

Information with a description of the child protection system in Ukraine concerning the care and placement of children-orphans and children deprived of parental care

Parents (adoptive parents) are the legal representatives of their minor children (part one of Article 242 of the Civil Code of Ukraine). Parents have the right to involve other persons in the upbringing of the child, to transfer him/her for upbringing to individuals and legal entities (part two of Article 151 of the Family Code of Ukraine).

The custodian is the legal representative of a minor and of an individual declared incapable. Another person may be the legal representative in cases established by the law (parts two, three of Article 242 of the Civil Code of Ukraine).

Until the establishment of custody or care and the appointment of a custodian or a caregiver, the custody or care over an individual is carried out by the relevant guardianship authority (Article 65 of the Civil Code of Ukraine).

If a child permanently resides in a health care institution, educational or other children's institution, the functions of a custodian and a caregiver in relation to him/her are entrusted to the administration of these institutions (part one of Article 245 of the Family Code of Ukraine).

Foster parents are the legal representatives of foster children and act without special powers as custodians or caregivers (part four of Article 256-2 of the Family Code of Ukraine).

Parents-educators are the legal representatives of children and act without special powers as custodians or caregivers (part four of article 256-6 of the Family Code of Ukraine).

Law of Ukraine "On the Protection of the Childhood" states that local executive power authorities and local self-government authorities acting as the guardianship authorities according to their competence under the current Ukrainian law shall ensure taking measures regarding the protection of the childhood.

The peculiarities of the children's rights protection of different categories are also established by the Family Code of Ukraine, Laws of Ukraine "On Ensuring Organizational-Legal Conditions for Social Protection of Orphans and Children, Deprived of Parental Care", "On Authorities and Services on Children Issues and Specific Institutions for Children" and others legislative acts of Ukraine.

According to Article 56 of the Civil Code of Ukraine the guardianship authorities in Ukraine are: State administrations of districts, districts in the cities of Kyiv and of Sevastopol, as well as executive bodies of town, district, rural councils.

The actions detailed algorithm for guardianship authorities is defined by the Order of Performing by the Guardianship Authorities of Activities related to the Child's Rights Protection, approved by the Resolution of the Cabinet of Ministers of Ukraine of 24.09.2008 No866 (hereinafter referred to as "the Order").

The Laws of Ukraine "On Ensuring Organizational-Legal Conditions for Social Protection of Orphans and Children, Deprived of Parental Care", "On the Children Issues Organs and Services and Special Entities for Children" as well as the Order assigns consideration of issues of the social protection of children, in particular children-orphans and children deprived of parental care or children in difficult life circumstances to the services on children issues as a structural unit of a guardianship authority.

The guardianship authorities are authorised to:

- Identification of children in difficult life circumstances, including children in danger, children who have suffered from domestic violence or have committed domestic violence in any form, as well as children left without parental care, to organize their social protection, including record keeping, as well as to ensure temporary placement, if necessary;
- Immediate removal of a child from parents in case of danger to the life and health of a child,
- Preparation and lodging to a court of claims to deprive a mother, a father of their parental rights, or removal of a child from parents without deprivation of parental rights,
- Referring to the civil status registration bodies for registration of birth of a child whose parents are unknown,
- Granting to a child the status of a child-orphan or a child deprived of parental care,
- Placing children-orphans and children deprived of parental care under different forms of placement with the priority to the family forms,
- Conflict resolution between the parents regarding the child's upbringing,
- Control over the intended use of the alimonies for a child,
- Filling administrative protocols in case of dereliction of duties regarding the child's upbringing by parents or those who replace parents,
- Protection of the housing and property rights of children,
- Granting to a child the status of a child suffered from the war activities and military conflicts,
- Return of children Ukrainian citizens when they left without a legal representative abroad and need to be returned to Ukraine,
- Organizational and methodological assistance to the children shelters, to the centres of socio-psychological rehabilitation of children, to the centres of social support of children and families,
- Representation of children's interests in courts, etc.

Family forms of placement of children-orphans and children deprived of parental care

Ensuring the upbringing of orphans and children deprived of parental care in a family forms of placement is regulated by the UN Convention on the Rights of the Child, the Family Code, the Civil Code and the Civil Procedural Code of Ukraine, by the Laws "On Protection of the Childhood", "On the Children Issues Authorities and Services and Special Entities for Children", "On Providing Organizational-Legal Conditions for the Social Protection of Children-Orphans and Children Deprived of Parental Care", by the Resolutions of the Cabinet of Ministers of Ukraine of 24.09.2008 No866 "Issues of Activities of the Guardianship Authorities related to the Child's Rights Protection", of 26.04.2002 No564 "On Approving the Statute of Family Type Orphanage", of 26.04.2002 No565 "On Approving the Statute of Foster Family".

According to Article 52 of the Constitution of Ukraine maintenance and upbringing of children-orphans and children deprived of parental care is assigned to a State.

Article 6 of the Law of Ukraine "On Providing Organizational-Legal Conditions for the Social Protection of Children-Orphans and Children Deprived of Parental Care" prioritizes the placement of a child in the family of citizens of Ukraine: adoption, custody or care, foster family, family type orphanage.

It is clearly stated that a child can be placed in institutions for orphans and children deprived of parental care, regardless of ownership and subordination, if for some reasons he/she could not be placed in a family.

CUSTODY AND CARE

Custody, care over a child is established by the decision either guardianship authority under the procedure, established by the Order, or by a court exclusively over children-orphans, children deprived of parental care (custody relates to a child under 14 years old, care relates to a child from 14 to 18 years old).

A custodian or a caregiver is appointed first of all when citizens are in a family, kindred relations with a child.

Custodians, caregivers receive the financial support from the State for the maintenance of their fosterlings, but unlike foster parents and parents-educators of family-type orphanages, do not receive financial support for themselves.

A custodian, a caregiver of a child may be an adult capable person under his/her consent, except persons specified in Article 212¹ of the Family Code of Ukraine. Also, a person whose interests are contrary to the interests of a child may not be a custodian, a caregiver of a child.

The priority right to registration of custody (care) have:

- Persons, who are in a family, kindred relations with a fosterling (at the same time the personal relations between them, the ability of a person to carry duties of a custodian or a caregiver shall be taken into account);
- A family, where a child lived at the moment when the issue of establishment of the custody (care) was raised;

¹ **Article 212.** Persons not eligible for becoming adoptive parents:

The following categories of persons may not adopt a child:

- 1) persons with limited capacity;
- 2) persons declared as incapable;
- 3) persons whose parental rights were terminated and not reinstated;
- 4) persons who were previously adoptive parents (custodians, caregivers or foster parents) of another child but the adoption (custody, care or foster care) was terminated or annulled through their fault;
- 5) persons who are registered with or being treated at a neuropsychological or drug treatment department;
- 6) persons who are addicted to drugs or alcohol;
- 7) persons who do not have a permanent place of residence and stable income;
- 8) persons who have any diseases or illnesses that appear on the list approved by the central executive authority ensuring the state healthcare policy formulation;
- 9) foreigners who are not married, except when a foreigner is the relative of the child;
- 10) persons who were convicted for criminal offences against someone's life and health, freedom, honour and dignity, sexual freedom and sexual inviolability, public security, public order and morality, or in connection with distribution of drugs, psychotropic substances and equivalents, as well as for the offences referred to in Articles 148, 150, 150¹, 164, 166, 167, 169, 181, 187, 324, and 442 of the Criminal Code of Ukraine, or have an unexpanded or not otherwise duly annulled criminal record for any other criminal offence;
- 11) persons who require continued support and care due to their health condition;
- 12) stateless persons;
- 13) person who is married to a person who may not be an adoptive parent in accordance with Paras 3 to 6, 8 and 10 of this Article.

2. In addition to the persons specified in this Article, other persons whose interests are contrary to the interests of the child may not become adoptive parents.

Establishing a custodian or a caregiver of a child the personal qualities of this person, his/her ability to bring up the child, child's attitude to this person as well as the child's wish shall be taken into account.

When persons applied to the centre with the issue on establishing the custody or care over a child, who lives in the institution, such persons shall be directed to the Service on Children Issues and informed on the necessity to submit the documents, defined by para 40 of the Order or for the period of martial law in Ukraine (only for relatives) – by para 79 of the Order.

The necessary condition for persons, who are not the relatives of a child but wish to register the custody, care over this child, is their training on the problems of upbringing of children deprived of parental care. Relatives of a child with whom he/she lives and who intend to take him/her under the custody (care) do not undergo training.

Peculiarities of the custody and care as a form of placement of a child:

- Custodians and caregivers carry their duties free of charge,
- A State social support is paid to children deprived of parental care who are placed to the custody or care,
- Establishment of the custody or care does not suspend payments of pensions, alimony, compensation for harm after losing a nourisher, other social payments to a child under the law,
- Children-orphans and children deprived of parental care being under the custody or care keep the benefits prescribed by the law to this category of children;
- Fosterlings may be adopted by other citizens under the consent of a custodian or guardianship authority.

FOSTER FAMILY

The issue is regulated by the Family Code of Ukraine and the Resolution of the Cabinet of Ministers of Ukraine of 26.04.2002 No565 "On Approving the Statute of the Foster Family"

Foster family – a family or an unmarried person, who voluntarily for a fee accepted for upbringing and living together from one to four children-orphans and children deprived of parental care. For the period of martial law in Ukraine, such families can accommodate children who have been left without parental care without financial assistance for their maintenance.

Foster parents may be able-bodied persons who are married, except the persons specified in Article 212 of the Family Code of Ukraine.

When deciding the placement of children in a foster family the following shall be taken into account:

- age of foster parents and children (by the time both foster parents reach retirement age, all foster children shall reach the age of leaving the foster family). In some cases, under the consent of the parties, the foster family may function after the foster parents reach retirement age, but not more than five years.
- the average monthly total family income for the previous six months (may not be less than the subsistence level established by the law for the relevant social and demographic groups of citizens).

- learning outcomes (persons who have expressed a wish to become foster parents must necessarily undergo training organized by regional centres of social services for families, children and youth with the involvement of specialists in psychology, pedagogy, medicine).

Stages of creating a foster family:

- Foster parents pass the relevant preparatory courses (it is a mandatory condition, training is taking place not less than once per two years),
- Preparation of recommendations by the social services centre for family, children and youth under the results of trainings,
- Preparation of opinion by the Service on Children Issues with regard to the existence of conditions necessary to create a foster family,
- Decision on creation of a foster family by the State administration of district (or executive committee of the local council) under the application and documents provided,
- Conclusion of an agreement on placement of children to a foster family for upbringing and living together,
- Placement of children to the foster family.

Decision on creation of a foster family, placement of children to a foster family is delivered by the State administration of district or executive committee of the city council.

Peculiarities of a foster family:

- Foster parents carry their duties on upbringing of children for fee (unlike adoption and establishment of the custody/care): one of them receives financial cover in amount of 35% of a State social support per every foster child,
- Foster parents take foster children to own living space which conforms to sanitary and hygienic and living conditions (unlike placement of a child to a family type orphanage)
- A State social support is paid to children-orphan and children deprived of parental care who are placed to a foster family,
- Children-orphan and children deprived of parental care being in a foster family keep the benefits and State guarantees prescribed by the law to children-orphan and children deprived of parental care, as well as previously assigned alimony, pensions, other social payments,
- Children-orphan and children deprived of parental care may be adopted by other citizens, but foster parents have the priority right to adopt them.

FAMILY TYPE ORPHANAGE

The issue is regulated by the Family Code of Ukraine and the Resolution of the Cabinet of Ministers of 26.04.2002 No564 "On Approving the Statute of Family Type Orphanage"

Family type orphanage - separate family created upon will of a spouses or an unmarried person, who take for upbringing and living together not less than five children-orphan and children deprived of parental care. Total number of children in a family type orphanage may not be more than ten, including native children. For the period of the martial law in Ukraine,

such families may accommodate children who have been left without parental care without financial assistance for their maintenance.

Parents-educators - spouses or unmarried persons, who take for upbringing and living together not less than five children-orphans and children deprived of parental care, and who are granted the status of parents-educators by a decision of the guardianship authorities.

The adults and able-bodied persons may be the parents-educators, except persons specified in Article 212 of the Family Code of Ukraine.

The average monthly total family income per person for the previous six months preceding the month of submission of an application for creating a family-type orphanage may not be less than the subsistence level established by the law for the relevant social and demographic groups of citizens.

Stages of creating a family type orphanage:

- Parents-educators pass the relevant preparatory courses (it is a mandatory condition, training is taking place not less than once per two years),
- Preparation of recommendations by the relevant social services centre for family, children and youth under the results of trainings,
- Preparation of opinion by the Service on Children Issues with regard to the existence of conditions necessary to create a family type orphanage,
- Decision on creating a family type orphanage by the State administration of district (or executive committee of the local council) under the application and documents provided,
- Conclusion of an agreement on creating a family type orphanage between parents-educators and the authority decided to create it,
- Placement of children to the family type orphanage (it shall be completed in course of 12 months from the date of creation, children having family ties shall be placed firstly, except when they may not be brought up together due to the medical indications).

When deciding the placement of children the age of parents-educators and children **shall be taken into account** (by the time both parents-educators reach retirement age, all fosterlings shall reach the age of leaving the family type orphanage). In some cases, under the consent of the parties, the family type orphanage may function after the parents-educators reach retirement age, but not more than five years.

Peculiarities of the family type orphanage:

- Parents-educators take children for upbringing and living together for fee (they receive financial cover in amount of 35% of a State social support per an every foster child (distributed in equal parts under their consent),
- Parents-educators receive a separate house or apartments according to the norms prescribed by the law,
- A State social support is paid to every fosterling,
- Fosterlings keep the benefits and State guarantees prescribed by the law to children-orphans and children deprived of parental care, as well as previously assigned alimony, pensions, other social payments,
- Children-orphans and children deprived of parental care may be adopted by other citizens, but the priority right to their adoption is given to the parents-educators of a family-type orphanage.

In accordance with Article 31 of the Law of Ukraine “On Ensuring Organizational-Legal Conditions for Social Protection of Orphans and Children, Deprived of Parental Care”, parents-educators are persons, who replace parents, legal representatives of their fosterlings and shall protect their rights and interests in the State Power Authorities, including the judiciary, as custodians or caregivers without special powers. They may not use the rights granted to them contrary to the interests of the child.

Acquisition of the status of parents-educators of family-type orphanages cannot restrict the civil rights of these persons.

Parents-educators have a right to:

- protect a child, his/her interests as custodians or caregivers without special powers;
- apply to a court with a claim on deprivation of parental rights of parents of fosterlings;
- apply to a court with a claim to cancel the adoption or declare it invalid in respect of children who lived with them and were transferred for adoption;
- adopt children, who are under the upbringing and maintenance in their families;
- participate while consideration by the Guardianship Authority of the issue regarding the management of the child's property;
- demand the return of a child from any person who retains him/her not on the basis of the law or a court decision;
- require the Guardianship Authorities to provide them with complete information about a child and his/her parents, the state of his/her health, the level and peculiarities of the child's development;
- determine independently the methods of upbringing of a child taking into account the opinion of the child and the recommendations of the Tutelage and Guardianship Authorities.

Parents-educators are obliged to:

- protect rights and interests of children, to be their representatives in institutions and organizations;
- create appropriate conditions for the comprehensive harmonious development of children;
- take care of health, physical, mental and moral development, education of children, prepare them for work;
- ensure that medical examinations of children are conducted twice a year by doctors-specialists and to follow their recommendations;
- ensure the acquisition of education by children, to monitor the education and development of children in educational institutions, to maintain relations with teachers and educators;
- be engaged in development of abilities of children, including to involve them in employment in out-of-school educational institutions;
- not to prevent the communication of a child with his/her native parents and to return the child in case of restoration of parental rights, release from prison and in other cases, if it is not contrary to the interests of a child and is not prohibited by a court decision;
- cooperate with local State administrations, local self-government authorities and social workers, to involve specialists in solving problematic issues;
- inform the relevant Guardianship Authorities in case of unfavourable conditions for the maintenance, upbringing and education of children in a family-type orphanage.

PATRONAGE OVER THE CHILD

The purpose of patronage is to ensure protection of the rights of a child who, due to the difficult life circumstances, is temporarily unable to live with his/her parents/legal representatives, providing him/her and his/her family with services aimed to the reintegration of the child into the family or granting to the child the relevant status which is necessary for further decisions, taking into account the best interests of the child relating to ensuring of his/her right on upbringing in a family or in conditions as close as possible to a family.

Namely, the patronage is a temporary form of placement of a child who mostly has not been granted the status of orphan or child deprived of parental care yet.

The issue of creating and operating the patronage family are regulated by the Family Code of Ukraine and the Order of creation and activity of the patronage family, placement, stay in the patronage family, approved by the Resolution of the Cabinet of Ministers of Ukraine of August 20, 2021 № 893 "Some Issues of Protection of Children's Rights and Providing the Services of Patronage over a Child".

The patronage family is a family in which, under the consent of all its members, an adult, who has undergone a special training course, carries the duties of a patron-parent on a professional basis.

The patron-parent is a person who, under the participation of family members, provides care, upbringing and rehabilitation services for a child in his/her family.

The patron-parents are not the legal representatives of children.

SMALL GROUP HOUSE

The issue on creation of the small group house regulated by the Resolution of the Cabinet of Ministers of Ukraine of 31.10.2018 № 926 "On Approval of the Model Regulations on a small group house".

Small group house is a social protection institution designed for a long-term (inpatient) living of orphans, children deprived of parental care, including children with disabilities, in conditions closed to a family, socialization and preparation for independent life, assisting the return of children in the biological family or placement in the family forms of upbringing.

These houses provide services in accordance with the needs of the territorial community replacing institutions and organizations with similar functions, which will accelerate the reform of boarding schools established in soviet times, and ensure maximum accessibility of children to community services.

Not more than 10 healthy children at the same time, or 8 children with limited life activities, including those with disabilities, may live in a small group house.

Children-orphans, children deprived of parental care with limited life activities, including those with disabilities, are enrolled in a small group house primarily, except those who need palliative care.

In case of absence of such children, other orphans, children deprived of parental care, aged ten to eighteen may be placed to a small group house.

In order to maintain the family relationships, children from three to nine years of age may be accommodated in a small group house with older siblings, as well as children left without parental care, whose siblings are in a small group house.

One of the tasks of a small group house is to ensure the child's education in the nearest preschool, general secondary education institution at the child's place of residence, including ensuring the right of children with special educational needs to inclusive education and educational services according to individual development program.

The creation of small group houses shall strengthen the role and responsibility of local executive power authorities and local self-government authorities for the situation of children and families with children.

State maintenance of children in small group houses consists 2.5 of subsistence level for children of appropriate age, for children with disabilities - 3.5 of subsistence level for children of appropriate age.