



"Restriction Of Parental Rights As A Measure Of Legal Influence"

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ABSTRACT

In the article, the procedure and grounds for limiting parental rights, the legal consequences of this process for parents and their children, as well as the opinions of scientists in this regard, problems related to the application of legal norms in judicial practice and the resolution of disputes of this category, and practical suggestions have been developed.

ARTICLE INFO

Received: 20th

April, 2026

Accepted: 11th May 2026

KEYWORDS:

restriction of parental rights, child, family, commitment, conflicts

From the very first days of independence, priority has been given to reforms aimed at strengthening state protection of motherhood and childhood.

In recent years, human interests have been recognized as the highest value and have become a priority direction of state policy. Pursuant to the Decree of the President of the Republic of Uzbekistan on the "Uzbekistan–2030 Strategy," a number of priority tasks were identified to improve the system of social protection for children.

Over the years, the process of implementing international instruments aimed at ensuring children's rights into national legislation has intensified. For example, on December 9, 1992, the Republic of Uzbekistan acceded to the Convention on the Rights of the Child, and on January 7, 2008, the Law of the Republic of Uzbekistan "On Guarantees of the Rights of the Child" was adopted. Furthermore, by Presidential Decree No. PF-6275 dated August 9, 2021, the institution of the Commissioner of the Oliy Majlis for Children's Rights (Children's Ombudsman) was established in the Republic¹.

While the implementation of legislative acts aimed at protecting children's rights is being effectively ensured in practice, issues related to child upbringing and their material support remain highly relevant in society.

According to Article 77 of the Constitution of the Republic of Uzbekistan, parents and persons replacing them are obliged to support their children until they reach adulthood and to ensure their upbringing, education, healthy development, and comprehensive personal growth.

At the same time, children's rights to be raised under the care and protection of their parents are guaranteed by both international and national legislation.

In particular, pursuant to Article 9 of the Convention on the Rights of the Child, children shall not be separated from their parents against their will. Such separation may occur only in exceptional circumstances when it is determined by a court decision to be in the best interests of the child.

¹ Decree of the President of the Republic of Uzbekistan "On the Strategy 'Uzbekistan – 2030'." [Electronic resource]. Accessed on 27.05.2024. <http://lex.uz/docs/6600413>

A similar provision is also enshrined in Article 13 of the Law of the Republic of Uzbekistan “On Guarantees of the Rights of the Child.”

The removal of a child from parental care may be carried out only by a court decision and solely in the interests of the child. In this regard, a child may be removed from parental care only when the parents have been deprived of parental rights or when such rights have been restricted.

Family legislation does not provide a specific definition of the concept of “restriction of parental rights”; however, it directly establishes the grounds and legal consequences of such restriction².

In legal scholarship, various scholars have expressed different views on this issue.

In particular, according to L.V. Ladochkina, the restriction of parental rights is a state coercive measure aimed at removing a child from parental care without depriving the parents of their parental rights³.

T.V. Krasnova argues that, by its nature and essence, the restriction of parental rights is a temporary measure and that it is not always based on the culpable conduct of the parents⁴.

According to L.M. Pchelintseva, the culpable conduct of one or both parents may serve as grounds for restricting parental rights as a measure of family-law liability⁵.

According to a group of scholars, particularly N.A. Ablyapteva and Yu.S. Lugovaya, there are situations in which parents pose a danger to their minor children under their care. In such cases, society does not seek to completely separate the child from the parents; rather, when the parents’ conduct is incompatible with the proper relationship between educator and child, the law provides for the restriction of parental rights⁶.

While partially agreeing with the views of the above-mentioned scholars, it appears appropriate to interpret the concept of “restriction of parental rights” more broadly. It should not be understood solely as the removal of a child from parental care on the grounds established by law. It should also encompass situations where parents live separately from the child and their actions or behavior pose a threat to the child’s life or health, thereby justifying the restriction of their parental rights in relation to the child.

National legislation provides two principal grounds for the restriction of parental rights.

The first ground arises where leaving the child with one or both parents is dangerous to the child due to circumstances beyond the parents’ control, such as mental disorders, other chronic illnesses, severe life circumstances, or similar conditions.

The second ground exists where leaving the child in the care of the parents poses a danger to the child as a result of the parents’ culpable acts or omissions. Examples include systematically leaving the child without supervision, frequently causing domestic conflicts while under the influence of alcohol, leading a lifestyle contrary to accepted moral standards, or engaging in other wrongful conduct that endangers the child.

In both situations, if the parents’ conduct creates a threat to the child but the court finds insufficient grounds for depriving one or both parents of their parental rights, the court may decide to restrict parental rights (including removing the child from parental care) without formally depriving the parents of those rights.

The primary reason for a child's special legal status and protection, both within and outside the family, stems from the fact that children, due to their physical, psychological, and social immaturity, require full or partial protection and care⁷.

It should be emphasized that the temporary restriction of parental rights provides parents with an opportunity to improve their moral conduct and reconsider their attitude toward fulfilling their parental responsibilities. At the same time, it serves as a preventive measure against the future violation of children's rights and legitimate interests.

If a child has been removed from one or both parents by a court decision and parental rights have been restricted, but the parents subsequently fail to change their behavior, the guardianship and trusteeship authority

² Family Code of the Republic of Uzbekistan. Bulletin of the Supreme Assembly of the Republic of Uzbekistan, 1998, Annex to issues 5–6; 2003, No. 03/24/905/0106.

³ Ladochkina L.V. “Restriction of Parental Rights.” Bulletin of the Saratov State Law Academy. 2017, No. 4, pp. 101–104.

⁴ Krasnova T.V. “Deprivation of Parental Rights: Conceptual Errors of Legislation and Problems of Law Enforcement Practice.” Bulletin of Omsk University. Law Series. 2015, No. 3.

⁵ Pchelintseva L.M. “Family Law of Russia.” NORMA Publishing House, p. 363.

⁶ Ablyapteva N.A., Lugovaya Yu.S. Crimean Herald. No. 1(22), 2019. p. 5.

⁷ Burdo E.P. “Restriction of Parental Rights as an Institution of Family Law.” UDC 347.634

is obliged to file a claim for deprivation of parental rights six months after the court's decision on the restriction of parental rights has entered into force.

In this regard, it is important to distinguish between the concepts of restriction of parental rights and deprivation of parental rights. The differences are manifested in the following aspects:

First, the restriction of parental rights is a temporary measure that remains in force until the circumstances posing a threat to the child's life, health, or moral development are eliminated.

Second, the grounds for deprivation of parental rights and restriction of parental rights are separately established by law and differ from one another. For example, where a parent is unable to raise a child due to circumstances beyond his or her control, such as a serious illness or mental disorder, the child may be removed from that parent's care only until recovery occurs (restriction of parental rights). However, such circumstances cannot subsequently serve as grounds for deprivation of parental rights.

Third, when parental rights are restricted, parents may be permitted to maintain contact with their child, provided that such contact does not endanger the child's psychological well-being or health. Such meetings may take place with the consent of the guardianship and trusteeship authority or other legal representatives.

Fourth, deprivation of parental rights constitutes a measure of last resort and is applied only where parents fail to fulfill their parental obligations as a result of their culpable actions or omissions.

In contrast, the restriction of parental rights may also be imposed in the interests of the child where parents are unable to fulfill their parental responsibilities due to circumstances beyond their control, such as a serious illness or a mental health condition.

Fifth, when parental rights are restricted, parents lose the right to personally raise their child and to receive benefits and privileges granted in connection with the child. However, where parents are deprived of parental rights, they lose all rights arising from their legal relationship with the child in respect of whom they have been deprived of such rights, including the right to receive maintenance from that child.

As noted above, the removal of a child from parental care by court order or the restriction of parental rights may be justified where the parents' conduct poses a danger to the child or where the family environment itself creates a risk to the child. However, the content and legal meaning of this concept have not been clearly defined in the current legislation.

In this regard, scholarly research reveals differing views among legal scholars concerning parental conduct that may endanger a child.

For example, according to I. Ordintsev, one of the most significant evaluative factors in resolving family law disputes is the concept of "danger," which serves as a ground for restricting parental rights. Although the law identifies both culpable and non-culpable circumstances that may justify the restriction of parental rights, it does not establish clear criteria for determining when a child is considered to be at risk⁸.

S.I. Smirnovskaya proposes defining the concept of a "child being at risk" on the basis of the Law of the Russian Federation "On the Fundamentals of the System for the Prevention of Juvenile Delinquency and Neglect"⁹.

Similarly, N. Ablyapteva notes that legislation does not establish specific requirements for removing a child from parental care in the context of restricting parental rights. At the same time, the degree of danger posed by a parent to a child must be assessed individually in each case, taking into account the child's age, health condition, and other relevant circumstances. According to this view, the concept of "danger" should be understood as the existence of physical or psychological threats to the child's personality, life, or health¹⁰.

According to E.P. Burno, parental conduct that poses a danger to a child includes, among other things, frequent conflicts and disputes arising from the parents' abuse of alcohol, as well as situations in which a child is repeatedly left without parental supervision and care¹¹.

In our view, when assessing acts or omissions by parents that endanger a child's life and health, it is advisable to establish a clear legal definition of the concept of "danger" in legislation.

⁸ Ordintsev I.I. Bulletin of Moscow University of the Ministry of Internal Affairs of Russia. 2011, No. 3

⁹ Smirnovskaya S.I. Op. cit., p. 17

¹⁰ Ablyapteva N.A., Lugovaya Yu.S. Crimean Herald. No. 1(22), 2019. p. 5.

¹¹ "Restriction of Parental Rights as an Institution of Family Law." UDC 347.634.

In this regard, the concept of “danger” could be defined as a situation in which the conduct of one or both parents creates a physical or psychological threat to the child's personality, life, or health, as confirmed by an inspection report on the family's living conditions, explanations provided by the guardianship and trusteeship authority, medical opinions, witness testimony, and other factual evidence.

In such cases, it is not essential whether the parents are culpable or not, nor whether a harmful consequence has already occurred. Rather, for the purpose of restricting parental rights, the existence of a family environment that is dangerous to the child is, in itself, sufficient, regardless of the parents' fault.

Proceedings for the restriction of parental rights commence with the filing of a statement of claim before a court. Such a claim may be submitted by the child's close relatives, bodies and institutions legally entrusted with the protection of the rights of minors, preschool educational institutions, general educational institutions and other relevant organizations, as well as by a prosecutor.

In accordance with the requirements of the current civil procedural legislation, cases concerning the restriction of parental rights are considered by the court under the general procedure with the mandatory participation of both the prosecutor and the guardianship and trusteeship authority.

It should be emphasized that the restriction of parental rights does not release parents from their obligation to provide maintenance for their child. When considering such a case, the court simultaneously resolves the issue of recovering child support (alimony) from one or both parents for the maintenance of the child.

At the same time, a child whose parents' parental rights have been restricted retains ownership rights to residential property or the right to use residential premises, as well as all property rights arising from kinship with his or her parents and other relatives, including the right to inherit.

A parent whose parental rights have been restricted by a court may be permitted to have contact with the child, provided that such contact does not have a negative impact on the child. Such meetings may take place with the consent of the guardianship and trusteeship authority and, where applicable, with the consent of the guardian (trustee), adoptive parents, or the administration of the institution in which the child is being raised.

Although family legislation contains provisions concerning the restriction of parental rights, it does not clearly define what constitutes a “negative impact” of a parent on a child.

Judicial practice demonstrates that factors considered to have a negative influence on a child may include a parent being intoxicated during visits with the child, interfering with the child's upbringing, encouraging the child to engage in unlawful conduct or other inappropriate behavior, and similar actions.

In this regard, certain controversial issues also arise concerning the determination of a child's future legal status when one or both parents have their parental rights restricted.

In particular, although family legislation clearly establishes the grounds for restricting parental rights, it does not comprehensively regulate the future legal status of the child or the form of the child's placement. As a result, these legal provisions may be interpreted differently by courts.

For example, family legislation provides that where both parents have their parental rights restricted and the child is removed from their care, the child shall be placed under the supervision of the guardianship and trusteeship authority. However, legislation does not regulate situations where a child is removed from the care of only one parent and the other parent is unwilling to assume responsibility for the child, resides abroad for an extended period, or lacks adequate conditions for raising the child.

In our view, Part 4 of Article 84 of the Family Code should be supplemented with the following provision: “Where it is impossible to place the child with the father or mother, or where both parents have had their parental rights restricted, the child shall be placed under the care of the guardianship and trusteeship authority.”

Judicial practice also reveals certain difficulties in the application of legal provisions concerning the restriction of parental rights.

For example, claimant Sh. filed a claim with the court, stating that she had entered into a lawful marriage with defendant M. in 2012 and that two children had been born from the marriage, namely N. (born in 1999) and L. (born in 2007). Due to family disputes, the parties divorced in 2012. Pursuant to a court order issued

in 2012, child support payments were imposed on the defendant for the maintenance of the child. The claimant further stated that the defendant had left for the Russian Federation in 2011 and, up to the present time, had failed to provide any financial support for the child. The accumulated child support debt amounted to 72,659,809 Uzbek soums. On these grounds, the claimant requested that the defendant be deprived of parental rights in relation to the child L.

By a court judgment rendered in 2022, the claim was partially satisfied, and the parental rights of defendant M. with respect to the minor child L. were restricted.

The court considered the defendant's residence in the Russian Federation and his inability to fulfill his obligations to support and raise the child as grounds for restricting parental rights. At the same time, the court concluded that continued contact between the child and the father could have a significant impact on the child's upbringing.

However, in considering the claim for deprivation of parental rights, the court failed to substantiate why it was necessary to remove the child from the care of a parent who was not actively raising the child or why the restriction of parental rights was required under the circumstances of the case.

In this regard, the study and analysis of judicial practice concerning disputes related to child upbringing indicate the existence of certain difficulties in applying legal provisions governing the restriction of parental rights.

In particular, family conflicts, the breakdown of family relationships, and the separate residence of parents often give rise to disputes concerning participation in the upbringing of their children.

According to Article 76 of the Family Code, a parent living separately from the child has the right to maintain contact with the child, participate in the child's upbringing, and take part in decisions relating to the child's education.

If a parent who has a child under their care, whose behavior poses a threat to the child, applies to the court with a claim to restrict the parental rights of the other parent in order to prevent possible harm to the child's life and health through their future participation in the child's upbringing, the application of Article 83 of the Family Code (Oila Kodeksi) to satisfy such a claim is debatable, because the content of this norm only provides for the removal of a child from parents in cases established by law.

Accordingly, it would be appropriate to amend family legislation to include a provision that allows restricting parental rights even when a parent's behavior endangers the child's life and health, including in cases where the parent lives separately from the child.

By improving this norm, it would create a legal basis in judicial practice to restrict the parental rights of a parent (or one of them) who lives separately from the child but, according to legal requirements, has the right to participate in the child's upbringing, while the exercise of this right poses a risk to the child's life and health.

In this regard, by studying the social environment of a parent whose parental rights have been restricted, as well as the causes and conditions that pose a threat to the child's life and health within the family, and by taking measures to eliminate them, it may become possible in the future to restore the child to a normal family environment and to the upbringing of their biological parent(s).

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