

Секция «Английский язык и право (на английском языке)»

Peculiarities of execution of court decisions on the definition of a child's place of residence.

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At the present time in Russian courts the number of disputes relating to the upbringing of children has increased. The process of execution of judicial decisions concerning children's fate is difficult enough.

The resolution of the plenum of the Supreme Court of the Russian Federation №10, 27.05.1998 "On the application of legislation by the courts in settling disputes relating to the upbringing of children" refers to the need of respecting the interests of a child as one of the tasks of the execute process[1].

According to the decision of the Plenum of the Supreme Court of the Russian Federation, the disputes relating to the upbringing of children are the disputes concerning the place of residence of a child when his parents are living apart.

The main problem of the definition of place of residence of a child is that "the lost side" is not ready and is unlikely to be ever prepared to accept such a decision of the court, as such a decision in its understanding is equivalent to voluntary surrender of the child to the other spouse.

At all stages of the judicial proceedings affecting the rights and interests of a child, it is the interests of the minor which shall be a priority protection. At the stage of enforcement proceedings under this category of cases, it is very important to respect the interests of a child which are defined as creating conditions that exclude the infliction of minor mental and physical trauma at the time of the execution of judgement. In particular, the Supreme Court of the Russian Federation obliges the courts in determining the modalities of attendance of non-custodial parent in the upbringing of the child to prevent the other parent about possible consequences of failure to comply with the judgment of the Court (i.3, art. 66 FC RF).

As noted above, execution of adjudication in this category of cases is very difficult. The problem is that each party finds the decision to be wrong and illegal.

For example, in the case of X., a former husband of a complainant disobeyed the requirements of bailiffs and refused to hand over the child to the complainant voluntarily.

In the presence of a pediatrician, a psychologist, a representative of the local tutorship and two witnesses the bailiff took the complainant's son from his father by force and passed him to his mother. During the execution of transfer of the child to his mother the bailiff-executive failed to make proper execution. The child cried, resisted, pushed away the complainant and ran away to his father. After that followed the second unsuccessful attempt. The child screamed badly during the procedure and resisted. The complainant objected the methods used by the bailiff because such actual transfer causes the complainant and the child serious psychological suffering.

Firstly, in the given example the child hadn't seen his mother for more than one and a half year and she was a stranger for him. Secondly, the bailiff is not entitled to apply force to a child of any age when transferring him to the other parent. If the situation does not change, the act of non-execution should be made and sent to the court. The family code of the Russian

Federation allows the court in case of impossibility of execution make a determination about the temporary device of a child in the educational, medical institution or in the institution of social protection of the population, or in any other analogous institution. Such a measure of intermediate nature often allows to lighten the mood, to calm down parents and their child, and after that it is easier to execute the judgment.

The European Court of human rights drew its attention to this fact pointing out that the authorities obviously didn't use a gradual and flexible approach in the execution of the decision of the court. European Court draws its attention to the fact that in the course of enforcement proceedings the bailiffs and the courts didn't show due diligence and prudence when considering the applicant's requests for assistance. Bailiffs were unprepared for the task solution, they did not have any idea of what could be or should be done, or a clear plan of action while the courts were considering the case, ignoring the urgency that this case merited. As a result, critically important time has been lost, primarily because of the delay of the authorities during consideration of the case. Taking into account aforesaid, the Court concluded that the Russian authorities had not taken without delay all steps which would be reasonable to expect of them to fulfill the court's decision relating to the custody of the applicant with her son. Thus they violated the applicant's right to respect for her family life, guaranteed by article 8 of the Convention. Hence, it has been a violation of article 8. In addition, according to the European Court of human rights, these violations are conditioned also by the disadvantages of the Russian legislation, which does not contain special norms governing the procedure of such court decisions. We should agree with these remarks because the Federal law «On enforcement proceedings» contains only a few articles and they are of general character. Therefore, it is necessary to introduce some amendments into the Federal law «On enforcement proceedings», in which there should be a separate chapter devoted to executive actions of this category of cases.

Summing up aforesaid, we think that it is necessary to make fundamental changes in family law and in Federal law «On enforcement proceedings» on the problem of execution of judgments of the place of residence of the child.

Источники и литература

- 1) On the application by the courts of legislation in settling disputes relating to upbringing of children, the Plenum of the Supreme Court of the Russian Federation of 27.05.1998 №10 (p. of 06.02.2007)//Access of reference and legal systems "Consultant-plus".