



## Research Article

### IMPLEMENTATION OF GUARANTEES OF CHILDREN'S PROPERTY RIGHTS IN THE FAMILY

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#### ABSTRACT

Minors also have certain property rights. The property of minor children in the family is considered separate from the property of parents, and parents are not considered the owners of their children's property. However, parents, as legal representatives of children, exercise ownership authority over this property. However, the legislation stipulates that the disposal of children's property should not be carried out contrary to their rights and interests. In some cases, when there is a conflict between the interests of parents and minor children, the parent's disposal of the child's property is limited. Nevertheless, in practice there are cases of violation of property rights and interests of minors. At the same time, this shows the necessity of researching issues of guaranteeing children's property rights in the family.

#### KEYWORDS

Family, minor children, parents, children's property, property rights and interests of the child, ownership, use, disposition.

#### INTRODUCTION

The right of an individual to become an owner is defined in Article 36 of the Constitution. The right to property can arise not only with the birth of a child, but

also in some cases in the state of the fetus. According to Article 90 of the OK, "children do not have the right to own their property during the lifetime of their

parents, and in turn, parents do not have the right to own the property of minor children."

In scientific literature, property rights mean the rights of participants in property relations related to the ownership, use and disposal of certain property<sup>1</sup>. These include material, obligation and absolute rights that the child can dispose of.

In Uzbekistan, guarantees of property rights for each person are provided by the country's legislation. Based on the provisions of this norm, children, as well as adults, can own, use and dispose of property in the forms established by law. It is not possible to arbitrarily deprive a minor of property. Property rights of children are enshrined in both family and civil law. Chapter 13 of the OC defines the rights of minors arising from family membership and family legal relations. This includes the following rights: 1) for provision; 2) for income and inheritance; 3) for the property of parents (if living with them); 4) demand compliance with the law in the disposal of his property. An important condition for parents and children to live together is not to arbitrarily appropriate each other's property<sup>2</sup>. Thus, if a child received property as a gift or inheritance, parents can use it only with his consent, which indicates that the minor's property rights are equal to those of other participants in family legal relations<sup>3</sup>.

A special feature of the child's rights to property is that children who have a certain property cannot dispose of

it in full in accordance with the rules of civil law. According to Article 29 of the FC, it is considered that a child under the age of 14 cannot enter into large transactions and fully dispose of his property. According to Article 27 of the FC, disposal of material goods belonging to children can be carried out only after the age of 14 with the consent of the parents. Without parental consent, minors can make their own wages, exercise copyrights, make small transactions and make deposits. In other cases, parents are responsible for the consequences of the disposal of the child's property. Taking this feature into account, it can be concluded that children's property rights are quite limited in terms of disposal. And since they are mainly related to family legal relations, the rights of minors entail certain obligations of parents or legal representatives.

In carrying out such a legal and factual action, parents must comply with the rules established by family and civil law. A distinctive feature of the legal relationship under consideration is the presumption of good faith of parents in the management of children's property rights. And in a healthy family relationship, the guarantees of proper control of the child's property are indisputable. However, in practice, there are often cases where children's property interests are violated. In particular, this is evident in marriage annulment, abuse of rights by guardians, fraud by officials, etc<sup>4</sup>. In case of violation of the child's rights, the legislation

<sup>1</sup> Zubkov S. B. Problemy pravovogo regulirovaniya imushchestvennykh prav nesovershennoletnix // Zakon i pravo. 2007. No. 10. S. 69–71.

<sup>2</sup> Pavlenko E. M. Mejdunarodnye standarty prav rebyonka: novelly i praktika realizatsii v Rossii // Obespechenie i zashchita prav rebyonka: mejdunarodnyi opyt i rossiyskaya praktika. Sbornik nauchnykh statey po itogam kruglogo stola "Zashchita prav rebyonka", Moscow, October 16, 2015 goda / Pod obshch. ed. E. M. Pavlenko. Moscow: Prava cheloveka, 2016. C. 18–22.

<sup>3</sup> Kustova, R. B. Imushchestvennyye prava detey / R. B. Kustova. — Text: neposredstvennyy // Molodoy uchenyy. — 2022. — No. 23 (418). — S. 303-305. — URL: <https://moluch.ru/archive/418/93055/> (data obrascheniya: 21.01.2023).

<sup>4</sup> Serebryakova A. A., Zashchita imushchestvennykh prav detey. Historical and social-educational thought. 2017. Tom. 9. No. 2. Chast 1. S. 105–110.

guarantees his protection. Ensuring the rights of minors and creating an effective mechanism to combat the violation of children's rights are the main priorities of the state policy. Property rights of minors are guaranteed by special legal norms. In particular: ensuring that during the divorce of the spouses, it is not allowed to divide the things purchased for the children; includes the possibility of waiving the principle of equal shares of the spouses in the division of property if the interests of the children are harmed.

Children should have a special legal status as individuals who need special protection and care due to their physical and mental immaturity. States parties to the Convention on the Rights of the Child are obliged to provide the child with the protection and care necessary for his well-being, taking into account the rights and obligations of his parents, guardians or other persons responsible for him by law, and for this purpose, all appropriate legislative and administrative measures must be seen.

Children are subjects of family legal relations, and the regulation of these relations is aimed at ensuring priority protection of children's rights and interests. Other sectoral legislation does not determine the special or general status of the child (children as individuals of a certain category). In Uzbekistan, the property rights of the child are not properly regulated due to the inconsistency and in some cases the contradiction of the diversified legal norms defining them.

Family law obliges parents and other family members to provide child support; if this obligation is not

fulfilled, alimony will be levied by the court to support the child. The terms "maintenance"<sup>5</sup> and "alimony" are not the same terms; Alimony is a narrower concept, it is a type of maintenance. For example, according to the laws of Latvia, parents are obliged to take care of the life and well-being of their children, to provide them with food, housing, clothing, upbringing and education. If there are no parents or they are not able to provide for the child, this responsibility falls on the grandparents<sup>6</sup>.

In Uzbekistan, property relations remain outside the framework of priority family legal regulation (Article 4 of the OK). Family law takes into account the interests of the child only as a user, gives the court the right to deviate from the equality of shares in the division of the joint property of the spouses - the child's parents, taking into account his interests, and the share of the wife (husband) living with the child in the joint property is greater is taken as a basis for being (the second part of Article 28 of the OK); at the same time, the possibility of violation of the child's property (including housing) rights by the same owner mother (father) in the future is not excluded. In our opinion, with the increase of the spouse's share in the common property, taking into account the interests of the children, such property should be given to the children for free use until they can meet their own needs<sup>7</sup>. Latvian legislation imposes the obligation to provide for minor children, including housing, on the parents "until the children are self-supporting"<sup>8</sup>. This provision should be reflected in the norms of the OK or such an obligation should be included in the content of the

<sup>5</sup> Pchelintseva L.M. Semeynoe pravo Rossii: uchebnik dlya vuzov. M., 1999. S. 362.

<sup>6</sup> Civil Code of the Republic of Latvia, prinyatyy Latvian Republic by law 28.01.1937 // Grazhdansky Codex Latviyskoy Republic. SPb. 2001. S. 179.

<sup>7</sup> Gladkovskaya E.I. Imushchestvennye interesy semi v semeynykh otnosheniakh. - Krasnodar, 2009. - S. 132.

<sup>8</sup> Civil Code of the Republic of Latvia, prinyatyy Latvian Republic by law 28.01.1937 // Grazhdansky Codex Latviyskoy Republic. SPb. 2001. S. 179.



social (family) law of the personal use of the child as a member of the family of the owner of the residence.

Children's rights are least protected in the housing sector. If after the termination of marriage the child lives with his parents in another house, it is not guaranteed that the child will retain the right to use the living space belonging to one of the parents. Article 2 of the OK includes children and parents as family members, regardless of whether they live together or separately; According to the literal meaning of Article 32 of the Housing Code, only children who live with the owner are included in the family members of the owner. In housing and family law, there is a discrepancy between the circle of family members of the owner, while the preservation of the right to use residential premises depends on the recognition of a person as a member of the owner's family. Courts rightly recognize the right of the child to the housing, taking into account the provisions of Article 32 of the Civil Code, they "correct" the circle of family members of the owner. The position of the courts is determined by the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 22 of September 14, 2001 "On the judicial practice of housing disputes", but not by the legislator. The right of residence of a child deprived of parental rights is also unclear. In this case, the deprivation of parental rights leads to the termination of the legal relationship between the child and the parents, which, according to the general rule, goes to the child's father or mother deprived of parental rights. leads to the loss of the right to use the corresponding housing. However, according to the third part of Article 81 of the OK, "the question of whether a parent deprived of parental rights (one of them) will continue to live together with a child shall be decided by the court in accordance with the procedure established by the legislation on housing."

If the child lives in a house that belongs to another family member, for example, a grandfather, and not to his parents, and after the termination of the parents' marriage, he becomes a former member of the owner's family, because he already lives with his mother (father), the protection of his housing rights as difficult as possible. Because, according to the provisions of Article 32 of the Housing Code, recognizing the grandson (grandson) as a family member of the owner (grandfather), the court grants the child's right to use housing, if there is no right to use other residential buildings, only for a certain period of time. can save the term. If the grandmother (grandfather) owns several residential buildings based on property rights, and the child's mother does not have a house, the court does not have the right to force the owner to provide the child with other residential buildings, even if the above circumstances are proven, because alimony obligations arise secondarily between grandparents and grandchildren and may arise only when it is impossible to collect alimony from the child's parents.

The norm defining the special legal status of a child who has become a former member of the owner's family also exists in the civil legislation. In this situation, it will be enough for the owner of the house to sell the living space and the child (grandchild or great-grandchild) who has been moved out of the house sold by court order for a certain period of time will remain on the street again. In this case, the consent of the guardianship and patronage body is not required for the alienation of residential buildings.

There are also cases of violation of the child's property rights by his parents-owners. In particular, the total area is 65.5 square meters. according to the privatization agreement, the apartment was transferred to the joint ownership of all family

members, including two minor children, after which this apartment was sold by the children's parents and a two-room apartment was purchased instead. The purchased apartment, as property acquired during the marriage, was divided equally between the spouses by the court. Revoking this decision, the regional court noted that the cassation instance incorrectly determined the status of the apartment as the best property of the couple, because when concluding the transaction, the parents violated the rights of the children to the best joint property in relation to the privatized apartment. In the retrial of the case involving adult children, the subject of the dispute was the two-room apartment, which was the subject of the dispute, but instead of the three-room apartment, which was the joint property of the children, the property rights of the children were privatized.

Civil law, which gives priority to the interests of the bona fide possessor in exchange for a fee, does not allow the restoration of property rights of children. Thus, according to the privatization agreement, B., his adult son R. and two minor sons I. and D. (six and 16 years old), the apartment, which has become the common joint property, becomes the subject of several sales contracts, and the last of them is already B. and M. arranged between The court satisfied the claim that the agreements on the alienation of the apartment were invalid, because as a result of the conclusion and execution of these agreements, minors and D. had lost the right to property. M. claimed that he did not know and could not know that the seller's children are also co-owners of the sold property. According to the complaint of the Supreme Court, the civil affairs panel stated the following: firstly, the argument of the plaintiffs that the interests of minors

living in the apartment were violated during the sale of the apartment is not considered sufficient grounds to invalidate the contract of sale of the apartment by itself; secondly, if the buyer's honesty is confirmed, the claim will not be satisfied on the basis of civil law.

At the same time, an agreement with the specifics of the expression of the will was concluded: the minor owner I. instead of, his mother citizen B. composed; mother - citizen B. 16-year-old son D. also agreed to conclude the deal. The OC provides parents with the application of the provisions of the civil law on the disposal of the property of minor children (the third part of Article 90) and does not allow the conclusion of transactions that lead to the reduction of the property of minors under the civil law. At the same time, "the usual consent of the body of guardianship and patronage to conclude an agreement to alienate the property of a minor child does not sufficiently confirm the legality of the agreement." We B. in the above situation. cannot be recognized as an authorized alienator, and we believe that minors and minor co-owners have come out of ownership according to the provisions of Article 229 of the FC. First of all, if the representative has his own interest, the conclusion of the transaction, which is against the interests of the principal, should be considered to have been carried out without authority<sup>9</sup>. Second, the OC does not allow parents to represent the interests of the child in cases of conflicting property interests (Article 74, Part 3, Article 75, Part 3).

The following points of A.E. Tarasova are relevant: if the will of the representative does not reflect the interests of the minor, it is logical to use the mechanism of protection of the minor's rights through

<sup>9</sup> Sklovsky K.I. Pravomochie and polnomochie v mechanism vozniknoveniya grazhdanskikh prav // Economy and law. 2004. – No. 11. – S. 104.

vindication even from the honest buyer<sup>10</sup>. The current legislation does not ensure the implementation and protection of the child's property rights. Accordingly, the courts conclude that the deterioration of the housing conditions of their minor children by parents is not a reason to invalidate disposition agreements, if it does not correspond to the grounds provided by law for invalidating the agreements. Thus, in its decision No. 5-B05-106 dated 17.01.2022, the civil trial panel of the Supreme Court, with an official reference to Article 116 of the Civil Code, indicated that the court did not specify which legal documents the transaction was incompatible with. Deterioration of the living conditions of the mother's minor son, if it does not correspond to the grounds provided by the law for the cancellation of agreements, does not in itself serve as a reason to recognize the agreement of sale and purchase of an apartment as invalid.

In our opinion, the will of a minor as a participant in civil-legal relations cannot be taken into account due to the specific characteristics of his legal subject. Compliance with the property interests of the minor owner of the disposal agreement concluded only by the legal representative should be a criterion for evaluating the grounds for disposal of the property from the property of such an owner in case of fair purchase of the property from his legal representative for a fee.

On the special grounds for invalidating agreements that have the character of expressing a will - the conclusion of an agreement by the legal representative of a minor child that does not correspond to the property rights and interests of the minor child, and with the permission of the legal representative, a minor between the ages of 14 and 18, which

corresponds to the interests of the legal representative, but it is desirable to enter into an agreement that violates the legal interests of the minor who entered into the agreement.

The proposed solution is supported, first of all, by the lack of uniform approaches to the child as a subject of legal relations with a special legal status that takes into account his vulnerability due to his physical and mental immaturity as a subject of legal relations; secondly, the difficulty in determining the requirements of specific laws or other legal documents that are inconsistent with this agreement is reflected in the cancellation of an agreement that violates the child's property rights and (or) interests based on Article 116 of the Civil Code.

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