

## Investigating the laws relating to Care and Rights of Without-Guardian Children in Iran

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### ABSTRACT

*In Iran, the majority of without-guardian children have lost their parents or one of them because of different accidents and events and they lack any casual or genealogical relatives being able to guard them. When divorce or death of one of the parents broke the family up, the sinless children have been mostly delivered to those institutions responsible for caretaking without-guardian children. Such children are deprived from having their own family because of reasons like poverty, inability of one of the parents or second marriage of their parents. While the number of institutions responsible for caretaking without-guardian children and the number of such children are increasing, some couples divorce because they are hopeless of having their own child. Most of Iranian families hesitate on accepting a without-guardian child as their own one. The majority of families accepting such children are worried about the behaviors and reactions of people living in their neighborhood, so they try to disguise this fact. They are permanently afraid of the future when these children will finally become aware of the reality. Accordingly, they are annoyed. However, in Iran up to 1975, the beneficent people were caretaking without-guardian children directly or indirectly. Acceptation of such responsibility - for both without-guardian and with-guardian children – was not based on any legal documents and was only done for virtual incentives. The couple unable of having their own child accepted an alien child and then was pretending to guard their own child. Or such couples were overtly growing one of their relatives' children. But, anyhow, their relationship wasn't based on any rules or regulations. But, based on nowadays rules, the applicant couples settled in Iran must write their application on libeled papers and deliver to their local general court. The court, after receiving the application and investigating the couple's conditions, decides whether they are qualified or not. Before issuing the decisive guardianship decree, the child is given to the applicant couple for 6 months according to an issued tentative decree.*

*Keywords: adoption, guardianship rituals, temporary trustee, family-like*

### Introduction

In April 1975, the lawgivers of Iran who had derived the adoption law from European countries' laws, especially France, ratified this law. But Iran' laws relating to family, inheritance and matrimony have been derived from Emamiyeh jurist in which no adoption forms existing in juridical systems of European countries are allowed. Therefore, this law was called "the law of without-guardian children's protection". There is no adoption forms in Iran' juridical system. But there is something called "caretaking of without-guardian children" which can be an equivalence for adoption and it is based on an especial law verified in 1975. Christianity religion also emphasizes on holiness of family. Although some people, according to religious ceremonies and regulations, are called the child's baptismal parents, such relativity can't make a family. The conditions pertaining to baptism and adoption are quite different. While baptism has always been a traditional and religious ceremony, adoption has been unfamiliar and unknown concept in traditional and religious laws of France.

### **Adoption**

Adoption, which is an especial concept in European juridical mechanisms, doesn't exist in Iran's juridical system and the phrase of "caretaking of without-guardian children" is figuratively used, instead. This figurative phrase means accepting a child as a legal offspring and giving him legal privileges.

### **Issuing Guardianship Decree and its Effects**

After investigating the conditions of the applicant couples, the court will issue the decree referring to the tentative period of guardianship. After passing this 6-month period, the court, following the laws and being sure about the guarantee of the child's life expenses after the death of the applicant couple, will issue the decisive guardianship decree based on the article 5 of the law referring to protection of without-guardian children. The court will issue such decree provided that the couple guarantees the preparation of the expenses for the life and education of the child after their deaths.

### **Guardianship Ceremonies**

Based on the article 1 of the law referring to protection of without-guardian children, only the couple settled in Iran can take the responsibility of caretaking of a child as their own offspring. The lawgivers in Iran, aiming at following the interests of without-guardian children, haven't necessitated the applicant couples to have Iranian citizenship. Unlike the juridical system of France in which the single persons can also apply to accept a child's guardianship, the juridical system of Iran doesn't provide such possibility because it is thought that the goal of accepting the responsibility of caretaking of an orphan child is providing him a family-like conditions. The child must have such a feeling that he has a natural and normal family including a man and a woman who are like his own parents.

The applicant couple settled in Iran must write its application on libeled papers and then deliver to the local general court of area where they are living. Both parts of the couple (wife and husband) must jointly write and sign the guardianship application paper. This means that they must be in agreement with each other regarding the acceptance of a child's guardianship. They both must be willing to do that.

The court, after receiving the application, investigating the couple's conditions and verifying the qualification of the couple, will issue a tentative decree and gives the child's guardianship to them for 6 months. If the disqualification of the couple is proved during this 6-month period, or, if the couple gives up having such responsibility, the court will abrogate the issued decree.

If the applicant couple can promisingly guarantee the preparation of the expenses referring to life and education of the child, up to his adolescence, after their deaths, the court will issue the decisive guardianship decree after the tentative 6-month period. The quality or type of the preparation and the promise depends on the court's decision: for example, the couple can deposit a fixed amount of money for the child in his own name in a bank and delegate a person to provide the child with expenses of his life and education from that deposit account after the death of the couple. After investigating all conditions, the court will issue the guardianship decree.

### **The Conditions of the Applicant Couple**

The guardian wife and husband, in addition to be settled in Iran, must be physically, psychologically and financially qualified, too. Both of them (at least one of them) must be 30 years old, at least. According to the article 3 of the law referring to protection of without-guardian children, both wife and husband must not be interdictor or afflicted to contagious incurable illnesses.

After physical and psychological qualification, the couple must also be qualified morally. Moreover, they must be generally qualified, too. That is, none of them must be addicted to alcohol, drugs or other kinds of harmful addictions. It is necessary for both wife and husband, or at least one of them to be financially qualified enough in order to be able to manage a normal and ordinary family.

### **The Conditions of the Child**

The child whose guardianship is going to be given to a couple must be less than 12 years old. None of his parents and paternal forefathers must be known or alive. Or, he must be given to public-gaining institutions and none of his parents or grandparents have referred to him for 3 years (article 6 of the law

referring to protection of without-guardian children). But those who have accepted the responsibility of caretaking of a without-guardian child before the verification of this law can be dispensed from the age limitation (under 12) of the child if they want to continue being a guardian.

By defining an age limit, the lawgivers in Iran have aimed at following the child's interests. Firstly, based on psychological studies, during childhood period (under 12) a child can adjust himself with the guardian family with more ease. Secondly, since the goal of caretaking is preparation of more effective training in a family-like situation, the child being under 12 years old will be trained more effectively and more efficiently.

If the parents of the child are found at any conditions, they will be preferred to have their own child's guardian. Such reasoning will be true when the parents have lost their child because of accidental or unpredictable events like flood, war or earthquake.

### **The Effects of the Guardianship Decree**

After issuing the decisive guardianship decree, its contents will be communicated to Register Office. Then the name of the child will be registered in identity documents of the couple and a new identity document including the characteristics of the guardian couple is issued for the child (article 14 of the law pertaining to protection of without-guardian children). This decree necessitates the guardian couple to accept some tasks and responsibilities regarding the child's care & training and alimony payment. It also necessitates the child to obey his new parents.

The defined tasks in guardianship law just refers to the couple and they can't permeate to the couple's relatives. For example, based on the article 1199 of Iran's citizen law: "the preparation of offspring's alimony is the father's responsibility. If he is unable to do that or if he dies, such responsibility will permeate to forefathers". But if the guardian couple dies, the couple's forefathers can't be obliged to pay the alimony of the child under the late couple's guardianship. Since, just the guardian couple takes the responsibility of paying the alimony of the child, the couple's forefathers won't be included. According to the note of article 11 of the above-mentioned law, management of under-guardianship child's properties is delegated to the guardian couple. Unless, the court decides not to do such delegation because delegation is rule-governed and it must not be interfered with the father's or forefather's guardianship.

The effects of the guardianship decree are limited to those mentioned above and there are no other effects. For example, as it has been clarified in article 2 of this law, the child won't be considered as one of the guardian couple's inheritors. Also, such guardianship acceptance doesn't create any kind of respect between the couple, in one hand, and the child, on the other hand. Therefore, although the name of the child is apparently registered in the guardian couple's identity documents and vice-versa and they are introduced as each other's relative, the opposite interpretation can also be proved. For example, when the family's guardian (father) dies and, based on inheritance laws, his properties are distributed between his wife and the under-guardianship child, the deceased's brother and sister along with the deceased's wife are legally known as his inheritors and they will be able to prove that the under-guardianship child hasn't been the deceased's real child. Accordingly, they can deprive him from the deceased's inheritance. Although it can rarely occur, it is not illegal.

### **Disbandment and Cancellation of Guardianship Decree**

Based on some cases predicted in Iran's law, the court can be appealed to disband and cancel the guardianship decree. Article 16 of the guardianship law has limited these cases to three ones as follows:

1. When the guardian couple misbehaves with child. For example, they may lose their moral qualification by annoying and torturing the child or doing dishonorable acts against him. If such guardianship isn't in accordance with the child's interests and expediency, the attorney and the chief of justice in the local juridical area can appeal the court to cancel the guardianship decree.
2. The under-guardianship child may commit some behaviors being intolerable for the guardian couple, or the guardian couple may have lost their physical or financial ability to care the child. In such conditions, the guardian couple can appeal the court to cancel the guardianship decree.
3. If the under-guardianship child grows old enough (he becomes an adolescent person) and doesn't like to be an under-guardianship child any more, he can appeal the court to cancel the guardianship decree. It

is also possible that his own parents find him, or the guardian couple and the child come to such agreement that it's better to cancel the guardianship decree. In such conditions, based on the guardian couple's appeal and the acquired agreement between the couple and the child, the court will cancel the guardianship decree.

In each case, before issuing the cancellation decree for guardianship, the court will try to maintain its previous decree; but whenever investigation of the conditions and the child's interests necessitates cancellation of the guardianship decree, the court will do so. This decree after being decisive is communicated to Register Office to correct the fabricate documents of both sides of the guardianship decree. Accordingly, all effects of the guardianship decree, including obligation to care the child and pay the child's alimony, will be cancelled.

Regarding to above-mentioned cases, some main points as the necessary ones can be concluded:

1. The guardian couple may become the parents of their own offspring after the guardianship decree being issued. Such event doesn't interfere with the guardianship decree.
2. Regarding the couple's financial capability, they can accept the caretaking responsibility of some without-guardianship children. In such conditions, the court will finally decide after investigating the interests of both the family and the under-guardianship children.
3. If the couple divorces each other, the court will decide on the child's guardianship. But the divorce decree doesn't interfere with the guardianship decree. That is, the guardianship decree can keep its own credit even though the couple divorces each other.
4. As it was said, the guardianship decree doesn't interfere with the inheritance distribution law among both sides of the guardian couple and the under-guardianship child. The couple while being alive can grant or denote any types of property to the child and such denotation is not forbidden. But such granted or denoted property can't be given back from the child after the couple's death.

Based on the note 5 of the law pertaining to caretaking of without-guardian children, whenever some amounts of money or some properties are granted or denoted to the under-guardianship child by the guardian couple while being alive and then the child dies, all of those granted money or properties will be given back to the couple by the government.

5. Article 20 of the world agreement of children, written in children's language which has also been signed by Iran, states that the governments must help without-guardian children and they must try to find good families for them, instead of their own lost families.

### **The Phases of Acceptation of Caretaking of Without-Guardian Children by Social Welfare Bureau**

The first phase of acceptance starts from reception department and then social welfare bureau of the city, following the regulations and procedures prepared by assistance of social affairs, continues the phase.

Then, the child is brought to a temporary home in order to make the final decision about his transfer to a family or different homes of social welfare organization.

### **The Conditions of Child Acceptation**

- Death of parents or one of them based on the presented necessary and legal documents.
- Imprisonment of parents or one of them based on juridical or police officials' confirmation.
- The parents' being lost (both of them or one of them) based on juridical or police officials' confirmation.
- Existence of particular conditions in the family that can hurt the child, for example; the existence of extreme misbehaviors (physical, mental, sensational or sexual), or too much ignorance regarding the caretaking of the child.
- The existence of psychological or incurable diseases in the family that can hurt the child's physical and psychological health and also his comprehensive growth and development (based on related experts' confirmation).
- Existence of drug addiction in the family that can endanger the child's physical and psychological health and also his growth and development.

- Other unusual conditions proving the guardian couple's disqualification (based on related experts' confirmation).

### **General Conditions of Reception**

The children that are accepted in this caretaking institution are of two types:

1. Without-guardian children
2. Bad-guardian children

### **Without-Guardian Children**

Without-guardian children refer to those children who have been temperately or permanently deprived from having qualified and effective guardianship.

### **Bad-Guardian Children**

Bad-guardian children refer to those children whose parents (or one of them) can't care of them because of reasons like moral disqualification, economical poverty, incurable diseases, drug addiction, being guilty, being wanted and or being in prison.

After the court issues the disqualification decree for such families or parents, such children are given to the related organizations (firstly to social welfare organization and then to specialized centers).

Additionally, some children are those who have been left by their parents. If the age of the child is very low, he will be firstly given to nursery centers. Then, after getting 7 years old, he will be given to centers in charge of caring without-guardian and bad-guardian children.

Generally, the process of acceptance of without-guardian and bad-guardian children is managed by guardianship department in social welfare organization. After passing the legal phases, the children are sent to related institutions.

### **Necessary Actions after Reception of the Child**

- **The main goal of all after- reception actions:** attempts must aim at returning the child to his own parents (father, mother and paternal ancestors). So, it is necessary to do the following actions:
- Getting introduction letter from juridical authorities and receiving legal medical documents
- Interviewing the child's accompanying person to get necessary information about family conditions of the child's parents and relatives. Such interviews are carried out by social workers. They must prepare some reports from such interviews.
- Making preliminary files and completing data collection forms (documents, reports, pictures, characteristics and psychological assessment).
- Trying to return the child to his own parents by making use of social workers' services and offering financial assistance (monthly assistance and other types of case-based or marginal assistances )to prevent child's separation from his own family.
- Transferring the child to an alternative family (among the child's relatives or the volunteer families), if such returning is not possible, or if the child's parents aren't alive. Of course, such transfer must be based on confirmation and recognition of family-like committee of the province and it also requires juridical officials' decree.
- If none of the above-mentioned solutions can occur, based on the child's conditions, he must be transferred to temporary homes, nursery centers, education home or children & teens home.

### **Types of Caretaking**

1. Caretaking and training in a family:
  - a. Care and the child's life continuance in his own family or one of his relative's family
  - b. Nurse maid
  - c. Adoption
  - d. Family-like

2. Caretaking and training at homes ( boarding centers)
  - a. Children& teens temporary home
  - b. Babies & neonatal home
  - c. Children & teens home
  - d. Children’s independent home

### **Different Forms of Transfer to Society and Family (Clearance):**

1. Transfer of the child to his own family, the nurse maid, caustic relatives, real relatives and volunteer families (family-like).
2. Adoption
3. Independent life and marriage

### **Administrative regulations of boarding centers:**

#### **Article 1**

Based on note 2 of article 1 in the statute of the charity population - in order to care, protect and educate without-guardian childrenand teens- some boarding centers are established in cities or towns to provide such children and teens with high school and professional education since when they are 4 years old up to the end of high school and professional education period.

#### **Article 2**

All centers entitled “the population’s boarding centers” that are active all over the country or they are going to be established later- if necessary- in addition to follow allrules of the country, must administratively follow the rules included in this regulation pack.

#### **Article 3**

The necessity of establishing new boarding centers or disbanding old ones in the capital must be based on suggestions presented by the central population’s CEO and then the approve of board of directors. But in the towns, it is firstly based on the suggestion presented by local board of directors and secondly on approve of central board of directors.

#### **Article 4**

The main duties of the population’s boarding centers are as follows:

- A. Caretaking of the children since when they are 4 years old up to the end of high school education( the children’s age must not be more than 20 years old).
- B. Creation of a suitable educational environment and preparation of necessary care so as to keep physical and psychological health of the population’s children.
- C. Preparation of the children for accepting their social responsibilities in the future.
- D. Training qualified children to be sent to young workers’ group. So, the population’s boarding centers must prepare a list of the qualified children in the last month of an educational year( Khordad in Iran) and send it to the reception & clearance commission in order to make suitable decisions about them.

#### **Article 5**

The main duties of the boarding center’s manager are as follows:

- A. Creation and reinforcement of the relationship between the child and his family and strengthening the related sensational feelings in order to persuade the child to return to his family’s warm atmosphere.
- B. Making careful care and trace regarding the children’s training and educational affairs.
- C. Permanent tracing of the children’s hygienic conditions in order tosupply and control natural physical growth and prevent catching different diseases.
- D. Providing the children with assistance and guidance about their talents while choosing their educational fields of study and their desirable professions.
- E. Permanent contact and communication between the children’s teachers and coaches, in one hand, and the professional supervisors, on the other hand, in order to being aware of the quality of the children’s development and the level of his interest while working.
- F. Setting up the internal programs of the boarding center, whenever needed.
- G. Offering new plans and suggestions to improve policies and perform more modern procedures in the population’s boarding centers.

- H. Performing all regulations, approvals and instructions communicated by the central population.
- I. Cooperating with all governmental agencies and similar charity organizations to use their possibilities and experiences.
- J. Controlling the order and the discipline of the boarding center's environment.
- K. Setting up recreational programs and performing them to help the children use their spare time.

**Article 6**

The capacity of a boarding center in the capital city is specified based on the central population CEO's suggestion and the board of directors' approval. In the other cities and towns, such capacity is specified based on the local board of directors' suggestion and also the CEO's suggestion, in one hand, and then on the central board directors' approval, on the other hand.

**Article 10**

The conditions of accepting children in boarding centers are as follows:

- a. The age must be from entire 4 to the end of high school education.
- b. Lack of financial capability
- c. Being healthy both physically and psychologically

**Article 11**

In addition to the above-mentioned conditions, the followings are also important:

- a. Not having father and mother ( both of them)
- b. Not having father
- c. Not having mother
- d. Father or mother's incurable disease

**Note:** reception of the children having their own parents is always temporary and the boarding center, after removing the care problems, will try to return such children to their own families.

**Article 13**

The population's nursery center prepares a list of children finishing the age 3 and remaining without - guardian, and of the children whose families haven't done anything to return them back, and of the children having passed the age limitation to be deposited to a suitable family, at the end of the last month of each educational year (Khordad in Iran). This list is sent to the commission making final decisions about them. The social workers must prepare a report for each of the child who is going to be sent to boarding center and send these reports to reception & clearance commission. This commission will make decisions based on the sent reports.

**Article 17**

If the child gets infected by a physical or psychological disease during his residence in boarding center, all necessary medical cares including drugs, doctors and hospital will be prepared for him to be recovered completely. Therefore, a boarding center must be equipped with its own particular medical and hygienic equipment. If it lacks them, it must get help from the hospitals and doctors determined by the population and do its best, whenever needed.

**Article 18**

Clearance from boarding centers is done in the following cases:

- a. Getting to the age 20 for the children having father and mother.
- b. Receiving an application from child's father or mother, legal guardian and or a competent person.
- c. Being sure about the child's ability to supply his own livelihoods properly.
- d. Getting marriage
- e. Being morally disqualified.
- f. Being infected by an incurable psychological or physical disease according to the diagnosis of the population's trustworthy doctor.
- g. Lack of monthly payments by the parents or the legal guardian and or the competent person and official (if the monthly amount has been determined by the commission).

**Note 1:**

If the child is both without-guardian and qualified enough, he will be introduced to young workers' center.

**Note 2:**

The authorities of boarding centers are responsible for getting contact with the parents, the guardian, the legal guardian and or any competent persons or officials introducing the child to the center. They do such contacts by social workers. In short, by such contacts, they try to clear the child sooner than the defined deadline.

**Note 22:**

The children working during the vacation in or out of the boarding center must pay %5 of their income to the boarding center. They must receive a receipt for each payment. Such employment depends on the boarding authorities' agreement.

**Note 23:**

The incomes acquired from the children's working and other types of incomes must be collected based on financial regulations of the population and then they must be deposited to the population's bank account. According to the related regulations, the financial reports pertaining to these deposits must be forwarded to the central office.

**Without-Guardianship in Iran (types of systems)**

The important duty of social welfare office starts from reception and acceptance of the responsibility of caretaking of a child and ends in the formation of the child's independent life. Types of procedures applied to care and train without-guardian children in Iran are as follows (based on their priorities).

**Adoption**

**Temporary Trustee:** making use of interested and volunteer persons and families for caretaking of the children.

**Family-like environment:** three to four years old children will live with families having their own children. The number of family members must be less than 5. This type of caretaking must be along with social workers' supervision and social welfare office's assistances.

**Children's home:** 10 to 14 children are given to a committed family in which the without-guardian children will be behaved like other members. A contract on livelihoods will be made between the social welfare office and the family.

**Conclusion**

The applicant couples settled in Iran must write their application in libeled papers and deliver to the general court of their local area. Both sides of a couple must jointly write and sign the guardianship application. The reason of such arrangement is that both sides of a couple must be completely in agreement with each other regarding acceptance of a child's guardianship. That is, both of them must be willing to accept a child's guardianship. The court - after receiving the application, investigating the couple's conditions and verifying the qualification of the couple - will issue a 6-month guardianship decree and the couple will become the guardian of the child for 6 months tentatively. If the disqualification of the couple is proved for the couple, or the couple gives up accepting the guardianship of the child, the court will cancel the issued decree. At the end of the tentative period, the court will issue the decisive guardianship decree if the applicant couple confidently guarantees the expenses of the child's life and education until when the child become an adolescent. The quality and type of this expense guarantee and confidence will depend on the court's decisions: for example, the couple can deposit a fixed amount of money for the child in his own account in a bank and then determine a representative person who can supply all expenses of the child's life and education from that account after the death of the couple. After issuing the decisive guardianship decree, the contents of the decree will be communicated to Register Office so as to register the child's name in the couple's identity documents and also issue the child's new identity document including the names of his new parents (article 14 of the law referring to protection of without-guardian children). According to this decree, some duties and responsibilities related to caretaking, education and alimony payment will be made for the guardian couple. This decree also will determine some duties for the children, for example, they must completely obey their new parents. The determined duties and responsibilities in the guardianship law must only be done by the guardian couple. Such duties and responsibilities don't propagate to the couple's relatives. For example, based on article 1199 of Iran's civic law, "supplying the children's alimony is the father's



responsibility. If the father dies or if he can't supply the alimony, the paternal forefathers will be responsible for supplying the children's alimony." But if the guardian couple dies, paternal forefathers of the couple will not be responsible for supplying the under-guardianship child's alimony because the under-guardianship child's alimony payment is only the guardian couple's responsibility. Based on the note of article 11 of the above-mentioned law, the responsibility of managing the properties of under-guardianship child is assigned to the guardian couple, unless the court makes other decisions; because representativeness must be rule-governed and legal and it must not be mistaken with father or forefathers' guardianship.

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