

ACTUAL ISSUES OF GUARDIANSHIP AND TUITION

Nino Mindiashvili, PhD student
Grigol Robakidze University, Tbilisi, Georgia

Abstract

Collision issues are discussed in family law such as conditions of marriage, results of marriage, annulment of marriage, duty of maintenance, relations between parents and children, relations related to child's origin, conditions of adopting, guardianship and tuition. I discuss issues of guardianship and tuition in mentioned work, which I think is very interesting and actual.

Keywords: Guardianship; Tuition; Social service agency

Introduction

For protection of interests and constitutional rights of children left without care of parents, family law foresees existence of guardianship and tuition institution, timely detection and registration of children left without parents is its obligation.

Relevant education and take care of a child is the main duty of parent. Both parents are imposed equal rights on educating children. Consequently family law foresees deprivation of parental right in case of mistreat to child from the side of parent. Child left without care of parent will be prescribed form such as guardianship and tuition.

Guardianship and tuition is a law complex institute, which includes norms of civil, family and administrative law.⁵¹ One group of scientists deems, that it is a family legal institute and foresees protection of rights and obligations of those citizens, who especially need it .⁵² Part of scientists do not agree with this opinion.

Who can be set guardianship and tuition is discussed in detail in Georgian Civil Code. In 1275 Article of Civil Code is discussed who can be set guardianship and tuition: Underage children, who are left without care of parents, because of death of parents, confession of death, deprivation,

⁵¹ Sh. Chikvashvili. Publisher "Meridian". City of Tbilisi, 2000. P. 403.

⁵² Ershova N.M. Family issues in Civil Law. 1977, p. 67.

suspension or limitation of parental right, disability of parents, considered as missing or child considered as abandoned, are set up guardianship and tuition in case of their education, protection of personal and property rights and interests. In case if child has relationship with one of parents family legal relationship, he/she must not be set guardian or tutor, because it is considered that one parent can protect his/her personal and property rights.⁵³ According to 1276 Article of Civil Code: “Guardianship is set on child, who has not reached the age of seven or on a person, who is considered as a person with disability by the court, because of unsound mind or imbecility”, in 1277 Article is represented: “Guardianship on underage person is set from the age of seven to eighteen. Also guardianship can be set on underage capable person if he/she asks, if he/she cannot independently implement his/her rights and perform his/her duties because of health condition”. Also Civil Code determine, that tuition can be set on adult by the court, which abuses alcohol and drugs and because of this puts family in bad material situation. He/she has the right to make arrangement about disbursing of property, also to disburse salary, pension or other type of income only in case of tutor, instead of making meticulous arrangement. His/her personal characteristics, ability of fulfillment of taken obligations, relationship between guardian/tutor person, interests of guardian/tutor person, also directions of parents or testator will be taken into account during selecting of guardian or tutor.

Central and local bodies of guardianship and tuition are: Plenipotentiary institution-agency which is in the system of the Ministry of Labor, Health and Social Protection and its territorial bodies. Rules of working of guardianship and tuition bodies are determined by the Ministry of Labor, Health and Social Protection. LEPL Social Service Agency of the Ministry of Labor, Health and Social Protection, as “a central body of guardianship for social rehabilitation”, authorized by resolution of 14 April, implements state program 2014 #29 of Georgian Government about care of child, whose aim is improvement of physical and social conditions and integration in society of persons with disability (including children), elderly devoid of family care, socially unprotected, homeless and children who are in risk of desert. Also urgent help of families with children being in crisis situation.

According to carried out researches, based on database of 2014, in three educational institution 87 foster children are left, whose rating is finished and probabilistic form of tuition is planned. Tbilisi Children Crisis Distribution closed in May 2014. Senaki shelter was closed in December. Guardianship was set on 34 children and tuition on 176 children.

⁵³ R. Shengelia, E. Shengelia. Tbilisi, publisher “Meridian” 2013. P. 348.

Guardianship was set on persons with disability – on 565 beneficiaries. Tuition was set on 82 persons up to 18 age. As a result of done activities, the agency received access on electronic database of Notary Chamber in 2014, which includes data about persons with disability/limited ability recognized by the court.

The body of guardianship and tuition must set guardian or tutor no later than one month from the time, when the necessity of guardianship and tuition will be known. Set of guardianship and tuition can be set on a child in case if: a) The court will inform body of guardianship and tuition about limitation or deprivation of parental rights and duties of both parents of child; b) Rights and duties of parent are inhibited; c) Both parents of child are dead; d) Guardian set on child is dead or functions of guardian are impounded; e) The court considers child as abandoned; f) The parent is declared as incapable or missing . The court that made decision about consideration of person with disability, is obliged no later than three days after coming in force, to inform body of guardianship and tuition about it according to location of that person, who need a guardian because of disability. It is mentioned in law, that guardian or tutor must be set with their consent. Selecting tutor for capable adult, who cannot protect his/her rights and perform his/her duties because of health condition, is possible only with the consent of guardian. Selecting of tutor for capable adult, who cannot protect his/her rights and perform his/her duties because of health condition, is possible only with the consent of guardian.

According to 1283 Article of Civil Code, person cannot be set as a guardian or tutor, who has not reached the age of eighteen; a person, who is considered as a person with disability by the court; a person, who has deprivation of prenatal rights because of obviation for performance of prenatal rights and duties; a person, who is waived from duty of guardian or tutor because he/she did not duly perform these duties.

I think that the following provisions must be added to mentioned provisions: 1. A person cannot be a tutor, who leads immoral life; 2. A person, whose interests opposites interests of the person being under care; 3. Persons, who are declared as insolvent and case administration to them has not finished; 4. Persons, whose care was forbidden by alive parents.⁵⁴ 5. Persons, who cannot duly educate children, because of health condition.

Guardian or tutor can be set by the direction of died parents with notarization or if notary is not accessible based on document (testament) notarized by local administrative body. Guardian or tutor is obliged to take care of person being under care, to protect their rights at court. The guardian

⁵⁴ Pezeshkian N. Family psychotherapy through Russian Law, family as a therapist, 2003, p. 332.

do not have the right to make agreement in the name of tutorial person and tutorial person do not have the right to agree making on agreement in the name of tutor, which is related to alienation of property, hypothecate, rent more than for ten years, lend or issuance of other debt obligations, deny bill or rights of guardian or tutorial person, to become partner of entrepreneurial company, to take a debt, to divide a property or make such agreement which may reduce property.

Body of guardianship and tuition will liberate guardian or tutor in case of improper behavior from imputed obligations, also during recovery of parental rights. Guardianship will be terminated: a) If guardian have died; b) If underage tutorial person has received the age of seven, instead cases, when he/she is considered as a person with disability according to law; c) If a parent of underage tutorial person, who has not reached the age of seven, has recovered parental rights and duties; d) If a tutorial person with disability is declared as a person with capacity by the court. If underage tutorial person has reached the age of seven, in such case guardianship is terminated and guardian becomes tutor without special decision of body of guardianship and tuition. Tuition will be terminated: a) If tutorial person dies b) If underage tutorial person has reached the full age; c) If underage tutorial person has get married.

Decision of body of guardianship and tuition about appointment, deprivation and emancipation of guardian (tutor), also every interested person can appeal all issues about guardianship and tuition at the court.

Conclusion

Institute of guardianship and tuition has an important legal meaning. As we have mentioned, prescription of guardianship and tuition is a protection of property and personal rights of those people, who cannot protect their rights and perform civil legal duties independently. Body of guardianship and tuition has an important role in development of state and society. More promotion is necessary to bodies of guardianship and tuition, in order to perform imputed functions timely and quickly.

References:

- Georgian Civil Code, 1997.
- Comments of the Civil Code.
- Government resolution N291 \
- “Social rehabilitation and child care”, 2014.
- www.parliament.ge
- Chikvashvili Sh. “Family Law”, Tbilisi, “Meridiani”, 2000.
- Shengelia E., Shengelia R. “Family Law” Tbilisi, “Meridiani”, 2013.
- Ershova N.M. “Family Law in civil Law”. 1977.