

Rights And Obligations of A Representative and Authorizer In Civil Law

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Abstract

This article examines the legal nature of representative relations and analyzes the rights and obligations arising between the principal, the representative, and third parties within different forms of representation. Special attention is given to legal and contractual representation under the legislation of the Republic of Uzbekistan. The study explores legal representation through parents, guardians, trustees, and heads of legal entities, emphasizing the distinctive features of their rights and duties, particularly in protecting the personal and property interests of minors and legally incapable persons. The article highlights gaps in current legislation, especially the insufficient regulation of the obligations of persons under guardianship and trusteeship, and substantiates the need to formally закрепить such obligations. In addition, contractual representation based on agency agreements is analyzed, with proposals to expand and clarify the rights and duties of both the principal and the representative. The author concludes that refining these norms would enhance legal certainty, prevent disputes, and strengthen the effectiveness of the institution of representation in civil law.

Keywords: Representative, authorizer, representation, power of attorney, legal representation, voluntary representation.

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1. Introduction

It is known that the principal grants the representative certain powers, and the representative, acting within the framework of these powers, creates rights and obligations not only in relation to the principal but also for third parties. As in any relationship, one of the most important elements of representative relations is the rights and obligations of the parties. Right arising from representative relations

and obligations are divided into two parts:

- 1) rights and obligations between the principal and the representative;
- 2) the right arising in relation to third parties and obligations.

At the same time, the rights and obligations in representative relations are different depending on the types of representation, and based on these criteria, i.e., in relation to whom the rights and obligations arose, to which type of representation they belong, the essence of the rights and obligations in representative relations is revealed.

In representative relations, the rights and obligations of the principal and the representative are of particular importance. Their content is determined based on the types of representation.

It is known that representation is divided into different types based on the basis of its emergence, the form, method, and goals of its implementation. However, in most literature, representation is mainly divided into general types:

- 1) legal representation;
- 2) contractual representation;
- 3) representation arising based on an agreement.

Based on this, we considered it necessary, first of all, to clarify the rights and obligations of the principal and the representative in legal representation to each other and to third parties.

Thus, legal representation is representation arising from the powers granted to the representative on the basis of normative acts, independent of the will of the principal. Legal representatives are:

- parents, adoptive parents;
- guardians and trustees;
- heads of legal entities.

Based on these forms of legal representation, their rights and obligations are considered different. It is known that parents, as legal representatives of their children under the age of 18, protect their interests and act on their behalf. In this case, no documents are required from them, only the child's first and last names, written in the place "parents" in the birth certificate are sufficient. The peculiarity of this form of legal representation is that the rights and obligations arising in it are directed only to third parties, that is, the rights and obligations between the representing child and the parents of his representative have a peculiar form. In this case, the child has only rights directed to parents and third parties, while the parents have obligations towards the child, and they have rights and obligations towards third parties. This can be clearly seen in the norms of the Family Code of the Republic of Uzbekistan, which state the following rights of children:

- 1) the right to live and be raised in a family;
- 2) the right of the child to see his parents and other relatives;
- 3) the child's right to protection;
- 4) the child's right to express their opinion;
- 5) the right to a child's first name, first name, and patronymic;
- 6) the right to change the child's name and surname;

- 7) the right of children to private property in the family;
- 8) the child's visit with the parent whose parental rights have been restricted by the court;
- 9) the right of grandfather, grandmother, brothers, sisters, and other close relatives to visit the child;

Rights of the guardian (parents):

- 1) the right of parents to equal rights in relation to their children;
- 2) the right to equality of parental rights and obligations;
- 3) the right of parents to educate and raise children;
- 4) the right to protect the rights and interests of children;
- 5) the right to exercise parental rights;
- 6) the right of a parent living separately from the child to exercise parental rights;
- 7) the right to protection of parental rights;
- 8) the right to the restoration of parental rights;
- 9) the right to demand the lifting of restrictions on parental rights.

Parental obligations are mainly obligations not to violate the rights of third parties, not to harm their legitimate interests, to refrain from illegal actions, and obligations arising from transactions made on behalf of their children.

If we analyze the above-mentioned rights and obligations, then family legislation covers the personal non-property rights and obligations of the child and parents more broadly and pays more attention to their property rights. According to F.M.Otakhodzhaev, the "personal rights of children" used in legislation are cumulative in nature and imply different goals, expressing different content. The personal rights of minors can be divided into the following primary and independent personal rights:

- the right to live and be raised in the family;
- the right to see their parents and other relatives;
- right to self-defence;
- the right to freely express one's opinion;

- Right to name, patronymic, and surname[1].

N.Ashurova believes that it is advisable to include the right to health as a personal non-property right in the Family Code and the Civil Code[2]. In our opinion, this proposal of the author is appropriate. Because in scientific literature, the right to health is considered a personal non-property right[3].

Another form of legal representation is the representation of the heads of legal entities on behalf of the legal entity under their leadership. This representation is assessed as a form of legal representation, firstly, the head of a legal entity has the right to act on behalf of the legal entity without any power of attorney, that is, when the head of the enterprise enters into relations with other entities on behalf of the enterprise, he has the right to act without a special written power of attorney[4], secondly, as an authorizer, the legal entity delegates authority to its head not based on its own will, but on the basis of certain legislative acts, based on the goals of activity, charter and regulations. If we talk about the rights and obligations between the head and the legal entity in this form of representation, and secondly, about the rights and obligations of the head in relations with third parties, we should mainly focus on the rights and obligations of the head in relations with third parties. Because the rights and obligations between a legal entity and a manager are regulated by the norms of labor legislation. Therefore, we considered it necessary to consider the rights and obligations between the manager and third parties.

One of the forms of legal representation is guardianship and trusteeship. This form of representation is considered one of the most basic and important forms of legal representation, and its regulation plays an important role in the development of the state and society. Because this representation is directly related to the upbringing and development of the younger generation, their development and finding their place in society, contributing to the development of the state, as well as providing assistance to certain persons with limited legal capacity and incapacity in society. Therefore, these representative legal relations are regulated by the Civil Code of the Republic of Uzbekistan, the Family Code, the Regulation of the Cabinet of Ministers of the Republic of Uzbekistan "On Guardianship and Trusteeship" of April 12, 1999, and the Law of the Republic of Uzbekistan "On Guardianship and Trusteeship" of January 2, 2014. In the sphere of legislation, the adoption of the new Law "On

Guardianship and Trusteeship" is a vivid confirmation of the state's care for children. This law also establishes that guardianship and trusteeship institutions are an important tool for ensuring human interests.

According to Article 32 of the Civil Code of the Republic of Uzbekistan, guardianship and trusteeship are established to protect the rights and interests of legally incompetent or partially legally incompetent citizens. Guardianship and trusteeship over minors are also established for their upbringing. Article 173 of the Family Code of the Republic of Uzbekistan states that guardianship and trusteeship are established over children left without parental care for the purpose of their upbringing, education, and upbringing, as well as for the protection of their personal and property rights and interests. According to H. R. Rakhmankulov, guardianship and trusteeship are important means of raising children left without parents or deprived of their help and guardianship, protecting their rights and interests[6]. In some literature, it is noted that guardianship and trusteeship are methods of protecting citizens who have difficulty or cannot independently protect their rights and interests, and for minors, guardianship and trusteeship are an opportunity for their upbringing in the family[7]. According to Sh.R. Yuldasheva, guardianship and trusteeship are activities aimed at providing support, upbringing, education and care for children left without parental care, as well as persons declared legally incompetent and partially legally incompetent by a court, as well as protecting their personal and property rights and interests.

Thus, legal relations related to legal representation arise after guardians and trustees are assigned to legally incompetent, partially legally incompetent, or legally competent sick persons in accordance with the procedure established by law. These relations consist of, firstly, the rights and obligations between the principal and the representative, and secondly, the rights and obligations arising in relation to third parties.

The Law of the Republic of Uzbekistan "On Guardianship and Trusteeship" specifies not only the rights and obligations of guardians and trustees, but also the rights of persons under guardianship and trusteeship in a separate norm[8].

In the cases provided for in Article 37 of this Law, obtaining permission from guardianship and trusteeship bodies when performing actions that infringe on the

property rights of wards, i.e., guardians and trustees may conclude certain transactions only with the permission of guardianship and trusteeship bodies, this transaction may be declared invalid. According to E.A. Sukhanova, a guardian and trustee cannot conclude the following transactions:

Exchange, gift, pledge and etc,

Contracts and agreements that result in the division, loss, or reduction of a certain part of the property of a guardian or ward [9].

An important aspect of the newly adopted Law "On Guardianship and Trusteeship" is that the rights of persons under guardianship and trusteeship are clearly indicated in a separate norm, that is, the rights of guardians and trustees are defined in Article 33 of the law.

However, this law does not specify the obligations of persons under guardianship and trusteeship. If we think logically, it is true that wards cannot fulfill obligations, but there is a difference between wards and wards not only in mental state, but also in legal status.

Because, as R.J.Matkurbanov notes, the analysis of the subjectivity of civil law of minors determines the nature of its development. Because during the development of minors, their legal personality changes several times due to the expansion of their legal capacity upon reaching a certain age established by law. Consequently, upon reaching a certain age, the legal personality of minors is enriched with new rights[10]. In our opinion, for this very reason, it would be advisable if the obligations of persons under guardianship were reflected in the law.

The reason is that Articles 27 and 31 of the Civil Code of the Republic of Uzbekistan stipulate that persons with limited legal capacity and minors aged fourteen to eighteen are liable for damages caused by minors in accordance with this Code.

It is known that guardianship is inherently responsible for adult, legally competent citizens who are assigned guardianship due to their health condition. Because, unlike guardianship, the primary function of guardianship is to assist and assist the individual. Therefore, in our opinion, Article 331 of this law should be added, which should indicate the following as the obligations of persons under guardianship:

- 1) respect for the patron;
- 2) not to demean the honor and dignity of the benefactor;
- 3) refrain from actions that damage the reputation of the patron in public and in other places, discrediting his name;
- 4) confidentiality of the guardian's personal, family, and relationship with the guardian;
- 5) not to obstruct the exercise of the benefactor's rights and obligations and to assist him in their fulfillment;
- 6) follow the advice and instructions of the sponsor;
- 7) not to cause harm to the health and property of the guardian.

Thus, if we analyze the legislation on guardianship and trusteeship, it should be noted that in current legislation, special attention is paid not only to the personal non-property rights of persons under guardianship and trusteeship, but also to their property rights, as a clear example of which we can point to the fact that Chapter VII of the Law of the Republic of Uzbekistan "On Guardianship and Trusteeship" defines "protection of property rights of persons under guardianship or trusteeship."

Of course, this is not without reason, since persons under guardianship and trusteeship, along with all subjects of civil law, have the right to own property. According to N.Ashurova, any citizen has the right to own property regardless of age.

In other words, the property rights of minors do not differ from the legal capacity of adults. Only the possibility of exercising property rights may differ between adult and minor citizens.

Minors interact in the exercise of property rights not directly, but through their representatives[11]. In some scientific literature, it is also stated that the owner's right to use their property is exercised by them or by persons appointed by them[12], that is, guardians and trustees also use their representatives to dispose of their property.

At the same time, N.Ashurova notes that a minor owner can directly participate in the entrepreneurship of legal entities as a founder or with the assistance of representatives[13]. J.Yuldashev emphasized that individuals can become founders if they have legal

capacity or through their representatives[14].

In our view, the author in this case meant any type of representation. In some literature, it is indicated that currently in practice there are cases of contributing the property of minors to various commercial organizations[15].

However, according to N. Ashurova, the legislation does not contain norms on the participation of minors in the activities of commercial legal entities, the possibility of making property contributions and contributions. This problematic issue can also be solved by applying the institution of transferring property to trust management[16].

B.R.Topildiyev emphasizes the need to pay special attention to the introduction of a contractual procedure for transferring the property of persons under guardianship and trusteeship to trust management, increasing the legal literacy of guardianship and trusteeship bodies, and at the same time, it is advisable to include in the Civil Code and the Regulation "On Guardianship and Trusteeship in the Republic of Uzbekistan" an article entitled "A contractual procedure for managing the property of a person under guardianship and trusteeship." [17]

However, in our opinion, it is impossible to fully agree with the proposals of these authors, since, firstly, in accordance with the Law of the Republic of Uzbekistan "On Guardianship and Trusteeship," the property of persons under guardianship and trusteeship is managed by guardians and trustees under the control of guardianship and trusteeship bodies.

Because, as L.Yu. Mikheeva emphasized, one person (guardian or trustee) can perform the duties of caring for the person and property of the ward. He has the appropriate opportunity in this area and can be involved not only in raising the child, but also in the growth of his capital.

At the same time, the ward may not have any property, and there will be no problems with its protection[18]. In addition, it is more convenient for guardianship and trusteeship bodies to dispose of the property of persons under guardianship and trusteeship under their supervision to guardians or trustees than to transfer it to trust management, which prevents the destruction of the property. Secondly, it is related to the economic side of the issue, that is, the property of persons under

guardianship and trusteeship is cheaper to dispose of by guardians and trustees under the supervision of guardianship and trusteeship authorities, than to transfer their property to trust management. Because, as H.Rahmonkulov emphasized, being a guardian and trustee is recognized as an honorable duty and a human, familial duty. Therefore, the law does not provide for any form of remuneration to guardians and trustees for their services[19].

In the institution of representation, in addition to legal representation, contractual representation, the rights and obligations of the principal and representative in it also play an important role. The most frequent representation in contractual representation is - representation carried out on the basis of an agency agreement.

According to Article 817- of the Civil Code of the Republic of Uzbekistan, under a commission agreement, one party (authorized representative) undertakes to perform certain legal actions in the name and at the expense of the other party (the principal) . Rights and obligations under a transaction concluded by a representative arise directly from the principal.

A mandate may be given by a representative to perform one or more specific legal actions or to conduct the principal's affairs in accordance with his instructions.

In our opinion, It would be advisable to supplement the obligations of the representative in Article 820 of the Civil Code of the Republic of Uzbekistan with the following:

- 1) fulfillment of the task within the framework of the assigner's instructions;
- 2) do not arbitrarily deviate from instructions, if the situation requires, go out and notify the principal;
- 3) in circumstances beyond their control, significant change in the situation, warning of a threat to the interests of the principal;
- 4) keeping the information known to him secret.

At the same time, the following rights are granted:

- 1) to demand a clear indication, clarification of the instructions;
- 2) to act in the interests of the principal in the absence of instructions;

- 3) deviation from the situation;
- 4) entrust the execution of the assignment to his deputy;
- 5) right to withdraw from the contract;
- 6) consulting with the principal on the assignment, the situation, and expressing one's opinion.

Article 821 of the Civil Code of the Republic of Uzbekistan defines the obligations of the principal as:

- provide the representative with the necessary funds for the execution of the assignment;
- to accept without delay the work performed by the agent in accordance with the contract;
- the representative must pay the necessary expenses for the execution of the assignment;
- upon completion of the assignment, pay remuneration to the representative, if provided for by law or contract.

In our opinion, the following obligations can also be added to the obligations contained in this article:

- 1) clear and correct indication of instructions;
- 2) we can provide all information on the assignment and indicate other obligations.

In conclusion, it should be noted that, despite the strengthening of the legal status of the subjects of the institution of representation in our legislation, there are still some shortcomings, especially their rights and obligations are not clearly and fully indicated. In some forms of representation, it is given in the form of references to other normative acts. This can lead to confusion and lethargy in these relationships. Therefore, if the above proposals are reflected in the legislation, the legal regulation of the institution of representation will be further strengthened.

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