ON THE ISSUE OF STEPFATHER’S/STEPSMOTHER'S MANAGING THE STEPSON’S/STEPDAUGHTER’S PROPERTY

Abstracts. The article is devoted to the analysis of issues in the field of property relations of parents and children, namely, issues related to the management of children's property in mixed families, where the main subjects of legal relations are stepfather, stepmother, stepson, stepdaughter. The relevance of the studied topic is determined by the presence of some problematic issues, which are caused by the uncertainty of the theoretical content and the specific nature of family legal relations between the above-mentioned participants.

The authors of the article emphasize that in the current family legislation of Ukraine, unfortunately, there are no necessary legal norms that would be the relevant regulators for the implementation of property relations, and thus there is no proper connection between the legal guarantees provided by law and the practical implementation of property rights.
The article also draws attention to how these relations are settled between stepfather/stepmother and stepson/stepdaughter. Indeed, according to the law, stepfathers/stepmothers are not endowed with appropriate powers. The analysis of Article 177 of the Family Code of Ukraine also shows the uncertainty of the legal norm, especially when the management of the property of a young child implies the committing by the parents of transactions in relation to this property. It seems that the existing regulatory provisions regarding the management of the child's property and the committing of transactions with it in the interests of the child do not have in fact any legal mechanism for its implementation. Therefore, such transactions regarding the managing of the property of a young child will be declared invalid, as this will contradict the requirements of the Family Code of Ukraine to take into account the needs and interests of a young child who can independently determine them.

In the context of the studied issues, the authors of the article are convinced that the property content of the rights and obligations of stepfather and stepmother in relation to the stepson, stepdaughter should be considered in a broad sense – through the provision of maintenance that would provide the child with a full and harmonious process of development and living in the family. By virtue of which, the property rights and obligations of the stepfather/stepmothers should be close to the parental ones (that is, those that exist in families between biological parents and children). That is why the property rights and obligations should be considered not only as an obligation to maintain, as specified in Article 268 of the Family Code of Ukraine, but also as a set of rights laid down in the doctrine of family law: the right to maintenance (Article 180 of the Family Code of Ukraine); the right of personal private property (Article 174 of the Family Code of Ukraine); the right of joint ownership (Article 175 of the Family Code of Ukraine); the right to use the property (Article 176 of the Family Code of Ukraine); the right to manage the property of the child (Article 177 of the Family Code of Ukraine); the right to use income from the child's property (Article 178 of the Family Code of Ukraine).

**Keywords:** property legal relations, property rights, property obligations, stepfather, stepmother, stepson, stepdaughter, property management.

**Introduction.** The study of the issue of property rights and obligations of stepfather and stepmother as an element of their family legal status, as well as the content of property relations between them, is of particular importance in the context of family legal relations, the participants of which are stepfather/stepmother, stepson/stepdaughter. As I. V. Zhylinkova noted, it is the content that determines the features of a particular legal relationship, its nature and type [1, p. 254]. According to N. M. Krestovska, legal relations are social relations regulated by the rule of law, the content of which is subjective legal rights and subjective legal obligations of their parties [2, p. 127]. They are a legal expression of economic, political, social,
cultural and other social relations. Therefore, the property rights and obligations of the mother, father and child (in our case, stepfather/stepmother and stepson/stepdaughter) make up a significant part of the content of the relevant parental relationship. We agree and support this position of the scientist, because we believe that under the current conditions of existence and development of the family institution, the content of the legal family relationship with the participation of stepfather/stepmother and stepson/stepdaughter should be considered as maximum close to the relevant legal relations with the participation of parents and children.

Best of all the general principles of the exercise of family rights and the performance of family duties are determined by the norms of Articles 14 and 15 of the Family Code of Ukraine, according to which, family rights are closely related to a person and cannot be transferred to someone else. It is also natural that in the process of realization of property rights and obligations by stepfather/stepmother, separate problematic issues arise, which are caused by the uncertainty of the theoretical content and specific nature of the relations under study.

Among the modern scientists who investigated the problems of realization by stepfather/stepmother of property rights of stepson/stepdaughter, including the management of their property, one should mention I. V. Apopii, L. V. Afanasieva, T. V. Bodnar, L. G. Baranova, V. S. Hopanchuk, O. V. Dzeria, M. M. Diakovich, I. V. Zhylinkova, L. M. Zilkovska, L. V. Krasytska, V. A. Kroitor, R. A. Maidanyk, Z. V. Romovska, L. V. Sapeiko, I. L. Serdechna and a number of others. At the same time, the problems of the implementation by individual subjects of family legal relations, including the stepfather/stepmother, remains poorly studied, which gives rise to problems of both theoretical and practical nature and necessitates further scientific intervention.

**Presentation of the main material.** Currently, researchers name a number of property relations, the object of which is property, which belongs to parents and children on the principle of separation of property. In particular, these include: relations regarding the parents’ management of their young children’s property; relations regarding the committing by minor children of transactions with the use of property owned by them on the right to private property, according to which the child's parents exercise control; relations between parents and children living together regarding the use of property that belongs to them on the right of joint (partial or joint) ownership [3, p. 157].

It should be emphasized that for the proper implementation of this category of property relations, the most important is the connection between the legal guarantees provided by law and the practical implementation of these rights. Moreover, in the context of the topic under study, these rights do not find any legislative regulation, which follows from the content of Chapter 22 “Obligation to Support Other Family Members and Relatives” of the Family Code of Ukraine. We
can state that non-existence in the current family legislation of the necessary norms of legal regulation of such institutions as the right of personal private property of stepfather/stepmother, stepson/stepdaughter; the right of common joint ownership of stepfather/stepmother, stepson/stepdaughter; the right to use the property of these participants in legal relations; the right of stepfather/stepmother to manage the property of the child; the right to use by the stepfather/stepmother of income from the child's property leads to the latter's inability to realize their property rights and obligations towards children at the proper level and which, as a result, negates the legal state guarantees specified in Article 5 of the Family Code of Ukraine [4].

L. V. Krasytska points out that parents and children, as independent owners of property, exercise the powers of the owner in accordance with Article 319 of the Civil Code of Ukraine within its family and civil capacity, taking into account the provisions of the Civil Code of Ukraine (Articles 31, 32, 35). Therefore, the parents’ realization of the right to manage the property of a young child is of particular scientific interest.

In accordance with Part 1 of Article 177 of the Family Code of Ukraine, parents manage property belonging to a young child without special authority. Parents are obliged to take care of the safety and use of the child's property in the child’s interests. If a young child can independently determine his/her needs and interests, the parents manage their property, taking into account such needs and interests [5, p. 239]. After the termination of the management, the parents are obliged to return to the child the property that they managed, as well as the income from it.

The doctrine of family law also emphasizes that the parents’ management of the child's property should not be considered as a right of title possession, let alone as a right of ownership, although it is an independent right owned by parents by virtue of the law and can be defined as the right to manage the property of a young child, which consists in the possibility of performing a set of legal and factual actions, aimed at the realization of the property rights of the child regarding the possession, use and disposal of property belonging to him/her solely in the interests of the child [6, p. 65]. At the same time, R. A. Maidanyk points out that the determining component of the management of the property of a young child, is the provided for by part 1 of Article 177 of the Family Code of Ukraine, obligation of parents to take care of the safety and use of the child's property in his/her interests [7, p. 70]. While Z. V. Romovska sees the property management as a set of actions aimed first of all at its preservation, ensuring the possibility of using it by the owner or some other person, and in some cases – the possibility of receiving income [8, p. 357].

We should also emphasize that the use of the term “obliged” in family legislation (Article 177 of the Family Code of Ukraine) gives reason to believe that the Family Code of Ukraine provides for the legal obligation of parents in relation to the child. In turn, the child acquires certain rights in relation to the parents, [9, p. 212]. That is, the
child is vested with the right to demand the management of his/her property, namely: the preservation of property and its use in its interests.

By virtue of the above, the question arises how these relations between the stepfather/stepmother and stepson/stepdaughter are regulated, because according to the law, stepfather/stepmother are not vested with appropriate rights. Besides, the analysis of Article 177 of the Family Code of Ukraine shows the uncertainty of the legal norm, especially when the management of the property of a young child also implies the parents’ committing of legal transactions with this property. The normative provisions regarding the management of the child's property and the committing of transactions with it in the interests of the child seem to have no legal mechanism for its implementation. Therefore, such transactions regarding the management of the property of a young child would be declared invalid, as this would contradict the requirements of the Family Code of Ukraine to take into account the needs and interests of a young child who can independently determine them.

Given the legal relations under study, we assume that the stepfather/stepmother, having assumed the duty of family care and upbringing, also undertakes the obligation to take care of the child's property. In this sense, the experience of the Czech Republic is quite positive, where the law relies on parents to manage the child's property from the position of caring owners. Income from the child's property is allowed to be used primarily for the child’s maintenance and only then for the needs of the family. After the child reaches the age of majority, the parents are obliged to transfer the property to him/her and, at his/her request, provide a final report within a year from the date of the termination of the management. This provision does not deprive the child of the right to sue the parents for damages or unjustified enrichment [10, p. 240].

In our opinion, the above-mentioned provision may receive a reasonable application in the family legislation of Ukraine, which will provide an opportunity at the proper level to ensure the legal implementation of the relevant property legal relations regarding the management of the child's property by stepfather/stepmother. Even greater legal support in these matters will be provided by the participation of the guardianship and guardianship authorities.

According to the Family Code of Ukraine, the management of the property of a young child in the classical relations between parents and children is carried out under the control of the guardianship authority, taking into account that part 2 of Article 177 of the Family Code of Ukraine provides that the parents of a young child do not have the right, without the permission of the guardianship authority, to commit the following transactions regarding the child’s property rights: to conclude agreements that are subject to notarization and (or) state registration, including agreements on the division or exchange of a residential building, apartment; to issue
written obligations on behalf of the child; to renounce the property rights of the child. Permission to commit transactions in relation to the child's real estate is granted by the guardianship authority after an inspection carried out within one month, and only if the child's right to housing is guaranteed (Part 4 of Article 177 of the Family Code of Ukraine).

The mentioned issues are not ignored by scientists and are quite actively discussed in the literature [11, pp. 272-275; 12, pp. 323-327], and the norms enshrined in Article 177 of the Family Code of Ukraine and Article 32 of the Civil Code of Ukraine testify to the gradual development of a reliable mechanism for protecting the right of the child to housing.

Part 6 of Article 177 of the Family Code of Ukraine also provides that when one of the parents commits transactions regarding the property of a young child, it is considered that he/she acts with the consent of the other parent. The second parent has the right to apply to the court with a request to declare the transaction invalid as such that was committed without his consent, if this transaction goes beyond the limits of a minor domestic one. Accordingly, in mixed families, this provision of the law finds its actualization, especially in situations where the parents, due to certain life circumstances or labor relations, temporarily leave the children with their stepfather/stepmother.

In this context, quite reasonable is the position of I. V. Zhylinkova, who rightly notes that in the text of Part 6 of Article 177 of the Family Code of Ukraine accents should have been put differently. Two main things should have been pointed out: 1) parents decide on the management of the child's property together; 2) parents have the right to conclude an agreement in which they will determine the procedure for joint management of the child's property, separate management of the child's property by one of them or transfer of the child's property (share of property) to some other person [13, p. 93]. The legislative constructions outlined by the scientist provide a reliable mechanism for protecting the property rights of the child for the period of absence of his own father or mother.

It is on the commonality of the exercise of the right of parents to manage the property of a young child, unless otherwise provided by the agreement between them, that is also emphasized in Parts 7, 8 of Article 177 of the Family Code of Ukraine, which provide that parents decide on the management of the child's property jointly, unless otherwise provided by the agreement between them. Disputes that arise between parents regarding the management of the child's property can be resolved by the guardianship authority or the court. After the termination of the management of the property, parents are obliged to return it to the child, as well as the income received from its management.

**Conclusions.** Studying the family legal status of stepfather/stepmother in family law of Ukraine, we are convinced that the property content of the rights and
obligations of stepfather/stepmother in relation to the stepson/stepdaughter should be considered in a broad sense, first of all, through the provision of maintenance, that is, providing the child with the necessary priority things (food, clothing, medicines, living conditions), things necessary for full development and upbringing (sportswear and accessories, musical instrument, etc.), funds (organization of cultural leisure, payment for additional educational services and training). And given the content of the family legal relations between stepfather/stepmother and stepson/stepdaughter, we also assume the impossibility of the same rights belonging simultaneously to the biological parents and to stepmother/stepfather, since the content of the legal status of stepfather/stepmother, in accordance with the scientific study carried out, implies the imposition on stepparents of those actual parental rights and obligations, which are abandoned by the child's own parents.

Thus, the property rights and obligations of the stepfather/stepmother should be close to the parental and proceed from the following legal concept: spouses (mother, father ↔ stepfather, stepmother) ↔ child (own and (or) from previous marriages or relationships equated to such) ⇒ family, and therefore, property rights and obligations should be considered not only as an obligation to support, as enshrined in Article 268 of the Family Code of Ukraine, but also as a set of rights laid down in the doctrine of family law: the right to maintenance (Article 180); the right of personal private property (Article 174); the right of common joint ownership (Article 175); the right to use the property (Article 176); the right to manage the property of the child (Article 177); the right to use income from the property of the child (Article 178) [4].

References:


