



THE RIGHTS AND OBLIGATIONS OF THE GUARDIANSHIP AND TRUSTEESHIP AUTHORITIES AND THE ORGANIZATION OF ACTIVITIES IN THIS FIELD

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Article history:	Abstract:
Received: 10 th January 2024 Accepted: 8 th March 2024	This article analyzes the general rules of the organization of guardianship and trusteeship, the legal foundations of this institution, as well as the grounds for establishing guardianship and trusteeship and their rights and obligations in this field. The legal grounds for becoming a guardian and trustee are given, as well as the ideas and views of scientists on this matter. Opinions were expressed on the issues of the institution of guardianship and trusteeship in the new Uzbekistan. The conclusions were made based on the opinions presented in the article, the studied scientific sources, and the research conducted by scientists in this regard.
Keywords: guardian, trustee, general grounds, legal basis, rights and obligations, candidate for guardianship, candidate for trusteeship, incapacitated person, partially capable person.	

INTRODUCTION

As each state chooses its own path of independence and development, it consolidates its most important goals and objectives, which serve to ensure the welfare of the people, in the Constitution, which is considered its chief. Consequently, the will of his people, a country with a superstitious Constitution in harmony with the noble intentions of his heart, always goes forward, without ever deviating from the high marks set by him.

One of the important political events in the history of the new Uzbekistan, updated by 65 percent, embodied in itself the norms regarding the protection and guarantee of human rights and freedoms, entered into force since May 1, 2023.

If some of the norms of our updated constitution are paid attention to, then one can witness that the idea of the superiority of human rights over everything, deeply embedded in the content of the new Constitution, also finds its proof in practice.

Due to the fact that a person, his life, freedom, honor, dignity and other inviolable rights are of high value, over the past years, a number of works have been carried out under the leadership of the head of our state, Shavkat Mirziyoyev, in order to ensure the personal, political, economic and social rights of a person. A clear example of this is the Constitution adopted in the newly edition, which concentrates on human rights and freedoms.

ANALYSIS OF THE MAIN LITERATURE

A closer look at the norms of the updated constitution can be seen that the existing rules are expressed in the legislation of international standards and advanced developed foreign countries.

In particular, the XIV chapter of the Constitution adopted in the new edition was called "Family, children and youth"¹. It will not be an exaggeration to say that this is a sign of high attention to the fact that the rights of not only the family institute, but also children and young people are established in the prime of the country.

Article 77 of the newly adopted Constitution stipulates that parents and guardians are obliged to raise their children until they reach adulthood, and to take care of the child's upbringing, education, and healthy, full and wholesome development. At the same time, the state and society ensure the feeding and education of orphans and children deprived of their parents' custody, education, and healthy, full and healthy development, and for this purpose, the promotion of welfare activities is mentioned.

It should be noted that if the content of the above article is considered, it is noteworthy that guardians and trustees (patrons) are understood as substitutes for parents.

¹ National Database of Legislation, No. 01.05.2023, 03/23/837/0241



Article 3 of the Law of the Republic of Uzbekistan "On guardianship and trusteeship"² defines the concepts of guardianship and trusteeship as follows:

Guardianship is a legal form of placement of orphans under the age of 14 and children deprived of parental care, as well as citizens recognized by the court as incompetent, in order to provide them with support, upbringing and education, protect their property and personal non-property rights and legitimate interests.

Trusteeship is a legal form of placement of orphans aged 14 to 18 years and children deprived of parental care, as well as citizens with limited legal capacity in court, in order to provide them with food, upbringing and education, protection of their property and personal non-property rights and legitimate interests. Citizens of the age of majority who, due to their state of health, cannot independently exercise their rights and perform their duties, may be assigned sponsorship at the request of these persons.

At the same time, it can be seen that Article 3 of the law of the Republic of Uzbekistan "On the guarantee of child rights"³ and chapter 21 of the Family code (articles 173-175)⁴ also establish norms on the concepts of guardianship and trusteeship.

It is reasonable to note that the system of guardianship and trusteeship in Uzbekistan is developing in the coming years. There are about ten normative documents in this area, and a number of normative foundations are being created aimed at further improving this area. In particular:

- Family code of the Republic of Uzbekistan⁵;
- Civil code of the Republic of Uzbekistan⁶;
- Law of the Republic of Uzbekistan "On guardianship and trusteeship"⁷;
- Law of the Republic of Uzbekistan "On the guarantee of child rights"⁸;

- Decree of the President of the Republic of Uzbekistan "On additional measures to strengthen the social protection of orphans and children deprived of the care of their parents" PD-4185⁹;

- Decree of the President of the Republic of Uzbekistan "On additional measures to improve the system of protection of the rights of the child" PD-4736¹⁰;

- Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 269 "On approval of regulatory legal acts on the implementation of the law of the Republic of Uzbekistan on guardianship and trusteeship"¹¹;

- Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 824 "On the selection of alternative forms of resettlement of orphans and children deprived of parental care, measures to strengthen the institution of the family and improve the system of prevention of social trust"¹²;

- Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 739 "On measures to further strengthen the social protection of orphans and children deprived of the care of their parents or other legal representatives"¹³ and other regulatory legal acts are included.

Today, it is known to everyone that as a result of the reforms carried out in the new Uzbekistan, new relations are emerging in all spheres of social life. Including, as a result of the reforms carried out in the legal sphere, new national legal systems are emerging and their activities are being formed. It is especially worth noting that the development of legislation aimed at determining the status of subjects of law, legal regulation of their activities is considered one of the important strategic tasks in the context of a market economy.

It should be noted that the implementation of civil rights usually comes from the individual's own desires and interests and is committed directly by the individual himself. At the same time, the current legislation also establishes that a person's civil rights are allowed to be exercised through representatives, depending on his wishes and desires.

² National Database of Legislation, 21.04.2021, No. 03/21/683/0375, 22.10.2021, No. 03/21/723/0983, 12.04.2023, No. 03/23/829/0208

³ National Database of Legislation, 15.03.2023, No. 03/23/823/0150; 12.04.2023, No. 03/23/829/0208

⁴ National Database of Legislation, 12.04.2023, No. 03/23/829/0208, 08.05.2023, No. 03/23/838/0257-сoн

⁵ National Database of Legislation, No. 12.04.2023, 03/23/829/0208, No. 08.05.2023, 03/23/838/0257

⁶ National Database of Legislation, No. 08.11.2022, 03/22/801/0998, No. 25.10.2023, 03/23/871/0797

⁷ National Database of Legislation, No. 21.04.2021, 03/21/683/0375, No. 22.10.2021, 03/21/723/0983, No. 12.04.2023, 03/23/829/0208

⁸ National Database of Legislation, 15.03.2023, No. 03/23/823/0150; 12.04.2023, No. 03/23/829/0208

⁹ National Database of Legislation, No. 30.11.2021, 06/21/26/1111

¹⁰ National Database of Legislation, No. 29.05.2020, 07/20/4736/0680

¹¹ National Database of Legislation, No. 08.02.2022, 09/22/62/0111, No. 05.04.2022 й., 09/22/153/0266, No. 04.09.2023, 09/23/434/0679

¹² National Database of Legislation, No. 07.07.2022, 09/22/363/0600, No. 10.08.2022, 09/22/438/0726

¹³ National Database of Legislation, No. 07.07.2022, 09/22/363/0600



Therefore, civil-legal representation is divided into legal and contractual types. According to the views of I.Zakirov¹⁴, one of our legal scholars, the representative creates, changes and cancels certain rights and obligations towards the representative according to the authority he has. Consequently, authority is understood as the right of the representative to take certain legal actions on behalf of another person and thus generate legal consequences for him. The powers of the representative can be based on a law, a court decision, a document of the represented state bodies or a power of attorney.

In this respect, minor or incompetent persons are appointed by the competent state authorities as legal representatives, i.e., guardians or patrons.

A person under guardianship or trusteeship is a person for whom guardianship or trusteeship is established.

National legislation defines the following as individuals who need to establish guardianship or trusteeship:

- orphans and children deprived of the care of their parents;
- children who have parents who are not deprived of parental rights and live in conditions that directly threaten the life or health of children or do not meet the requirements for their maintenance, upbringing and education;
- adult eligible citizens who need trusteeship according to their state of health, non-eligible or restricted in their treatment capacity.

The category of persons who cannot be appointed guardian or patron includes:

- persons deprived of parental rights or limited parental rights;
- persons found by the court to be incompetent or limited in their treatment capacity;
- former adopters if the adoption was canceled as a result of their refusal or due failure to fulfill their obligations, abuse of parental rights, cruel treatment with adoptees, chronic alcoholism or drug addiction;
- persons excluded from the fulfillment of guardian or patron obligations for failure or due failure to fulfill obligations imposed on them or for abuse of their rights;
- persons previously convicted of intentional crimes;

persons with diseases that prevent them from being appointed guardians or sponsors.

The guardian and patron are considered to be the most active and highly responsible entities of the guardianship and trusteeship relationship. It is the guardians and patrons who are manifested as minor,

incompetent and limited in the capacity of treatment, as persons who directly carry out the provision and protection of the rights and legitimate interests of citizens of adult circulation who need patronage according to the state of their health.

Given the analysis of the current legislative norms of the Republic of Uzbekistan, it is noted that among the subjects of civil law, only citizens, that is, only a person considered a citizen of the Republic of Uzbekistan, can become guardians and patrons. Because, guardians and patrons directly carry out the care and maintenance of minors and their material support, the care of citizens with disabilities and limited treatment capacity, and those who need help due to illness.

Under the second part of Article 21 of the law of the Republic of Uzbekistan "On guardianship and trusteeship", adult citizens can be appointed as guardians or trustees only by their consent.

This is what is understood from this rule that it is not allowed to impose the implementation of guardianship and trusteeship in a mandatory way. Therefore, a citizen who wants to become a guardian and patron will confirm his consent by applying for an application. The submission of such an application means the consent of the applicant to guardianship and guardianship.

One of the Russian scientists Y.Ushakova noted that modern legislation provides for the consent of a person to perform his guardianship duties as a prerequisite for the appointment of a guardian (trustee). Only the free expression of desire, the desire of a child to replace his parents, cannot be the main factor in proper upbringing, and care at the same time cannot be based on coercion. However, those who wish to make such a commitment among individuals do not constitute a majority and, as a rule, do so with the participation of close relatives¹⁵.

Another Russian legal scholar R.Tovmasyan¹⁶ believes that in itself, when determining a guardian (trustee), it is necessary to take into account not only the formal compliance of a particular candidate with the requirements of the law, but also the interests of a child or a person who needs a guardianship designation. Therefore, priority (preference) should be

¹⁴ Zakirov I.B. Civil law. Part I. - Tashkent: TSUI, 2009.

¹⁵ Ускова Ю.В. Некоторые аспекты и проблемы установления опеки (попечительства) в Российском законодательстве // Научный журнал КубГАУ, 2014. №100(06). – 25 с.

¹⁶ Товмасын Р.В. Правовое регулирование опеки и попечительства в отношении несовершеннолетних: пробелы и противоречия // Вестник Омского университета. Серия «Право». 2011. - №1 (26). – 139 с.



given to a close person if there are two or more candidates, and not contrary to civil and family law. However, for those in guardianship or trusteeship, this alone will not be enough.

According to the views of another Russian scientist O.Ilina¹⁷, it is necessary to calculate the interests of the person in custody (under patronage) as a criterion for choosing a guardian and a candidate for trusteeship. However, this interest should not contradict civil and family law.

Adding to the ideas and views of the scientists analyzed above, it should be said that when choosing a guardian and patron, it is necessary that the interests of the persons in guardianship and trusteeship have priority. The non-conformity of such priority to the norms of the law is a formal requirement, and legislative exceptions to this requirement must be provided. The reason is that the strict definition of formal requirements in the law undermines the rights and interests of persons who need to establish guardianship and trusteeship: minors and those who need care.

The activities of the guardian or patron, the work they carry out, the rights and obligations they assume are directly aimed at ensuring the rights and obligations of minors. In this, the guardian carries out, along with legal actions aimed at the implementation of the rights and obligations of the person under his guardianship, factual actions related to the provision of the interests of this person¹⁸.

This situation arises from part 1 of Article 32 of the Civil code of the Republic of Uzbekistan. According to this norm, guardianship and trusteeship are established to protect the rights and interests of citizens who are incapable of circulation or are not fully qualified for circulation¹⁹.

Guardianship and trusteeship of minors is also established for the purpose of their upbringing. The rights and duties of guardians and patrons related to this are determined by legislation. The essence of guardianship and trusteeship is precisely the protection of the rights and duties of persons under their guardianship and trusteeship.

For this reason, the activities of guardians and patrons to protect the rights and duties of persons

under their guardianship and trusteeship, including in the courts, do not require the granting of any power of attorney or other special authority. For example, the rights and law-protected interests of persons who are incompetent or limited in treatment are protected in courts by their legal representatives (parents, adoptees, guardians, patrons).

Article 7 of the law of the Republic of Uzbekistan "On guardianship and trusteeship" states that the following shall be established as state bodies carrying out activities in the field of guardianship and trusteeship:

Cabinet of Ministers of The Republic Of Uzbekistan;

Ministry of Preschool and school education of the Republic of Uzbekistan;

Ministry of Health of the Republic of Uzbekistan;

local government authorities.

Guardianship and trusteeship activities:

by the child protection departments of district (city) governments – in relation to minors;

it is carried out by district and city medical associations – in relation to citizens who have been declared incompetent or limited in capacity by the court, as well as adult citizens who are in need of trusteeship due to their health.

Local state authorities carry out activities in the field of guardianship and trusteeship within the limits of the powers established by this law and other legal documents.

Consular institutions of the Republic of Uzbekistan in relation to citizens of the Republic of Uzbekistan who are minors living outside the Republic of Uzbekistan, who are deprived of the care of their parents, who have no legal capacity or limited legal capacity, as well as adult citizens of the Republic of Uzbekistan who cannot independently exercise their rights and fulfill their obligations due to their health. takes measures to establish guardianship or trusteeship in accordance with the procedure established by law.

Legal entities and individuals other than guardianship and trusteeship bodies are not allowed to operate on the identification and placement of persons in need of a trusteeship or sponsorship designation.

Since the guardian and patron carry out a legal action on behalf of the person under guardianship or trusteeship, first of all, he must act in his interests. Otherwise, the action carried out by him will not become legal. In carrying out any action aimed at ensuring the interests of minors, the guardian must comply with his obligations established by law and not deviate from the scope of his powers.

The Regulation "On guardianship and trusteeship in the Republic of Uzbekistan" approved by

¹⁷ Ilyina O.Yu. Interests of the child in family law of the Russian Federation. – M.: OJSC Publishing House "Gorodets", 2006. – 192 p.

¹⁸ Ашурова Н.А. Вояга етмаганларнинг фуқаролик-хукукий муносабатлардаги иштироки. юрид.фан.номз.дис....Автореф. –Тошкент: 2008.

¹⁹ Review of the Civil Code of the Republic of Uzbekistan. Volume 1 (Part One) Ministry of Justice. - Tashkent: "Vektor-Press", 2010.



the decision of the Cabinet of Ministers of the Republic of Uzbekistan No. 269 of September 22, 2014 "On approval of regulatory legal acts on the implementation of the law of the Republic of Uzbekistan "On guardianship and trusteeship"" established the powers of the guardianship and trusteeship bodies and their duties. In addition, separate functions of the guardianship and trusteeship authorities are also cited.

According to the norms of the above Regulation, there are requirements for the participation of guardianship and trusteeship bodies in the consideration of child-rearing disputes by the courts, and in accordance with Article 88 of the Family code, when the court considers child-rearing disputes, regardless of who filed a claim for the child's protection, guardianship and it is determined that the trusting body should be involved in the work.

Guardianship and patronate duties are performed free of charge. The guardian and trustee are not obliged to provide maintenance to the person under their guardianship or trusteeship.

CONCLUSION

The expenses of the guardian and patron for the provision of his or her guardianship are covered by the funds of the person in question in accordance with the procedure established by the legislation, and in the absence of funds, the guardianship and trusteeship bodies can appoint benefits for its provision. Due to poor health, the patron of an adult who needs a sponsor designation must be exempt from the trusteeship obligation at the request of his patron. In this case, the guardianship and trusteeship authorities can appoint another person to him as a patron, with the consent of the person in need of the appointment of a trustee. In general, the guardians and trustees are in charge of the guardianship and trusteeship bodies over the activities they carry out. The agreements and contracts they make can then be found invalid if the interests of the trustees or the sponsored persons are violated.

In conclusion, it can be said that the development of the institute of guardianship and trusteeship in the new Uzbekistan, the need to ensure the comprehensive and high-quality implementation of work in this area, and to radically improve the activities of guardianship and trusteeship bodies in the field of protecting the rights and legitimate interests of minor children is growing.

It is worth noting separately that there is no adequate monitoring of the activities of guardians and trustees by the guardianship and trusteeship authorities. Therefore, it is advisable to change and add to the legislation the rights and obligations of guardianship and trusteeship, the norms established in

the legislative acts on this area for the improvement of their duties.

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