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SOI: [1.1/TAS](http://s-o-i.org/1.1/TAS) DOI: [10.15863/TAS](https://doi.org/10.15863/TAS)

International Scientific Journal
Theoretical & Applied Science

p-ISSN: 2308-4944 (print) e-ISSN: 2409-0085 (online)

Year: 2021 Issue: 06 Volume: 98

Published: 24.06.2021 <http://T-Science.org>

QR – Issue



QR – Article



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OBSERVANCE OF CHILDREN'S RIGHTS WITH SEPARATE PARENTS

Abstract: *The issues of strengthening the family and supporting traditional family values have been set by the President of the Kyrgyz Republic on a par with issues of national security and economic development. It is obvious that the main task of the physical, mental, spiritual and moral education of the child is assigned to the family, since the child in his development relies on the principles, moral foundations and spiritual foundations of his parents.*

In accordance with the norms of international and Kyrgyz family law, the right of a child to live and be raised in a family is his fundamental, basic right, and the priority of family education of children is one of the basic principles of family law.

Key words: family, divorce, parents, children, law, separately, communication.

Language: English

Citation: Akmatova, A. T., & Satybaeva, N. (2021). Observance of children's rights with separate parents. *ISJ Theoretical & Applied Science*, 06 (98), 629-632.

Soi: <http://s-o-i.org/1.1/TAS-06-98-79> **Doi:**  <https://dx.doi.org/10.15863/TAS.2021.06.98.79>

Scopus ASCC: 3308.

Introduction

However, along with this, it should be noted that the number of divorces of marriages remains steadily high in the Kyrgyz Republic. So, « in 2019, about 11 thousand divorces were registered in the Republic, or 1.7 divorces per 1000 population. About a third of divorces occur among married couples who have been married for less than 5 years. As a result of divorces, 13.3 thousand children were left without one of their

parents. Most often, spouses made out for divorce in Bishkek - 2.1 divorces per 1000 population, in Issyk-Kul and Chui oblasts - 2.0 divorces per 1000 population. Residents of Osh oblast (1.3 divorces per 1000 population) and Jalal-Abad oblasts were least likely to divorce (1.4 divorces per 1000 population» [1].

Table 1. Number of marriages and divorces in the Kyrgyz Republic.

Years	Total		Per 1000 population	There are 1000 marriages divorces	
	marriages	divorces	marriages	divorces	
2015	52,043	8 588	8,7	1.4	165

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2016	47837	9 102	7.9	1.5	190
2017	43350	9 588	7.0	1.5	221
2018	49579	10 434	7.8	1.7	210
2019	49 431	10992	7,7	1.7	222

However, not all marital unions created are strong. Every fifth marriage breaks up: in rural areas, there were 154 divorces per 1000 marriages, while in urban areas there are more than 2 times more [2].

Of course, in the event of a divorce of the parents, the habitual life of the children is disturbed, which cannot but affect their physical and mental state [3]. The main task of parents is to avoid the negative consequences of divorce for their children, to make every effort to reduce their mental and physical suffering.

Often, in practice, the rights of children are grossly violated by one of the parents, or by both parents, relatives of the child.

In this regard, the legislation of the Kyrgyz Republic also provided for the necessary conditions for the development and upbringing of a child in the event of a parental divorce [4]; the responsibility for compliance lies with the parents.

For both parents, there is a statutory obligation not to interfere with each other in exercising parental rights and to strictly comply with the court's decision.

Thus, the parent with whom the child lives is obliged to comply with the procedure for communication established by the court and, in accordance with it, is obliged to transfer the child to the parent who lives separately, and he is obliged to return the child to his place of permanent residence in accordance with the same procedure. Otherwise, the parent's action may be qualified as an abuse of the right.

Parents who have a common child, living separately, often cannot resolve the situation associated with the child's communication with each of the parents. In this regard, they have a dispute about the procedure for exercising parental rights, which results in an appeal to the court, the initial reason for which is the parents' inability and / or unwillingness to agree on issues related to the upbringing of a common child [5].

The study and analysis of judicial practice have shown that parents, when formulating claims, include conditions that detail the procedure for communication between a parent living separately with a child. Among others, the most common conditions are for spending school holidays with children, holidays and weekends, birthdays of parents and other close relatives, determining the order of communication during a child's illness, the possibility

of going abroad, etc. It is quite obvious that it is impossible to foresee all possible options for the behavior of parents, and the more detailed the decision, the more grounds for its violation.

When the court establishes the procedure for communicating with the child of a separately living parent, the question of the place of communication between the parent and the child and the need for the presence, for example, of the parent with whom the child lives, or close relatives on the part of this parent, is controversial. Quite often, a parent living separately opposes that the territory of communication is limited to the place of residence of the child, and even more so that meetings with the child take place in the presence of strangers or another parent. Compliance with these conditions, as a rule, is insisted by the parent with whom the child lives, explaining this by the fear of the negative impact of the separate parent on the child. Only in rare cases does the court determine that communication between the child and the parent should be carried out at the child's place of residence [6].

The law does not establish a list of the rights and obligations of parents in case of separation. On the one hand, in accordance with item 70 of the Family Code of the Kyrgyz Republic, parents have equal rights and have equal responsibilities in relation to their children.

On the other hand, a parent living separately from a child has the right to communicate with him, to participate in his upbringing and to resolve issues of the child's education (item 71 of the Family Code of the Kyrgyz Republic), i.e. his parental rights are limited to a specific list. Thus, when studying the issue of parental rights in case of separation of parents, the question of the extent of parental rights is important.

Can the order of communication between parents and a child be equal for each parent, namely 50/50, i.e. for six months the child lives with one parent, and six months with another, or a week with one parent, and a week with another, half a week with one parent and half with the other? The participants in the process are trying to find out this question in court [7].

It is reasonable to assume that the equality of the rights of parents does not exclude the establishment of such an order, however, guided by the interests of the child, the peculiarities of his psyche, such an order cannot be recognized as corresponding to the interests of the latter.

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Courts, as a rule, do not establish such a communication regulation when making a court decision, however, when approving a settlement agreement, they do not find obstacles to its approval.

Item 71 of the Investigative Committee of the Kyrgyz Republic establishes that a parent living separately has the rights (but not obligations) to communicate with the child, to participate in his upbringing and to resolve issues of his education. At the same time, according to item 70 of the Family Code of the Kyrgyz Republic parents have equal rights and bear equal responsibilities in relation to their children. Thus, a separate parent not only has rights, but also responsibilities in relation to the minor [8].

When considering a statement of claim to determine the procedure for communication between a parent and a minor child, the requirements for determining the child's place of residence and collecting alimony are often investigated.

Interestingly, when making a decision, the courts do not take into account the fact of non-payment of alimony when determining the procedure for communicating with a child as a circumstance indicating a failure to fulfill the parent's obligation to support children.

Systematic failure to comply with the order of communication with a child can be committed exclusively in the form of intent, while the parent is clearly aware that such behavior is causing harm to his child. Of course, we are not talking about situations when a parent, for a good reason (illness, business trip, etc.), cannot fulfill the procedure for exercising parental rights determined by the court [9].

Taking into account the above, it seems possible to draw some conclusions about the need to improve family legislation on issues related to the procedure for exercising parental rights by a parent living separately [10]:

1) a claim on the procedure for the exercise of parental rights by a parent who lives separately must be considered either simultaneously or after the court has determined the place of residence of the minor for a proper understanding of which of the parents is separately living;

2) the determination of the child's place of residence with one of the parents should mean that from that moment the scope of parental rights changes. Determination of the child's place of residence with one of the parents means that the legal status of the parent with whom the child lives is different (not equal) to the status of the parent who lives separately, and taking this into account, the procedure for the participation of each parent in the upbringing of the child is established [11];

3) in case of non-payment by a parent living separately, alimony without a valid reason for a long time (from six months or more), i.e. in case of improper performance of the parental obligation to support the child, the court has the right to deprive the parent living separately from the child for a certain period of the right to communicate with him;

4) the guardianship and trusteeship authorities, in the process of considering by courts cases on the procedure for exercising parental rights by a parent living separately (and determining the child's place of residence with one of the parents), submit to the court, upon request, an act on living conditions;

5) it is necessary to establish a mandatory forensic psychological and pedagogical examination only in relation to children under 10 years of age, with the obligation to reimburse expenses by both parents in equal parts. With regard to minor children who have reached the age of 10, the court has the right to oblige parents to submit a psychological and pedagogical study and hear the child's opinion in court.

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