

CHILD PARTICIPATION IN FAMILY AND CHILD PROTECTION MATTERS IN UZBEKISTAN

The questions of the International Association of Youth and Family Judges and Magistrates were sent to the Supreme Court by the UnCEDU Children's Fund (UNICEF) in Uzbekistan, and answered with no personal identification except "Judicial Panel, Civil Affairs".

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in family and protection matters. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Uzbekistan.

Key words: child participation; family law; child protection; children's rights; justice system; Uzbekistan.

1. Determining that a particular situation concerns a minor, does he become a party to the proceedings?

The law of the Republic of Uzbekistan allows in this case the personal participation in the court of a minor child, if it concerns specifically his or her question.

Thus, under Article 67 of the Family Code, a child has the right to protect his rights and legitimate interests. A minor recognized by law as fully capable until reaching adulthood has the right to exercise his rights and responsibilities, including the right to protection.

In violation of the rights and legitimate interests of the child, including the failure or improper performance of the parents (one of them) duties to raise, educate the child or in the abuse of parental rights, the child has the right to apply for their protection to the guardianship and guardianship authority, and at the age of fourteen - to the court.

Article 11 of the Child Guarantee Act also guarantees the child's right to protection, which makes it not permissible to leave such appeals without consideration because the child is not fully incapacitated. The protection of the rights and legitimate interests of the child is carried out by the parents (persons

who replace them), and in the cases provided by this Code - the guardianship and guardianship body, the prosecutor and the court.

By virtue of Article 42 of the SEC, the rights and protected interests of minors, i.e. citizens between the ages of fourteen and eighteen, are protected in court by their parents, adoptive parents or guardians. However, this does not deprive minors and citizens of disability of the right to participate in such cases.

In cases involving the recovery of alimony from parents, as well as those arising from employment relations and transactions related to the disposal of earnings or other income, minors have the right to personally defend their rights and protected interests in court. A minor who has reached the age of sixteen may personally exercise his rights and duties in court if declared fully capable (emancipation), in accordance with the law.

A minor who is sixteen years old may personally exercise his rights and duties in court if declared fully capable (emancipation). The rights and protected interests of minors under the age of fourteen are protected in court by their legal representatives - parents, adoptive parents or guardians.

Does he have the right to legal assistance from a lawyer/lawyer?

Under Article 9-1 of the Bar Law, the legal activity is carried out on the basis of an agreement (contract) on the provision of legal assistance concluded between the lawyer and the trustee (defendant). An agreement (contract) on legal aid is a civil-legal contract concluded in a simple written form between the trustee (defendant) and the lawyer, to provide legal assistance to the trustee (defendant) or the person appointed by him.

By virtue of Article 27, 29 of the Civil Code, minors between the ages of fourteen and eighteen make transactions with the written consent of their parents, adoptive parents or guardians. The transaction made by such minors is also valid with its subsequent written approval by his parents, adoptive parents or guardian. For minors under the age of fourteen (young) transactions can only be made on their behalf by their parents, adoptive parents or guardians.

Thus, because counsel can provide legal assistance only on the basis of a contract, the latter may appear in court in the interests (in defense) of a minor on the basis of contracts concluded in accordance with the above requirements of the law.

Were there restrictions on the participation of the lawyer compared to other parties?

There are no restrictions, as the lawyer commits all proceedings in the case in the interests of the minor, as well as the legal representatives of the child (parents, adoptive parents, guardians, guardians).

Is it an ethical obligation for a lawyer/lawyer to represent only the opinion of a minor, including in cases where he does not take into account the opinion of a minor in the best interests of the minor?

In this case, limiting the ethical obligation to represent only the opinion of a minor, the law does not imply, because in such cases the court is in the interests of the child and takes into account the opinion of the child himself. The court may assess the rest of the lawyer's opinion, i.e. take or ignore his opinion.

Thus, according to p.3 of the President's Decree of 22.04.2019 for No.4296 "On additional measures to further strengthen the guarantees of the rights of the child," the child has the right to express his opinion in the family of any issue affecting his interests, as well as in any trial or administrative proceedings. At the same time, the authorities (persons) authorized to make decisions in resolving matters affecting the interests of the child should consider as an important factor the opinion of a reasonable and self-thinking child, regardless of his age, and make decisions based on the best interests of the child.

2. How is it usually a minor involved in a trial?

Usually a minor participates in a trial on general grounds in accordance with procedural law. In other world, he has the right to participate both independently and with the participation of legal representatives or a lawyer. Also, if necessary, the court can interview a minor with the participation of a specialist (teacher, psychologist, representative of the guardianship and guardianship body).

Only in exceptional cases, during the interrogation of a minor, a person involved in the case can be removed from the courtroom by the court's definition. Upon the person's return to the courtroom, the minor's testimony should be read out and the opportunity to ask him in interviews.

Does he participate directly or through an intermediary (lawyer/lawyer) or other professional?

The answer to these questions is set out in the answers to the first question.

If it's another professional, could you name him and indicate his responsibilities?

Another professional may be a representative of a guardianship and guardianship body, a teacher or a psychologist, with whom a minor may be interviewed. Such a professional participates only in the interests of such persons, and enjoys rights and responsibilities only within the individual child.

3. If a minor was directly involved in the trial, was it voluntary?

Yes, such participation is voluntary, because if he does not wish to participate in the court, the court attracts its legal representatives.

In cases where the child's opinion is very important, for example in cases involving the determination of residence with one of the parents, the child may be interviewed by the court in a separate room without the participation of the parties, but with the participation of a specialist who will present his opinion in writing. But even in such cases, the child's opinion is recorded in the court transcript, which can be familiarized participants of the process.

In this case, who advises the minor about his desire to participate and how he wants to participate?

According to the Presidential Decree of May 29, 2020, no.

Moreover, such an explanation to a minor is given by the guardianship and guardianship authority on behalf of the court or by the court itself when talking to him (this is allowed separately from the process).

Were there any institutional protocols on how to provide this advice?

Such advice is carried out by the guardianship and guardianship authority on their protocols (provisions).

Were there information materials specially prepared for children and their participation?

No

4. If a minor does not wish to participate directly in the trial, what alternatives are there to ensure his indirect participation? If there is any doubt about what a minor really wants or he does not want to participate, what measures can be taken to ensure his participation?

Indirect participation of a minor is provided through a professional, it can be a representative of the guardianship and guardianship body, a teacher or a psychologist, with the participation of which may be interviewed by a minor. If the child's opinion about participation is questioned, the court may conduct a conversation with him on its own with the departure of the child at his location.

5. In the case of direct participation, at what procedural stage is this happening?

This can be done at any stage of the trial.

Is there a quantitative limit on consultation with a minor?

No

6. What is the atmosphere in the courtroom where a minor participates?

Trials involving a minor are conducted benevolently, routine formalities are observed, participation takes place in the usual courtroom, in the judge's office can be held only separate conversations with him, in the courtroom can participate all participants in the process, in some cases, based on the situation and psychological state of the child, the participants of the process can be temporarily removed from the courtroom to make the child feel comfortable. Participants in the process should be dressed neatly, there is a slumber.

7. Is there a protocol on how to ask questions of a minor in family and child protection cases?

There is no separate protocol, but the court must create an atmosphere for the minor to express his opinion sensibly and independently, as well as taking into account his age.

By the President's decree of 22.04.2019 for NoPP-4296, the relevant agencies are instructed to develop and approve:

Criteria for assessing a child's ability to think intelligently and self-thinking (p.3);

manual for working with persons under the age of eighteen, as well as to improve the skills of their employees on a systemic basis (p.13).

8. Who can ask questions to a minor during the trial?

The presiding judge (court), the prosecutor, the lawyer and other participants in the process have the right to ask questions directly by them, with

this mediation of the court is not necessary. However, the court may suppress requests that may embarrass or violate the rights of the minor. The number of questions has not been determined.

9. Is a court decision taken in the presence of a minor?

Yes, if the court deems it necessary, the decision may be made public in the presence of a minor.

If a minor wishes, can he stay in the room after he has expressed his opinion?

If the court deems it right to remain a minor in the courtroom, he may stay, but if the court considers that his presence violates his rights and interests, he may remove him from the courtroom.

10. Are there any specific rules regarding the consideration of the opinion of a minor in the context of a decision?

According to Article 68 of the Family Code, a child has the right to express his or her opinion in the family of any matter affecting his interests, as well as to be heard in any judicial or administrative proceedings. At the same time, the authorities and officials authorized to make decisions, in resolving matters affecting the interests of the child, should consider the opinion of the child regardless of his age and make decisions in the best interests of the child.

By virtue of p.3 of the President's Decree of 22.04.2019 for No.4296 "On additional measures to further strengthen the guarantees of the rights of the child," the child has the right to express his opinion in the family of any issue affecting his interests, as well as in any judicial or administrative proceedings. At the same time, the authorities (persons) authorized to make decisions in resolving matters affecting the interests of the child should consider as an important factor the opinion of a reasonable and self-thinking child, regardless of his age, and make decisions based on the best interests of the child.

Therefore, the indication in the context of the decision-making opinion of the minor is an important aspect. As for the child's age criterion, the data is individually regulated from the dispute.

11. How is the decision brought to the attention of the minor?

The court's decision is brought on general grounds provided for the participants of the trial. At his request, the decision can be issued to him

personally. As for the questions he may have raised, he can speak to the judge in person, and this may happen in the Sedia's office.

12. Does a minor have the right to appeal against a judgement?

If the decision relates to a dispute involving a minor, he has the right to appeal the court decision.