed, taking into account that the respondent father has the right to visit his child and participate in his upbringing, and determined the procedure for visitation, and imposed on the plaintiff mother the obligation not to oppose the respondent father's visitation with her child. Accordingly, the court found it necessary to satisfy the plaintiff's claim.

Usually, in judicial practice, the fate of the child and with whom he lives are considered an important issue by the courts, but due to the lack of mutual agreement and the ongoing

dispute, this issue remains unresolved². In our opinion, Article 44 of the Family Code of the Republic of Uzbekistan should be supplemented with the following parts:

“When separating from a marriage in a judicial procedure, the spouses may submit to the court for consideration an agreement on the procedure for paying funds for the maintenance of children and (or) a spouse who is incapable of working and needs assistance, the amount of this amount, or the division of the spouses’ common property.

When considering a case on divorce, the court must clearly determine whose custody the minor children will remain in, regardless of whether the spouses submit an agreement on which of them the child will remain in.”

These amendments to the law:

firstly, will prevent an increase in the volume of cases in the courts;

secondly, will reduce the likelihood of children wandering between their parents in the future.

In rare cases, divorced spouses live in the same apartment. As a rule, this cohabitation is temporary and lasts until the property dispute between the husband and wife is resolved.

As for the fate of the child in this case, it is impossible to expel him, regardless of the circumstances of the parents, because according to family law, the parents are obliged to ensure the material well-being of the child, to provide for his upbringing and education even after the divorce.

² Nasriyev I., Karaboyev J. Bolalarni munosib hayot sharoitlari bilan ta’minlamaslik oqibati // Odillik mezoni. №6. 2020. – B. 44.