

THE ROLE OF THE EXPERT PSYCHOLOGIST IN TAKING DECISION TO THE QUESTION OF DETERMINING THE PLACE OF RESIDENCE OF CHILDREN

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Abstract. *This article discusses issues related to determining the place of residence of children, as part of a forensic psychological examination. Psychological and legal mechanisms for conducting this examination are revealed, taking into account its ability to serve as one of the evidence in civil proceedings.*

Keywords: *child, forensic psychological examination, expert opinion, interests of the child, civil litigation.*

As you know, the need to develop measures to protect the rights of the child (due to his social, physical and mental immaturity) required the allocation of international protection of children's rights in a special direction. To this purpose, the United Nations created the Social Commission and the United Nations Children's Fund (UNICEF). The international right of the child is to be recognized as a person from the moment of birth. The issue of establishing a period of time after which a person begins to be considered an adult from a legal point of view is considered quite complicated. However, from the position of scientific psychology, the actual and passport age of the child (with all the ensuing consequences) are sufficiently determined. Taking into account the periodization of age development, already at the age of 3, the child shows an emotional and value attitude to the world, including the close environment (parents). And these features of a child at the age under consideration must be taken into account when considering civil cases on the right of upbringing and place of residence with one of the parents.

The law provides that the solution of this issue is possible only in the interests of the child himself, subject to the principle of equality of rights of both parents. However, in Uzbekistan, the established tradition is such that when determining the place of residence of children, preference is usually given to mothers. Statistics show that almost 80% of cases related to this issue are resolved in favor of mothers, without taking into account the interest of the child. Although the possibility of expert study of such cases by a psychologist in other countries, for example, in the Russian Federation, has long been not an exception, but the rule.

In rare cases, in the practice of the noted circumstances, children are left with their fathers. According to O. V. Konovalyuk and V. V. Dorofeev, the place of residence of the child should be determined not only with the mother, but also with the father, because the father plays an important role in the moral and physical education of the child.

In Uzbekistan, in January-September 2021, 29,031 facts of divorce were registered. During this period, the divorce of parents with one child was recorded in 28.1% of cases; with two children - 15.8%; with three children - 4.2%; with four or more children - 0.9%. But in 2022, a total of

48,734 divorces were already registered, i.e. there is a trend towards the disintegration of family unions.

The reported figures are, of course, disappointing, and in every divorce process considered in court, the issue of determining the place of residence of children was also raised. Consequently, the demand for judgment in special psychological knowledge is constantly growing.

In the resolution of the plenum of the Supreme Court of the Republic of Uzbekistan dated September 11, 1998, No. 23 (“On the practice of applying legislation by courts in resolving disputes related to the upbringing of children”), it is noted that the court, considering the merits of the dispute on this issue, takes into account in the interests child in various circumstances, subject to the principle of equality of parental rights of both parents. If necessary, the court must appoint a forensic psychological examination, which can be carried out in relation to the parents (one of them), as well as a psychological analysis of the situation (family conflict). It should be borne in mind that the conclusion of a forensic psychological examination and the conclusion of the guardianship and guardianship authority, being only one of the evidence, must be evaluated by the court in conjunction with other evidence available in the case.

Also in the noted resolution it is indicated that when resolving disputes between parents living separately about which of them and which of the children will remain to live, the court, based on the established Art. 71 of the Family Code of the Republic of Uzbekistan of equality of rights and obligations of father and mother, must make a decision that would be consistent with the interests and desires of minors. At the same time, the court takes into account the child's attachment to each of the parents, brothers and sisters, which of the parents shows great care and attention to the children, their age, the moral and personal qualities of the parents, the relationship that exists between each of the parents and the child, the possibility of creating conditions for the child to upbringing and development (occupation, mode of work of parents, financial and marital status of parents, etc.).

The need to involve an expert psychologist in the consideration of disputes about determining the place of residence of the child is due to the fact that the court is faced here not only with legal, but also, first of all, with proper psychological issues, because parents apply to the court in the presence of a complex of personal and other disagreements, the impossibility of resolving them peacefully.

However, in the practice of expert forensic psychological research, there are cases when, when considering civil cases related to the protection of the rights and interests of children, mistakes are made. The ambiguity in understanding all the necessary circumstances on the basis of which judicial decisions are made leads to moral errors, as a result of which children and their parents who have declared their rights to education suffer.

A psychological analysis of judicial practice on divorces in the Republic of Uzbekistan allows us to conclude that the number of positive court decisions is clearly skewed in favor of mothers, that the interests of fathers, who also claim the right to raise their own children, are infringed, taking into account the interests of each common child.

Analyzing the experience of the practical implementation of the laws of different states, it should be noted that, for example, in Finland in 1975, the “Law on Paternity” was adopted, according to which joint custody continues after the divorce of the spouses.

In the UK, under the Children's Act 1989, a description of forms of child care is given, which defines the responsibilities of parents and other persons in raising a child. The obligation to

take care of the child, to raise him morally, physically and mentally healthy is prescribed to both the mother and the father in equal measure.

Under the laws adopted in many states in the United States, there are legal and physical forms of custody of children after the divorce of both parents. If a child stays with one of the parents, then this factor does not deprive the other of the opportunity to participate in upbringing and education. The second physical form assumes that children, if possible, live with each of the parents in turn (for example, during the study period - with the mother, and during the school holidays - with the father). This is about separate custody between mother and father. This means that the mother usually takes the girls and the father takes the boys.

However, this trend can also have negative consequences, especially in cases where brothers and sisters who are psychologically attached to each other are separated in this way.

If the dispute about the right to raise children arose in connection with the dissolution of the marriage, then attention should be paid to the causes of the family conflict, which can be an important circumstance for correctly determining the place of residence of the child, taking into account his interests. The noted provisions are psychological, and it is impossible to professionally implement them based only on life experience. In this case, it is necessary to use special knowledge, namely, knowledge of a psychological nature.

When the court tries to resolve the issue of transferring the upbringing of a child to one of the parents only on the basis of testimonies, cases are often dragged out, repeatedly reviewed, which leads not only to an increase in legal costs, but also to an increase in the negative impact of a chronic conflict situation in the family on the child, which can lead to mental disorders.

It should also be noted that each case of transferring the upbringing of a child to one of the parents is inherently unique, and this uniqueness lies in legally significant circumstances that are the foundation of a special psychological study. The central issue of the examination is the child and the establishment of the "best interests of the child". This factor is considered from two points of view, namely: child-parent relationships and the quality of educational plans of each parent.

In a generalizing version of foreign literary sources, it is shown that, for example, in the United States, the court, when deciding on child custody, takes into account two leading factors: the child's preferences; recommendations of expert psychologists, according to which in 85% of cases the court makes decisions.

During the conduct of forensic psychological research in civil proceedings on the issue of the right to raise a child and the place of his residence, difficulties arise that require very careful study. For the most part, the object of study in this case is the parents, their relationships, children and their special attachments. But there are cases when parents do not live together for a long time, and the child lives with one of the parents in such conditions where he feels comfortable and psychologically harmonious. In these circumstances, consideration of the situation of family conflict between the parents of the child is unproductive, unless the child is examined to determine the degree of his attachment and preferences. Hence, taking into account the evidence and other information available in the civil case materials (discs, photographs, video clips, etc.), one should be selective about the object of research.

In this regard, we give a typical example from our expert practice. According to the materials of the case, the mother of minor children could not find a common language with her husband's parents and went to her father's house. The children stayed in the father's house under the supervision of his parents. At the same time, the mother showed perseverance and, despite the

active reaction of protest from both her son and daughter, took them for further residence in her 3-room apartment, where, in addition to the mother, seven more people lived together. During the trial, on the basis of the statement of claim of the father, to whom the children remained psychologically attached, the issue of determining their place of residence was decided. The civil case file included a CD showing the emotionally charged protests of the children during their forced removal from the home of their father and grandparents.

The expert study was carried out in accordance with the definition of the court, which posed questions to the psychologists. To resolve the issues raised by the court, the experts conducted psychological examinations of the brother (B.) and sister (R.).

Answering the questions posed by the panel of judges, the psychologists made the following conclusions:

1. Minor R., whose age refers to a minor period, has individual psychological characteristics related to accentuation according to the "psychasthenic" type. At the time of the examination, the girl was found to be in a state of "distress" (neurotic disorder), due to the conflict nature of the "family situation of development".

2. Minor B., has individual psychological characteristics, due to the accentuation of the "hyperthymic" type. At the time of the examination, the child is in a state of frustration, which is expressed in a neurotic state provoked by the "family situation of development" associated with the mother's claims for the separation of the child from the father, which with a high degree of probability can damage the psychological health of the child and his "normative" social adaptation.

The recommendations and testimonies of the expert summoned to the court to give explanations were ignored by the panel of judges, since the court considered the problem in question specifically, in the context of legal powers. The preferences of minor children, as well as their emotional attachments, were not taken into account by the court. Despite the fact that a 10-year-old girl (subject R.) gave the testimony preferred in favor of the father, the court decision was made in favor of the mother.

According to the position of psychologists-experts of the Russian Federation, a child who has reached the age of 10 may have little life experience, personal maturity, and self-awareness in order to make a decision, in which the child may be influenced by the attitudes of adults. The degree of psychological induction of a child from an adult depends on his age-related mental development, the presence or absence of signs of increased suggestibility and emotional dependence on one of the parents. The noted parameters are revealed during the experimental psychological examination of the child, and the degree of manifestation of these parameters is diagnosed in the trial. Therefore, as a rule, it is revealed that leaving a child with an "inductor" parent may be contrary to his true interests. At the same time, the transfer of a child to the upbringing of a parent whom he currently rejects can have a serious psycho-traumatic effect on him.

It should also be noted an interesting fact regarding the traditional Uzbek mentality, when most families live with the parents of the father of the children. And practice shows that in many cases children are very often attached to their grandparents. Therefore, in the case of litigation, children very often prefer fathers, given these attachments to his parents. However, when conducting a forensic psychological examination, the dilemma is often actualized with whom the child should live - based on his own choice or based on the prevailing role of the mother.

Agreeing with the position of I.A. Gorkova and V.F. Engalychev, when conducting a forensic psychological examination of child-parent relationships, the expert must assess not only the current mental state and personality traits of children, but also the features of their subjective world, dominant and often unconscious experiences, intrapersonal conflicts, processes of adaptation to stress.

According to the authors, the most significant circumstances here include:

- features of the cognitive, emotional and behavioral spheres of parents, value orientations and individual psychological characteristics of parents;
- worldview of parents, including religious attitudes;
- representation in the mind of the structure of the motive of the behavior of each of the parents in the child-parent relationship;
- awareness of material, temporal, intellectual, emotional, behavioral and other educational opportunities;
- awareness of the intra-family situation, the true causes of family conflict.

It is equally important to establish the degree of psycho-physiological, psychological and socio-psychological compatibility of each of the parents with the child. Another important criterion is the ability for long-term dyadic emotional relationships in the parent-child system.

The noted facts lead the courts to the need to raise other questions, which are as follows: do parents have a negative impact on children; are the children in a state of mind; what are the psychological characteristics of the emerging personality of the child; what is the degree of influence of the behavior of parents on the formation of certain behavioral attitudes and acquired personal values in the child. In this case, it is necessary to determine the level of mental and personal development, close people of the child, for example, grandparents, father's wife or mother's wife, etc.

Summing up the above facts, it leads to the fact that, based on the motivation of taking into account the “best interests” of the child, the solution of issues on the right to raise children should take place on the principles of: objectivity, scientific character, impartiality, both on the part of the judicial panel and on the part of experts - psychologists conducting forensic psychological research.

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