

**IMPROVING THE INSTITUTION OF GUARDIANSHIP AND
TRUSTEESHIP IN NEW UZBEKISTAN: LEGAL FOUNDATIONS
AND DEVELOPMENT PROSPECTS**

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ANNOTATION: *This article examines the legal foundations and institutional development of the system of guardianship and trusteeship in New Uzbekistan. It analyzes the constitutional provisions, civil and family legislation, and related normative acts regulating this sphere. Particular attention is given to the protection of the rights and legitimate interests of minors and legally incapable persons. The study also considers scholarly approaches to the selection and responsibilities of guardians and trustees. Based on the analysis, proposals are formulated to improve legislation, strengthen monitoring mechanisms, enhance professional training, and harmonize national regulations with international standards.*

Keywords: *guardianship; trusteeship; legal capacity; protection of minors; civil law representation; family law; social justice; legal reform.*

In New Uzbekistan, large-scale reforms are being implemented to protect human interests, ensure social justice, and create worthy living conditions for the population. Within this transformative process, improving the system of guardianship and trusteeship occupies a special and strategic place. A number of legal and institutional measures have been undertaken in

our country to protect the rights of persons with disabilities, orphaned children, and elderly individuals living alone.

In particular, special attention was devoted to issues of guardianship and trusteeship within the framework of the State Program entitled “The year of Honoring human dignity and active mahalla” approved by the President of the Republic of Uzbekistan in 2021. Furthermore, through coordinated efforts between the state and society, new mechanisms have been developed to further advance and modernize this sphere.

Proceeding from the principle that the individual, his or her life, freedom, honor, dignity, and other inalienable rights constitute the highest value, over recent years a wide range of measures has been implemented under the leadership of President Shavkat Mirziyoyev to ensure the protection of personal, political, economic, and social rights of citizens. A clear example of this commitment is the adoption of the new edition of the Constitution, which consolidates fundamental human rights and freedoms.

An analysis of the norms of the updated Constitution demonstrates that it reflects international standards as well as advanced provisions found in the legislation of developed foreign states. Notably, Chapter XIV of the newly adopted Constitution is entitled “Family, children and youth”¹. Without exaggeration, this indicates the high level of attention devoted not only to the institution of the family, but also to the constitutional recognition and protection of the rights of children and young people within the Basic Law of the country.

Article 77 of the newly adopted Constitution establishes that parents and persons substituting for parents are obliged to support their children until they reach adulthood and to care for their upbringing, education, and their

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

healthy, full, and comprehensive development. The same provision further stipulates that the State and society ensure the maintenance, upbringing, education, and healthy and holistic development of orphaned children and children deprived of parental care, and that charitable activities aimed at achieving these purposes shall be encouraged.

It is important to emphasize that, based on the substance of the above-mentioned constitutional norm, the category of “persons substituting for parents” includes guardians and trustees.

Article 3 of the Law of the Republic of Uzbekistan “On Guardianship and Trusteeship” provides the following definitions of these concepts².

Guardianship is a legal form of placement of orphaned children under the age of fourteen and children deprived of parental care, as well as citizens declared legally incapable by a court, for the purpose of providing them with maintenance, upbringing, and education, and for protecting their property and personal non-property rights and legitimate interests.

Trusteeship is a legal form of placement of orphaned children aged fourteen to eighteen and children deprived of parental care, as well as citizens whose legal capacity has been restricted by a court, for the purpose of providing them with maintenance, upbringing, and education, and for protecting their property and personal non-property rights and legitimate interests. In addition, trusteeship may be established, upon request, over legally capable adult citizens who, due to their health condition, are unable to independently exercise their rights or fulfill their obligations.

Article 77 of the newly adopted Constitution establishes that parents and persons substituting for parents are obliged to support their children until

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

they reach adulthood and to care for their upbringing, education, and their healthy, full, and comprehensive development. The provision further stipulates that the State and society ensure the maintenance, upbringing, education, and healthy and holistic development of orphaned children and children deprived of parental care, and that charitable activities aimed at achieving these objectives shall be encouraged.

At the same time, it should be noted that norms regulating the concepts of guardianship and trusteeship are also enshrined in Article 3 of the Law of the Republic of Uzbekistan “On Guarantees of the Rights of the Child”³, as well as in Chapter 21 (Articles 173–175)⁴ of the Family Code.

It is appropriate to emphasize that the system of guardianship and trusteeship in Uzbekistan has been developing dynamically in recent years. Approximately ten normative legal acts regulate this sphere, and additional regulatory foundations aimed at further improving the system are continuously being formed. In particular, the Family Code and the Civil Code of the Republic of Uzbekistan, the Laws “On Guardianship and Trusteeship” and “On Guarantees of the Rights of the Child,” the Presidential Resolutions No. PR-4185 “On Additional Measures to Strengthen the Social Protection of Orphaned Children and Children Deprived of Parental Care” and No. PR-4736 “On Additional Measures to Improve the System for the Protection of Children’s Rights,” as well as Resolution No. 269 of the Cabinet of Ministers of the Republic of Uzbekistan “On Approval of Normative Legal Acts for the Implementation of the Law of the Republic of Uzbekistan ‘On Guardianship

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

⁴ National Database of Legislation of the Republic of Uzbekistan, 12.04.2023, No. 03/23/829/0208; 08.05.2023, No. 03/23/838/0257

and Trusteeship’,” and other regulatory legal acts, constitute the core legal framework governing this sphere.

It is widely recognized that, as a result of the reforms being implemented in New Uzbekistan today, new forms of social relations are emerging in all spheres of public life. In particular, legal reforms have led to the formation of new national legal institutions and the gradual establishment of their functional mechanisms. It is especially important to note that, under conditions of a market economy, the development of legislation aimed at defining the legal status of subjects of law and regulating their activities constitutes one of the key strategic priorities.

It should be emphasized that the exercise of civil rights ordinarily derives from the will and interests of the individual and is carried out directly by the person concerned. At the same time, the current legislation provides that civil rights may, based on the will and intention of the individual, also be exercised through representatives. This possibility is expressly enshrined in law.

Accordingly, civil-law representation is generally divided into two types: statutory (legal) representation and contractual representation. According to the opinion of the national legal scholar I. Zokirov, a representative, acting within the scope of the authority granted to him or her, creates, modifies, or terminates certain rights and obligations for the person represented⁵.

Accordingly, authority (power of representation) is understood as the legal right of a representative to perform certain juridical acts on behalf of another person and thereby create legal consequences for that person. The

⁵ Zokirov, I.B. Civil Law. Part I. Tashkent: Tashkent State Institute of Law, 2009.

powers of a representative may be based on law, a court decision, an act issued by an authorized state body, or a power of attorney.

In this regard, legal representatives namely guardians or trustees are appointed by authorized state bodies for minors or persons lacking legal capacity.

A person under guardianship or trusteeship is understood as an individual in respect of whom guardianship or trusteeship has been established.

National legislation identifies the following categories of persons as requiring the establishment of guardianship or trusteeship:

- orphaned children and children deprived of parental care;
- children whose parents have not been deprived of parental rights but who live in conditions that pose a direct threat to their life or health, or in circumstances that fail to meet the necessary requirements for their maintenance, upbringing, and education;
- adult legally capable citizens who, due to their health condition, require trusteeship, as well as citizens declared legally incapable or whose legal capacity has been restricted.

The following categories of persons are not eligible to be appointed as guardians or trustees:

persons deprived of parental rights or whose parental rights have been restricted;

persons declared by a court to be legally incapable or to have limited legal capacity;

former adoptive parents, if the adoption was annulled due to their evasion or improper fulfillment of parental obligations, abuse of parental rights, cruel treatment of the adopted child, or chronic alcoholism or drug addiction;

persons who have been removed from the performance of guardianship or trusteeship duties for failure to fulfill their obligations properly or for abuse of their rights;

persons previously convicted of an intentional crime;

persons suffering from diseases that prevent them from being appointed as guardians or trustees.

Guardians and trustees are regarded as the most active and highly responsible subjects within guardianship and trusteeship legal relations. It is precisely guardians and trustees who directly ensure and protect the rights and legitimate interests of minors, legally incapable persons, persons with restricted legal capacity, and legally capable adults who, due to their health condition, require trusteeship.

An analysis of the current legislation of the Republic of Uzbekistan demonstrates that, among the subjects of civil law, only natural persons specifically, citizens of the Republic of Uzbekistan may be appointed as guardians or trustees. This is because guardians and trustees directly undertake the upbringing and material support of minors, as well as the care and assistance of legally incapable persons, persons with restricted legal capacity, and individuals in need of support due to illness.

According to Part Two of Article 21 of the Law of the Republic of Uzbekistan “On Guardianship and Trusteeship,” adult citizens may be appointed as guardians or trustees solely with their consent.

This provision clearly indicates that the duties of guardianship and trusteeship cannot be imposed compulsorily. Therefore, a citizen wishing to assume the role of guardian or trustee confirms his or her consent by submitting a written application. The submission of such an application constitutes an

expression of the applicant's voluntary agreement to undertake guardianship or trusteeship responsibilities.

According to the Russian scholar Y. Usakova, modern legislation establishes, as a mandatory condition for the appointment of a guardian (trustee), the person's consent to assume guardianship responsibilities. Only the free expression of will and the genuine desire to substitute for the child's parents can serve as a fundamental factor for successful upbringing, since care cannot be based on coercion. However, in practice, the number of individuals willing to assume such responsibility is limited, and, as a rule, these obligations are most often undertaken by close relatives⁶.

Another Russian legal scholar, R.V. Tovmasyan, emphasizes⁷ that when determining a guardian (trustee), it is necessary to consider not only the formal compliance of a particular candidate with statutory requirements, but also the interests of the child or the person in need of guardianship. Therefore, if two or more candidates are available, preference provided it does not contradict civil and family legislation should be given to a person who is close to the ward. Nevertheless, this factor alone is not always sufficient to fully safeguard the interests of persons under guardianship or trusteeship.

According to another Russian scholar, O.Y. Ilyina⁸, the primary criterion in selecting a candidate for guardianship or trusteeship must be the interests of the ward. At the same time, such interests must not conflict with the norms of civil and family legislation.

⁶ Uskova, Yu.V. "Some Aspects and Problems of Establishing Guardianship (Trusteeship) in Russian Legislation." Scientific Journal of Kuban State University, 2014, No. 100(06), 25 p.

⁷ Tovmasyan, R.V. "Legal Regulation of Guardianship and Trusteeship in Respect of Minors: Gaps and Contradictions." Bulletin of Omsk University. Series 'Law', 2011, No. 1 (26), 139 p.

⁸ Ilyina, O.Yu. The Interests of the Child in the Family Law of the Russian Federation. Moscow: OAO Publishing House "Gorodets," 2006, 192 p.

Agreeing with the views of the above-mentioned scholars, it should be stated that, in appointing a guardian or trustee, priority must be given to the interests of the person under guardianship or trusteeship. At the same time, strict adherence to formal legal requirements should be regarded as a procedural condition, and legislation should provide for certain exceptions where necessary. This is because excessively rigid formal requirements may adversely affect the rights and legitimate interests of minors and other persons in need of care for whom guardianship or trusteeship must be established.

The activities of a guardian or trustee, including the functions performed and the rights and obligations assumed, are directly aimed at ensuring the rights and interests of minors. In this context, a guardian performs not only juridical acts intended to exercise the rights and fulfill the obligations of the person under guardianship, but also factual acts aimed at safeguarding and promoting the ward's legitimate interests⁹.

This principle follows from Part One of Article 32 of the Civil Code of the Republic of Uzbekistan. According to this provision, guardianship and trusteeship are established for the purpose of protecting the rights and interests of citizens who are legally incapable or who do not possess full legal capacity¹⁰.

Guardianship and trusteeship over minors are also established for the purpose of their upbringing. The corresponding rights and duties of guardians and trustees are determined by legislative acts. The very essence of guardianship and trusteeship lies in the protection of the rights and obligations of persons placed under guardianship or trusteeship.

⁹ Ashurova, N.A. Participation of Minors in Civil-Law Relations. Candidate of Legal Sciences Dissertation Abstract. Tashkent, 2008.

¹⁰ Commentary to the Civil Code of the Republic of Uzbekistan. Volume 1 (Part One). Ministry of Justice. Tashkent: "Vektor-Press," 2010.

For this reason, the activities of guardians and trustees in protecting the rights and obligations of their wards including representation before courts do not require a power of attorney or any other special authorization. For example, in court proceedings, the rights and legally protected interests of legally incapable persons or persons with limited legal capacity are defended by their legal representatives (parents, adoptive parents, guardians, or trustees).

Article 7 of the Law of the Republic of Uzbekistan “On Guardianship and Trusteeship” specifies the state bodies authorized to carry out activities in the field of guardianship and trusteeship. These include the Cabinet of Ministers of the Republic of Uzbekistan, the Ministry of Preschool and School Education, the Ministry of Health, and local state authorities.

Guardianship and trusteeship activities are carried out as follows:

- by the child protection departments of district (city) khokimiyats (local executive authorities) with respect to minors;
- by district and city medical associations with respect to citizens declared legally incapable or with limited legal capacity by a court, as well as legally capable adult citizens who, due to their health condition, require trusteeship.

Local state authorities exercise their powers in the sphere of guardianship and trusteeship within the scope of authority defined by this Law and other legislative acts.

Consular institutions of the Republic of Uzbekistan take measures, in accordance with the procedure established by legislation, to establish guardianship or trusteeship over citizens of the Republic of Uzbekistan residing abroad who are minors deprived of parental care, legally incapable persons, or persons with restricted legal capacity, as well as adult citizens who, due to their

health condition, are unable to independently exercise their rights or fulfill their obligations.

Other legal entities and individuals, apart from the authorized guardianship and trusteeship bodies, are not permitted to engage in activities related to the identification and placement of persons requiring guardianship or trusteeship.

When a guardian or trustee performs a juridical act on behalf of a person under guardianship or trusteeship, he or she must, first and foremost, act in the interests of that person. Otherwise, the act performed may not possess legal validity. In carrying out any action aimed at safeguarding the interests of minors, a guardian must comply with the obligations established by law and must not exceed the scope of his or her authority.

The Regulation “On Guardianship and Trusteeship in the Republic of Uzbekistan,” approved by Resolution No. 269 of the Cabinet of Ministers of the Republic of Uzbekistan dated 22 September 2014 “On Approval of Normative Legal Acts for the Implementation of the Law of the Republic of Uzbekistan ‘On Guardianship and Trusteeship’,” defines the powers and responsibilities of guardianship and trusteeship authorities. In addition, the Regulation specifies particular functions assigned to these bodies.

According to the provisions of the above-mentioned Regulation, guardianship and trusteeship authorities are required to participate in court proceedings concerning disputes related to the upbringing of children. In accordance with Article 88 of the Family Code, when courts consider disputes concerning child upbringing, the guardianship and trusteeship authority must be involved in the proceedings, regardless of which party has filed the claim for the protection of the child.

Guardianship and trusteeship duties are performed without remuneration. A guardian or trustee is not personally obligated to provide financial support to the person under guardianship or trusteeship.

Expenses incurred by a guardian or trustee for the maintenance of the ward are reimbursed from the ward's own funds in accordance with the procedure established by legislation. If such funds are insufficient, the guardianship and trusteeship authorities may assign an allowance for the ward's maintenance. Furthermore, a trustee appointed for an adult due to health-related incapacity may be released from his or her trusteeship duties at the request of the person under trusteeship. In such cases, with the consent of the person in need of trusteeship, the guardianship and trusteeship authority may appoint another individual as trustee.

In general, guardians and trustees are accountable to the guardianship and trusteeship authorities for the performance of their duties. Agreements and contracts concluded by them may subsequently be declared invalid if they are found to have violated the rights and legitimate interests of the person under guardianship or trusteeship.

Activities in the sphere of guardianship and trusteeship constitute one of the key directions for implementing the principles of social justice and humanism in New Uzbekistan. In order to further develop this system, the following scholarly proposals may be advanced:

First, to elevate to a new stage the measures aimed at harmonizing normative legal acts regulating guardianship and trusteeship with international standards;

Second, to improve the monitoring and oversight of guardianship and trusteeship activities through the use of digital platforms;

Third, to introduce specialized educational programs for the professional training of specialists in the field of guardianship and trusteeship;

Fourth, to strengthen the participation and cooperation of mahalla institutions and civil society organizations in this sphere;

Fifth, to effectively utilize media and social networks to promote a culture of guardianship and trusteeship within society.

In conclusion, it may be stated that in New Uzbekistan there is a growing need to further develop the institution of guardianship and trusteeship, to ensure the comprehensive and high-quality implementation of measures in this field, and to fundamentally improve the activities of guardianship and trusteeship authorities in protecting the rights and legitimate interests of minors.

It is also important to note that monitoring of the activities of guardians and trustees by the authorized guardianship and trusteeship bodies remains insufficient. Therefore, it appears appropriate to introduce amendments and additions to the relevant legislative acts governing this sphere, aimed at refining the rights, obligations, and responsibilities of guardians and trustees, as well as strengthening the institutional framework regulating guardianship and trusteeship.

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