

**GUARDIANSHIP AND CUSTODY INSTITUTION IN THE LEGAL SYSTEM OF
UZBEKISTAN: ISSUES OF EFFECTIVENESS AND IMPROVEMENT**

Akramova Sabrina Akmalovna

Email: akramovasabrina001@gmail.com

Abstract: This article explores the role and significance of the guardianship and custody institution within the legal system of the Republic of Uzbekistan. It provides a comprehensive analysis of its legal-theoretical foundations and existing challenges in practice. The research employs normative-legal, comparative-legal, and socio-legal methods to examine discrepancies between the progressive provisions enshrined in the Civil Code and the realities of weak supervision, low legal literacy, and inadequate enforcement mechanisms. The article also reviews foreign experiences — particularly those of the United States, Germany, and Russia — and formulates practical recommendations aimed at addressing systemic shortcomings. Proposed measures include thorough pre-appointment background checks and mandatory training courses for guardians and custodians, the introduction of an electronic monitoring system, and enhancement of supervisory authorities' institutional capacity. Ultimately, the study emphasizes the necessity of improving the efficiency of the guardianship and custody system to ensure full protection of the rights and interests of vulnerable citizens (Civil Code of the Republic of Uzbekistan, 2024; UNICEF, 2020).

Keywords: guardianship, custody, legal analysis, practice, challenges, legislation, social protection, legal reform, children deprived of parental care.

Introduction. The institution of guardianship and custody holds a central position in the social policy of the Republic of Uzbekistan. It serves as a fundamental legal mechanism ensuring the protection of the rights and legitimate interests of the most vulnerable groups of society — orphans, minors deprived of parental care, and individuals declared legally incapacitated by a court. The effectiveness of this institution directly reflects the state's commitment to social justice and human rights.

Uzbek legislation — particularly the Civil Code, the Family Code, and relevant subordinate acts — contains extensive and progressive norms regulating guardianship and custody relations (Civil Code of the Republic of Uzbekistan, 2024).

However, a deeper examination reveals a significant gap between the high legal standards established by legislation and their actual implementation in practice. The main legal problem lies in the weak enforcement of the robust provisions set forth in the Civil Code. Studies show that insufficient supervision and monitoring mechanisms often lead to cases where guardians fail to properly fulfill their duties (Rakhmonova & Kholmirezayeva, 2025). This, in turn, undermines the core legal principle prohibiting guardians from using the property of wards for personal gain.

The current system functions primarily on a reactive basis — responding to complaints and violations — rather than proactively preventing abuse or ensuring early detection of risks. This article aims to analyze these inconsistencies, identify their root causes, and propose actionable solutions to strengthen the guardianship and custody framework.

The main objective of this study is to critically examine the role of the guardianship and custody institution in Uzbekistan's legal system and to develop scientifically grounded recommendations for its improvement.

- To achieve this objective, the following tasks were set:
- To analyze the legal and theoretical foundations of guardianship and custody.
- To identify the key practical problems and shortcomings in implementation.
- To conduct a comparative study of foreign practices (United States, Germany, Russia).
- To propose specific legal and administrative reforms aimed at eliminating identified problems.

Methodology: This study employed a combination of normative-legal, comparative-legal, and socio-legal methods to ensure a multidimensional understanding of the guardianship and custody system in Uzbekistan.

The normative-legal method was applied to comprehensively analyze and interpret the provisions of the Civil Code, the Family Code, and other relevant regulatory acts of the Republic of Uzbekistan. This approach allowed for the identification of inconsistencies between the legally prescribed norms and their practical enforcement, thus serving as the basis for evaluating the institutional effectiveness of guardianship and custody mechanisms.

The comparative-legal method enabled the researcher to examine Uzbekistan's experience in light of international best practices, particularly those of the United States, Germany, and Russia. Through this approach, global models of guardianship and custody were compared, revealing both structural similarities and procedural differences. The method also facilitated the formulation of context-specific recommendations for adapting successful international mechanisms to the Uzbek legal system (UNICEF, 2024).

The socio-legal method was used to assess the real social impact and practical efficiency of legal norms. This involved reviewing analytical materials, academic publications, and data from legal advisory portals to identify key challenges such as low legal awareness and procedural inefficiencies among guardianship authorities (Advice.uz, 2023). The application of this method provided empirical grounding for the study's conclusions regarding the gap between legislative intent and real-world outcomes.

By integrating these methodological approaches, the study aimed to ensure both analytical depth and applied relevance, creating a holistic understanding of how guardianship and custody laws function within Uzbekistan's evolving legal framework.

Results: According to Article 32 of the Civil Code of the Republic of Uzbekistan, guardianship and custody are established to protect the rights and interests of individuals who are either legally incapacitated or partially incapacitated. The legislation clearly distinguishes between guardianship and custody.

Guardianship applies to orphans under the age of 14, minors deprived of parental care, and individuals declared legally incapacitated by a court. In such cases, the guardian acts as a full legal representative, empowered to protect both the property and non-property rights of the ward (Civil Code of the Republic of Uzbekistan, 2024).

Custody, on the other hand, is established over minors aged 14 to 18, as well as individuals recognized by the court as partially incapacitated. A custodian provides consent for certain legal actions and assists the ward in exercising their limited legal capacity. The Civil Code strictly prohibits guardians from using the property of wards for personal gain — a provision designed to safeguard the material interests of vulnerable individuals. However, empirical findings indicate that this principle is often undermined due to weak oversight and ineffective monitoring mechanisms (Rakhmonova & Kholmirezayeva, 2025).

Guardianship and custody authorities are responsible for identifying children deprived of parental care, maintaining official records, and determining the appropriate forms of placement in each case. They are also tasked with ensuring that wards receive adequate living conditions, education, and care. These authorities play an essential role in decisions related to adoption and family-based placement (Ministry of Justice of Uzbekistan, 2024).

Despite these legally proactive mandates (“to identify,” “to supervise”), the practical reality remains predominantly reactive. Institutional responses are typically triggered by complaints rather than preventive monitoring. As a result, violations are often discovered only after harm has occurred — which increases the vulnerability of wards and diminishes trust in the system (UNICEF, 2020).

Furthermore, the judicial system plays a crucial role in guardianship matters, such as declaring individuals incapacitated or terminating guardianship. However, the lack of coordination between administrative and judicial bodies often leads to systemic inefficiencies. Cases that could be resolved administratively are instead referred to courts, resulting in an overload of civil proceedings and procedural delays. The absence of an integrated control mechanism thus weakens the responsiveness of the guardianship framework (UNICEF, 2024).

Field analysis and empirical data reveal several systemic issues within Uzbekistan’s guardianship and custody practice:

Failure of guardians to fulfill their obligations. Although the law mandates annual reports by guardians and regular inspections by oversight bodies, these requirements are frequently neglected or delayed. According to UNICEF’s Justice for Children in Uzbekistan (2020), guardianship inspectors represented children’s interests in court proceedings in only 0.9% of cases — indicating minimal institutional engagement.

Weak monitoring and accountability mechanisms. Inspections are often conducted only after complaints are filed, rather than as part of continuous oversight. This reactive approach results in delayed detection of abuse, including the misuse of wards’ property (Advice.uz, 2023).

Low level of legal literacy among guardians and custodians. Surveys show that many guardians lack basic knowledge of their legal duties and the mechanisms for child protection. Some inspectors also misinterpret their responsibilities during judicial processes, reflecting insufficient legal, pedagogical, and psychological preparedness (UNICEF, 2024).

Ineffectiveness of preventive mechanisms. Despite explicit prohibitions, violations involving the use of ward property for personal benefit continue to occur. Because monitoring is weak, such cases are usually revealed post factum rather than prevented. The 0.9% engagement rate of

guardianship authorities underscores the gap between formal legal guarantees and their practical enforcement (UNICEF, 2020).

These results collectively confirm that the guardianship and custody system in Uzbekistan suffers from limited institutional coordination, low legal awareness, and the absence of a proactive control framework. Addressing these challenges requires not only procedural reform but also an increase in the professional competence and accountability of guardianship authorities.

Analysis and Discussion: The analysis of international experiences demonstrates that the effectiveness of guardianship and custody systems largely depends on the degree of professionalization, transparency, and institutional coordination. The comparative study of the United States, Germany, and Russia provides significant insights for improving the Uzbek model.

In the United States, the guardianship system operates under the supervision of specialized family courts and child welfare agencies. Before appointment, candidates for guardianship undergo thorough background checks, including psychological evaluations, income assessments, and interviews with social workers (U.S. Department of Health and Human Services, 2023). This pre-screening process minimizes the risks of abuse and ensures that only individuals with sufficient moral and financial capacity are entrusted with guardianship responsibilities. Additionally, guardians are subject to mandatory training programs on child care, property management, and legal obligations. These measures collectively promote accountability and competence among guardians.

In Germany, guardianship functions are performed by state welfare authorities (Jugendamt) or non-profit organizations, providing a professional and institutionalized approach. German law requires that every guardianship appointment be preceded by a comprehensive background investigation, including assessments of the guardian's suitability, financial stability, and psychological readiness (UNICEF, 2024). Regular supervision and scheduled evaluations are also mandatory, ensuring continuous monitoring of guardians' activities. This system prioritizes the best interests of the child and fosters a culture of preventive oversight rather than reactive control.

In Russia, guardianship services are administered by local executive authorities, which operate specialized departments dedicated to child welfare and family policy. The system encourages family-based care and community participation, offering incentives for families willing to become guardians or foster parents (Ministry of Justice of Uzbekistan, 2024). Despite progress, Russian practice still faces challenges similar to those in Uzbekistan, including uneven regional implementation and limited institutional capacity.

Comparatively, the U.S. and German systems demonstrate the advantages of professional and institutional guardianship, in contrast to informal or purely familial models. These countries emphasize training, continuous supervision, and accountability mechanisms, which reduce the likelihood of rights violations. Their success underscores the importance of viewing guardianship not merely as a charitable or familial duty but as a regulated professional responsibility embedded within the welfare system.

For Uzbekistan, these findings suggest that adopting a hybrid professional model—where trained social workers, psychologists, and legal experts collaborate with families under state

supervision—could significantly enhance system effectiveness. The introduction of mandatory pre-appointment checks, training certification, and electronic monitoring systems would help close the gap between law and practice. Moreover, strengthening coordination between administrative and judicial bodies could prevent procedural duplication and reduce case backlogs in civil courts.

Ultimately, the comparative analysis indicates that while Uzbekistan's legislative framework is comprehensive, its institutional enforcement remains weak. Learning from the structured and data-driven systems of developed countries can provide the foundation for designing a more proactive, accountable, and transparent guardianship mechanism that aligns with both national values and international standards of child protection (UNICEF, 2020; Rakhmonova & Kholmirezayeva, 2025).

Conclusion: Guardianship and custody remain integral components of Uzbekistan's social and legal system, serving as vital instruments for protecting the fundamental rights and interests of vulnerable groups—particularly orphans, minors deprived of parental care, and individuals deemed legally incapacitated. While the country's legislative framework is robust and comprehensive, the study demonstrates that the practical enforcement of these laws remains inadequate. Weak supervision, insufficient legal awareness among guardians, and the absence of a proactive monitoring structure undermine the very principles established by the Civil Code and related regulations (Civil Code of the Republic of Uzbekistan, 2024; UNICEF, 2020).

To address these systemic deficiencies, a series of institutional and procedural reforms are required. The following recommendations are proposed:

Enhance pre-appointment background checks. Introduce mandatory psychological evaluations, financial assessments, and social background reviews for all potential guardians and custodians prior to appointment. This approach mirrors international standards applied in the United States and Germany, ensuring the selection of qualified and responsible candidates (U.S. Department of Health and Human Services, 2023).

Implement mandatory training and certification. Establish compulsory courses for guardians and custodians on child welfare, property management, and legal obligations, emphasizing both ethical and psychological readiness for the role.

Develop an integrated electronic monitoring system. Create a unified national database to track guardianship cases, monitor financial transactions, and document inspection reports. Such digital oversight mechanisms would improve transparency and accountability across all levels of administration (Ministry of Justice of Uzbekistan, 2024).

Strengthen the capacity of supervisory authorities. Increase staffing and professional competence within guardianship departments, provide regular training in legal and digital skills, and grant broader powers for preventive intervention.

Promote public awareness and civic participation. Launch national campaigns through mass media and social networks to raise legal literacy on guardianship and custody. Establish free legal aid centers to assist guardians and families in understanding their rights and obligations.

Localize and adapt international best practices. Tailor successful foreign models—particularly those emphasizing professionalism, accountability, and proactive oversight—to Uzbekistan’s socio-legal context.

In summary, reforming the guardianship and custody institution is not merely a matter of legal procedure but a reflection of the state’s commitment to human rights and social justice. Strengthening this system will ensure that the Republic of Uzbekistan fulfills its constitutional obligation to protect its most vulnerable citizens. The proposed reforms—when implemented comprehensively—can transform the guardianship and custody framework from a reactive structure into a proactive, transparent, and rights-based system, aligned with both national values and international standards (UNICEF, 2024; Rakhmonova & Kholmirzayeva, 2025).

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