

CHILD MAINTENANCE: SEVERAL TOPICAL THEORETICAL AND PRACTICAL ASPECTS

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Abstract. *The Constitution of the Republic of Lithuania¹ determines that both parents have to maintain their minors, while the state has to establish conditions under which parents would be able to do their duties, i.e. undertakes responsibility to maintain the children who lack the maintenance from their parents. Latter obligations are concretized in the Civil Code of the Republic of Lithuania² (3.192–3.204 art.). It also anticipates the principles under which the child's maintenance should be provided, its forms, size criteria and the definition of its use and control. There is a theory that when parents are not able to fully perform the duty to maintain their children, the guarantees of the child's constitutional rights oblige the State to secure quick reception of necessary financial support from other resources. Considering the existing social, economic, legal and other changes and sustaining both the analysis of court practice and doctrine attitude the article analyses present topicality concerning children maintenance, i.e. correspondence between child's needs, parent's wealth status and the prosecution of court's decision, the correlation of state's duty to children maintenance and parent's responsibility, the peculiarities of majors maintenance.*

Keywords: *child maintenance, parental responsibility, support of studying child.*

1 Constitution of the Republic of Lithuania, 1993. LWUP edition, page 25, part 6 art. 38, 39.

2 Civil Code of the Republic of Lithuania. *Official Gazette*. 2000, No.74.

Introduction

Exceptional situation of the children determines the necessity to clearly define the content of the children rights, to secure that positive law includes satisfactory content of latter rights and that legal procedures are created. Hereof would secure the possibility of each child to realize his/her rights.³ One of the essential and natural rights of children is a child's right for maintenance. For a long time it was a norm for the society to think that a child can realise his/her financial rights only when he attains his majority. Until this fact his/her financial rights might be used by parents at their discretion. In other words, according to the existing Marriage and Family Code⁴, until 2001 child's rights were the derivatives of the rights of his/her parents⁵. Therefore, according to the court practice, in case when parents had lived separately, the maintenance had been adjudged to the parent with whom the child's residence had been determined. The Civil Code which came in force on the 1st of July, 2001, has clearly and in no uncertain terms distinguished child's rights from parent's rights and obliged the court to treat the child as the subject of obligatory legal maintenance (creditor) and his parents as the executives of child property who manage the property in conformity of the usufructuary rights.⁶

After the analysis of national court practice, it was noticed that SCL has not once emphasized that parent's right to maintain the child is absolute, personal (*intuitu personae*) pecuniary obligation which arises from natural liability to be responsible for children situation until they attain the majority. This personal pecuniary right cannot be refused⁷ or transferred to other persons⁸, not even to the parent the child resides with.⁹ The appropriate implementation of this right meets vital child's needs and the realization of child's rights. Thus, the right for child's maintenance is a priority.

Rates of the cases on the maintenance of the underage and their increase indicate obvious relevance to analyse such issues and identify arising problems.¹⁰ In 2005 court

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- 3 Šimonis, M.; Januškienė, J. Vaikų teisės Lietuvos Respublikos teisės sistemoje [Children Rights in the Law System of Lithuanian Republic]. *Teisės problemos*. 2001, 4: 63.
 - 4 Marriage and Family Code of the Republic of Lithuania. Vilnius: Ministry of Justice edition, 1990.
 - 5 More information in: Stripeikienė, J. Vaiko, kaip savarankiško teisės subjekto, problema [Problem of Child as self-dependent subject of law]. *Jurisprudencija*. 2003, 42(34).
 - 6 More information in Sagatys, G. Tėvų pareiga išlaikyti nepilnamečius vaikus: aktualūs subjektų klausimai [Topical Issues of Children Support Obligation Entities]. *Jurisprudencija*. 2005, 71(63): 120–126.
 - 7 Considering that maintenance obligation is individual, personal and that another subject with the same liability has no right to dismiss a parent who has a personal maintenance obligation from its implementation, since the part 1 article 3.159 of CC which prohibits such refusal or exemption from prosecution of legal obligations will be violated. Ruling of SCL in civil case of *L.S. v. V.S.* No. 3K-3-236/2006 on 29 March 2006.
 - 8 Altman, S. A Theory of Child Support. *International Journal of Law, Policy and the Family*. 2003, 17(2): 173–210.
 - 9 Ruling of SCL in civil case of *L.B. v. V.B.* No. 3K-3-369/2003 on 19 March 2003; Ruling of SCL in civil case of *V.S. v. M.S.* No. 3K-3-259/2004 on 26 April 2004; Ruling of SCL in civil case of *D.A. v. R.A.* No. 3K-3-307/2006 on 24 May 2006.
 - 10 For example, in 2004, 3896 maintenance cases had been analyzed, in 2005 – 6854, in 2006 – 6647, in 2007 – 7263, in 2008 – 8025, in 2009 – 8503, in 2010 – 8301. Information of National Courts Administration. [interactive]. [accessed 09-02-2012]. <<http://www.teismai.lt/lt/teismai/statistika>>.

practice was generalized in order to clarify whether courts apply material and procedural legal norms correctly while analysing civil cases and invoking laws regulating parent's duty to maintain their children.¹¹ In general aspects the problems of legal regulation of children maintenance are approached in juridical scientific literature of Lithuania.¹² On the other hand, considering present family situation in Lithuania, especially negative processes of its development¹³, there is a theory that the nature (totality of circumstances) of cases on child's maintenance gradually alters. For example, more often parents are living in separate countries where living standards differ, each year more and more people gain the status of unemployed¹⁴, therefore they do not have enough incomes themselves. Thus, the prosecution of court order becomes complicated. Moreover, after the modification of the article 3.194 of the Civil Code, which was fundamental for the assumptions to demand the maintenance after attaining majority,¹⁵ many interpretations of the latter norm appeared. Whereas, the order of the Constitutional Court of the Republic of Lithuania¹⁶ has evoked different cases on application of this norm in court practice.

The importance of the appropriate realization of child's maintenance is highlighted at European level. The collaboration of states is pursued in uniforming¹⁷ family law (especially seeking to secure the protection of children rights) where a number of international legal acts include the issue on the right for maintenance, for example, Hague Convention of 2 October 1973 on law application to maintenance obligations (ratified by Seimas on 23 March 2001 by legal acts no. IX-229);¹⁸ Hague Convention of 2 October 1973 on recognition and enforcement of decisions relating to maintenance obligations

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- 11 Ruling of the Senate of the Supreme Court of Lithuania No. 54 on 23 June 2005 "On the implementation of the law regulating parental obligation to maintain materially their infant children in court practice". *Case Law*. 2005, No. 23.
- 12 Sagatys, G., *supra* note 6; Sagatys, G. Aktualūs vaiko išlaikymo dydžio nustatymo klausimai [Urgent Questions to Establishing the Size of Child's Upkeep]. *Jurisprudencija*. 2005, 67(59): 23–33.
- 13 Such processes could include birth decrease, increase of divorces and a number of children living with one of the parents or without parents at all, impairment of their material state, the increase of emigration rates and etc.
- 14 In 2005 there were registered 163.9 thousand of unemployed, in 2006 – 160.8 thousand, in 2007 – 166.7 thousand, in 2008 – 214.2 thousand, in 2009 – 369.4 thousand, and in 2010 – 303.1 thousand [interactive]. [accessed 19-01-2012]. <http://www.ldb.lt/Informacija/Apie/Documents/Ataskaitos/Darbo_rinka_skaiciais_2005-2010.pdf>.
- 15 Act on substitution of the article 3.194 of the Civil Code of the Republic of Lithuania. *Official Gazette*. 2004, No. 171-6319.
- 16 Ruling of the Constitutional Court of the Republic of Lithuania of 7 June 2007 Regarding the compliance of paragraph 3 (wording of 11 November 2004) of Article 3.194 of the Civil Code of the Republic of Lithuania with the Constitution of the Republic of Lithuania [interactive]. [accessed 10-01-2012]. <<http://www.lrkt.lt/dokumentai/2007/n070607.html>>.
- 17 Annually the issue on increase and adjustment of Family Law, as a unit of private law overall, attains major attention: bilateral and multilateral agreements are signed, fundamental principles and provisions are enunciated. More information in: Boele-Woelki, K. *Perspectives for the Unification and Harmonisation of Family Law in Europe*. Antwerp-Oxford: Intersentia, 2003; Antokolskaja, M. *Harmonisation of Family Law in Europe: a Historical Perspective*. Antwerp-Oxford: Intersentia, 2006.
- 18 Hague Convention of 2 October 1973 on law application to maintenance obligations. *Official Gazette*. 2001, No. 38-1291.

(validated on 2 April 2002 by Seimas legal Act No. IX-831);¹⁹ Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Commission Regulation (EC) No. 1496/2002 of 21 August 2002 partly replacing Council Regulation (EC) No. 44/2001; Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations²⁰ (the latter is applicable since June 2011 and replaces Brussels I Regulation²¹ concerning family rights to maintenance obligations). The topicality of child maintenance is emphasized not only in European and international level passing new legal acts, but also seeking to form institutions responsible for effective prosecution of transnational court decisions.²²

1. Commensurate Between the Needs of the Child and Financial Status of his Parents and Appropriate Enforcement of Judgement

It is thought that maintenance right as such in general is not recognized as a new legal institution, however, the essential field remains child maintenance. The perspectives of its development presuppose the establishment of standard methods (specific models/methods) and the establishment of fixed allowance which secures maintenance considering debtors (parent living separately from the children) contribution to child maintenance.²³ There should be mentioned that the methodology of the establishment of child maintenance allowance differs in various countries (for example, percentage of income system, system of commensurate between needs and potential, system of expense distribution and other), and there is no unambiguous opinions concerning which system is the most positive and best to secure the satisfaction of child needs. Besides, in respect with the intensification of persons free movement in EU, more often the amount of child maintenance is related to the expenses of each parent for communication and participation in child's education. And though some legal systems deny the connection

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- 19 Hague Convention of 2 October 1973 on recognition and enforcement of decisions relating to maintenance obligations. *Official Gazette*. 2002, No. 51-1934.
- 20 Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations [interactive]. [accessed 19-01-2012]. <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:007:0001:01:LT:HTML>>.
- 21 The regulation (EC) No. 44/2001 of 22 December, 2000 on jurisdiction and the recognition and enforcements of judgements in civil and commercial matters [interactive]. [accessed 19-01-2012]. <<http://www3.lrs.lt/c-bin/eu/preps2?Condition1=40948&Condition2>>.
- 22 Curry-Sumner, I. Transnational Recovery of Child Maintenance in Europe: the Future is Bright, the Future is Central Authorities [interactive]. [accessed 10-01-2012]. <<http://www.law.muni.cz/ednici/Days-of-public-law/files/pdf/mep/Curry-Sumner.pdf>>.
- 23 Martiny, D. Current Developments in the National Laws of Maintenance: a comparative analysis. *The material of the Annual Conference on European Family Law on 29-30 September 2011 in Trier (Germany)*.

between child maintenance and communication with him (number of contact hours), in reality this correlation exists beyond the debates.²⁴ The identification of the intensity of the connection between allowance and contact with the child is not typical for the system of “commensurate between needs and potential” applicable in Lithuania since 1 July 2001²⁵, though manifestations of indirect format might be found in court practice.²⁶ On the other hand, it is thought that in certain cases (for example, when one of the parents is living outside the Republic of Lithuania and the location of his intercourse with the child is determined outside child residence, i.e. 2 months in summer, during child’s winter and spring holidays) the modification of maintenance would be expedient determining the conditions of maintenance allowance distribution in subject to the duration of intercourse and child attendance.

In several latter years cases on maintenance bear the elements of amount decrease or increase. These requirements usually are based on the impairment of financial situation (debtor loses the job or additional resource of income). The motivation in essence is the change of economic situation in the country, for example, growth of prices and similar. In disputed over child maintenance courts estimate child needs and financial situation of both parents and follow the principle of underlying protection of child rights and interests, the principles of honesty and etc. Both parents have procedural obligations to provide the court with evidence about their possibilities to maintain the children. Considering the fact that the concept of child needs is quite extensive, legal doctrine divides them into general and individual. General needs are necessary conditions for child’s development: food, clothes, accommodation, right to health protection, possibility to get education, profession, right to appropriate rest, leisure, cultural education (31 article of Convention on the Rights of the Child, 16 article of Children’s Rights Protection Law). Individual needs are characteristic to concrete child, i.e. considering child possibilities and wishes, material conditions should capacitate the child to participate in various additional recreational activities, sports, cultural events, theatres, concerts, summer camps, obtain all necessary means to develop his talent or just simply get engaged in play.²⁷ Each individual need should be assessed separately. However, attention should be drawn to the fact that individual needs might be considered as an extra determinant in defining the maintenance²⁸, i.e. the court has to determine such allowance which would not violate

24 Rešetar, B. The Link Between Child Maintenance and Contact. *The Future of Family Property in Europe*. European Family Law Series vol. 29. Boele-Woelki, K.; Miles, J.; Scherpe, J. M. (eds.). Antwerp-Oxford-Portland: Intersentia, 2011, p. 279–295.

25 Marriage and Family Code, valid until 1 July 2001, had embedded the system of interest-bearing part of income, i.e. ¼ (or 25 per cent) of all received incomes for one child, 1/3 of all received incomes for two children and etc. Quod vide. Marriage and family Code of the Republic of Lithuania. *Official Gazette*. 1969, No. 21-186.

26 For example, SCL stated that constant income of low value which are intended to satisfy necessary needs of the child and which are in disposition of the child himself (pocket-money) comprise a part of necessary child maintenance. If the presence of pocket-money is proven, the reason to decrease the debt amount on the maintenance of underage arises. The ruling of the SCL of 16 March 2010 in civil case No. 3K-3-114/2010 on bailiff’s actions under the complaint of the claimant A. A.

27 Ruling of SCL of 10 November 2009 in civil case *I. V. v. D. V.* No. 3K-3-495/2009.

28 Sagatys, G., *supra* note 12, p. 27.

the commensurate of parent financial situation and the needs of the underage, which in court are determined as general and individual and reflect the particularity of concrete child's development and education. On the other hand, parent finances intended for the formation of child habits of living in luxury cannot be identified as adjudged amount for the increase of maintenance.²⁹ In respect with the latter attitude we could debate on divorce case S.V. versus V.J., which evoked various opinions and, where until court leave, Vilnius City 1st District Court had obliged S.J. to pay each month more than 11 000 Litas for child maintenance, and the allowance of 3 000 to the mother of underage. According to the already enacted court order³⁰, until the child attains his majority, S.J. is obliged to pay each month the allowance of 4500 Litas. Considering court practice and appealing to the resolution of the Senate of the Supreme Court of Lithuania where main criteria of cases on maintenance are formed and the principles of law such as justice, honesty, rationality, without abusing one's rights, it is assumed that the order of the latter court is questionable as contravening to present court practice and principles of law. Besides, such attitude exists in court practice of foreign countries, i.e. the maximum amount of maintenance is not the best implicit decision suiting to all cases without exception. Adjudging maintenance from persons having an average or major income you cannot attempt to "adjudge as much as possible".³¹ In latter case one more argument should be mentioned, i.e. „child maintenance is not intended to accumulate savings, acquire property which is not necessary to meet child needs“.³² Though there are opinions that the rest part of maintenance, which is left after all essential child needs are satisfied, might be used for his leisure expenses, living-space improvement and similar, all amounts saved from allowance should be safely invested or kept in child's bank account.³³ Analysing several different attitudes a question might be reasonably raised: a) whether it is purposeful and fair to estimate the satisfaction perspectives of future child needs and adjudge bigger maintenance in respect than it is actually necessary at time of case hearing in court? b) whether it is possible to adjudge the maintenance in reference to assumptions, i.e. proposing motivation that in half-year a child will be interested in certain activity, or that child is growing fast, therefore, in a year the bigger than present (in time of hearing case in court) amount of money will be needed for his clothes?

Estimating the latter positions it might be stated that there is quite difficult to separate the part of maintenance purposefully and exclusively used for child's interests from the part intended for other child needs (especially investments in child's future). On the other hand, emphatic assertion that tentative calculations for child future maintenance (especially until the age of 3, and in cases when one of the parents departs to another state) are inexpedient and do not meet child interests would be questioned. Positive

29 Ruling of SCL of 27 May 2010 in civil case *V. J. v. D. V. J.* No. 3K-3-243/2010.

30 Case of Vilnius City 1st District Court No. N2-1133-55/2011.

31 Gay, R. F.; Palumbo, G. J. *The Child Support Guideline Problem* [interactive]. [accessed 09-01-2012]. <www.adr.com.law1/csp11.htm>.

32 Ruling of SCL of 15 April in civil case *Ž.K. v. V.V.* No. 3K-3-193/2005.

33 Mikelėnas, V. *Lietuvos Respublikos civilinio kodekso komentaras. Trečioji knyga* [Commentary of the Civil Code of Republic of Lithuania. Book Three.] Vilnius: Justitia, 2002, p. 386.

motivation in latter case could be the following: tentative calculation of satisfaction of necessary needs of child under the age of three is possible considering both already existing court practice and including such conditions as rapid child growth, development, parent departure to another country and fair prosecution of court order at least for particular period. Such requirements, when explicit calculation of child maintenance until the age of three and after with different amounts is provided, in court practice are solved adjudging the average of requested amounts.³⁴ There is an opinion that court has to calculate only such maintenance expenditures which are reasonable, rational and satisfy all discussed child needs. For example, expenditures for child need of clothes are argued providing annual report of disbursement for child clothes. Such report might become a keystone counting monthly expenses.

Another aspect which is obviously related to the issue is the provision that adjudged maintenance should be possible to prosecute. Law constitutor has not determined the minimum limit of the maintenance affirming that allowance should be commensurate to the needs of underage and the financial situation of their parents and secure all conditions of child development. In respect to the circumstances of the case, court established the maintenance which is necessary to satisfy the conditions of child development. The practice of Court of Cassation³⁵ accepts that the maintenance of minimum monthly wage might be the oriental criteria adjudging the maintenance for the satisfaction of necessary needs. However, this criterion is just oriental and **might be applied only in concrete circumstances of the case** (bold print by the author). Such arguments as the amount of maintenance cannot be less than one minimum monthly wage (2 part of 6.461 article of CC) and applied to child maintenance institution are untenable. First of all the indeterminacy of minimum amount of the maintenance is not considered a law gap. Besides, legal relation on maintenance and rental legal relations are different, therefore, the parallel of the law is impossible.³⁶ The principle of commensurate between child needs and parental financial situation obliges the court to evaluate parental possibilities to satisfy child needs while issuing the maintenance order. The court cannot issue a bigger maintenance than objective parental financial situation allows.³⁷ Thus, each time dealing with the case on maintenance the court has to determine financial situation of the parents, i.e. all incomes, property, necessary expenses and child needs. Consequently, if parents get variable income, child right to maintenance is secured establishing concrete amount of periodical monthly payments³⁸. Furthermore, there should always be a condition that court order is possible to prosecute when the maintenance order is issued.³⁹ Commensurate is a balance between child needs and financial situation of

34 Ruling of Vilnius City 1st District Court in civil case No. 2-3574-22/2004; Ruling No. 54 of the Senate of the Supreme Court of Lithuania of 23 June 2005 on Application of law regulating parental obligation to maintain materially their underage children in court practice. *Case Law*. 2005, No. 23.

35 Ruling of SCL of 26 April 2004 in civil case of *V. S. v. M. S.* No. 3K-3-259/2004; Ruling of SCL of 10 November 2009 in civil case of *I. V. v. D. V.* No. 3K-3-495/2009.

36 Ruling of SCL of 9 February 2010 in civil case of *D. B. v. K. M.* No. 3K-3-71/2010.

37 Ruling of SCL of 8 February 2010 in civil case of *R. P. v. E. J.* No. 3K-3-37/2010.

38 Ruling of SCL of 1 February 2006 in civil case No. 3K-3-79/2006.

39 In case on the amount of maintenance court did not take into consideration the objective circumstances of financial situation of a person obligated to provide the maintenance (low value of income, the number of

both parents, since both parents have obligations to child maintenance. Following the latter principle court determines which needs are necessary and can be satisfied by the financial and material situation of the parents. Hereby, when the maintenance order is already issued, the court deals with the issue how to allocate the maintenance between parents and to determine the maintenance which should be paid by the parent who fails to provide the maintenance. The division of the maintenance first of all appeals to the obligation of both parents to maintain their children. Their rights and obligations are equal. The principle of equal treatment might be distorted only regarding different financial situation and other important circumstances.⁴⁰ The court cannot sustain the divorce contract, which is constituted by parents at time of marriage termination (art. 3.51 of CC) or when they decide to live separately (part 4, article 3.76 and article 3.73 of CC), if there are any conditions which make a child maintenance dependent on certain circumstances: a) for example, a father undertakes to maintain children if a mother does not contract another marriage or if she does not reside the Republic of Lithuania and etc.; b) if circumstances determine obviously too little amount of maintenance in respect to the income of either of parents obliged to maintenance and child needs; c) if one of a parents with whom the child is living refuses to accept the maintenance (for example, the father motivates that he earns more or simple due to the facts that when child attains his majority he won't be supposed to maintain the parent in his old age). Such contract clauses would contradict child interests and violate the principle of equality of both parents to maintain their children. Almost adequate interpretation of parental obligations to maintain their children exists in foreign countries.⁴¹

In practice often the major part of persons supposed to provide the maintenance attempt to present not all evidence reflecting their financial situation, i.e. artificially impair it while decreasing income or present property. In correspondence, one more aspect that might be mentioned in the category of such cases is kinds which might be ascribed to child maintenance. The article 3.199 of the Civil Code defines that kinds against which the maintenance payments might be made include wage, royalty payments, pension, scholarship, all bonuses and finances obtained from business, dividends, interests, realty and estate. It should be noted that rents and monetary compensation for subsistence costs are considered as additional income since they increase the real monthly income of the cassator.⁴² Additional income from work includes daily allowance since it is not just purposeful disbursement or compensation of employee's costs.⁴³ It should be stated that

dependents, constant maintenance without any abuse) motivating only by present court practice that the amount of the maintenance cannot be lower than 1 MMS and should be allocated in equal parts to both parents. Case of Vilnius City 1st District Court No. N2-4677-127/2011.

40 Ruling of the SCL of 27 May 2010 in civil case of *V. J. v. D. V. J.* No. 3K-3-243/2010.

41 For example, the case of the Supreme Court of Indiana in the United States in 1994 (*Straub v. B.M.T.* Supreme Court of Indiana, 1994, 645 N.E. 2d 597) on the issue whether a child's mother, who has signed an agreements with child's father that a father is not responsible for child maintenance, has a right to decide on child maintenance. The Supreme Court of Indiana stated that parents have no right to make an agreement which would eliminate their rights and duties to their children. Parental obligations of the children maintenance are independent of either agreement between the parents of a child. Krause, H. D.; Elrod, L. D.; Garrison, M., *et al. Family Law Cases, Comments and Questions*. St. Paul, 2003, p. 867.

42 Ruling of SCL of 7 February 2007 in civil case No. 3K-7-6/2007.

43 Ruling of Vilnius City 1st District Court of 22 September 2011 in civil case No. 2A-2200-798/2011.

according to their functional purpose daily allowance cannot be bigger than employee's earnings during business trip. Therefore, such incomes can be included into the number of kinds against which the payments of child maintenance might be made. Besides, it is suggested that minimum amount of maintenance is not related with 1 MSL as it had been embedded in court practice until the CC has come to force,⁴⁴ but with the allowance (amount of 1.5 times of basic social benefit) which is provided by Children's Maintenance Fund to the child who does not get the maintenance from his parents.

The attention should be drawn to the fact that a person who administers the maintenance has to manage the allowance carefully and thoughtfully. Thus, the interpretation of a child as an independent legal subject does not allow parents to use the maintenance for their own needs or other purposes that are not related to the guarantee of child needs and interests. Thus, sustaining child maintenance issue analysis with the latter aspect, the control of child maintenance usage should be emphasized, i.e. almost one decade before the SACL had stated that if dispute concerning maintenance usage for parental interests, inappropriate distribution according child needs or insufficient contribution to child maintenance by himself, just satisfaction of his needs from obtained maintenance arises, the court verifies how a father or a mother manages the maintenance (article 3.186 of CC) or whether there is no reason to remove the parent from management of the property (Clause 4 part 1 article 3.191 of CC).⁴⁵ However, for today there is stated that control devise of maintenance management does not exist (except court's active role dealing with cases of such category and appeal to CCP provisions⁴⁶). Hereof, the assumptions of indulgence emerge that one of parents does not use the maintenance in conformity with its purpose.

2. The Interface of State Dependent Children and Parental Responsibility

In these latter years the family situation in Lithuanian acquires obvious critical features: the number of divorces increases⁴⁷, what influences the prosecution of

44 The provisions of the Civil Code, which came in force in 2001, in generally do not establish the minimum amount of maintenance and leaves it to the privilege of the court. Such position of the law is assessed contraversary. Sagatys, G. The pre-harmonization area: a comparison of Lithuanian, Latvian and Estonian child maintenance laws. In: Boele-Woelki, K.; Miles, J.; Scherpe, J. M. (eds.). *The Future of Family Property in Europe*. European Family Law Series vol. 29. Antwerp-Oxford-Portland: Intersentia, 2011, p. 324; Kudinavičiūtė, I. Civilinio kodekso normų, susijusių su šeimos narių teisių apsauga, įgyvendinimo problemos [Realization of Civil Code Norms Related with the Defence of the Family Members' Rights]. *Jurisprudencija*. 2002, 28(20).

45 Ruling of SCL of 29 September 2003 in civil case of *J.V.M. v. T.S.* No. 3K-3-874/2003.

46 For example, Article 376 of the Code of Civil Procedure of the Republic of Lithuania. *Official Gazette*. 2002, No. 36-1340, current edition 18 11 2011.

47 10 thousand cases on divorce were registered in 2010. It is 736 divorces more than it was registered in 2009. In 2010 more than a half of divorced couples (56,2 %) had mutual children under the age of 18. In result 7.9 thousand children have left to live without one of the parents (usually without a father). During last eleven years 106.8 children have left to live in incomplete families. *Demographic Yearbook 2010*. Vilnius: LSD, 2011, p. 71–72.

obligations for child maintenance. Moreover, the emigration has also played a big role in family modification⁴⁸. It has formed a new model of *transnational* family,⁴⁹ i.e. living conditions of a family the members of which live separately in different countries and the trivial of which trespasses state boundaries, in essence transform the family as such and change its functions. Part of functions is transferred to other family members, relatives, the other part of functions might be temporarily suspended or realized improperly, i.e. the rights of abandoned children are represented improperly or are not represented at all, since the status of persons taking care of children is not legally determined (no custody or similar).

The number of families at social risk has left almost the same⁵⁰. In 2008 there were 25483 children living in families at social risk, in 2009 – 24222 children and in 2010 m. – 23335. Usually families are prescribed to the number of families at social risk because parents are alcoholic or use psychotropic substances (6 245), lack skills (3661), in temporary custody (220), abuse against children (215). State mostly confines herself to observer status. Lithuania has no system which would be based on norms forcing parents to cure alcoholism or usage of psychotropic substances and obliging to master programmes developing parental skills to grow and take care of children. Besides, if parental authority is limited, usually children (over 50 per cent) are taken under institutional guardianship (for example, in 2010 – 1265). In this case, it would be purposeful to establish the institution of temporary custodians which as an alternative guardianship would secure the satisfaction of child needs in family, and not in institution. On the other hand, in order children who have been deprived of parental care were grown up in families and not in the institutions, the norms considering which individual acts would oblige close relatives⁵¹ to maintain children deprived of parental care should be determined. The maintenance in respect would be divided to latter families instead of institutions of children custody. Such norms and effective their application would enforce state support to the families, which are growing children, and secure the satisfaction of child needs and interests

The Civil Code of the Republic of Lithuania (art. 3.192) establishes that parents are obliged to maintain their minors both living in marriage or after divorce and both when children are taken from their parents or parental authority is limited. Article 3.204

48 83.2 thousand people emigrated from Lithuania in 2010. There is 61.2 thousand more than in 2009. Annually on the average there are 25.3 emigrants per 1000 residents (while in 2009-6,6). *Demographic Yearbook 2010, supra* note 47, p. 147–148.

49 Maslauskaitė, A.; Stankūnienė, V. *Šeima abipus sienų: Lietuvos transnacionalinės šeimos genėzė, funkcijos, raidos perspektyvos* [Family Across Frontiers: Genesis, Functions and Development Prospective of Trans-National Families in Lithuania]. Vilnius: Tarptautinė migracijos organizacija, Socialinių tyrimų institutas, 2007.

50 There were 11350 families at social risk in 2008, 11121 in 2009, 10904 in 2010. Statistic Department of Lithuanian Republic [interactive]. [accessed 19-01-2011]. <www.db1.stat.gov.lt>.

51 According to the article 135 of CC the concept of close relatives includes only the relatives in the direct line until the second level (parents and children, grandparents and grandchildren) and relatives in the indirect line of the second level (brothers and sisters). Considering the fact that article 3.135 is a general norm the concept of close relatives should be interpreted more extensively. For example, in article 3.17 of CC family connections reach the fourth level.

of CC embeds the state obligation to maintain children receiving no maintenance from their parents or the maintenance from other adult close relatives who are in a position to maintain the child. The systematic analysis of the rule on children maintenance and the division of the duties between different subjects reveals the fact that the liability of close relatives who maintain the children deprived from parental care is established in the articles number 3.236 and 3.237 of the CC. The latter provisions are consolidated in chapter XVI; therefore it would be purposeful to adjust the dislocation of latter norms corresponding to their content and singleness. Though the law intends the obligation for adult brothers (sisters) and grandparents to maintain the children who are deprived from parental maintenance, in practice the state is prosecuting this liability. The norms which identify the obligation of close relatives to maintain the minors are declaratory. The attention should be drawn to the fact that the state is not the debtor of the maintenance obligation. The state just provides social support (art. 52 and 39 of the Constitution of the Republic of Lithuania) to the children receiving no maintenance from their parents or other obliged persons. Thus, here the delimitation of social support and maintenance obligation might be discussed.

In XX century there dominated the opinion that alimony is the substitute of social maintenance and that the development of the system of social support would lead to gradual decline of maintenance obligation. Later this theory was contradicted. However, the connection between the maintenance obligation and social support still exists, since both have the same purpose – to provide the maintenance to jobless persons who need it.⁵² Therefore, it is thought that there is very close connection between maintenance obligation, state social policy and the security of child welfare. On the other hand, social support cannot be equated to child maintenance,⁵³ since often a family where children get the maintenance from both parents might additionally get social support.⁵⁴ Meanwhile the maintenance is adjudged to the child and becomes his property which has to be used only to satisfy his interests. There exists an opinion that state is obliged to secure the satisfaction of vitally necessary child needs when liable persons fail to fulfil this obligation. The intention of the establishment of such state obligation has been already recommended in 1982 by the Committee of Ministers of Council of Europe.⁵⁵

The state has not established effective responsibility⁵⁶ for parents who avoid maintaining the child, which would be preventive and encouraged parents to fulfil

52 Antokolskaja, M. V. *Semeinoje pravo* [FamilyLaw]. Moskva: Jurist 2000.

53 The concept of support is more extensive and maintenance (alimony) is interpreted as a type of support with distinctive legal nature. Nečajava, A. M. *Semeinoje pravo* [Family Law]. Moskva: Jurist, 2005, p. 247.

54 Law on Financial Social Assistance for Low-Income Families (Single Residents). *Official Gazette*. 2006, No. 130-4889; Law on Disbursements for Children. *Official Gazette*. 1994, No. 89-1706; 2004, No. 88-3208, 152-5534; Law on Social support for schoolchildren. *Official Gazette*. 2006, No.73-2755; 2008, No. 63-2382, etc.

55 Payment by the State of Advances on Child Maintenance: Recommendation No R (82) 2 adopted by the Committee of Ministers of the Council of Europe on 4 February 1982 and Explanatory memorandum. Strasbourg, 1982 [interactive]. [accessed 09-01-2012]. <<https://wcd.coe.int/com>>.

56 The application of administrative responsibility against the waste or use of parental authority in opposition to interests of children doesn't provide to positive results because the penalties for these offences is a warning, and for repeated violation – a fine of several hundred litas (181 str., 181 (1) str.). Code of Administrative Offences of the Republic of Lithuania. *Official Gazette*. 1985, No. 1-1 (current edition since 15-12-2011).

their duties. SCL had stated that the institute of the limitation on parental authority (art. 3.180 – 3.183 of CC) performs both punishing and educative preventive functions. Therefore, temporary limitation on parental authority might be applied as preventive mean for parents in order they change their behaviour and lifestyle. It might also serve as a method to secure the child from future prejudice.⁵⁷ On the other hand, the implementation of the limitation of parental authority when parents fail to provide the maintenance does not establish positive outcomes or essential changes in order to improve child's financial situation. Moreover, the child often lacks family as a natural environment for development. It is thought that despite parental obligation to provide the maintenance such maintenance usually is not extended or recorded as debt.⁵⁸ The strictest responsibility is established in the Penal Code of the Republic of Lithuania.⁵⁹ Article 164 anticipates that avoidance to maintain children by court leave, to pay money for child's maintenance or provide other necessary material support is punished by public labour or restriction of liberty, or arrest, or deprivation of liberty up to five years. Such responsibility is applied to several persons, although 587 applications have been prepared and presented to pre-trial investigation institutions this year,⁶⁰ cases often are terminated in absence of crime composition. Considering the fact that majority of children are left without dependent maintenance (approx. 84 thousand parents fail to provide children maintenance in Lithuania) and following the endorsement and implementation of the article 27 of the Civil Code, unfortunately, only on 26 December 2006 Seimas of the Republic of Lithuania had enacted the act of Children's Maintenance Fund of the Republic of Lithuania.⁶¹ The main goal of the fund is to secure child's right to social protection and guarantee of state obligations to provide the determined support considering the circumstances established in the Law. The state also obtains the right to require that persons who are liable to maintain the child would recover the finances which the state has paid as social benefit. Only in 2008, in respect to the latter law, Children's Maintenance Fund (CMF) was founded and annually supports approximately 25 thousand children,⁶² who receive no maintenance at least from one of his parents. According to the provisions of the order Fund payments are periodical and are paid once per month. The allowance for one child cannot exceed the amount of 1.5 time of basic social benefit (195 Lit). Children's Maintenance Fund is an agent which pays a part of issued maintenance from state budget and recovers those amounts with 5 per cent

57 Ruling of SCL of 19 October 2005 in civil case of *Kaunas City District Chief Prosecutor v. G. N.* No. 3K-3-492/2005.

58 If the court has issued the order on the maintenance of the underage and he lives in the institution of care, parents are not deprived from the obligation to provide the maintenance. Therefore, if the obligation is not prosecuted and the maintenance is not provided, a reason to calculate the debt appears. The recovery of the debt is regulated in the article 3.200 of the Civil Code. Ruling of SCL of 25 January 2011 in civil case of *N. S. v. R. J.* No. 3K-3-8/2011.

59 The Criminal Code of the Republic of Lithuania. *Official Gazette.* 2000, No. 89-2741.

60 Children's Maintenance Fund of the Republic of Lithuania [interactive]. [accessed 09-01-2011]. <www.vif.lt>.

61 Law on Children's Maintenance Fund of the Republic of Lithuania. *Official Gazette.* 2006, No. 144-5464.

62 Since 1 January 2008 till 30 September 2011 Administration of Children's Maintenance Fund received 34 455 applications for maintenance [interactive]. [accessed 19-01-2011]. <www.vf.lt>.

interest from debtor on behalf of the state.⁶³ However, in two years of Fund's activity, the recovery was just 0.39 per cent of paid amounts,⁶⁴ when, for example, in Latvia the debtors of analogical fund are treated as state debtors and the recovery of allowance from them reaches approx. 90 per cent. There should be noted that articles 3.202 and 3.204 of CC regulate the circumstances under which the obligation of the debtors is to provide child maintenance. The difference is only if a child was under the guardianship of the state (municipality), the maintenance will be recovered with the help of a guardianship institution (as an agent) according to the law and used exceptionally for child interests. In this case there is no resource, since even when the child is maintained by guardianship institution, the child remains the creditor. Meanwhile, the application of article 3.204 of CC regarding state maintenance provided by state finances indicated state's right of resource to the debtor who has been deprived of allowance. Thus, the state becomes a creditor.

Despite the fact that Fund mentioned above provides only symbolic material maintenance, there was an idea to eliminate it „considering rough economic situation of the state and specifically big deficiency of state finances and motivating that with the help of social benefit the state supports families, **especially** (*bold print by the author*) needy ones, and that the material situation of children from needy families won't worsen even if the payment of maintenance is terminated“.⁶⁵ The latter suggestion and its arguments might be evaluated negatively, because the differentiation of families (or children) into wealthy and needy is disputed, and the elimination of any material support for children receiving no maintenance from their parents is intolerant and does not meet child's interests.

3. The Peculiarities of Material Maintenance of Adult Studying Children

The institute of adult children maintenance has been already established in Marriage and Family Code. It has defined parental obligation to maintain their adult jobless children who need the support.⁶⁶ The maintenance to adult jobless children was issued by court sustaining the material and family status of parents and the status of

63 The state acquires this right only if persons obliged to maintain the child have failed to prosecute this obligation by reasons which under the leave of the court were accepted as irrelevant. If the reasons are relevant the state does not acquire the right of resource. Only objective circumstances might be identified as relevant reasons – serious illness, unemployment and similar. Reasons originated despite persons blame. Mikėlėnas, V. *Šėimos teisė* [Family Law]. Vilnius: Justitia, 2009, p. 406.

64 Altogether, during the period of almost 4 years (since 1 January 2008 till 30 September 2011) there were paid 119 million. 646 thousand Litas. Children's Maintenance Fund Act Repealing Bill explanatory Notes, prepared on 6 December 2011 by Ministry of Social Security and Labour of LR [interactive]. [accessed 19-01-2011]. <www.lrs.lt>.

65 Children's Maintenance Fund Act Repealing Bill Explanatory Notes No. XIP-3927 [interactive]. [accessed 19-01-2011]. <www.lrs.lt>.

66 Marriage and Family Code of the Republic of Lithuania. *Official Gazette*. 1969, No. 21-186, 80 art.

child who requires maintenance. The court also considers a person's possibility to get the maintenance from his spouse and children who in conformity with the law have to maintain him. It should be mentioned that the obligation to maintain adult children who need support was determined not only to their parents, but to their adult brothers and sisters or grandparents who have enough finances as well (when adult children do not have parents or cannot get necessary maintenance).⁶⁷

In 2001 the provisions of Civil Code on adult child maintenance in their essence did not differ from the former provision of MFC, i.e. part 3 of article 3.194 intended that court adjudges maintenance until child attains his majority, except cases where the child lacks capacity for work due to a disability determined before the age of majority. On 11 November 2004 the modification of this article has been enacted. The above mentioned provision has been supplemented with the statement that court adjudges the maintenance if a child is in need of support, he is a full-time student of institutions of secondary, vocational or higher education and is not older than 24 years of age.⁶⁸ This statement created a new institute of adult studying children maintenance which had not existed in legal system before.

The latter provision had been criticized even before its consolidation.⁶⁹ However, the suggestions for the improvement had been ignored and it had been endorsed without substitutions. The search of criteria, which court has to take in consideration while issuing the adult child maintenance, has been left to court practice which has developed salutary. For three years the legal norms regulating adult child maintenance in court practice have been considered as imperative⁷⁰ and implemented quite broadly. For example, Court of Cassation had issued the maintenance to adult citizen of Belarus from her parent living in Lithuania in motivation that, though, according to the Law of Belarus parents are not obliged to maintain their adult children, foreign legal norms are not applied if their implementation contradicts the legal imperative norms of the Constitution of the Republic of Lithuania.⁷¹

On June 7, 2007 the Constitutional Court of the Republic of Lithuania introduced its opinion concerning the analyzed issue. Its resolution states the following: "To accept that the volume of part 3 article 3.194 of the Civil Code of the Republic of Lithuania (Edition 11 November 2004; *Official Gazette*. 2004, No. 171-6319), where it is determined that in all cases the court has to issue parental maintenance if the adult person is in need of support or is a full-time student at the institutions of secondary, vocational and higher education and is not older than 24 years of age, contradicts part 1 article 109 of the Constitution of the Republic of Lithuania (the principle of constitutional

67 Quod vide ibidem articles 97, 99.

68 Act on the supplement of the article 3.194 of the Civil Code of the Republic of Lithuania. *Official Gazette*. 2004, No. 171-6319.

69 Conclusion of the Committee on Legal Affairs of Seimas of the Republic of Lithuania concerning draft on the supplement of the article 3.194 of the Civil Code [interactive]. [accessed 19-01-2011]. <<http://www3.lrs.lt>>.

70 Ruling of SCL of 13 March 2007 in civil case *J.A. v. A.U.* No. 3K-3-95/2007; Ruling SCL of 14 March 2007 in civil case *N. J. v. G. J.*, No. 3K-3-104/2007.

71 Ruling of SCL of 23 January 2007 in civil case *I.T. v. I.T.* No. 3K-7-130/2007.

law).⁷² The position of the Constitutional Court was oriented to the criteria, considering which the adult person maintenance was issued, extended interpretation and tightening. The financial situation of a full-time student who is asking for maintenance has to be determined assessing his property and all kinds of income (wage, allowances, pension, royalty payments, scholarship and etc.). However, not only objective incomes have to be assessed, but also an exploitation of **reasonable possibilities** (*bold print by author*) to get them.⁷³ One of possibilities for a full-time student to get finances for his studies is a state supported loan which is intended to cover tuition fee and expenses for living. Besides, excessively cautious attitude towards the usage of credit possibilities and the doubt in one self's financial potential in the future determine the refusal to accept the possibility of credit obligations and cannot be estimated as sufficient argument to transfer the burden of finance extension to other persons (parents or one of them). One more criteria, which should also be considered and which should be implemented to the adult student who is asking for maintenance, is honest and progressive learning. Otherwise, the reception of maintenance would mean the abuse on family rights, since incompatibility between the aim of education pursuit and adults action (inactivity) are estimated as the violation of the rights of parents who provide the adult student with the maintenance and inadequacy to the honesty imperative of the implementation of family rights.⁷⁴ It might be stated that in each concrete case on maintenance to adult *studying* child the court has to assess the totality of circumstances. Meanwhile, in cases on maintenance to adult *schoolchild who pursuits for secondary education* and application of the principles of law consolidated in part 2 article 3.4 of the CC, the most significant constitutional provision is that “the secondary education in Lithuania is usually acquired when a schoolchild attains the majority (at the age of 18), therefore, it is obvious that parents have obligation to maintain the child until the time when child studies honestly and progressively and acquires secondary education or vocational secondary education comes to an end”.⁷⁵ In respect with the comparative aspect it might be stated that the adult child maintenance is not established in a majority of the states of the European Union. The discretionary right to issue the maintenance to the adult child is conceded to the courts of several countries, though only at exceptional circumstances when a child studies at secondary school.⁷⁶ The bill of the modification of the article 3.194 of the Civil Code and Code supplementation with the article 3.192 (1) had been proposed on 20 March 2010 in order

72 Ruling of the Constitutional Court of the Republic of Lithuania of 7 June 2007 Regarding the compliance of paragraph 3 (wording of 11 November 2004) of Article 3.194 of the Civil Code of the Republic of Lithuania with the Constitution of the Republic of Lithuania. *Official Gazette*. 2007, No. 65-2529.

73 Ruling of SCL of 12 September 2007 in civil case of *J.P. v. S.P.* No. 3K-3-189/2007; Ruling of SCL of 25 January 2008 in civil case of *G.M. v. G.M.* No. 3K-3-25/2008; Ruling of SCL of 11 April 2008 in civil case of *A.L. v. A.L.* No. 3K-3-248/2008.

74 Ruling of SCL of 25 January 2011 in civil case of *R. B. v. M. B.* No. 3K-3-11/2011.

75 Ruling of SCL of 25 May 2009 in civil case of *I. R. v. J. R.* No. 3K-7-204/2009.

76 For example, the article 97 of the Family Law of Estonia intends that persons who have right to get maintenance include the children who study in a secondary or vocational educational institution, but no longer than he becomes 21 years of age. Family Law of Estonia [interactive]. [accessed 19-01-2012]. <<http://archive.equel-jus.eu/193>>.

to consolidate more clear and consistent regulation of the institute of the adult studying children maintenance. There is an opinion that the improvement of present norms would allow to determine essential elements of the institute on maintenance for children in need of support and who have already attained the majority. Moreover, it would identify the discretionary right of the court to judge both on maintenance expediency and its concrete amount in respect to concrete circumstances of the situation.

Conclusions

1. Present legal regulation on child maintenance in essence provides the possibility of the realization of child right to maintenance. On the other hand, certain provisions might be modified and generated in order child needs and interests were comprehensively satisfied, especially identifying the presumptions on the execution of the control of the amounts of child maintenance and the development of the effective mechanism of noncompliance with maintenance obligations. There should be noted that such derivative as Children's Maintenance Fund (hereof CMF) should not be eliminated. On the contrary, the order of debt recovery from the debtors has to be revised and improved while eliminating the possibility of practice upon artificially created insolvency and similar reasons.

2. Lower federal courts often issue the order on the identification of the amount of child maintenance which contradicts with the main legal principles and already settled court practice. Thus, the execution of their leaves is handicapped or simply impossible as contravening the commensurate between child needs and financial situation of his parents. Summarizing the practice in law interpretation of the Court of Cassation it might be stated that the amount of the issued maintenance for the underage from their parents who fail to provide the maintenance or do not properly execute the obligations resulting from the law on underage maintenance or until children attain the majority has to satisfy necessary conditions of child's development. Besides, the amount of maintenance is not directly related to the amounts which were provided by the parents when they executed their obligations properly. Thus, the issue on the amount of child maintenance has to consider reasonable child needs which are reserved by his (her) talents and vocations.

3. The analysis of state support for the family comes to a conclusion that it is insufficient and in essence is limited only to the symbolic material support to certain family groups. Parents are not provided not only with material, but also with psychological support for proper education of their children. Such support would be more effective under the establishment of institutions duplicating parental rights and duties. The latter institutions would not only consult, but also deputize parental rights and duties in the natural environment of the child in respect with the critical situation when parents fail to grow their children considering subjective and objective circumstances.

4. The state is not the debtor of the maintenance obligation. It just provides social support for children receiving no maintenance from their parents or other obliged persons. Though, the object of social support and maintenance is the same, i.e. to provide

support for the persons who need the maintenance, social support cannot be equated to the maintenance. Social support is provided when a child receives no maintenance from the obliged persons, and the state under the right of resource may recover the finances from the persons who were obliged to maintain the underage.

5. The article 3.192, 3.200 and 3.202 (except 3.204) of the Civil Code qualify the issues on the adjudgement of the debt for child maintenance from the parent who fails to provide the maintenance and when a child is taken under guardianship and his residence is settled in the institution of care for children. It is stated that if the relations of recovery does not emerge the creditor remains a child himself.

6. If parents fail to maintain their children, the law anticipates subsidiary obligation for close relatives (brother, sisters or grandparents) to maintain these children and only when the latter persons cannot maintain the children, they are provided by the social support of the state. Norms regulating child maintenance from close relatives are not applied in practice. There exists an opinion that persons, who apply for maintenance, do not perceive the obligation of close relatives to maintain the underage children and think that if parents fail to maintain the child, such obligation goes to the state. The present legal regulation is faulty since the obligation of child maintenance is intended to close relatives the concept of which is interpreted quite narrow (parents, brother, sisters, grandparents). It would be purposeful to broaden the list of persons who are obliged to maintain the underage child and include close relatives of the fourth level who have possibility to maintain underage children.

7. The maintenance for the adult studying children (except at the secondary school) is issued following only formal criterion – age, studies at certain institutions and untenable assertion for the necessity of maintenance. The assessment of the latter issue is contraversary. Considering the fact that the parental obligation to maintain their children after they attain the majority is not of absolute, but of conditional nature, therefore, the necessity of the maintenance in concrete case has to be motivated not only by actual circumstances of financial situation, but also by the possibility to improve one's situation in alternative ways to the unconditional parental maintenance. Besides, in latter cases as well as in cases on maintenance for underage, there should be a commensurate between the needs of the studying child and the possibilities of his parents to realize those needs, i.e. the criterion of parental financial situation should be estimated.

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VAIKŲ IŠLAIKYMAS: KAI KURIE AKTUALŪS TEORINIAI IR PRAKTINIAI ASPEKTAI

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Santrauka. *Šeimos įstatymai ir jų taikymas turi užtikrinti šeimos ir jos reikšmės visuomenėje stiprinimą, prioritetinę vaiko teisių ir interesų apsaugą bei gynimą, vaikų auklėjimą šeimoje, šeimos narių tarpusavio atsakomybę už šeimos išsaugojimą, galimybę visiems šeimos nariams tinkamai įgyvendinti savo teises ir pareigas. Lietuvos valstybė pripažįsta, kad šeima yra visuomenės ir valstybės pagrindas, natūrali vaikų auginimo ir gerovės aplinka, kad vaikams yra būtina ypatinga apsauga ir priežiūra tiek iki gimimo, tiek ir po jo. Realizuojant Vaiko teisių konvencijos nuostatas, kuriose yra deklaruojama kiekvieno vaiko teisė turėti tokias gyvenimo sąlygas, kokių reikia jo fiziniams, protiniams, dvasiniams, doroviniams ir socialiniams vystymuisi, atsižvelgiant į tai, kad pagrindinės teisės ir pareigos, susijusios su vaiko teisių įgyvendinimu, tenka vaiko tėvams, įvertinant, kad vaiko teisės išlaikymą užtikrinimas sudaro sąlygas kitoms vaiko teisėms (teisė į būstą, mokslą, tinkamas gyvenimo sąlygas ir pan.), būtina garantuoti tėvų pareigos materialiai išlaikyti savo vaikus vykdymą. Lietuvos Respublikos Konstitucija nustato, kad abu tėvai privalo išlaikyti savo nepilnamečius vaikus, o valstybė privalo sudaryti sąlygas tėvams vykdyti šias pareigas, t. y. įsipareigoja išlaikyti vaikus, negaunančius išlaikymo iš tėvų. Pastarieji įsipareigojimai yra konkretizuoti Lietuvos*

Respublikos civiliniame kodekse (3.192–3.204 str.), numatant teisės principus, kuriais vadovaujantis turėtų būti teikiamas išlaikymas vaikams, išlaikymo formos (ypač paplitusi kas mėnesį mokamomis periodinėmis išmokomis), dydžio kriterijus bei išlaikymo panaudojimo ir kontrolės apibrėžtis. Valstybė įsipareigoja globoti šeimas, auginančias ir auklėjančias vaikus namuose, ir teikti jiems paramą (Konstitucijos 39 str. 1 d.). Manytina, kad kai vaiko tėvai neįstengia visiškai įvykdyti savo pareigos išlaikyti vaikus, konstitucinės vaiko teisių garantijos įpareigoja valstybę užtikrinti greitą būtinos finansinės paramos gavimą iš kitų šaltinių. Atsižvelgiant į esamus socialinius, ekonominius, teisinius bei kitus pokyčius straipsnyje remiantis teismų praktikos analize bei doktrininiu požiūriu analizuojamos šių dienų aktualijos vaikų išlaikymo srityje, t. y. atitikties tarp vaiko poreikių ir tėvų turtinės padėties bei teismo sprendimo vykdymo, valstybės pareigos išlaikyti vaikus ir tėvų atsakomybės koreliacija, sulaukusių pilnametystės vaikų išlaikymo ypatumai.

Reikšminiai žodžiai: vaikų išlaikymas, tėvų atsakomybė, studijuojančių vaikų išlaikymas.

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