

**PERSONAL NON-PROPERTY RIGHTS OF CHILDREN IN THE FAMILY:
THEORETICAL AND PRACTICAL ANALYSIS**

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In today's rapid globalization processes, the protection of children's personal non-property rights is considered one of the highest priorities, both on the international stage and from the perspective of improving national legislation. Consequently, wide-ranging reforms are being implemented at the level of state policy in our country to strengthen the educational potential of the family institution, preserve traditional family values in society, and improve the spiritual and moral environment within socially vulnerable families.

However, it remains difficult to provide a fully affirmative answer to the question of how effectively these reforms are influencing the formation of a child's spiritual and moral qualities and their development into a well-rounded individual within the family.

This necessitates the conduct of in-depth scientific research aimed at enhancing the educational, cultural, and scientific potential of families. As it has been noted: "The family is a sacred place that ensures the continuity of life and builds the foundation of goodness and humanity for future generations. Indeed, concepts such as compassion, honor, and decency, which define a child's character, worldview, and spiritual image, are first and foremost formed and established within the family environment" [1].

In today's rapid process of globalization, protecting the personal non-property rights of children is a strategic task, not only at the national level but also on an international scale. Although strengthening the family institution has been elevated to the status of state policy in Uzbekistan, several problems persist in practice regarding a child's development into a well-rounded individual. Indeed, a person's initial life concepts and spiritual foundations are formed precisely within the bosom of the family.

A child's personal non-property rights are those rights that are not related to material interests, are inseparable from the individual, and are inalienable. These rights can be categorized into the following groups:

1. Rights of Individualization (Identity Rights): These rights distinguish the child as a separate individual within society and legal relations:

- The right to a name, patronymic, and surname (Article 69 of the Family Code);
- The right to change the name and surname (based on specific age and conditions — Article 70 of the Family Code);
- The right to acquire and preserve nationality and citizenship [2].

Мақолангизнинг таснифлаш (классификация) ва тадқиқот предмети белгилаш қисми учун юқори даражадаги академик инглиз тилидаги таржима:

2. Rights to Live and Develop in a Family Environment – These are central rights that ensure the social and biological needs of the child:

- The right to live and be raised in a family (Article 65 of the Family Code);
- The right to know one's parents and benefit from their care;
- The right of the child to maintain contact with parents and other relatives (grandparents, siblings, etc.) (Article 66 of the Family Code) [3];
- The right to maintain contact with parents even when living separately from them [4].

3. Rights to Personal Integrity and Moral Development – Rights that protect the dignity and intellectual freedom of the child:

- The right to life and health protection;
- The right to personal integrity and protection of honor and dignity (protection from cruel treatment by parents – Article 75 of the Family Code);
- The right to express one's opinion (on any matter affecting their interests – Article 68 of the Family Code);
- The right to freedom of conscience, speech, and information.

4. Rights to Legal Protection – These rights serve to ensure the enforcement of all the aforementioned rights:

- The right to the protection of rights and legal interests (Article 67 of the Family Code);
- The right to appeal to guardianship and trusteeship authorities or the court in case of rights violations by parents (or guardians) [5].

The classification of a child's personal non-property rights possesses a complex legal structure, and each category constitutes an extensive field requiring separate scientific research. However, the institution of the child's right to express their opinion, which causes the most

debate and discussion in practice and requires further legislative refinement, has been designated as the primary subject of this research.

The right to express one's opinion is fundamental for defining the child as an independent subject within family law relations.

According to Article 13 of the Convention on the Rights of the Child, Article 68 of the Family Code of the Republic of Uzbekistan, and Article 15 of the Law "On Guarantees of the Rights of the Child" (No. ZRU-139), it is emphasized that every child in a family has the right to express their views, as well as the right to be heard in any judicial or administrative proceedings concerning matters affecting their interests. The consolidation of the child's right to express their opinion in the Family Code signifies that the state recognizes the child as a distinct individual and creates legal opportunities for them to voice their perspective, form their own beliefs, and freely establish their position on any matter concerning their welfare.

In the Explanatory Dictionary of the Uzbek Language, the term "opinion" is defined as a judgment or conclusion that expresses an attitude toward or an evaluation of something [6].

Based on the essence of Article 68 of the Family Code, a child's opinion emerges as a factor of legal significance in resolving matters that affect their interests. That is, the child is recognized as a subject with the right to independently express their stance on circumstances that directly impact their personhood.

For instance, when choosing extracurricular activities or supplementary courses beyond the core educational process, a child may express an opinion on which type of activity is most acceptable and beneficial for them based on their interests, abilities, and needs. In such cases, the child's perspective is viewed as an expression of their right to individual development.

The expression of a child's viewpoint is not limited merely to an advisory capacity. In circumstances established by legislation, the child's opinion serves as a direct legal basis for the emergence, modification, or termination of specific rights and obligations. This is because the child's consent or objection functions as a crucial criterion in the decision-making process regarding their interests, thereby creating the potential to influence the dynamics of specific legal relationships.

In particular, when resolving the issue of whether a child should reside with the father or the mother, the child's expressed desire regarding which party they wish to live with is of paramount importance. In this context, the child's consent to live with one parent may create a state of disagreement with the other. Thus, the position expressed by the child emerges as a factor that directly influences the essence and outcome of family law relationships.

The report published by the Supreme Court following the conclusion of 2025 provides the following significant figures regarding children's interests: Among the total cases heard by courts concerning the custody and upbringing of children, claims related to determining the child's place of residence and their recovery (transfer) show an upward trend. Specifically, in approximately 53% of divorce cases, the issue of the children's subsequent fate (with whom they will reside) is adjudicated [7].

An analysis of family legislation in foreign countries reveals diverse approaches to hearing a child's opinion and taking it into legal account. For instance, according to the Family Code of Ukraine, once a child reaches the age of 7, their direct consent is required to change their surname [8].

Article 54 of the Family Code of the Republic of Moldova and Article 57 of the Family Code of the Russian Federation establish similar norms regarding a child's right to express an opinion. According to these provisions, a child who has reached the age of 10 has the right to freely express their opinion on any matter affecting their interests. Furthermore, obtaining the consent of a child who has reached the age of 10 is of a mandatory (imperative) nature in cases involving the change of the child's name or surname, restoration of parental rights, placement of the child in a family for upbringing (guardianship, trusteeship, or foster care), adoption, and the establishment of paternity or maternity.

In Western countries, the age criteria for hearing a child's opinion are set relatively lower. For instance, in judicial practice, a child's opinion is sought and taken into account starting from the age of 9 in Switzerland, 8 in the United States, and 6–8 in England.

Such legal norms are reflected in the family legislation of almost all Commonwealth of Independent States (CIS) countries, indicating the successful implementation of international standards for the protection of children's rights into national legal systems [9].

Within the framework of studying European standards for the protection of children's rights, the experience of the Republic of Serbia is of particular significance. Article 65 of the Serbian Law "On the Family" not only recognizes the child's right to express an opinion but also establishes it in extensive normative detail. Specifically, Paragraph 1 of Article 65 sets forth the imperative rule that "a child capable of forming their own opinion has the right to express that opinion freely." A noteworthy aspect of this norm is that it not only guarantees the child's fundamental right to freedom of expression but also provides a range of "additional" (subsidiary) rights and special procedural privileges to ensure its realization.

In particular, the process of hearing a child's opinion in Serbian family law encompasses two vital aspects:

1. **Right to Information:** The child must be provided with the necessary information before a decision is made on a matter concerning them.
2. **Special Protection:** The existence of guarantees ensuring that the child is free from any pressure or influence when expressing their opinion. This approach elevates the child's involvement in the decision-making process to a qualitatively new level, going beyond merely listening to their views [10].

The Code of the Republic of Kazakhstan "On Marriage (Matrimony) and the Family" also contains a unique mechanism for exercising a child's personal non-property rights. Specifically, the procedure for determining a child's nationality is directly linked to their right to express an opinion and choose their ethnic identity. According to this legislation, while a child's nationality is traditionally determined by the nationality of their parents, the legal status in cases where parents belong to different ethnic groups is managed as follows:

1. **Priority of Preference:** At the time a child is issued an identity document (passport or ID card), they may choose and record the nationality of either the father or the mother based on personal preference.
2. **Right to Change Nationality:** An adult or an individual who has reached a certain age subsequently has the right to change their ethnic affiliation to the other parent's nationality upon application. The legal significance of this norm lies in the fact that it recognizes ethnic affiliation not merely as a biological factor but as a manifestation of the individual's right to self-determination. This serves as a practical and expanded expression of the "right to express an opinion on any matter affecting the child's interests" as stipulated in Article 68 of the Family Code of the Republic of Uzbekistan [11].

Furthermore, the issue of taking the opinion of a ten-year-old child into account in court remains somewhat controversial today. According to Article 29 of the Civil Code of the Republic of Uzbekistan, a child who has reached the age of 6 has the right to conclude minor domestic transactions (e.g., purchasing household items). This indicates that from this age, a child is capable of expressing their will to a certain degree. This rule is one of the norms that has been automatically carried over from the former USSR codes since 1926.

According to psychologists today, even preschool-aged children exhibit concentration, a sequence of actions, and the ability to evaluate their actions and their results [12].

Based on the aforementioned analyses, it can be concluded that in the context of global transformations, where the duration of childhood has significantly condensed, it is expedient to apply the age for taking a child's opinion into account to children who have reached the age of 7. Furthermore, expanding the list of circumstances where a child's opinion is mandatory remains a highly relevant task.

The primary objective of such legislative amendments is to create a family law system that fully aligns with the evolving character of familial relations and meets the requirements of the modern family model and judicial practice—specifically, to develop a contemporary concept of children's rights. This approach is consistent with the principle of the "best interests of the child" as stipulated in the Convention on the Rights of the Child.

It is deemed appropriate to include the child's opinion as a requirement in the following categories of cases:

- Cases regarding the deprivation of parental rights;
- Disputes related to the child's right to maintain contact with grandparents, siblings, and other close relatives;
- Judicial proceedings concerning the establishment of paternity;
- Instances of acknowledgment of paternity;
- Situations involving the determination of the order of communication and visitation for children living separately from a parent.

In these instances, the child's consent should be established as a mandatory requirement not only during judicial proceedings but also at the time of concluding agreements between parents. This would create a legal foundation for the child to express their views independently and elevate the acceptance of their opinion by parents to the level of a legal obligation.

Consequently, the child will be recognized in family law relations not merely as an object of protection, but as a full-fledged subject of rights participating as an independent individual.

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