



IMPLEMENTATION OF THE PRINCIPLE OF EQUALITY OF PARENTAL RIGHTS AND RESPONSIBILITIES

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Received: May 24 th 2023 Accepted: June 26 th 2023 Published: July 24 th 2023	The concepts of "equality" and "equality" are often used as equivalent terms in the legal literature. Some scholars believe that "subjective rights and responsibilities in the parental relationship merge together", parental rights are also parental responsibilities at the same time.
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Every legal, democratic and secular state guarantees the implementation of the principle of parental equality and creates all the necessary conditions for this.

For example, article 10 of the International Covenant on Economic, Social and Cultural Rights stipulates that the family, which is the natural and fundamental unit of society, should be afforded the widest possible protection and assistance, especially in its formation, and as long as it is responsible for the care and upbringing of children who are not independent. Special protection should be provided to mothers for a reasonable period before and after childbirth. During this period, working mothers should be granted paid leave or leave with adequate social security benefits.¹

The Constitution of the Republic of Uzbekistan enshrines equal human and civil rights and freedoms irrespective of sex, race, nationality, language, origin or property status, and in addition, an entire chapter 14 of the Basic Law is devoted to the family as the basic unit of society.

Article 72 of the Family Code of the Republic of Uzbekistan stipulates that parents have equal rights and bear equal responsibilities in relation to their children (parental rights). Parental rights provided for in this chapter shall be terminated when children reach the age of eighteen years (majority), as well as upon entry of minor children into marriage and in other cases established by law when children acquire full legal capacity before they reach the age of majority.²

The concepts of "equality" and "equality" are often used as equivalent terms in the legal literature. Some

scholars believe that "subjective rights and responsibilities in the parental relationship merge together", parental rights are also parental responsibilities at the same time. Parental rights, according to M. V. Gromozdina, "cannot be viewed through the prism of only rights or only duties. Their essence is due to such properties as urgency, inalienability, the presence of public and private principles, belonging equally to both parents, a combination of children's and parental interests."³ And according to M.M. Staroseltseva, parental rights and duties are identical to each other, which is reflected in the forms and methods of their implementation. Parents, while exercising their rights, at the same time fulfill their duties, which in turn ensure the realization of the rights of children.⁴

Thus, according to Russian scholars in the field of family law, an analysis has been made, according to which in the materials of judicial practice there is a tendency to secure a woman's right of exclusive "property" in relation to her children, leaving the father only the obligation to pay alimony. And, despite the existence of norms that ensure the implementation of the principle of equality of the father and mother in the upbringing of children, according to various sources, from 95 to 97% of children after the dissolution of marriage, separation of parents, are automatically transferred to the mother. All this once again speaks of a violation of

¹ International Covenant on Economic, Social and Cultural Rights (Adopted by General Assembly resolution 2200 A (XXI) of 16 December 1966), RC acceded on 16.12.1996 <https://lex.uz/docs/2686024#2686060>

² Family Code of the Republic of Uzbekistan // <https://lex.uz/docs/104723>

³ Gromozdina M. V. Implementation of parental rights in the separation of parents under the legislation of the Russian

Federation: monograph // Consultant Plus, 2012. 90 p. (in Russian).

⁴ Staroseltseva M. M. Implementation and protection of parental rights under family legislation of the Russian Federation: author's dissertation. ... Cand. Legal. Sciences. Moscow, 2009. 26 p. //

<https://www.dissercat.com/content/osushchestvlenie-i-zashchita-roditelskikh-prav-po-semeinomu-zakonodatelstvu-rossiiskoi-feder>



the essence of this principle, and, conversely, of its significance in practice.⁵

This is clearly seen in the legal relations of parents, when the rights of mothers dominate over paternal rights. Let's look at the foreign experience of advanced countries, where parental rights are regulated quite well at the legislative level.

In Europe, for example, there have been dramatic changes in the way responsibilities are shared between women and men in families, and in particular a shift towards a more even balance. However, laws, practices and gender stereotypes about the roles of women and men sometimes result in fathers not being able to maintain a permanent relationship with their children. For a parent and a child, the opportunity to be together is an important part of family life, which is protected by the European Convention on Human Rights. Separation of parents and children should be carried out only by court order and only in exceptional circumstances that entail serious risks to the interests of the child.

A child's rights to reside and access can be particularly sensitive and a source of conflict in case of parental separation. States are encouraged to introduce or, where appropriate, make greater use of cohabitation arrangements, which are often the best way to maintain contact between children and their parents. However, cohabitation should be used sparingly and always with the best interests of the child in mind. States must also do a better job of enforcing residency and access decisions.

Family mediation (mediation) should be used more widely and equal rights of parents, regardless of their marital status, should be ensured. Finally, it should be recalled that, while parents certainly have rights, they are above all duty and responsibility towards their children.⁶

In the United Kingdom, for example, parental responsibility means that all mothers and most fathers have the legal rights and responsibilities of parents. If you have parental responsibility, your most important roles are as follows: to provide a home for the child, to protect and support the child, and the parents are responsible for: the discipline of the child, the choice and provision of the child's education, consent to the child's treatment, give a name to the child and agree to any name change, look after the child's property. In

addition, parents should provide financial support for their child, regardless of whether they have parental responsibility or not.

Parental responsibility for separated parents is that if you have parental responsibility for a child but do not live with them, this does not mean that you have the right to spend time with your children. However, the other parent should include you in the process of making important decisions regarding their life.

A parent does not always need to obtain the consent of the other parent for routine decisions, even if they also have parental responsibility.

If it is a major decision (e.g. one parent wants to move abroad with their children), both responsible parents must agree in writing.

If one parent disagrees, you can apply for a special order or a prohibited activities order. After that, the judge will make a decision that meets the best interests of minor children.

A parent must ensure that his/her children receive financial support, regardless of whether he/she has parental responsibilities or not.

A parent can get help to connect with his or her children.⁷

Parents have the right and duty to educate their children. They are responsible for the upbringing and development of their children, are obliged to take care of the health, physical, mental, spiritual and moral development of their children. Parents have priority over all other persons in the upbringing of their children. Parental rights may not be exercised in conflict with the interests of children. The best interests of children should be the primary concern of their parents. In exercising parental rights, parents may not harm the physical and mental health of their children or their moral development. Methods of raising children should exclude neglectful, cruel, rude, degrading treatment, insult or exploitation. Parents exercising parental rights to the detriment of the rights and interests of minors shall be liable in accordance with the procedure established by law. All matters relating to the upbringing and education of children are resolved by mutual agreement, taking into account the views of the children. Parents, if there are disagreements between them, have the right to apply for the resolution of these

⁵ E. L. Kdlyan, G. A. Magdesyan On the implementation of the principle of equality of parents' rights in the exercise of certain powers // Paradigms of Management, Economics and Law No. 1, 2021. //

https://www.elibrary.ru/download/elibrary_46253991_27783791.pdf

⁶ Cm. Equality and shared parental responsibility: the role of fathers // <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22022&lang=en>

⁷ Parental rights and responsibilities // <https://www.gov.uk/parental-rights-responsibilities>



differences to the guardianship and guardianship authority or to the court.

The place of residence of children in case of separation of parents is established by agreement of the parents. In the absence of an agreement, the dispute between the parents is resolved by the court based on the interests of the child. At the same time, the court takes into account the child's attachment to each of the parents, brothers and sisters, his age, the moral and other personal qualities of the parents, the relationship existing between each of the parents and the child, the possibility of creating conditions for the child's upbringing and development. Parents have many other rights and obligations enshrined in the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and the Family".⁸

The experience of the family legislation of the Kyrgyz Republic is interesting, according to the first part of Article 71 of the Family Code, a parent living separately from the child has the right to communicate with the child, participate in his upbringing and maintenance, and resolve issues of the child's education.

The parent with whom the child lives should not interfere with the child's communication with the other parent, if such communication does not harm the child's physical and mental health, his moral development.

Parents have the right to conclude an agreement in writing on the procedure for exercising parental rights by a parent living separately from the child.⁹ There is a similar rule in Article 75 of the Family Code of the Republic of Uzbekistan, while this institution of an out-of-court agreement is not popular in the country, since parents, after the termination of their marriage and family relations, begin to determine the order and place of residence of children in court, which delays the process and possibly negatively affects the fragile child's psyche, because a 10-year-old child is given a choice in court, With which of the parents the child wants to stay, the court takes into account the child's attachment to each of the parents, brothers and sisters, the age of the child, the moral and other 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's upbringing and development (occupation, working hours of parents, financial and marital status of parents, etc.).¹⁰

⁸ G. Saiduldinova Legal relations between parents and children //

https://online.zakon.kz/Document/?doc_id=31512969&pos=6:-108#pos=6:-108

⁹ Family Code of the Kyrgyz Republic //

<http://cbd.minjust.gov.kg/act/view/ru-ru/1327>

In the legal literature, attention is rightly drawn to the legal significance of the interests of parents, to the need to take them into account when exercising parental rights. The interests of children should not be the only measure of the quality of family education. According to M.V. Antokolskaya, "this, first of all, is inhumane in relation to parents and inexpedient from an educational point of view, since it can adversely influence the child, contributing to the development of his selfishness."¹¹

Thus, the implementation of the principle of equality of rights and duties of parental rights should not cause harm to minors and dependent children and make it possible to participate in the lives of children and other relatives, such as grandparents, etc., and if parental consent is not reached, without immediately resorting to the judicial procedure, begin to apply mediation mechanisms in practice.

It is also necessary for citizens' self-government bodies, justice bodies, lawyers, notaries and mediators to strengthen educational activities on the essence of the norms of family law, in terms of out-of-court settlement of the exercise of parental rights and obligations in the upbringing of children, upon dissolution of marriage or separation, through a notarized agreement, that is, the exercise of the right to conclude an agreement in writing on the procedure for exercising parental rights by a parent, living separately from the child(ren) as a whole.

¹⁰ Family Code of the Republic of Uzbekistan //

<https://lex.uz/docs/104723>

¹¹ Antokolskaya M.V. Family Law. — M., 2002. P. 210.

https://www.elibrary.ru/download/elibrary_21661828_65637185.pdf