

# Some Issues of Legal Basis Guardianship and Legal Framework of the CIS Countries

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## Annotation

*This article describes the care and sponsor of the legislation in some countries of the CIS, the legal regulation of the relations of these countries, this legal framework will be analyzed. President of the Russian Federation, Belarus, Ukraine, Kazakhstan, Uzbekistan and other countries on the improvement of the institution of guardianship and custody on the basis of the analysis of the legislation put forward by some of the remarks.*

**Key words:** Guardianship and custody, family law, juvenile, children deprived of parental care, competency, incompetent, guardianship and trusteeship body

Guardianship laws regulating relations in the CIS system, an integrated approach is rare. In some countries (the Russian Federation) at the care and support of the legislation, it is in other countries (Belarus, Ukraine) guardianship and relationships shall be governed by the relevant provisions of civil and family law, custody and the third group a complete family as the Institute for the right to family law (Kazakhstan).

April 24, 2008, the Russian Federation № 48-FZ "On guardianship and the Law" On the 8th chapter, 32-article, the composition according to the following issues: basic concepts of care and protection to EU rules (Chapter 1) ; guardianship bodies and their functions and powers (Chapter 2); guardians and sponsors of the legal status (Chapter 3); trust being the legal regime of the property (Chapter 4); guardians, custodians and guardianship body of Liability (Section 5); the end of the care and protection (Chapter 6); care and support by the state sponsorship (Chapter 7); trustee and sponsor of the legislation on the final rules (Chapter 8).

As well as guardianship and custody, including minors by the Government of the Russian Federation on the issues of custody and

determined on May 18, 2009 №423 "On the implementation of the citizens of custody and protection of minors" was adopted.

The Russian Federation, "guardianship" On the Law of the Republic of Uzbekistan "guardianship" law of similar legislation in the comparison of these two aspects, however, there are different situations in the world. First of all, the laws of of the Russia Federation» guardianship" not reflected in the Law of the following issues: custody or sponsorship to the needs of individuals and their property information (Chapter 3); trust or protected rights (Article 33)<sup>1</sup>; guardianship and control (Chapter 8)<sup>2</sup>.

On the contrary, the law of the Russian Federation in the Republic of Uzbekistan "guardianship" are not following the rules established in the Law: Agreement on the implementation of the care or protection of the appointment of the care or protection (Article 14); deserved to be treated by the court to protect the rights and interests of disabled adult

<sup>1</sup> The Russian Federation, "guardianship" the law only provided by the trust and the property rights of protected persons (Article 17).

<sup>2</sup> The Russian Federation, "guardianship" the law of the care and protection of state support (Chapter 7) is provided.

citizens (Article 22)<sup>3</sup>; trust management of the property of the person (Article 23)<sup>4</sup>.

Belarus entity legally based on the size of the civil-law marriage and family under Article 144 of the Code of the Republic of Belarus<sup>5</sup>, as well as Article 32 of the Civil Code of the Republic of Belarus<sup>6</sup> 1, according to the trusteeship imposed against the following persons:

- 1) And under;
- 2) a mental illness or a result of the irresponsibility of persons who have been declared incompetent by a court.

Article 144 of the Republic of Belarus Marriage and Family Code, the Civil Code of the Republic of Belarus pursuant to section 33, paragraph 1 of the trusteeship shall be determined by the following:

- 1) ) Under the age of fourteen and eighteen minors;;
- 2) Alcohol, drugs or psychotropic drug abuse is treated by the court as a result of limited eligibility.

Guardianship institutions adopted on the basis of the legislation of the Republic of Belarus concerned cited M.V.Andriyashko leads to the following conclusion: the nature of the

<sup>3</sup> The Republic of Uzbekistan "guardianship" to protect the property rights of citizens with limited competency in the law to protect the property rights of minors are equally carried out on the basis of the total sponsorship provided (Chapter 7).

<sup>4</sup> Republic of Uzbekistan "On guardianship and trusteeship" the law of the trust or management of the property of the protected person, a common form of expression (Article 35).

<sup>5</sup> Code of the Republic of Belarus brake Family: pay the RESP. Belarus, on July 9, 1999 G., № 278-Z; c red. Zakat RESP. G. Belarus on July 15, 2010 №166-Z // Natsir. Register of the Republic of pravovyx actor. Belarus. - 2010 - №183. - 2/1718.

<sup>6</sup> The Civil Code of the Republic of Belarus: Law Rep. Belarus, 7 December. 1998, number 218-W; as amended. Rep Law. Belarus of July 16, 2010, №172-Z // Nat. Register of Legal Acts Rep. Belarus. - 2010. - №184. - 2/1724.

protection to minors custody and is characterized by integrity and family, administrative, civil and regulated by the Civil Procedure Law<sup>7</sup>.

However, appropriate recognition of the care and protection of the fundamental rules stipulated in the Marriage and Family Code of Belarus. If relations between custody and the Civil Code of Belarus Article 5 (32-36) is provided, the Marriage and Family Code Article 37 (Chapter 14, Articles 142-178) and sponsored by the provisions of trusteeship.

Marriage and family according to Article 143 of the Code of the Republic of Belarus, the guardianship and trusteeship body, local executive bodies and distribution.

Guardianship and custody charged with the following tasks:

- in the case of a juvenile, the child's place of residence to the district, the city's executive committee, the city district administration of the local Department of Education (Department), in cases stipulated by the legislation of the Republic of Belarus City Executive Committee, the city commission on minors local authorities;

Incapable or limited treatment capacity of adult people from the health department of the oblast executive committee, the Committee of the Minsk city executive committee health.

Unlike the Republic of Belarus, the Republic of Uzbekistan entrusted with guardianship and custody of the three entities, in addition to showing the district, town to promote employment and social protection of population centers, according to the state of health to sponsor an adult capable citizens who are in need of protection implementation (of the Republic of Uzbekistan " guardianship law "on part 2 of Article 3, paragraph 7).

<sup>7</sup> Andriyashko M.V. Guardianship of minors in the Republic of Belarus, Cand. Dis. ... Cand. jurid. Sciences. - Minsk, 2013. - 6 p.



Ukraine on the issues of custody and the Civil and Family Codes of Ukraine. Section 6 of the Ukraine GKning "guardianship" (Articles 55-79) is called, and the care and protection functions, custody and guardianship bodies to the care and protection of persons appointed by the court and guardianship bodies the appointment of a guardian and tutor, as well as their rights and obligations, custody and management of protected persons and their property, such as the termination of guardianship and protection are reflected in a number of issues.

Ukraine Family codes Chapter 19, "child guardianship and trusteeship" (Articles 243-251) is called. It appointed guardianship and custody of children, child custody, and individuals can sponsor, health care, education, custody and guardianship of children or other children living in the institution, the body that controls the trust or protected the rights of children, the child's rights, the rights of the child or a tutor child care provided by the issues of protection or liquidation.

S.V.Golikovaning that the trusteeship established by the legislation of Ukraine (sponsor), the main point of his universal. At the same time, the family and the child can be raised in a family hierarchy, the guardian<sup>8</sup>.

I.Yanitskaya care and support of Ukrainian legislation cited, the following: legal custody and by the current legislative regime and mentioned only the general principles of the Civil Code of Ukraine expressed in the relevant provisions of Article 25 of the Family Code.

Ukraine Civil Code Trust and sponsored by the norms of the various institutions include: the citizens' competency; representative; liabilities arising from damage. In addition, in Civil Code citizens of Ukraine on the

appointment of the care and protection requirements.

Ukraine Family code, Trust and sponsored by the Department of norms, and the care and protection of children deprived of parental care and family education as a form of regulation. Ukraine guardian, and the rights and obligations of the trust (protected) provided the rights of minors<sup>9</sup>.

Lvov law school representative Z.V.Romovskiy, the temporary guardianship and legal institutions, therefore, does not limit the size of the existing rights of their children and future measures and the child has certain rights can not prevent the emergence of guardianship - complex, civil-rights institutions<sup>10</sup>.

Ukrainian experts in the recognition of the existence of these controversial aspects. Because the subject of the law, out of custody and regulate the legal relationship characterized by express legal norms, and therefore care and support of the legislative norms expressed in the various fields of human rights. Therefore, the analysis of the legislation of Ukraine, as well as care and support of the Institute based on the expressed norms of this institution as an independent and separate institution that, as a legal institution can recognize the complex institution.

2001 Criminal Code of Ukraine "abuse of rights", according to Article 167, the care and protection to the detriment of the trust or the protected person, selfish purposes (residential area of the seizure of property, etc.) - the citizens' untaxed income of less than fifty minimum wages, or correctional labor up to two years' imprisonment.

<sup>8</sup> Golikova SV The principle of the priority of family education in Russian and Ukrainian law (comparative - legal analysis): Abstract. Dis. ... Cand. jurid. Sciences. - M.: 2012. - P. 21-22.

<sup>9</sup> Yanitskaya I. Legal nature of the guardianship institute // Martie, 2014. - 243 p.

<sup>10</sup> Romovsky Z.V. Ukrainian family law. - Kiev, 2009. - 500 p.

Experts noted that, in the Ukraine in 2009 - 12, 2010 - 8, 2011 - 4, 2012 - 5 person convicted by the courts or have been adopted <sup>11</sup>.

Recognizing that the wording of the Criminal Code of the Republic of Uzbekistan is not the norm. Only the article "Disclosure of the secret of adoption" - called guardianship authority against Article 125 provided that it is a crime to reveal the secret of adoption.

We believe that the Uzbek Criminal Code Article 122-1 of "abuse of rights", a new item and it is desirable to express the following content:

Care and protected against misuse of trust or to the detriment of the protected person, use (residential area of the seizure of property, etc.), -

Fifty minimum monthly wages or correctional labor for up to two years, or six months' imprisonment.

Kazakhstan guardianship relations of the Republic of Kazakhstan of December 26, 2011 №518-IV ZRK marriage (marriage) and is regulated by the Code of the family. The Civil Code of the Republic of Kazakhstan on issues of special care and protection shall not exist. That is why the Institute for the Rights of custody and Kazakhstan as predicted, may be considered.

Kazakhstan marriage (marriage) and Section 4 of the Code of the family, "guardianship" is 15-17 pages 115-132 substances. The orphan children and children deprived of parental care (Chapter 15), the procedure for the appointment of guardianship or protection (Chapter 16), or a tutor and trust or the legal status of protected persons (Chapter 17) as well.

According to Article 15 of the Code:

<sup>11</sup> Yevteyeva DP Criteria for the criminal misuse of guardianship rights under Article 167 of the Criminal Code of Ukraine // Bulletin of the Nizhny Novgorod Academy of the Russian Interior Ministry, 2013 - 23 - P. 174.

1. The orphan children and children deprived of parental care to protect the rights and interests of the Republic of Kazakhstan in the field of protection of children's rights to the authorized body and other state bodies within their competence, and are assigned to the legal representatives of children.

2. Orphaned children and children deprived of parental care the organization of activities for the registration of children deprived of parental care to be based on the specific circumstances, to choose the form of children, including child care, education and training entrusted to the local executive bodies.

3. The physical and legal persons, orphans, children deprived of parental care, placement, transfer of mediation and other activities are prohibited, those seeking the activity of state bodies within their competence.

Trustee or sponsor of carrying out the functions of government adoption and orphan children and children deprived of parental care and acting in accordance with the tasks entrusted to them to perform the functions of other bodies on protection of children, as well as provided in this Code due to the activities of intermediary agencies.

The physical and legal persons referred to in Article can not carry out their commercial activities.

July 9, 2004, the Government of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan Decree №591 of juvenile affairs and protection of their rights under the interagency commission. The working body of the Commission, and the Ministry of Education and Science of the Republic of Kazakhstan on the issues of protection of children's rights and legitimate interests of government agencies, non-governmental organizations and mass media in the development of mutual cooperation between the roles of the initiative.

Ministry of Education and Science of the Republic of Kazakhstan, the Committee for the Protection of the rights of children and its territorial divisions - the protection of the rights of children is carried out by the Ministry of custody and supervision<sup>12</sup>.

Opinions on the state of care and protection under the laws of the Republic of Kazakhstan said that N.P.Kalashnikova the following: Kazakhstan, for the rehabilitation of children in difficult life of patronage<sup>13</sup> (Foster children) of the introduction of a single model, the issues of custody and guardianship is necessary to change the law in accordance with international norms and standards. Today Kazakhstan form of care and protection and will require a radical revision of the priority need to focus on children from families with children to take<sup>14</sup>.

In my view, the main task of the care and protection children and children in foster care and the return of the child to the family as opposed to taking the focus to maintain ties with their ancestors and relatives. Therefore, the care and protection to their children and children in foster care should be used only as an exceptional measures fired.

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<sup>12</sup> Nugumanova BK The legal basis of the Committee for Protection of Children's Rights of the Ministry of Education and Science of the Republic of Kazakhstan // Improvement of the Institute: questions of law-making and enforcement. 2012. - P. 25.

<sup>13</sup> Patronus – lotinos pater – father .

<sup>14</sup> Kalashnikov NP Some aspects of solving the problems of orphans in Kazakhstan // Questions of Juvenile Justice. 2006. -№1 (6). - P. 34.