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LEGAL REGULATION PROBLEMS OF CHILDREN'S
OBLIGATIONS TO MAINTAIN THEIR PARENTS: CASE OF
LITHUANIA

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Abstract

The relevance of this study. Relevance of the topic. Children's support for parents is understood as the performance of their duties by providing parents with the support for their needs. This duty of children is a personal obligation that cannot be transferred to other persons and means that children must maintain support for their parents themselves. The right of parents to maintenance in Lithuanian law is linked to two mandatory conditions: 1) the parents are incapacitated for work due to disability, retirement age or illness (or other reasons); 2) the income or property received by the parents is not sufficient for subsistence, therefore they need maintenance. **The main problem.** The obligation of children to maintain the parents in need of their support is absolute, if it is established that the income received by the parents or their property is not sufficient to live and the parents have taken proper care of their children in the past and avoided improper performance of their duties. **The aim of this study** to analyze the legal problems related with the obligation of children to maintain their parents. **The following tasks** were set for the defined goal: to reveal the concept of children's duty to maintain their support for parents; to examine the essential aspects of the legal regulation of the duty of children to maintain the necessary support for their parents; to analyze the problems of legal regulation of the duty of children to maintain the parents necessary for their support in court practice. **The paper concluded** Establishing parental responsibility for children before death runs counter to the principles of equality, justice, proportionality and reasonableness, as the burden imposed is not equivalent to parental responsibility for children before adulthood. The responsible authorities do not take the initiative to protect the rights of obsolete parents. **The novelty** the law does not establish criteria for who should provide maintenance in order of priority - a spouse or an adult child. Neither the Constitution nor the Civil Code clarifies the concepts of guardianship and care. The criterion of incapacity for work established by law limits parents' access to maintenance. **As the result** to enable parents in need of maintenance who have not received maintenance from their adult children for more than a month to obtain maintenance from a

public authority, which could subsequently recover the amounts paid from the adult children for whom maintenance has been imposed. **The used methodology** is scientific literature analysis, analytical, comparative and descriptive methods. **Keywords:** parents and their children, child's duties to support their parents, support, family law.

INTRODUCTION

Statement of the problem.

The obligation of children to maintain the parents in need of their support is absolute, if it is established that the income received by the parents or their property is not sufficient to live and the parents have taken proper care of their children in the past and avoided improper performance of their duties.

Relevance of the topic. Relevance of the topic. Children's support for parents is understood as the performance of their duties by providing parents with the support for their needs. This duty of children is a personal obligation that cannot be transferred to other persons and means that children must maintain support for their parents themselves. The right of parents to maintenance in Lithuanian law is linked to two mandatory conditions: 1) the parents are incapacitated for work due to disability, retirement age or illness (or other reasons); 2) the income or property received by the parents is not sufficient for subsistence, therefore they need maintenance.

The aim of the research to analyze the legal problems related with the obligation of children to maintain their parents.

Results

The concept of the duty of an adult child to maintain parents

The responsibilities of children are formed through the prism of the general rights and responsibilities of

each person. If a child had to respect the rights of another person before reaching the age of majority, this obligation does not disappear when he or she reaches the age of majority. This duty is transferred to a higher level, where liability for non-performance or improper performance of this duty also arises [1]. Paragraph 4 of Article 38 of the Constitution of Lithuania imperatively establishes that the duty of children is to respect the care of their parents in old age and to preserve their legacy [2]. However, the Constitution does not define the term "patronage". The Constitution does not specify how specific children must behave in order to implement this constitutional provision [3]. In the glossary of terms, the word patronize is interpreted as storing. This constitutional duty of children is transferred and detailed in Article 3.205 of the CC, which states that: Adult children must maintain and take care of their incapacitated and supportive parents [4]. It should be noted that by transferring this duty from the primary source of law to the legal act regulating specific civil legal relations - the CC, the legislator thus leaves an indefinite duty - to "take care". In the glossary of terms, the word caring is explained as having care, pursuing what to get, doing, handling: caring for food, health, and more. Such vagueness of the concepts enshrined in the legal act, non-specification to the desired behavior, gives the right to interpret them in

different ways, according to the meaning of the desired result. As voluntary non-compliance with this obligation is subject to coercive measures [3], such ambiguity, uncertainty, vagueness in the legislation should not be left.

From a linguistic point of view, "guardianship" and "care" are actions that can be carried out through simple, day-to-day activities or work, such as providing financial support, care, guardianship, care, domestic help, and so on. From a purely linguistic point of view, this duty of care cannot be regarded as a purely property obligation since care does not in itself imply the provision of financial support. Both actions can also mean non-pecuniary obligations - the provision of all kinds of assistance, including property support. Such uncertainty in the Constitution may cause certain problems in order to properly interpret the Constitution and to implement its norms, V. Grigauskas notes. These duties of adult children enshrined in the Constitution and the CC indicate not only the care and custody of their parents, but there is also a material duty - to provide maintenance to parents who need their support [5]. To comply with any obligations, it is necessary to establish sanctions (consequences), because only in this way the public welfare is maintained and ensured. A person does not acquire a sense of responsibility until he or she realizes the consequences of his or her inaction or unlawful action.

In summary, it can be stated that first of all, the balance of mutual rights and responsibilities of family

members is strengthened by the perception of family unity and the mutual responsibility of its members. An essential factor in determining the existence or absence of a relationship between parents and their children is the degree of closeness between individuals. It should be noted that children to whom their parents provided material support before the age of majority or longer should provide the necessary support to their parents. However, it is clear that the provision that children must take care of their parents is more often seen as moral than legal. However, ensuring this responsibility for adult children should receive more attention from public authorities than has been the case to date. The state, like every citizen, has responsibilities, and the relevant public authorities must, in certain circumstances, assist each person in exercising his or her rights and defending his or her legitimate interests, in this case, parents who are obsolete and in need of support.

Basics of children's duties in accordance with the procedure established by legal acts

In Lithuania, as in many other countries, positive law establishes a legal obligation to provide maintenance to the elderly, assigning such an obligation to the entities (family members) established by law. However, the CC does not impose a direct obligation to maintain elderly family members and such regulation is based on the fact that age does not in itself mean a difficult material situation, which is considered to be completely correct. The maintenance obligation is primarily linked to the

existence of its necessity, which means that a shortfall in existing income and assets must be established in fact, only then is the need for maintenance established[5].

Articles 3.205-3.206 of the CC of the Republic of Lithuania regulate the duty of children to maintain their parents. Article 3.205 of the CC specifies the duty of care, but does not define the concept of care itself, which allows the interpretation of this provision of the law and at the same time does not allow the compulsory fulfillment of this duty. As caring itself can cover a rather wide range of actions, V. Grigauskas forms the conclusion that, this norm of the CC does not sufficiently ensure the constitutional duty to take care and take care of one's parents[4].

The obligation of children to maintain their parents is also universally recognized in foreign law [6], for example in Germany (Article 161 of the German Civil Code) and France (Article 205 of the French Civil Code) [7] it includes a general obligation to maintain direct relatives, in our neighboring countries Latvia[8], Estonia, children have a duty to support not only parents but also grandparents (the latter also have a reverse duty) if they need support.

Under section 32 of the Family Law Act of Canada, children who have reached the age of majority must maintain their parents if necessary. However, there are two conditions - the parent must have cared for or provided support for the child, and support is limited to what the child can provide. This is a rarely contested section of the Family Law[9].

Under current U.S. law, even a minor child may be required to maintain their parents in certain circumstances. The criteria of the person's dependent need and the person's ability to support must be maintained. A parent who requires maintenance from a child must prove their need and the child's ability to support, but parents are subject to a stricter need criterion than children[10].

For example, in the U.S. case of *Smith v. Mutual and Federal Co. Ltd*, in 1998, the court emphasized that in order to prove the need for parental maintenance from children, a strict criterion of necessity must be established[11]. For claimants to succeed, they must prove their deprivation and inability to support themselves. The need for maintenance is defined as a special necessity or lack of basic necessities. In another U.S. court judgment, *Oosthuizen v. Stanley*, 1938 AD 322 328, the court referred to "the quality and condition of eligible persons[12]." In the same case, it was noted that where the parents are to be dependent on the children, the needs of not only him but also his dependents must be considered.

In another U.S. court judgment in *Van Vuuren v. Sam* 1972 2 SA 633 (A) 642, Rabie JA referred to the same criterion, but stressed that the support required by parents must be limited to basic needs [13].

Laws governing children's responsibilities and duties to parents often require adult children to maintain their elderly and disabled parents. Some states extend this

obligation to close relatives. This responsibility can be implemented by law or morally promoted as part of a religion or culture[14].

U.S. law imposes an obligation on adult children to care for their needy parents when the parents are unable to support and take care of themselves[15]. Support typically includes costs related to food, clothing, shelter, and medical needs. Although rare, the "duty of care" can be extended to include needy relatives. Since 2016 30 states have responsibility laws for children. However, there is no uniformity in state laws as to how or for how long adult children must provide support and maintenance to their needy parents[16]. In some states, government agencies have enforced statutes, while in others, private entities, such as nursing homes, have filed lawsuits against adult children to recover the cost of caring for elderly parents. In addition to non-performance of pecuniary obligations, the duty of care includes a legal requirement to avoid any harm to another person because of acts or omissions.

The basis for the emergence of the obligation of children to maintain incapacitated parents

In Lithuania, the obligation of adult children to maintain incapacitated parents arises based on law and this obligation cannot be waived. This obligation, although not property, is of a personal nature and cannot be transferred to other persons. This obligation arises from the relevant composition of the legal

facts. The composition of the legal facts which give rise to an obligation on the children to pay maintenance to their parents is the event of birth from those parents and, of course, the legal registration of that fact, and the children must be adults to perform their duties to their parents. maintain them, provide them with support [4]. There is no doubt that this obligation also applies to adopted children and adoptive parents. However, unlike in the previous Article 96 of the CCC, at present the current CC does not impose an obligation on grandchildren who are unable to work and need support for their grandchildren if the latter have not been adopted. Under the current regulations, there is an inherent maintenance obligation between mayors and stepfathers, so mayors cannot claim back the funds they have transferred to their stepfather or stepmother as maintenance for the latter.

According to Article 6.128 of the CC. Paragraph 1, the maintenance obligation for parents is a personal obligation and ends with the death of an adult child who was required to maintain the parents. Unlike in the case of maintenance of former spouses, the law does not stipulate that the obligation to provide maintenance passes to the heirs of the deceased but provides in the law of succession for the provision of certain guarantees to support parents in need. A similar legal situation exists in German [17] and French law [18]. The law of most countries governs the maintenance of parents from children, but in Finland [19] or Ireland [20], for

example, parents do not have the right to maintain their child. In Ireland, maintenance can only be awarded from your current or former spouse. The right to bring a court action according to the place of residence of the defendant (i.e., children) or the plaintiff (i.e., parents, prosecutor, etc.) belongs to those parents who need maintenance and the prosecutor or state and municipal institutions in the public interest. If maintenance is not paid voluntarily to parents who have been declared incapacitated but have the right to bring an action for maintenance, the guardian or prosecutor is entitled to bring such an action in the public interest [21].

In analyzing this topic, unfortunately, there have been no cases in which at least one prosecutor defending the public interest or the state and municipal authorities responsible for the rights and legitimate interests of socially protected persons has brought an action for maintenance against a person who is unable to work and is unable to take proper care of himself. While there are enough examples in society where such intervention by the authorities would be useful and necessary, and sometimes even vital, because so far old, self-reliant people do not (or very rarely) go to court for maintenance from children who are so the duties are not performed voluntarily, as it seems that it is immoral to go to court, that the children have forgotten them and do not care for them. Therefore, if the relevant authorities take the initiative in such situations, direct litigation between the immediate family

members would be avoided and the persons in need of support would be taken care of. When deciding on the award of maintenance, the court must base its amount on the criteria of good morals and justice, reasonableness and fairness provided for in Article 1.5 (1) of the CC, as very frequently analyzed cases right and smart [4].

Opportunities and problems in the implementation of children's responsibilities to parents

Analyzing the case law of Lithuanian courts, it is noticed that the assessment of the factual circumstances of the case reveals the facts that parents raising a maintenance claim did not take care of them, did not provide maintenance, did not raise them. Article 3.206 of the CC provides for the right of a court to release adult children from the obligation to maintain their incapacitated parents if it establishes that the parents did not actually perform their duties to the children before reaching the age of majority[4]. The provisions of Article 3.206 of the CC provide the court with the right to refuse to award maintenance to parents of their adult children if the case reveals that: 1) Parents avoided performing their duties to children until adulthood; 2) Children were permanently separated from them through the fault of their parents. The Supreme Court of Lithuania has ruled on parental maintenance that Art. 6 d. Constitution of the Republic of Lithuania and Art. The CC stipulates that children must respect their parents, provide them with care in old age and respect their parents'

inheritance[4]. This constitutional duty establishes the obligation of children to take care of their parents by supporting them and providing maintenance that ensures their needs. In the absence of voluntary fulfillment of this obligation by the children, the parental right to maintenance is examined in court, the amount of maintenance required from the parents is awarded and recovered from the adult child, taking into account his or her financial situation. The provision of maintenance support to parents in need is compensatory in nature, which is like a remuneration to parents for their care and care for children. This obligation is a personal obligation, meaning that individuals have individual responsibility for providing maintenance. This obligation is not transferable. The obligation to provide maintenance to their incapacitated and supportable parents is incumbent on their adult children. However, if the children have been separated from the parents through no fault of the parents (albeit permanently), then the obligation to maintain the parents in

need of their support remains with the children. V. Mikelenas and other authors point out that “this norm cannot be applied if the children were not maintained through no fault of the parents themselves, i.e. if the parents have failed to fulfill their obligations to the children for objective reasons, such as illness, incapacity, difficult financial situation”. If the above-mentioned circumstances become clear and they are substantiated by evidence, the norm of Article 3.206 of the CC is not applied and children are not released from duty, but it should be noted that all these named circumstances must not have been caused by the parents.

Spanish [23] civil law also provides that children have a maintenance obligation towards their parents in need of support, but it is important that a person entitled to maintenance who needs support does not have such a situation through his or her fault. The guilt aspect, in maintenance cases, is also emphasized in Italy[23].

Conclusions

1. The fulfillment of the duties and legitimate expectations of individuals is possible through the recognition and fulfillment of the duties imposed. The unity of the rights and responsibilities of parents and children arises from the mutual efforts of the parties, arising more from solidarity than from absoluteness, to ensure the exercise of their rights and responsibilities based on equal exchanges.

2. The law does not establish criteria for who should provide maintenance in order of priority - a spouse or an adult child. Neither the Constitution nor the Civil Code clarifies the concepts of guardianship and care. The criterion of incapacity for work established by law limits parents' access to maintenance. The only method of maintenance is to limit the fulfillment of children's responsibilities to parents and the parents' ability to receive maintenance that meets real needs and possibilities.

3. The imposition of parental responsibility on children before death is contrary to the principles of equality, justice, proportionality, and reasonableness, as the burden imposed is not equivalent to parental responsibility for children before adulthood. The responsible authorities do not take the initiative to protect the rights of obsolete parents.

4. The amount of maintenance must also be considered by the court, taking into account the marital and property situation of the children and parents, as well as other circumstances relevant to the case, the maintenance obligation of all adult children of that parent brought to all or only one of the children.

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ПРОБЛЕМИ ПРАВОВОГО РЕГУЛЮВАННЯ ЩОДО ОBOB'ЯЗКІВ ДІТЕЙ УТРИМУВАТИ БАТЬКІВ: ПРИКЛАД ЛИТВИ

Анотація

Актуальність даного дослідження. Під підтримкою батьків розуміють обов'язки дітей утримувати батьків шляхом надання їм підтримки в їх потребах. Цей обов'язок дітей є особистим обов'язком, який не може бути переданий іншим особам, і означає, що діти повинні самі підтримувати своїх батьків. Право батьків на утримання в литовському законодавстві пов'язано з двома обов'язковими умовами: 1) батьки непрацездатні через інвалідність, пенсійний вік або хвороби (або з інших причин); 2) доходів або майна, отриманого батьками, недостатнього для проживання, тому вони потребують у їх утриманні. Головна проблема. Обов'язок дітей утримувати батьків, які потребують їх підтримки, є абсолютною, якщо встановлено, що доходів, отриманих батьками або їх власності, недостатньо для життя, і батьки належним чином дбали про своїх дітей у минулому і не мали неналежного виконання своїх обов'язків.

Мета даного дослідження є аналіз правових проблем, пов'язаних з обов'язком дітей утримувати своїх батьків. Для поставленої мети були поставлені наступні завдання: розкрити поняття обов'язку дітей підтримувати їх батьків; вивчити істотні аспекти правового регулювання обов'язків дітей підтримувати своїх батьків; проаналізувати проблеми правового регулювання обов'язків дітей щодо утримання батьків, необхідних для їх підтримки в судовій практиці. У статті робиться висновок про встановлення

батьківської відповідальності за дітей перед смертю, що суперечить принципам рівності, справедливості, пропорційності та розумності, оскільки покладний тягар не еквівалентний батьківській відповідальності за дітей до досягнення ними повноліття. Відповідальні органи не виявляють ініціативу щодо захисту прав застарілих батьків. Новизна закону не встановлює критеріїв того, хто повинен забезпечувати утримання у пріоритетному порядку - дружина або доросла дитина. Ні Конституція, ні Цивільний кодекс не роз'яснюють поняття опіки та піклування. Встановлений законом критерій непрацездатності обмежує доступ батьків до утримання.

В результаті це дає можливість батькам, які потребують утримання, які не отримували аліменти від своїх дорослих дітей більше місяця, отримувати аліменти від державного органу, який згодом міг би стягнути суми, виплачені з дорослих дітей, на яких були накладені аліменти. Використовувана методологія - аналіз наукової літератури, аналітичні, порівняльні та описові методи.

Ключові слова: батьки, діти, обов'язки дитини щодо утримання батьків, підтримка, сімейне право.

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ПРОБЛЕМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ ОБЯЗАННОСТЕЙ ДЕТЕЙ СОДЕРЖАТЬ РОДИТЕЛЕЙ: ПРИМЕР ЛИТВЫ

Аннотация

Актуальность данного исследования. Под поддержкой родителей родители понимают выполнение ими своих обязанностей путем оказания родителям поддержки в их потребностях. Эта обязанность детей является личной обязанностью, которая не может быть передана другим лицам, и означает, что дети должны сами поддерживать своих родителей. Право родителей на содержание в литовском законодательстве связано с двумя обязательными условиями: 1) родители нетрудоспособны из-за инвалидности, пенсионного возраста или болезни (или по другим причинам); 2) доходов или имущества, полученного родителями, недостаточно для проживания, поэтому они нуждаются в содержании. **Главная проблема.** Обязанность детей содержать родителей, нуждающихся в их поддержке, является абсолютной, если установлено, что доходов, полученных родителями или их собственности, недостаточно для жизни, и родители должным образом заботились о своих детях в прошлом и избегали ненадлежащее исполнение своих обязанностей. **Цель данного исследования** является анализ правовых проблем, связанных с обязанностью детей содержать своих родителей. Для поставленной цели были поставлены **следующие задачи:** раскрыть понятие долга детей поддерживать их родителей; изучить существенные аспекты правового регулирования обязанности детей поддерживать своих родителей; проанализировать проблемы правового регулирования обязанности детей по содержанию родителей, необходимых для их поддержки в судебной практике. В документе делается вывод об установлении родительской ответственности за детей

перед смертью, что противоречит принципам равенства, справедливости, соразмерности и разумности, поскольку возложенное бремя не эквивалентно родительской ответственности за детей до достижения ими совершеннолетия. Ответственные органы не проявляют инициативу по защите прав устаревших родителей. Новизна закона не устанавливает критериев того, кто должен обеспечивать содержание в приоритетном порядке - супруга или взрослый ребенок. Ни Конституция, ни Гражданский кодекс не разъясняют понятия опеки и попечительства. Установленный законом критерий нетрудоспособности ограничивает доступ родителей к содержанию. **В результате** это дает возможность родителям, нуждающимся в содержании, которые не получали алименты от своих взрослых детей более месяца, получать алименты от государственного органа, который впоследствии мог бы взыскать суммы, выплаченные со взрослых детей, на которых были наложены алименты. Используемая методология - анализ научной литературы, аналитические, сравнительные и описательные методы. **Ключевые слова:** родители, дети, обязанности ребенка по содержанию родителей, поддержка, семейное право.

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