

MAINTENANCE OBLIGATION IN POLAND

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Abstract: Lack of implementation of the maintenance obligation is becoming an increasingly important social problem. The article shows various legal institutions which are to help satisfying the needs of people entitled to alimony who do not get them, and who are not able to stand by themselves. The aim of the paper is to present ways to help such people, both in the light of public and private law. The article discusses the conditions that have to be met in order to be allowed to get public support.

Keywords: maintenance, maintenance obligation, alimony, public support, maintenance debtor.

1. Introduction

Lack of implementation of the maintenance obligation is becoming an increasingly important social problem. Although the legal regulations on maintenance obligations have been in Polish law for decades, an effective way to combat the phenomenon of non-alimentation has still not been found. The creation of new public institutions or the modification of existing ones in order to support those entitled to alimony testifies to the inefficiency of the family-legal alimony system. However, there are often situations in which lack of fulfillment of the obligation by the maintenance debtor translates into a significant deterioration in the financial situation of those entitled to maintenance, and sometimes even the lack of funds for current needs.

2. Maintenance obligation

The problem of alimentation is usually associated with the need of a parent to pay for the child's maintenance. Meanwhile, in Polish law an additional subjective scope is distinguished: a maintenance obligation for the spouse and a divorced spouse, a maintenance obligation for relatives and adopted persons, and a subsidiary alimony obligation (Ustawa z dnia 25 lutego 1964). Therefore, it is necessary to present and systematize particular categories of beneficiaries for whom one can apply for alimony.

The most common form of maintenance obligation is the maintenance of children by parents. Pursuant to the regulations in force, the parents are obliged to maintenance allowance towards the child who is not yet able to stand by himself. An exception is the situation in which the income from the child's property is sufficient to cover the costs of its maintenance and upbringing. It should be emphasized that the parents' maintenance obligation towards children does not expire when the child reaches the age of majority or the end of education, but continues until the child achieves independence. This means that parents are obliged to alimize a minor child who remains under parental authority, as well as an adult child who is of legal age who, without his own fault, is unable to stand alone due to his or her life situation, in particular illness, lack of education or not being able to find a job despite all efforts. (Jędrejek, 2017)

A solution not commonly known is the possibility of imposing a maintenance obligation on a spouse and a divorced spouse. The spouse will be entitled if the other spouse fails to meet the family's needs. Then the court may decide that the funds due to the evading spouse will be paid in whole or in part to the eligible spouse. (Łukasiewicz, 2014)

If we refer to a maintenance obligation towards divorced spouses, it can occur in two cases. The first case occurs when the premise of deprivation is met. If a divorced spouse is in need, he may demand from the other spouse to provide the means of subsistence corresponding to his justified needs. When determining the amount of the benefit, the earning and property opportunities of the debtor are also taken into account. It should be emphasized, however, that these regulations do not apply if the divorced spouse was considered exclusively guilty of the breakdown of his or her life. Such persons are not entitled to apply for alimony. (Sylwestrzak, 2007)

Polish law however provides an extended objective condition for the maintenance obligation between divorced spouses, in the event that one of the spouses is considered solely guilty of the breakdown of the marriage. In such a situation, the court may set alimony for the benefit of an innocent spouse, even if this was not in need. All that is required is that the material situation of an innocent spouse deteriorates significantly as a result of the dissolution of the marriage (Ustawa z dnia 25 lutego 1964).

As a rule, the maintenance obligation understood as the necessity to provide means of subsistence and, if necessary, also the means of education, charges relatives in a straight line

and siblings, including half-siblings. In this case, the obligation in question is reciprocal. The obliged persons must provide the entitled persons with the means necessary to satisfy their needs, which mainly include: nourishment, provision of clothes, medicines and personal hygiene, as well as housing maintenance. This means that those obliged to provide maintenance may also be entitled to receive them if there are statutory requirements. However, the legislator stipulated that the obliged person may avoid maintenance obligations towards siblings if this would involve him or his immediate family with undue prejudice, while excessive damage is understood here as lack of means to satisfy his own basic needs of the obligee and his immediate family, i.e. a spouse and children. (Łukasiewicz, 2014)

The Polish legislation also points on subsidiary maintenance obligation. As a rule, if one of the parents is unable to carry out the maintenance obligation imposed on him or her, it is the duty of the other parent to maintain and raise common children. If, on the other hand, none of the parents, despite due diligence and use of available earning opportunities, is able to fully or even partially perform maintenance obligations and there is a risk that for this reason children may be deprived, there is a subsidiary maintenance obligation. It includes further relatives, in particular grandparents. However, the subsidiarity of further relatives also occurs when closer relatives, despite the possibility, do not comply with the alimony imposed on them. (Łukasiewicz, 2014)

3. Tax consequences of alimentation

The alimentation has also some specific tax consequences. The legislator indicates two groups of entities entitled to alimony, in relation to which he differently forms the right to exemption from personal income tax.

In accordance with the applicable regulations, income tax-free alimony is for children under 25, and children of all ages who, in accordance with separate regulations, receive an allowance (supplement) or social pension. In this case, the maintenance is of an unlimited nature and no additional criterion is required to obtain such a tax exemption. However, a child who does not receive a nursing benefit or social pension who is over 25 years old, will be obliged to pay income tax on all child support received, because in this case the benefit received will already constitute the income of the entitled person (Ustawa z dnia 26 lipca 1991).

Maintenance for other people, received on the basis of a judgment or court settlement, are exempt from income tax up to PLN 700 per month. Benefits exceeding this amount are taxed in accordance with the provisions of the Personal Income Tax Act (Ustawa z dnia 26 lipca 1991).

The amount of maintenance due to the maintenance creditor is not determined voluntarily. First and foremost, the earning and financial resources of the person liable for alimony are of

great importance. (Kowalski, 2011). The term "earning and financial resources" is understood not only as actual earnings and income earned from property, but also those that the obligor can obtain if he exercises due diligence. Payable earnings are taken into consideration, which the debtor is able to obtain in his state of health, age, education and experience, and does not achieve them for trivial reasons that do not deserve to be included.

4. State support for entitled to alimony

Therefore, the methods of state support for persons entitled to alimony should be analyzed. The purpose of undertaking such a problem will be to systematize the possibilities of helping those in need who, by illiterating the debtor, can not satisfy their basic needs in life.

The principle of subsidiarity contained in the Constitution of the Republic of Poland makes the state obliged to support poor people who can not satisfy their needs by themselves (Konstytucja Rzeczypospolitej Polskiej). In addition, this group includes persons who do not receive maintenance support from the persons obliged to them for alimony. That is why, over the years, legislative solutions have been created in Poland, whose task is to support people entitled to maintenance, and to induce maintenance debtors to fulfill their obligations.

In principle, the maintenance of maintenance claims is based on the provisions of the Code of Civil Procedure. It is also possible to secure maintenance until they are fully due. These regulations apply primarily to spouses and children (Ustawa z dnia 17 listopada 1964).

The basis for securing a maintenance claim is the substantiation of the claim. At the same time, there is no need to make it probable that the lack of security would make it impossible to satisfy the claim.

In case of a misdemeanor of separation or divorce, the spouse may claim maintenance from the other spouse. It is important to stipulate that during the divorce proceedings or proceedings for separation, a separate case can not be initiated to meet the family's needs, including the granting of maintenance (Ustawa z dnia 17 listopada 1964).

A major facilitation for maintenance creditors is the possibility of securing future maintenance claims if they are related to the establishment of paternity. These claims can be protected before the child is born. The debtor is obliged to pay the appropriate amount corresponding to the costs of mother's maintenance for three months during the delivery period, as well as the costs of maintaining the child for the first three months after birth (Ustawa z dnia 17 listopada 1964).

It is also impossible to ignore the possibility of referring the parties to the proceedings to mediation, which is often a way to resolve the conflict amicably, although the parties do not initially see the possibility of establishing a common position.

It requires raising that setting the maintenance obligation is not always voluntary. If during the divorce proceedings or proceedings for separation, the parties do not express a common position in disputes, the court may refer them to mediation. In mediation proceedings, the parties may conclude a settlement on matters relating to the satisfaction of the family's needs, in particular to pay maintenance to the joint children of the parties. If, however, a settlement is not reached, the court may decide on the granting of one of the parties to the maintenance payment, as well as its amount, in a trial mode (Araszkiewicz, 2017).

Issues regarding the right to help in court proceedings for people in financial difficulties should also be raised. This issue is important because often poorer people give up their judicial claim because they can not afford to pay court fees or pay the attorney's fees, whose participation in the case is necessary, because such persons are not able to effectively represent their position. independently (Ramus, 2015).

Opening and running a trial before a court often involves the costs of the requesting party. In the event that the applicant does not have sufficient funds to pay the court fees and the lawyer's fees, he or she may apply for the right to grant assistance. On the basis of civil proceedings, this means that the requesting party may claim exemption from court costs (in whole or in part). In turn, a party that has already been granted a court exemption from the need to pay the costs of the proceedings, may apply for the appointment of a legal representative in the form of a lawyer or legal advisor. If the applicant is not exempted from court costs, he may demand the appointment of a professional representative, provided that he makes a declaration in the proceedings, which shows that he is unable to pay the attorney's fees without detriment to the maintenance of himself and his immediate family (Ramus, 2015). Dissemination of the law of assistance could improve the situation of people who are in a difficult financial situation and encourage them to take the actions necessary to fully realize their interests.

As a rule, a creditor against whom the debtor fails to perform his obligation to recover his claim must submit an application for the enforcement of the enforcement proceedings to the competent court or bailiff. Maintenance claims are undoubtedly an exception to this rule, because in cases where alimony has already been awarded, their execution may be initiated *ex officio* at the request of the court of first instance, which recognized the case. On the other hand, the bailiff is required to carry out an investigation, the purpose of which is to determine the debtor's assets and earnings from which enforcement can be carried out (Tomalak, 2014).

Benefits due to creditors for whom the debtors do not meet the maintenance obligation are another important issue to be addressed when discussing the subject of maintenance. This is a way to secure the basic financial needs of beneficiaries who are in a difficult financial and financial situation.

Each time, however, it should be borne in mind that if there are persons who may be required to pay maintenance to provide necessary means of support to the needy, then this obligation should be fulfilled in the first place. Only if the debtor fails to perform the service voluntarily and the execution of his property turns out to be ineffective, may the claimant apply for social

assistance benefits. Therefore, the right to benefits from the social assistance system should be treated as secondary, complementary, in relation to maintenance (Ustawa z dnia 12 marca 2004).

One of the institutions established to support maintenance creditors for whom the debtors do not meet maintenance obligations is the Maintenance Fund. Originally created by the Law on the Maintenance Fund from 1974, it was liquidated in 2003 by provisions introducing the Act on family benefits. At that time, he was replaced with a maintenance payment. The Fund itself, although slightly modified, was restored in 2008 by the Act on Assistance to Supported Persons. The main aims of the Maintenance Fund are conducting compulsory proceedings against alimony-related persons and providing services to an authorized creditor, the aggrieved party lacking the maintenance of the debtor (Ustawa z dnia 7 września 2007).

The period in which the creditor is entitled to benefits from the Maintenance Fund is varied. As a rule, the entitlement to receive such benefits expires upon the completion of the entitled person 18 years of age. However, if the entitled person continues to attend school or university education, he or she is entitled to the age of 25. In turn, if the creditor has a certificate of a significant degree of disability, the benefits are due for an unlimited period. A prerequisite for obtaining benefits is not to exceed the income threshold, which is PLN 725 per person in the family (Ustawa z dnia 7 września 2007).

When discussing the subject of state support for persons entitled to maintenance, it is impossible to omit another element of assistance, which is the possibility of bringing an action for maintenance claim by social assistance institutions. This is undoubtedly a way to make efforts to get the maintenance due from the debtor in a situation where the creditor is not able to effectively bring and conduct such proceedings.

Social assistance is an institution that was established to support people and families in meeting the necessary needs, and to enable them to live in conditions that correspond to human dignity. There are a number of social assistance centers whose aim is to help those most in need within a given unit. Support may primarily concern the recovery of maintenance claims from the debtor (Ustawa z dnia 12 marca 2004).

The head of the social assistance center, acting for the benefit of a person entitled to maintenance, carries out a maintenance interview. After its completion, it is possible to conclude an agreement with the maintenance debtor, under which the debtor undertakes to perform the maintenance obligation. If, however, the obligor refuses to sign such an agreement, he may expose himself to bring an action against him against the maintenance claim based on the provisions of the Act on Social Assistance (Ustawa z dnia 12 marca 2004).

The right to file such an action, apart from the head of the social assistance center, is also entitled to the head of the county family assistance center. In the course of the proceedings both in relation to the manager of the social assistance center and the head of the county family assistance center, the provisions on the prosecutor's participation in civil proceedings shall apply accordingly. It is also worth paying attention to the fact that to the initiation and conduct

of proceedings by these entities, the consent of the rightholder, in whose interest the proceedings should be conducted, is not required (Ustawa z dnia 12 marca 2004).

Another form of support entitled to maintenance, towards which debtors evade performance, is family allowance. It is often misinterpreted as providing means to support a child or family. Meanwhile, its purpose is only to partially cover the expenses for the child's maintenance. Therefore, it is not reasonable to claim that the family allowance was insufficient to cover the child's maintenance costs, because it is only a support for the parent or legal guardian of the child (Ustawa z dnia 12 marca 2004).

Family benefit should be understood as a cash benefit - an amount which the authority is obliged to pay to the entitled person for a period in which there is a legal right to receive it. This allowance is entitled to the entitled persons if the family income per person or income of the learner does not exceed PLN 674.00. The only exception is a family member – a child – with a severe or moderate degree of disability. Then the amount in question can not exceed PLN 764.00 (Ustawa z dnia 28 listopada 2003).

The legislator has also granted a number of supplements to the family allowance. These are supplements for: childbirth, childcare during the period of parental leave, single child raising, raising a child in a large family, education and rehabilitation of a disabled child, commencement of the school year, and for taking child education outside the place of residence (Ustawa z dnia 28 listopada 2003)

However, it should be borne in mind that family allowances and allowances will not be granted to a single parent, if the child has not been awarded child support by his parent. However, these regulations do not apply if the claim for maintenance was dismissed from the other parent (Ustawa z dnia 28 listopada 2003).

5. Court proceedings against alimony debtors

Speaking about alimony also requires analyzing the possibility of taking actions aimed at enforcing due maintenance for the benefit of creditors, undertaken by non-governmental organizations. This is another way of supporting people who, for various reasons, are not able to effectively claim their due claims themselves.

There are situations in which the maintenance creditors are not able to effectively pursue their interests in relation to the debtors. Non-governmental organizations that have the right to participate in proceedings before the courts in favor of and in the interests of citizens can come to help. Although the legislator grants the largest powers to act to non-governmental organizations in civil proceedings, they also have the right to act on behalf of persons in criminal, administrative and court-administrative proceedings. Such organizations have the right to initiate or join in pending proceedings regarding in particular maintenance, as matters

relating to the obligation to provide means of subsistence, and, if necessary, also means of education (Ramus, 2015).

In contrast to the head of the social welfare center and the head of the county social welfare center, non-governmental organizations must have legal standing to represent the maintenance creditor in court. It is therefore necessary for the organization to get a person's consent to be represented by a non-governmental organization (Ramus, 2015).

The maintenance debtors who fail to meet the obligation to perform the benefit, from 1 February 2019, are to be placed in the National Register of Debtors, also commonly referred to as the Register of Maintenance Debtors. This register is to be public and fully accessible via the Internet. In principle, its task will be to strengthen the enforcement of maintenance. Debtors who are overdue for maintenance for more than three months will be automatically placed in the register. This action is to motivate the debtor to pay the required amount. It is important that the register will be publicly available and anyone interested will be able to obtain information that the obliged person is in arrears with the provision of benefits to his or her own child. Persons placed in the National Register of Debts may also encounter additional difficulties in the form of impeding or preventing the acquisition of credit or installment purchases, as well as lowering credibility in the case of conducting business. If, however, the maintenance debtor repays the debt due, information about the date of performance will be placed in the register. This information, together with the debtor's details, will be visible for 7 years from the date of debt repayment. (Ministerstwo Sprawiedliwości, 29.05.2018)

Increasingly, there are also situations in which spouses come from different countries, which results in complications in the case of asserting property rights in divorce proceedings or proceedings for separation. Detailed guidelines on the law applicable to maintenance obligations in such situations are governed by private international law. The relevant provisions, however, are also included in the Polish Code of Civil Procedure. In accordance with the provisions contained therein, if the alimony case is dealt with separately from the matrimonial matter, the jurisdiction of the Polish courts is subject to ruling on disputable issues.

The term "alimony case" here should be understood broadly to make it easier for persons who are often clumsy in life to pursue claims, since judicial proceedings, especially in international law, are complicated. It should also be noted that national jurisdiction applies irrespective of the basis of the maintenance obligation. It is irrelevant for such claims that the maintenance obligation results from the law or the contract concluded between the parties, and whether it is monetary or non-monetary (Ustawa z dnia 17 listopada 1964).

An important problem, which is of particular significance for the whole of the issues discussed in this article, are penal provisions as well as the nature of changes occurring in the provision concerning the avoidance of fulfilling the alimony obligation. It is worth citing the possibilities of actions taken against the debtor in this area, which result in payment of arrears, as well as regular repayment of current maintenance obligations.

In the case of a debtor who evades the fulfillment of his alimony obligation, criminal proceedings may also be instituted. In doctrine, a deed committed by such a debtor was called a crime of non-alienation. This crime in the now known meaning appeared for the first time on the basis of Polish law along with the adoption of the Criminal Code in 1997. Over the years it was modified, but the changes introduced did not significantly change the nature of the crime itself (Ustawa z dnia 6 czerwca 1997).

The situation changed dramatically after the amendment of the Criminal Code of 2017, when the features of the crime changed. The most important change concerns the resignation from the phenomenon of persistence – In the light of the wording of the pre-revision provision, persistent evasion of the alimony obligation was punished, and the "persistence" in doctrine and case law was treated as a three-month period. In practice, this meant that the debtor, in order to avoid committing a crime, had to pay any amount to the entitled party within three months from the last date of performance. The amendment has made the mark of persistence no longer important to be able to deal with non-alienation. As of today, in order to commit a crime, it is enough to lead to arrears, the value of which exceeds the three-month maintenance obligation (in the case of periodic benefits), or the delay in performance is more than three months (in the case of services other than periodic). Moreover, in the basic type of crime, the need to prove that non-compliance with the alimony obligation would lead to a failure to satisfy the basic needs of the beneficiary of the benefit was not required. In the new wording of the act, this situation was considered to be a type of crime (Lachowski, 2018).

6. Summary

As a summary, it should be noted that the analysis of the maintenance obligation, especially in literature, usually covers only one branch of law, with possible references to other branches. There is no comprehensive approach taking into account different branches of law, combining administrative law with family law, civil proceedings, private and public international law or criminal law. Therefore, a compendium of knowledge on the alimony obligation and public legal support for persons entitled to maintenance should be created, taking into account different branches of law – family law, civil procedure, criminal law, as well as private and public international law.

Bibliography

1. Araszkievicz, M., Czapska, J., Pękała, M. (red.) (2017). *Mediacja. Teoria, normy, praktyka*. Warszawa: Wolters Kluwer Polska.
2. Jędrejek, G. (2017). *Kodeks rodzinny i opiekuńczy. Komentarz*. Warszawa: Wolters Kluwer Polska.
3. Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. nr 78, poz. 483 ze zm.).
4. Kowalski W. (2011). *Egzekucja świadczeń alimentacyjnych*. Sopot: Currenda.
5. Lachowski, J. (2018). *Kodeks karny. Komentarz*. Warszawa: Wolters Kluwer Polska.
6. Łukasiewicz, J. (red.) (2014). *Instytucje prawa rodzinnego*. Warszawa: Wolters Kluwer Polska.
7. Ministerstwo Sprawiedliwości. *Dłużnicy alimentacyjni w Krajowym Rejestrze Zadłużonych*, <https://www.ms.gov.pl/pl/informacje/news,11083,dluznicy-alimentacyjni-w-krajowym-rejestrze.html>, 30.09.2018.
8. Ramus, I. (red.) (2015). *Prawo alimentacyjne. Zagadnienia systemowe i proceduralne*. Toruń: A. Marszałek.
9. Sylwestrzak, A. (2007). *Skutki prawne separacji małżonków*. Warszawa: Wolters Kluwer Polska.
10. Tomalak, W. (2014) *Status ustrojowy i procesowy komornika sądowego*. Warszawa: Wolters Kluwer Polska.
11. Ustawa z dnia 12 marca 2004 r. o pomocy społecznej (Dz.U. 2004 nr 64, poz. 593 ze zm.).
12. Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Dz.U. 1964, nr 43, poz. 296 ze zm.).
13. Ustawa z dnia 25 lutego 1964 r. Kodeks rodzinny i opiekuńczy (Dz.U. 1964, nr 9, poz. 59 ze zm.).
14. Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych (Dz.U. 1991, nr 80, poz. 350 ze zm.).
15. Ustawa z dnia 28 listopada 2003 r. o świadczeniach rodzinnych (Dz.U. 2003, nr 228, poz. 2255 ze zm.).
16. Ustawa z dnia 6 czerwca 1997 r. Kodeks karny (Dz.U. 1997, nr 88, poz. 553 ze zm.).
17. Ustawa z dnia 7 września 2007 r. o pomocy osobom uprawnionym do alimentów (Dz.U. 2007, nr 192, poz. 1378).