

ANALYSIS OF THE LEGISLATION OF THE REPUBLIC OF UZBEKISTAN AND FOREIGN COUNTRIES ON THE INSTITUTE OF GUARDIANSHIP AND TRUSTEESHIP

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Abstract

This article presents a comparative analysis of the legislation of domestic and foreign countries regarding the institution of guardianship and trusteeship. The legislation of the Republic of Uzbekistan discusses the conditions for the appointment of a guardian and trustee, issues related to the rights and interests of persons under guardianship and trusteeship. In this regard, existing ideas and views in the scientific research of a number of scientists were analyzed. From foreign countries, opinions were given on the experience of countries such as Ukraine, Russia, Poland, Italy and the Czech Republic.

Keywords Guardian, trustee, legal basis, rights and obligations, candidate for guardianship, candidate for trusteeship, incapacitated person, partially capable person.

INTRODUCTION

Article 1 of the Constitution adopted in the new edition, considered one of the important changes in the history of our country, established the norm that “Uzbekistan is a sovereign, democratic, legal, social and secular state with a republican form of government”. Through this, the new Uzbekistan’s long-term development strategies, concepts, a solid legal framework for the prosperous life of our country and our people in general, as well as a reliable guarantee were created.

The approach of “Man – society – state”, which is the main principle of the current reform under the leadership of our respected leader Sh.Mirziyoyev, has become the main tradition in our practical life and has been deeply absorbed into the contents of the new Constitution. The idea of “for the dignity of man”, the dignity, honor and pride of man should henceforth come first in all spheres.

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 sponsors are understood as substitutes for parents.

Article 3 of the Law of the Republic of Uzbekistan “On guardianship and trusteeship” 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 guarantees of the rights of the child" and chapter 21 of the Family code (articles 173-175) also establish norms on the concepts of guardianship and trusteeship.

ANALYSIS OF THE MAIN LITERATURE

The guardian and the trustee are considered the most active and highly responsible subjects of guardianship and trusteeship relations. It is the guardians and trustees who manifest themselves as minors, incapacitated and limited in the possibility of treatment, as persons directly responsible for ensuring and protecting the rights and legitimate interests of citizens of adult age who need patronage in accordance with their state of health.

Taking into account the analysis of the current legislative norms of the Republic of Uzbekistan, it is noted that among the subjects of civil law, only citizens can become guardians and trustees, that is, only a person who is considered a citizen of the Republic of Uzbekistan. Because guardians and trustees directly provide care and maintenance of minors and their financial support, care for citizens with disabilities and limited treatment options, as well as 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 trustee will confirm his consent by applying for an application. The submission of such an application means the consent of the applicant to guardianship and trusteeship.

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 relatives .

Another Russian legal scholar R.Tovmasyan 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 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.Ilina , 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 trustee, 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.

Article 21 of the law of the Republic of Uzbekistan "On guardianship and trusteeship" establishes the following circumstances that must be taken into account when choosing a guardian and trustee:

To fulfill the obligations of guardianship or trusteeship by the decision of the district, the governor appoints a guardianship or trustee.

Adult citizens can be appointed as guardians or trustees only with their consent.

The district appoints a trustee or sponsor in accordance with a written statement from the mayor, who has expressed a desire to become a guardian or trustee.

When appointing a guardian or trustee, one must take into account his moral and other personal qualities, the ability to fulfill obligations, the relationship between a guardian, trustee and a person in custody or patronage, the attitude of a guardian or trustee family to a person in guardianship or trusteeship, as well as the desire of a person in guardianship or trusteeship.

A guardian or trustee must be appointed no later than a month from the date of notification to the guardianship and trusteeship authorities regarding the need to establish guardianship or trusteeship.

If a guardian or trustee is not appointed to a person in need of a guardianship or trusteeship designation within a month, the fulfillment of the guardian's or trustee's obligations is temporarily placed under the responsibility of the relevant guardianship or trusteeship authority at the location where the guardianship or trusteeship is determined.

The relevant guardianship and trusteeship authority for minors with parents fulfills the obligations of the guardian or trustee from the date

of the fact that they are not in the care of their parents or relatives.

The guardianship and trusteeship authority sends a written request to law enforcement agencies, civil status records writing bodies, as well as health institutions, in order to obtain information about a guardian or a person who has expressed a desire to become a trustee. In this case, the guardianship and trusteeship authority requires the provision of information about the citizen that allows you to determine only the ability of the guardian or trustee to fulfill his obligations.

Information received by the guardianship and trusteeship authority about a guardian or person who has expressed a desire to become a trustee is confidential and not disclosed, except as provided for by legislation.

Regardless of the place of residence, relatives of the person who needs the designation of guardianship or trusteeship, persons of the family in which he lives, persons who receive guardianship or trusteeship of brothers and sisters without severing kinship ties between them, as well as citizens of the Republic of Uzbekistan, have a privileged right to be appointed as guardians or trustees.

The procedure for appointing a guardian and trustee is determined by the Cabinet of Ministers of the Republic of Uzbekistan.

The inadmissibility of placing the institution of guardianship and trusteeship in the public sphere is associated with another important case. Guardianship and trusteeship occur only when there is a voluntary consent of the guardian or trustee. In other cases, in particular, the mandatory appointment of guardianship or trusteeship may be detrimental to individuals in need of trusteeship rather than benefit. The emergence of guardianship and trusteeship precisely in a voluntary order indicates that this legal institution cannot be recognized by nature only as an administrative and legal institution.

Analysis of the legislation of foreign countries

The legislation of foreign countries provides for

requirements that are in accordance with the norms enshrined in Article 21 of the law of the Republic of Uzbekistan “On guardianship and trusteeship”, both in relation to the guardian and the trustee.

In particular, according to Italian law, it is necessary that the qualities of a person who is in demand for guardianship and trusteeship should not be in doubt, have the opportunity to provide the child with adequate upbringing and education .

In this regard, Polish legislation is of interest because, in accordance with the legislation of this country, a person with full legal capacity for treatment can be appointed a guardian, who is not deprived of the right to mass or parental rights, as well as to be a guardian.

At the same time, the court evaluates the personal qualities of the candidate for guardianship and refuses to appoint a guardian if it considers that the candidate cannot fulfill the obligation to provide custody of the child.

In the Czech Republic, an individual who is qualified for circulation, leads a necessary lifestyle and agrees to be appointed as a guardian (trustee) can be designated as a guardian .

From the above analyzes, it becomes clear that in the legislation of foreign countries, too, when appointing a guardian and trustee, it is necessary, first of all, to be carried out based on the personal qualities of the candidate, and after that, to determine other criteria provided for by law.

In the legislation of the Republic of Uzbekistan, the personal qualities of a guardian and a candidate for trusteeship also become primary. Because it is the personal qualities that are considered the main criteria that determine the act of dishonesty and justice in the upbringing of a minor child, in the implementation of the rights of persons with limited or incapable of circulation.

As a rule, the moral and other personal qualities of the guardian and trustee are determined, first of all, depending on their living conditions, how they behave in society, in particular in the neighborhood and at work, behavior. And if necessary, it will be possible to determine the moral and other personal qualities of a guardian and trustee based on the fact

that a description is required from the citizens’ self-governing body, from the place of work.

The next criterion for choosing a guardian and trustee candidate is the ability of the candidate to fulfill the obligation of guardianship and trusteeship. The obligation of guardianship and trusteeship is manifested in factual and legal acts consisting in the provision, implementation and protection of the rights and legitimate interests of the person in the guardianship and trusteeship. Therefore, it is required that the level of knowledge of the persons being appointed as guardians and trustees, his place in society and his material capabilities and family circumstances allow the fulfillment of the obligation of guardianship and the ability of these persons at a level worthy of this.

The next criterion for choosing a guardian and trustee candidate, “relationship between guardian, trustee and person in custody or patronage”, is required not to be contradictory and dependent, there are no various misunderstandings and disagreements between them.

In the opinion of the Russian scientist V.Kulakov, it is very important to appoint whom as guardian and trustee, because it is to this aspect that the fate of the person in guardianship and trusteeship will eventually be tied, it will be necessary to educate from him that persons in zero guardianship and trusteeship coexist with the guardian and trustee. Therefore, a sincere, trusting, mercenary and free relationship from hostility between the educator and the educator is considered a guarantee of a successful family upbringing .

In fact, the friendly and sincere relations of the guardian with the person in custody and patronage have a positive effect on the upbringing of minor children and serve to increase the level of care for persons in need of care due to their incompetence or limited capacity for treatment, health or old age.

I.Yaniskaya, who conducted scientific research on the legislation of foreign states regarding the institute of guardianship and trusteeship, cited some notable points on the basis of Ukrainian legislation.

In particular, the scientist believes that today in the legal literature the point of view of assessing the

actions of a guardian (trustee) as the provision of certain services for the benefit of a guardian (trustee) is widespread, which means that the institution of guardianship refers to the civil-legal sphere. The basis for the implementation of the provision of services under guardianship (trusteeship) in connection with the contractual nature of the relationship with the provision of services should also be a civil-legal contract.

Such a contract can be included in the type of non-traditional contracts, and it can be concluded both for a fee and for free. Often, when a guardian and trustee are appointed from among relatives, their guardianship or trusteeship obligations are carried out for free. It is established that this rule also complies with the requirements of paragraph 4.12 of the rules of guardianship and trusteeship of the Republic of Ukraine .

However, it should be noted that the appointment of guardianship is carried out by decision of state bodies in most countries, and the appointment of guardianship or trusteeship is not allowed under the contract.

For example, in accordance with the legislation of the states of Uzbekistan and Kazakhstan, it is established that the appointment of guardianship is carried out by the court or local state authorities.

In the Russian Federation and Ukraine, both guardianship and trusteeship must be approved by the court or the state authority even when appointed according to the contract, and this contract must be registered. Therefore, the interpretation of guardianship and trusteeship as a civil law institution becomes only a one-sided approach to the issue. Therefore, noting the controversiality of the opinions of the Ukrainian specialist I.Yaniskaya, the purpose of guardianship and trusteeship is not only to replenish the lack of implementation of the treatment capacity of individuals in the framework and shell of a particular sphere of law, and only the use of methods and techniques of this sphere of law, but also to place children who are found, it is considered to protect their rights and provide them with all measures of social care.

CONCLUSION

In this, it is not of particular or significant importance which area of law or branch of guardianship is used, in which area of legislation the relationship with it is placed. In the context of today's convergence and globalization of law spheres and branches, institutions and substitutions, limiting the range of movement of law spheres or denying the use of their elements in Mutual legal regulation may not give the expected result.

Therefore, it is advisable to conclude that guardianship and trusteeship is a comprehensive Law Institute and a separate independent Legislative Institute.

In conclusion, it should be noted that when determining the place in the national legislative system of the norms of guardianship and trusteeship, it is a legislative institution of guardianship and trusteeship. This interpretation fully corresponds to the ideas regarding the essence of guardianship and trusteeship as a form of social care, as well as such care is the fulfillment of tasks of universal importance, and it is necessary to provide for the activities of state authorities and to provide comprehensive legal regulation.

Nevertheless, the totality tone of the system of norms on the right of guardianship and trusteeship indicates the importance of this institution and provides the basis for the recognition of guardianship and trusteeship at the level of the legislative sphere.

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