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The Concept of the Place of Residence of the Child: its Connection With Citizenship and Family Law

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One of the independent participants of civil and family legal relations is a child. It should be noted that the involvement of a child in this type of legal relationship is common. Many theoretical and practical problems arise in the implementation of children's rights. These problems are related to deficiencies in the legislation, different criteria for the approach to the creation of norms in the field of children's rights, diversification of legal regulation, inconsistency between legal norms and law enforcement bodies, problems in the optimal legal system of guaranteeing children's rights.

The Universal Declaration of Human Rights adopted and announced by the United Nations General Assembly on December 10, 1948 with Resolution 217 A (III) (**Article 13**. Everyone has the right to freedom of movement within each state and to choose a place of residence ¹⁾ and the Republic of Uzbekistan Citizenship of the Code (Article 21. Place of residence of a citizen. The place where a citizen permanently or mainly lives is his place of residence.) Citizens of the Republic of Uzbekistan have the right to freely choose their place of residence.

Unlike adults, a child's rights and obligations are based on their legal status. In addition to the general rules, civil and family legislation has special rules for the child's participation in legal relations. These provisions apply not only to the legal capacity and capacity of the child, but also to other elements of the child's legal status, including the place of residence of the child.

Now it is appropriate to analyze the child's place of residence, which is directly related to this relationship. It cannot be denied that one of the elements of the legal status of the child is the place of residence. Rules governing the child's place of residence exist in both family law and civil law. This shows the cross-sectoral nature of the regulation of the child's right to choose the place of residence. The rules of family law regulate the issue of the child's place of residence when parents live separately (Articles 30, 32, 66, 75).

In the civil legislation, and in particular in Article 21 of the FC, the concept of place of residence is given and the issue of place of residence of minor children is regulated. The place of residence of the child is the place of residence of the child, regardless of whether the parents live together

¹<https://constitution.uz/uz/pages/humanRights>

or separately until the age of fourteen. The place of residence of children between the ages of fourteen and 18 is not specified in FC.

It should be noted that the "Code of Marriage, Family and Guardianship" of the RSFSR of 1926 also regulates the issue of the child's place of residence. According to Article 55 of this code, if parents do not live together due to divorce or other reasons, their agreement should determine with whom minor children should live. If there is no agreement between the parents, the dispute will be resolved by the court based on the interests of the children. This provision provides for the determination of the child's place of residence in accordance with the agreement between the parents. At the same time, according to the provisions of Article 56 of the Code of the RSFSR of 1926, a parent living separately from children had the right to communicate with them and was obliged to participate in their upbringing, and whoever the parent was with. Living children did not have the right to prevent the other parent from communicating with the children and participating in their education. Guardianship and guardianship authorities could deprive a parent who lives separately from the child of the right to communicate with the child for a certain period of time if this interferes with the child's normal upbringing and has a harmful effect on him. If the parents cannot reach an agreement on the procedure for the participation of the parent who lives separately from their children in raising them, this procedure will be determined by the guardianship and guardianship authorities with the participation of the parents. In cases where the parents did not obey the decision of the guardianship and guardianship authority, the latter had the right to immediately apply to the court to resolve the dispute. The Civil Code of the RSFSR regulates the issue of the place of residence of minors under 15 years of age, defining it as the place of residence of parents, adoptive parents and guardians (Article 17 of the Civil Code of the RSFSR).

Using the method of historical and comparative jurisprudence, studying the issues of regulation of the place of residence of children in accordance with the existing domestic laws and current legislation, we define the concept of the place of residence of the child in relation to other rights and the criteria that must be met according to the agreement of the legal representatives on the place of residence of the child during the divorce, we emphasize that it is related to other issues that arise in the analysis of the current norms of family and civil legislation. It can be concluded that the rules on the place of residence of children should be regulated separately by the norms of family and (or) civil law, and differences in legal regulations should be eliminated. This issue is not sufficiently studied in the special literature on family and civil law.

There are problems with the law enforcement activities of courts and other bodies that resolve or help resolve disputes about the place of residence of children. The complex legal nature of the institution of the place of residence of children, the insufficient development of this issue in the scientific literature, the problems of law enforcement indicate the need for an in-depth study of this legal phenomenon, the identification of problems, their solution, and the theoretical justification of the appropriate legal regulation. The current FC defines the concept of "place of residence". Thus, in accordance with Article 21 of the FC, the permanent or main place of residence of a citizen is his place of residence. Also, in the Constitution of the Republic of Uzbekistan, everyone who is in the territory of the Republic of Uzbekistan on legal grounds has the right to freely move around the country, to choose the place of residence and residence (Article 32). Thus, in accordance with Article 21 of the FC, the permanent or main place of residence of a citizen is his place of residence. Also, according to the Constitution of the Republic of Uzbekistan, everyone who is in the territory of the Republic of Uzbekistan has the right to freely move around the country and choose the place of residence. (Article 32).

It should be noted that the rule on recognition of the place of residence of the child as the place of residence of one of the legal representatives in Part 2 of Article 21 of the FC is not always applicable. Sometimes legal representatives determine the child's place of residence based on the place of residence of other persons (for example, grandparents, other relatives).

At the same time, the current FC prohibits legal representatives from determining the child's place of residence based on the place of residence of other persons. This situation is not regulated in any way in family law. We can conclude that Article 75, Part 5 of the OC allows the child's place of residence to be determined not by their place of residence, but by agreement. It should be assumed that family law is lacking in this regard. With the voluntary consent of the legal representatives, they do not have the right to determine the place of residence of the child according to the place of residence of other persons (with some exceptions). Otherwise, many norms of the OC regulating the rights and obligations of legal representatives of children (the right to education, the right of a child to live and be raised in a family, the right to live together, etc.) will lose their meaning. In order to eliminate the described deficiency, Article 75, Part 5 of the OK should be clarified. According to FC, legal representatives include first parents, then adoptive parents and guardians. It should be noted that only parents are provided for in the OC (Article 75 of the OC, this issue is not regulated in adoption, guardianship and foster care institutions and families under foster care).

Based on the meaning of Article 165 of the OC (legal consequences of adoption), we can conclude that parents, guardians and adoptees have the same right. The contract concluded between the legal representatives must be in accordance with the norms of family and civil law. One of the requirements is related to its content and is to determine the place of residence only by the place of residence of one of the legal representatives. We are primarily talking about parents who have not been deprived of parental rights and who have not limited parental rights. Another important condition of the agreement is that the child's interests should be followed when deciding the issue of the child's place of residence. Many cases confirm this. These include the availability of residential buildings, the level of its improvement, the possibility of creating conditions for proper upbringing and provision, the behavior of legal representatives, the attitude towards children, etc. It is important to correctly identify the subject parts of the agreement. This can be done only by foreign representatives with legal capacity or partial legal capacity.

The rule on the possibility of determining the place of residence of children also applies to parents of minors between the ages of fourteen and eighteen. custodial parents, adoptive parents and guardians must have full legal capacity. Removal of the child from his parents, deprivation of parental rights, cancellation of adoption, cancellation of the agreement on giving the child to a foster family makes it impossible for the named persons to participate in the agreement. In this case, the place of residence is determined by the guardianship and guardianship body, as a rule, simultaneously with the decision on the form of placement of the child.

The next requirement concerns the form of the contract. It is clear that the form of the contract should be written, which will eliminate most of the shortcomings. It is also desirable to introduce the procedure for signing contracts with guardianship and patronage bodies. In this case, the implementation of the child's right to a place of residence is ensured. Here, we demonstrate the validity of the proposal using case law. Thus, a dispute arose between the parents of a minor about the child's place of residence. The child was registered at the place of residence of his father and lived at the place of residence of his mother. The court recognized the place of residence of the child as the place of actual residence ². The contract can be changed by the legal representatives in case of circumstances leading to a change of place of residence (relocation of the legal representatives to another area, provision of another accommodation, long business trip, illness that prevents the fulfillment of the rights and obligations of cohabitation, etc.). This contract is valid until the child reaches fourteen or eighteen years of age. When the child turns fourteen years old, he has the right to independently determine the place of residence with the consent of his legal representatives. This conclusion is based on the provisions of Article 27 of the FC and can be appealed to the court in case of disagreement between the legal representatives.

² <https://public.sud.uz/report/CIVIL> . Case No. 2-1502-2301/6479.

If there is no agreement between the parents, the dispute will be resolved by the court upon the application of the guardianship and guardianship body, other institutions for the protection of children's rights, or the prosecutor. In resolving the dispute, the court takes into account the interests of children, takes into account their opinion and takes into account the relationship between the child and the legal representatives, personal qualities of the legal representatives, financial and family situation and other relevant circumstances. If there are circumstances that require a change of residence, the legal representatives have the right to appeal to the court again with an appropriate application. The court's decision cannot be changed and considered legal until the child reaches adulthood. A child under the age of fourteen is not personally involved in determining the place of residence, although the consent of a child who has reached the age of 10 is required, for example, in solving some issues related to his placement in the family, and in this case, it is related to the place of residence. (Articles 155, 162, 172 of the Criminal Code). As a rule, this right is exercised by parents, other legal representatives, guardianship and guardianship authorities. It should be remembered that the child's interests should be taken into account when deciding the place of residence of the child. If the child's parents live in different regions, they also determine the child's place of residence by mutual agreement.

Also, Article 9 of the OK Articles 10-11 of the UN Convention on the Rights of the Child should be taken into account. It follows from the fact that the child has the right to be with his parents on a regular basis to maintain personal relationships and direct contact. A child and his/her parents have the right to leave any country, including their own country, and to return to their own country.

Place of residence is one of the circumstances that characterizes the legal status of a child. In addition to legal capacity and legal capacity, the place of residence allows to fully demonstrate the legal status of the child. It is closely related to other elements of legal status. As noted above, it affects the scope of the legal entity. In turn, legal capacity and legal capacity affect the place of residence of the child. Thus, a person with legal capacity determines the place of residence and its constituent elements, including housing, settlement, etc. The meaning of the concept of "place of residence" consists of subjective and objective elements such as housing (apartment, house, etc.), settlement, residential area, geographical location, state, etc. determined by the administrative-territorial unit.

Difficulties arise in understanding the child's place of residence in law enforcement activities. In particular, citizen B filed a claim against the insurer for his own interests and the interests of a minor child. He had concluded an insurance contract with an insurance company outside his place of residence. During the vacation, a traffic accident happened with the child. Medical care was provided at the resort, but treatment later took place elsewhere and costs were incurred. The insurer refused to cover the expenses, saying that the insured event happened outside their place of residence. According to the plaintiff, residence is determined by a specific apartment and not by a settlement. The district court dismissed the claim, citing the fact that the domicile was not limited to a specific residence as a basis for dismissal. It seems that the verdict is justified. The concept of "place of residence" includes not only a specific residence, but also a settlement.

Thus, the place of residence is the territory of the state where a citizen resides and lives mainly for one year, as a rule, or for another longer period of time that is the basis for determining the place of residence. At the same time, living should be understood as being and being in various legal and factual relationships that constitute the content of living. In this concept, the place of residence is defined as a public legal phenomenon: place, location, territory, address, geographical coordinates.