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MAINTENANCE OBLIGATIONS TOWARDS ADULT CHILDREN IN THE REPUBLIC OF SLOVENIA

Summary: In the Republic of Slovenia, parents have a general obligation to maintain their children until they reach the age of majority (i.e., until they are 18 years old) by providing, in accordance with their capacities, the conditions necessary for the child's development. This obligation is extended if the child, who has already reached the age of majority, remains enrolled in secondary or higher education, but not indefinitely. The article will examine the conditions under which the maintenance obligation applies even towards adult children and highlight the differences between the new Family Code (applicable since 2019) and previous legislation. Special attention will be paid to the so-called above-standard maintenance payments, which can reach thousands of euros and are usually granted for the benefit of adult children living and studying abroad. With the ever-expanding opportunities for obtaining education all over the world, it is not surprising that such cases, which have been appearing in the recent case law of Slovenian courts, are becoming somewhat controversial and are opening new questions of whether there should be a limit to the needs of adult children that are taken into account in the calculation of maintenance.

Keywords: maintenance obligations between parents and children, maintaining adult children, maintaining married children, children enrolled in higher education, the amount of maintenance payment, the above-standard maintenance payment

1. Introduction

Parental rights and obligations have their constitutional basis in Article 54 of the Constitution of the Republic of Slovenia (URS),¹ the first paragraph of which states that parents have the right and duty to maintain, educate, and raise their children. This right and duty may be revoked or restricted only for such reasons as are provided by law in order to protect the child's interests. The importance of the parent's obligation to maintain their child cannot be underestimated, as its primary purpose is to provide material and cognitive prerequisites necessary for the development of a child and his

¹ Constitution of the Republic of Slovenia - Ustava Republike Slovenije (URS), Official Gazette of the Republic of Slovenia, No. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99 and 75/16 – UZ70a.

or her progress to independent living. Its contents are concretised under Article 183 of Slovenian Family Code (DZ),² the first paragraph of which stipulates that parents shall maintain their children until the age of majority by providing, in accordance with their capacities, the conditions necessary for the child's development. In line with the definition of a child from Article 1 of the Convention on the Rights of the Child,³ the child is considered to reach the age of majority when he or she turns eighteen. The general obligation of parents to maintain their child, therefore, refers to children who have not yet reached the age of eighteen. At this point, they ipso iure become emancipated, are considered adults and gain full legal capacity, allowing them to independently enter into, change or terminate legal relationships and acquire corresponding rights and duties.⁴ However, because financial independence does not always coincide with legal independence, this obligation may be extended to adult children, if all legal requirements are met.⁵

When imposing an obligation on parents to maintain their adult children, Slovenian legislation pursues one main aim, namely, to ensure the best environment for children to obtain education according to their capacities, talents and wishes and thus secure the best chance for successful independent living. The article will examine the conditions that have to be met for the adult child to claim maintenance and the precise contents of the parents' obligation to maintain them, with a focus on some particular issues that required additional interpretation by Slovenian courts. Some attention will be paid to highlighting the differences between the new Family Code (applicable since 2019) and the previous legislation. Furthermore, the article will address the topic of so-called above-standard maintenance payments. These maintenance amounts, which can reach hundreds or even thousands of euros, are not limited to adult children but are nonetheless frequently granted for the benefit of adult children living and studying abroad. With the ever-expanding opportunities for obtaining education all over the world, it is not surprising that such cases, which have been appearing in the recent case law of Slovenian courts with an increased frequency, are becoming somewhat controversial and are opening new questions of whether there should be a limit to the needs of adult children that are taken into account in the calculation of maintenance.

2 Family Code - Družinski zakonik (DZ), Official Gazette of the Republic of Slovenia, No. 15/17, 21/18 – ZNOrg, 22/19 and 67/19 – ZMatR-C.

3 Convention on the Rights of the Child – Konvencija o otrokovih pravicah, Official Gazette of the SFRY, No. 15/1990, Official Gazette of the Republic of Slovenia, No. 35/1992, MP No. 9/1992.

4 For more, see S. Kraljić, Nadstarševstvo ali qui vadis sodobno starševstvo, Zbornik v čast Karla Zupančiča. Ljubljana: Pravna Fakulteta, 2014, pp. 133ff.

5 See also S. Kraljić & L. Burkelc Juras, Child maintenance for adult children who are studying: Slovenian legal regulation and the contemporary case-law. In: B. Arkin (ed.), The international survey of family law: published on behalf of the International Society of Family Law. Bristol: Jordan Publishing, Family Law, 2016, pp. 411-455.

2. General characteristics of maintenance obligations between parents and children

The right of a child to be maintained differs from other property rights in various characteristics, for example, its nature is also mandatory (the child may not waive the right to be maintained), strictly personal (it may not be transferred to another person during life and is extinguished after the death of maintenance creditor or debtor), and mutual; there is no statute of limitation for the right to claim maintenance (except individual monthly instalments); the already paid maintenance cannot be reclaimed; it is subject to change (depending on the changes in maintenance debtor's financial capacity and maintenance creditor's needs); etc.⁶

While the parents live together in a shared household, both of them usually contribute to the maintenance of their child. However, when they do not (or no longer) live together, the parent who does not live in the same household as the child still had to contribute to the maintenance in the form of a monthly payment (the fifth paragraph of Article 183 of DZ).⁷ Parents generally maintain their child in their household unless this is contrary to the child's best interest. Other means of maintenance are relevant, for example, if the child is attending school at a distant location, in which case it would not be in their best interest to spend hours travelling between their home and school on a daily basis. Similarly, if the child had to be removed from their parents and placed with their guardian, in a foster home or institution, other means of maintenance have to be implemented.⁸ It is worth emphasising that a parent whose parental responsibility has been withdrawn or restricted, or a parent whose child is placed under guardianship, with another person, in foster care or institution, are not free from the obligation to maintain the child. In such cases, the parents are required to ensure the maintenance of their child with monthly payments (Article 184 of DZ).

In addition to parents, a spouse or a cohabitating partner also have an obligation to maintain the child of their spouse or partner who lives with them, if neither parent has the capacity to maintain the child (subsidiary nature of the obligation). This obligation of the spouse or cohabitant no longer applies if the marriage or cohabitation with the child's parent was terminated, except where the reason for termination is the death of the child's parent. In such cases, the surviving spouse or cohabitant remains liable to maintain the child who was living with them at the time of the termination of marriage or cohabitation (Article 187 of DZ).⁹

6 For more, see S. Kraljić, *Družinski zakonik s komentarjem*. Maribor: Poslovna založba MB, 2019, pp. 610ff.; K. Zupančič, *Družinsko pravo*, Ljubljana: Uradni list Republike Slovenije, 1999, p. 163; Kraljić & Burkelc Juras, 2016, pp. 411-455.

7 See also Kraljić, 2019, p. 610.

8 B. Novak, *Družinsko pravo*, Ljubljana: Uradni list Republike Slovenije, 2017, p. 238; Government of the Republic of Slovenia, Proposal for the Family Code of 20 December 2016, p. 21, <https://imss.dz-rs.si/IMiS/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/63a46860fbf7173032be6b1684a-9ebc5cd21110e1eed4c737ad1c674c8a1ce5f> (accessed 29 September 2020). See also point 3.2 of this Article.

9 Kraljić, 2019, p. 625; Government of the Republic of Slovenia, Proposal for the Family Code of 20 December 2016, p. 22. For more, see also Novak, 2017, p. 240-242.

Parents no longer have an obligation to maintain their child who is married or lives cohabitation with a partner, as the child's spouse or cohabiting partner is now imposed with the burden of maintenance. This applies regardless of whether the child has already reached the age of majority or not.¹⁰ However, to ensure legal certainty, the parents are still required to maintain even a married or cohabiting child in cases where the child's spouse or cohabitant are unable to maintain them (the so-called subsidiary obligation to maintain a child). In the case of adult children, this obligation only applies if all other general conditions are met.¹¹

Maintenance obligations between parents and children are mutual. Under Article 185 of DZ, a child who has reached the age of majority has the obligation within their means to maintain their parents who have insufficient resources to support themselves or are unable to obtain them but only for as long as the parents had actually maintained the child. This obligation does not apply towards a parent who failed to fulfil their maintenance obligations towards the child without justified reasons. The adult child who has a duty to maintain their parent has several options, between which he or she may choose freely: maintenance in the form of payments, maintaining a parent in his or her household, other forms of maintenance (e.g. paying for accommodation and care in social care institution).¹²

According to Article 188 of DZ, the child cannot renounce the right to maintenance – such renunciation has no legal effect. The purpose of maintenance is to meet those basic needs of the child that they are unable to meet on their own and to provide at least the most basic conditions for a decent life. However, the prohibition to renounce the right to maintenance does not exclude a possibility to renounce the right to claim maintenance (in a procedural sense). The maintenance creditor or their legal representative may still decide not to file the claim or withdraw the claim after it had been filed.¹³

3. Maintenance for adult children

3.1 The obligation of maintenance towards adult children

Under Article 137 of DZ, parents have an obligation to care for the life and health of their children, providing safety, basic care, upbringing and supervision; provide their children with conditions for healthy growth, balanced personal development and independent life and work; maintain their children; and, within their powers, provide for the schooling and professional education of their children according to their capacities, talents and wishes. The child's education is, therefore, clearly considered to be of the utmost importance for their well-being. Under the original ZZZDR (1976), the obligation of parents to maintain their children lasted only until they turned eighteen, meaning that adult children who wanted to pursue

¹⁰ Kraljić, 2019, p. 612.

¹¹ Zupančič, 1999, p. 160; Government of the Republic of Slovenia, Proposal for the Family Code of 20 December 2016, p. 21.

¹² Kraljić, 2019, pp. 623-624; Novak, 2017, pp. 243-244.

¹³ Kraljić, 2019, p. 626.

higher education had to either be lucky enough to have parents who valued education and helped them financially of their own volition, or fend for themselves by finding their own source of income. Forcing children to work while also attending school makes it more difficult for underprivileged children to finish their studies, achieve success, and have the same opportunities in life as their wealthier peers, which is why the amendment brought about by the Act Amending the Marriage and Family Relations Act (ZZZDR-C)¹⁴ in 2004 represented a welcome change. The amended second paragraph of Article 123 of ZZZDR,¹⁵ which remained valid until the DZ came into force, stated that parents have the obligation to maintain their child after they reach the age of majority if the child is in regular full-time attendance at an educational institution, but only until the child reaches the age of 26. While the new age barrier doubtlessly improved the financial situation of young adults attempting to acquire better education and professional qualifications, the cited provision remained problematic and subject to criticism due to the fact that some study programmes in the Republic of Slovenia last longer than others (e.g. six years for medicine).¹⁶

The DZ rectified the situation by defining the parent's obligation to maintain their adult children in more precise terms. The second and third paragraphs of Article 183 of DZ thus stipulate that parents have the obligation:

- to maintain a child enrolled in secondary education until the age of majority, if the child is in regular full-time attendance at a secondary school and is not employed and not registered as seeking employment, until the first termination of secondary schooling or the moment of obtaining the highest level of general or professional qualification that may be obtained in accordance with secondary education regulations;
- to maintain a child enrolled in short-cycle higher education if the child is in regular full-time attendance and is not employed and not registered as seeking employment, until the first termination of short-cycle higher education in accordance with the provisions of the Act governing short-cycle higher education;
- to maintain a child enrolled in higher education if the child is in regular full-time attendance and is not employed and not registered as seeking employment until the first termination of an undergraduate study programme or a single masters study programme in accordance with the provisions of the Act governing higher education. If the study programme in which the child is enrolled lasts for more than four years, the obligation of maintenance shall be extended accordingly.

In all cases, the obligation of maintenance no longer applies after the child reaches the age of 26. If the child has not yet finished their studies by that time, they can no longer claim maintenance for the remaining period of their studies.

14 Act Amending the Marriage and Family Relations Act - Zakon o spremembah in dopolnitvah zakona o zakonski zvezi in družinskih razmerjih (ZZZDR-C), Official Gazette of the Republic of Slovenia, No. 16/04.

15 Marriage and Family Relations Act - Zakon o zakonski zvezi in družinskih razmerjih (ZZZDR), Official Gazette of the Republic of Slovenia, No. 69/04 – official consolidated text, 101/07 – odl. US, 90/11 – odl. US, 84/12 – odl. US, 82/15 – odl. US, 15/17 – DZ and 30/18 – ZSVI.

16 See, for example, Kraljić & Burkelc Juras, 2016, pp. 411-455.

3.2 The legal standard of "regular full-time attendance"

The precise meaning of the legal standard of "regular full-time attendance" had been the subject of much debate under the previous diction, which failed to provide the answers to whether the parents have an obligation to maintain their children only during under-graduate or also post-graduate studies,¹⁷ or whether the parents have to maintain the child who already obtained a certain level of education and decided to enrol into another study programme at the same level, in order to pursue another profession.¹⁸ Both questions were answered by the above-cited Article 183 of DZ, which clearly states that the child is entitled to claim maintenance only until they finish their master's study programme (i.e. not for post-graduate, PhD studies) and only until the first conclusion of the study programme at a certain level of education.

The fairly extensive case law already resolved most other ambiguities and laid out specific criteria for defining the concept of "a regular full-time attendance". Most importantly, the formal status of the student is not decisive when assessing whether this condition is met. Instead, the student has to fulfil their school or study obligations regularly and in a timely manner, in a school or study programme leading to a publically recognised degree or title. Its purpose is to acquire a profession or education that will provide an adult child with a better independent living. This means that the adult child might be formally enrolled as a full-time student, but will not meet the requirement of a regular full-time attendance if he or she does not regularly fulfil their study obligations (e.g. fails exams, does not progress to a higher year, and gets suspended).¹⁹ It is worth noting that a repeated enrolment in the same year of a study programme is not necessarily a reason for the adult child to lose the right to maintenance. The court has to consider all circumstances of a specific case, including possible justified reasons for a delay in the (otherwise successful) education process, such as illness or pregnancy, taking care of a gravely ill person, mental anguish following the parents' divorce or legal disputes with parents, unbearable domestic circumstances requiring regular police intervention, etc.²⁰ The burden of proof that

17 See, for example, the Higher Court in Ljubljana, Judgement IV Cp 410/2015 of 11 March 2015, in which the court decided that the parents are only obliged to maintain their children who are enrolled in under-graduate studies. However, it also pointed out that there is no clear position regarding the status of masters' study programmes after Bologna reform in either legal theory or case law.

18 See the Supreme Court of the Republic of Slovenia, Judgement II Ips 134/2002 of 16 May 2002 and the Higher Court in Celje, Judgement Cp 1543/2004 of 31 August 2005, in which the courts determined that the right to maintenance depends on a regular full-time attendance (regular fulfilment of study obligations) and not on studying at a higher level of education than the one already achieved. The parents have to support their child even if it turns out that they made a mistake when choosing their first profession. The Higher Court in Ljubljana (Judgement IV Cp 4003/2010 of 10 November 2010) even approved the maintenance claim of a child enrolled into the third study programme, after already finishing two others, because she managed to prove that she is not abusing the enrolment in order to keep receiving maintenance, but that this profession was always her first wish and she was prevented from enrolling due to lower grades. See also Kraljić & Burkelc Juras, 2016, pp. 411-455. Cf. Novak, 2017, p. 232-233.

19 It is worth emphasising that in the case of underage children, parents are not released from the obligation to maintain the child until they reach the age of majority (18 years of age), regardless of whether they attend the school or not.

20 Supreme Court of the Republic of Slovenia, Judgement II Ips 268/99 of 30 June 1999; Supreme

the reason for failure to fulfil study obligations was justified lies on the maintenance debtor (i.e. the adult child), who is also expected to provide evidence of regular study in the form of enrolment certificate, grade report, certificate of passed exams, certificate of extra-curricular activities, etc.²¹

On the other hand, even if the child does not have a formal status of a full-time student, the maintenance may still be awarded, as long as they regularly fulfil their study obligations. This also applies to adult children enrolled in study programmes that are purposefully organised in a way allowing the students to hold a job and earn their own income (whether they actually decide to work or not).²² Slovenian courts firmly stand by the opinion that the purpose of maintenance obligation towards adult children is to make it possible for them to study and successfully complete the chosen study programme. If the child were also expected to hold a job and earn their own income (to reduce their parents' obligation to pay maintenance), such time-consuming requirement would threaten the success of their studies and thus defeat the primary purpose of maintenance obligation.²³ Therefore, as a rule, the adult child who is in regular full-time attendance has no obligation to find a job, even if the study programme is organised in a way that would allow them to do so. However, if they wish to cover the costs of some above-standard needs, especially if their parents' financial capacity is low, they should contribute to their own livelihood, as long as their work obligations do not affect the success of their studies and the quality of their education.²⁴ Furthermore, if they have another source of income or financial means (e.g. savings, scholarship, ownership of real estate), there is no reason why they should not at least partially contribute to their own subsistence.²⁵ In the case of the maintenance obligation towards underage children, parents are expected (and obliged) to do everything in their power to ensure sufficient means to cover at least their basic needs, even if that means that they have to take out a loan. Adult children, however, are considered to be capable of working and contributing to their own livelihood. For that reason, their parents are not required to go above and beyond to provide sufficient funds for maintenance, if they are struggling themselves (e.g. they are unemployed, they have to maintain other underage children).²⁶

Court of the Republic of Slovenia, Decree II Ips 821/2007 of 15 November 2007; Higher Court in Ljubljana, Judgement IV Cp 1337/2015 of 13 May 2015. See also Novak, 2017, p. 234.

21 Higher Court in Ljubljana, Decree IV Cp 3713/2005 of 7 September 2005; Higher Court in Maribor, Decree I Ip 428/2017 of 10 July 2017. See also Kraljić, 2019, p. 619.

22 Supreme Court of the Republic of Slovenia, Judgement II Ips 150/97 of 22 October 1997; Supreme Court of the Republic of Slovenia, Decree II Ips 185/2003 of 8 May 2003; Higher Court in Celje, Judgement Cp 1173/2004 of 14 July 2004.

23 Supreme Court of the Republic of Slovenia, Judgement II Ips 174/2007 of 18 April 2007; Higher Court in Ljubljana, Decree IV Cp 399/2013 of 27 February 2013; Higher Court in Ljubljana, Judgement IV Cp 1477/2014 of 11 June 2014.

24 Higher Court in Maribor, Judgement III Cp 1087/2015 of 26 October 2015; Higher Court in Ljubljana, Judgement IV Cp 352/2019 of 27 February 2019.

25 Higher Court in Maribor, Judgement III Cp 681/2014 of 13 August 2014.

26 Zupančič, 1999, p. 160; Kraljić, 2019, p. 620; Novak, 2017, p. 231. See also Higher Court in Ljubljana, Judgement IV Cp 1639/2009 of 3 June 2009; Higher Court in Ljubljana, Judgement IV Cp 4003/2010 of 10 November 2010.

Article 194 of DZ lays down a general rule that the parents shall maintain their child in their household unless this is contrary to the child's best interest. In other cases of maintenance obligation, the choice of how they want to provide maintenance (i.e. pay maintenance, take the person in their household or provide for their maintenance in another way) is left to the maintenance debtor, unless the maintenance creditor has important reasons why the maintenance should be awarded as a payable amount. There were some ambiguities regarding the question of whether the parents may insist on maintaining their adult children in their household (which is generally cheaper for the parent), even though the child wants to move away and claims monthly payments, but they were already clarified by the Supreme Court of the Republic of Slovenia. The court explained that the reasons of adult children requesting maintenance in the form of monthly payments are, indeed, justified to the extent that they should be given more weight when compared to the parents' right to choose how to fulfil their maintenance obligations. As a child grows older, parental rights and obligations start to diminish proportionately to the child's growing independence. Thus, the child's right to an independent living also becomes prevalent, which is why their emancipation represents a justified reason to live separately from their parents and demand monthly instalments to cover their needs. The reason why the adult child decided to move away (if the parents were "at fault" or not) is irrelevant.²⁷

4. Above-standard maintenance payments

4.1 General rules on determining the amount of maintenance

The amount of maintenance is always calculated on an individual basis, with regard to the needs of the maintenance creditor and the material and earning capacity of the maintenance creditor (Article 189 of DZ). It should be determined with a specific child and their needs in mind and not, for example, the average expenses for a child of a certain age. For that reason, there are no fixed amounts of maintenance payments for specific age groups in the Republic of Slovenia.²⁸ When determining the amount of maintenance, the court should consider the best interests of the child, so that maintenance adequately provides for their successful physical and mental development. It needs to be awarded in the amount sufficient to cover the costs of the child's basic needs, in particular the costs of accommodation, food, clothes, footwear, care, schooling, education, leisure, free time and other special needs (Article 190 of DZ).

Determining the amount of maintenance is a value-based decision, not a decision based on simple math. It can be understood as a triangle, the corners of which are represented by three legally relevant factors: the needs of the child, the mother's

²⁷ Supreme Court of the Republic of Slovenia, Judgement II Ips 183/2000 of 29 June 2000; Supreme Court of the Republic of Slovenia, Judgement II Ips 832/2006 of 22 February 2007. See also Novak, 2017, p. 238.

²⁸ Novak, 2017, p. 229; Government of the Republic of Slovenia, Proposal for the Family Code of 20 December 2016, p. 20.

maintaining capacity, and the father's maintaining capacity. The court needs to fill in this triangle with the relevant circumstances of the specific case and then determine a point in this triangle that equally balances all relevant corners. In doing so, it is unavoidable that the courts use numbers as a foundation for determining the amount of maintenance, but they should only use the numerical amounts to define a framework and prevent the judgment from being arbitrary.²⁹

The virtue of life cannot simply be translated into the numeric world of math and numbers. When determining the amount of maintenance, specific factors of completely immaterial nature need to be taken into account (e.g. the fact that one of the parents is responsible for the child's care and upbringing). Furthermore, the needs of a child are not permanent and keep changing from one day to the other, from one month to the next. Similarly, the costs incurring in relation to specific needs are changing as well (e.g. the price of clothing, transport, food). Finally, the child's needs can only be met to the extent that corresponds with the parents' income. In this regard, the court's task is to determine a proper balance (proportionality of values) between the urgency of the particular needs of the child on the one hand and the burden on the maintenance debtor on the other hand.³⁰

The maintenance obligation has to be divided between both parents in relation to their capacities. The court should also take into account which parent carries a more significant burden of care and upbringing.³¹ If the needs of the child or the capacities of the parent liable to pay maintenance later change, the child and the parent may both request the increase, reduction or termination of the previously awarded maintenance (Article 197 of DZ). The court may comply with the request if it determines that the circumstances have indeed changed (*rebus sic stantibus*).³²

When determining the amount of maintenance, the court has to follow the chart of basic needs and give priority to those needs that are essential for survival. Once these basic needs are met, the court also considered the costs related to other needs, such as leisure and free time. The scope of needs that can be fulfilled with the maintenance will finally depend on the available means of both parents; the larger the financial capacity, the more considerable burden can be placed on the parents.³³ It is worth noting that in order to protect the child's best interests, the maintaining capacity of parents is assessed more strictly in the case of underage children. The parents have a duty to do everything in their power to obtain sufficient means to maintain their children. For that reason, they cannot successfully claim to have low financial

29 T. Pavčnik, *Narava, Ustava in nekatera preživninska vprašanja*, Pravna praksa, Year 33, No. 10, 2014, p. 11-12;. See also Kraljić & Burkelc Juras, 2016, pp. 411-455; Kraljić, 2019, p. 627; Higher Court in Ljubljana, Decree IV Cp 234/2011 of 16 February 2011; Higher Court in Ljubljana, Judgement and decree IV Cp 58/2013 of 30 January 2013.

30 Higher Court in Ljubljana, Judgement IV Cp 2972/2013 of 18 December 2013; Higher Court in Ljubljana, Judgement and decree IV Cp 58/2013 of 30 January 2013.

31 Zupančič, 1999, p. 162; Novak, 2017, p. 228.

32 For more on changing the amount of maintenance, see Kraljić, 2019, pp. 630-631 and Novak, 2017, p. 245.

33 Higher Court in Ljubljana, Judgement IV Cp 472/2018 of 25 May 2018; Higher Court in Ljubljana, Judgement IV Cp 1506/2019 of 11 December 2019.

means just because they are not even attempting to find employment or because they have purposefully disposed of their property to avoid paying maintenance. Similarly, being incapable of earning income (e.g. due to physical disability) is not a justified reason to avoid paying maintenance if the parent already has substantial wealth and other sources of income.³⁴ When determining the financial capacity of a parent, the court will, therefore, take into account their regular salary, but also all other financial sources, regular and exceptional incomes, and general economic circumstances.³⁵

If the maintenance debtor fails to pay maintenance three months in a row or pays maintenance irregularly, the child is entitled to receive maintenance compensation from the Maintenance Fund of the Republic of Slovenia, if the maintenance was awarded by a court or agreed upon at the social work centre if the child has Slovenian citizenship or a permanent residence in the Republic of Slovenia, and if the child has not yet reached eighteen years of age (or fifteen, if the child has entered an employment relationship).³⁶

The maintenance is assessed in a monthly amount and in advance; it may be claimed only from the date of filing the claim or the motion for the assessment of maintenance. To take into account the yearly inflation rate, the maintenance is annually adjusted to the consumer price index in the Republic of Slovenia. The adjustment is made in January, taking into account the cumulative rise in consumer prices since the month in which maintenance was last determined or adjusted (Articles 196 and 198 of DZ).

4.2 The above-standard maintenance in Slovenian case law

Slovenian case law distinguishes between cases in which the maintenance covers only the necessary costs of the maintenance creditor and cases in which the maintenance debtor's financial capacity is sufficiently high also to cover the above-standard needs of the creditor.³⁷ While the average maintenance for a child in the Republic of Slovenia amounts to less than 150 EUR,³⁸ the above-standard maintenance can be much higher, reaching over 500 EUR,³⁹ 1.550 EUR,⁴⁰ or even 3.000 EUR per month.⁴¹ Such excessive amounts are generally awarded in the cases

34 Government of the Republic of Slovenia, Proposal for the Family Code of 20 December 2016, p. 20.

35 Zupančič, 1999, pp. 159-160; M. Končina Peternel, Nekatera vprašanja v zvezi z družinskopravnimi spori, *Pravosodni bilten*, Year 2005, No. 1, p. 48; Novak, 2017, p. 227.

36 For more, see Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia Act - Zakon o Javnem štipendijskem, razvojnem, invalidskem in preživninskem skladu Republike Slovenije (ZJSRS), Official Gazette of the Republic of Slovenia, No. 78/06 – official consolidated text, 106/12, 39/16 in 11/18 – ZIZ-L); V. Rijavec & S. Kraljić, The Maintenance of the Children: Alimony Fund as Saving Grace? In: B. Verschraegen (ed.), *Family Finances*. Vienna: Jan Sramek Verlag, 2009.

37 Higher Court in Ljubljana, Judgement IV Cp 3316/2011 of 18 January 2012.

38 According to the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the average maintenance in the year 2020 amounted to 138.36 EUR. For more details, see <https://www.gov.si/assets/ministrstva/MDDSZ/druzina/PREZIVNINE-dne-3.-7.2020.docx> (accessed 30 September 2020).

39 E.g. Higher Court in Ljubljana, Judgement IV Cp 1520/2012 of 18 July 2012.

40 E.g. Higher Court in Ljubljana, Judgement and decree IV Cp 1922/2015 of 15 July 2015.

41 Supreme Court of the Republic of Slovenia, Decree II Ips 143/2012 of 18 October 2012.

of children who were raised in families with considerable financial means before their parents separated, which allowed them to pursue expensive hobbies, sports, and other activities, and most often also to study abroad. Judicial decisions awarding the above-standard maintenance are somewhat controversial, based on the (sometimes) ambiguous method of calculating the balance between the needs and financial capacities, as well as the interpretation of legal standards "reasonable amount" and "child's best interest", which is why the case law in this area is still developing.

In line with the way of life in Slovenia, children share the financial circumstances of their parents. If the parents can afford to offer their children more (financial) means than what would amount to a bare minimum necessary for survival, they are expected to do so, meaning that the child has the right to a better standard of living if his or her parents' financial capabilities allow for such standard.⁴² This applies to raising a child who lives with his or her parents, but also for a child who is receiving maintenance from a parent who does not live with the child. The child's needs can be ranked according to how essential they are; however, the maintenance should not be limited to the amount that would satisfy only the needs concerning which a certain degree of urgency is demonstrated, but should instead cover all needs that are in the child's best interest.⁴³ Different amounts of money can be spent to cover the same basic needs (e.g. accommodation, food, clothes, education, vacations, and entertainment), depending on how much of it is available. For example, parents with the above-average income can afford to pay for additional activities (such as skiing) and to spend more money on clothes that are not in the lowest price range. The actual quality and quantity of what the parents can (and should) offer their child depend on their financial capacity, and their duty to maintain the child increases proportionally with the latter, from the most basic to the less urgent needs, until the remaining asserted needs could be considered an (unnecessary) luxury.⁴⁴

However, even the above-standard maintenance is not unlimited and should be set at a reasonable amount. A "reasonable amount" is a legal standard, the contents of which are determined by case law through decisions in similar cases. The basic requirement is that the maintenance should adequately provide for the child's successful physical and mental development (under Article 190 of DZ).⁴⁵ The main criteria applied by Slovenian courts, in these and all other cases involving children, is the best interest of the child. Thus, when the above-average financial capacities of the parents are sufficient to satisfy all needs of the child that were demonstrated during proceedings, the only acceptable limitation on the amount of maintenance depends on the assessment of whether the costs of a specific need are in the child's best interest. If the maintenance debtor possesses sufficient means to satisfy all asserted needs, the conclusion that some of the child's needs need not be met or

42 Supreme Court of the Republic of Slovenia, Judgement II Ips 394/1996 of 12 September 1996; Higher Court in Celje, Judgement Cp 817/1998 of 27 August 1998.

43 Higher Court in Ljubljana, Decree IV Cp 1306/2017 of 19 July 2017.

44 Higher Court in Ljubljana, Judgement IV Cp 2219/2016 of 11 October 2016; Higher Court in Ljubljana, Judgement IV Cp 2874/2013 of 13 November 2013.

45 Higher Court in Ljubljana, Judgement IV Cp 3316/2011 of 18 January 2012.

should be met to a limited extent is only justified if this is in the child's best interest. Such an assessment can only be made by taking into account all circumstances of the case. When conducting this assessment, the court should take into account especially the extent to which the parents covered the costs related to a particular need while they were still living together with the child, as this finding may help determine the child's (above-standard) needs at the time of proceedings. The court should also consider that at least as far as the maintenance needs of the child are concerned, the child's position should not be adversely affected as a result of the parents' separation if no special reasons exist that would justify such negative change.⁴⁶ Logically, it is more likely that a situation where fewer needs are being met than before would negatively affect the child's development than awarding maintenance in the amount sufficient to cover the same needs as before the separation.⁴⁷

Even if parents possess a sufficient financial capacity, they do not need to meet (or fully meet) every need of their child if there are reasons why this would not be in the child's best interest. Their task is to teach and prepare the child for their independent living, which includes economic management of their funds. Too much money available could prevent them from developing these skills, which are necessary for their future.⁴⁸ Another example where the above-average maintenance would not be in the child's best interest is the case of a child with too many extra-curricular activities. Such activities facilitate the development of the child's natural talents and capabilities, as well as his or her social skills. However, a schedule that is too full is not in the child's best interest, as the children also need free time and the time spent with their parents. If they are old enough, they should also have enough time to do appropriate household chores, which will further prepare them for their adult life and independence. Moreover, as children progress through the educational process, they need to invest more and more time into their school work and studying to retain good grades, which could suffer on account of too many activities. If the court determines that the child's schedule is too full, it may exclude the costs of certain excess activities when awarding maintenance.⁴⁹

The examples of children's needs that were generally considered justified by Slovenian courts awarding maintenance include foreign language courses (including English language course carried out in England),⁵⁰ senior-year trip and dance (prom),⁵¹ gym membership, social activities, birthday gifts for friends, cell phone

46 Higher Court in Ljubljana, Decree IV Cp 1306/2017 of 19 July 2017.

47 Supreme Court of the Republic of Slovenia, Judgement II Ips 141/2013 of 19 September 2013; Higher Court in Koper, Judgement I Cp 634/2006 of 8 June 2006.

48 Higher Court in Ljubljana, Judgement IV Cp 653/2014 of 2 April 2014; Higher Court in Ljubljana, Judgement and decree IV Cp 1022/2013 of 8 May 2013; Supreme Court of the Republic of Slovenia, Decree II Ips 143/2012 of 18 October 2012; see also Novak, 2017, p. 230.

49 Higher Court in Ljubljana, Judgement and decree IV Cp 1922/2015 of 15 July 2015; Higher Court in Ljubljana, Judgement and decree IV Cp 1022/2013 of 8 May 2013; Supreme Court of the Republic of Slovenia, Judgement II Ips 322/2015 of 18 February 2016.

50 Higher Court in Ljubljana, Judgement IV Cp 1506/2019 of 11 December 2019; Higher Court in Ljubljana, Judgement II Cp 2087/1999 of 12 January 2000.

51 Higher Court in Ljubljana, Judgement II Cp 2087/1999 of 12 January 2000.

plans, vacations,⁵² ice skates and sports uniform, costs of international competitions, violin lessons,⁵³ piano lessons,⁵⁴ swimming, skiing, tennis and golf.⁵⁵ On the other hand, the courts rejected the following costs as unjustified or unnecessary: costs related to car maintenance and insurance when the father insisted that he would not give his son a car if they were still living together (instead, the court approved the costs of public transport between the child's home and the university);⁵⁶ costs for bio-resonance when the mother failed to prove that these costs are necessary for child's personal development;⁵⁷ costs for golf equipment when the claimed amount was considered too high compared to the actual costs of individual pieces of equipment.⁵⁸

While the precise scope and contents of legal standards "reasonable amount" and "the child's best interests" are, as a rule, determined by the court in each particular case, the unreasonable amounts awarded in some cases finally forced the Supreme Court of the Republic of Slovenia to step in and determine the maximum limit that should not be exceeded, regardless of the parents' financial capacity and the asserted needs of the child. In the case of a particularly rich maintenance creditor (the child's father), the court of the first instance awarded the highest amount of maintenance in Slovenian case law yet, with monthly payments ranging between 5.000 and 6.000 EUR. The case finally ended up before the Supreme Court, which did not doubt that the father can afford to pay such high amounts every month. Furthermore, the court assessed that since the father covered the costs of studying in the UK for three older daughters (as well as frequent holidays and trips abroad, expensive musical education, etc.), there is no reason why he should not do the same for the child in question. However, the court also emphasised that the child should learn how to live independently and manage her money in a responsible manner, which could be prevented if the maintenance was set too high. For that reason, even though the financial capacity of both parents was exceedingly high, the Supreme Court reduced the amount determined by the court of the first instance to 3.000 EUR per month. It stated that this amount represents the upper limit of maintenance obligation, which should not be exceeded, and thus established a rule to be followed by the courts in similar (probably rare) cases.⁵⁹

Naturally, the parents are not prevented from (voluntarily) covering any other costs that exceed the needs ensuring a successful physical and mental development of their child if they wish to do so of their own free will. If they determine that they are willing and capable of providing their child with additional financial means and pay for additional (luxurious) needs, they may agree between themselves to split those costs in a certain manner, or cover the costs themselves. However, these extra amounts cannot be included in the court-mandated maintenance and are not the

52 Higher Court in Ljubljana, Judgement IV Cp 3316/2011 of 18 January 2012.

53 Higher Court in Ljubljana, Decree IV Cp 234/2011 of 16 February 2011.

54 Higher Court in Ljubljana, Judgement and decree IV Cp 595/2013 of 13 March 2013.

55 Higher Court in Ljubljana, Judgement and decree IV Cp 1022/2013 of 8 May 2013.

56 Higher Court in Ljubljana, Judgement IV Cp 3316/2011 of 18 January 2012.

57 Higher Court in Ljubljana, Decree IV Cp 1306/2017 of 19 July 2017.

58 Higher Court in Ljubljana, Judgement and decree IV Cp 1922/2015 of 15 July 2015.

59 Supreme Court of the Republic of Slovenia, Decree II Ips 143/2012 of 18 October 2012.

subject of assessing the proper amount of maintenance.⁶⁰

It is also worth noting that the right of a child (especially of the adult child) to receive the above-standard maintenance comes with strings attached. While the parents with the above-standard financial capacity have a duty to ensure the (above-standard) conditions for healthy and consistent development and prepare the child for independent living, the child also has a responsibility to fulfil his or her obligations when progressing to their independent life. If these two processes are not mutual or at a similar level, the above-standard maintenance will represent a negation of the parents' legal obligation to provide their (especially adult) child with conditions for their progression to independent living. The age of the adult child and the year of their studies are the leading indicators that reflect how well the adult child complies with his or her obligations, which in turn guarantees his or her right to maintenance and at the same time justifies the higher amount of maintenance to cover the above-standard needs (if this is within the financial capacity of his or her parents).⁶¹ Therefore, if the child fails to reach adequate study results, the court may decide that the above-standard maintenance is not serving its purpose and is, consequently, unjustified.

5. Conclusions

The obligation of parents to maintain their children is primarily intended to ensure material conditions for successful personal development of a child during the time in their lives when they are not yet capable of providing for themselves. In the modern age, technological and social progress led to a situation where many jobs in the labour market require special skills and knowledge, which can only be obtained through the education process. According to the Statistical Office of the Republic of Slovenia, 92.6% of Slovenian population aged eighteen or over participated in formal education (youth or adults) in the school year of 2019/2020.⁶² With such a high number of adults involved in the education process, it is no surprise that adult children require their parents' financial support and assistance even after their legal emancipation at the age of eighteen. If they were expected to invest their time into earning their own income in addition to obtaining an education, the success of their studies would be at risk, which could, in turn, have long-term consequences for their success in adult life. For that reason, Slovenian legislation extended the right to maintenance to adult children, as long as they fulfil the conditions laid down in the DZ, the most important of which are "regular full-time attendance" and the maximum age of 26. The article paid particular attention to how Slovenian courts interpret the legal standard of regular full-time attendance, which does not depend on

60 Higher Court in Ljubljana, Judgement IV Cp 653/2014 of 2 April 2014; Higher Court in Ljubljana, Judgement and decree IV Cp 595/2013 of 13 March 2013; Higher Court in Ljubljana, Decree IV Cp 234/2011 of 16 February 2011; Supreme Court of the Republic of Slovenia, Decree II Ips 143/2012 of 18 October 2012.

61 Higher Court in Ljubljana, Judgement IV Cp 3316/2011 of 18 January 2012.

62 Statistical Office of the Republic of Slovenia, <https://www.stat.si/StatWeb/en/Field/Index/9> (accessed 29 September 2020).

a formal status of a student but on the de facto situation, in which the student fulfils their school or study obligations regularly and in a timely manner, in a school or study programme leading to a publically recognised degree or title. It also examined justified reasons for a delay in studies, the circumstances under which the adult child has to contribute to their own costs of living and the ways in which the adult child may be maintained.

The second part of the article addressed the issue of the above-standard maintenance, which may be granted in cases where the parents' maintaining capacity is sufficiently high also to cover the above-standard needs of their child. Children generally share the financial circumstances of their parents, which means that wealthier parents can (and are expected to) cover more of their children's needs than those who do not have sufficient means of income. The parents' obligation to maintain the child increases proportionally with their financial capacity, from the most basic to the less urgent needs. This applies even when the child no longer lives with one or both of their parents (either because they separated or because the child moved away, e.g. to study in another town) and is thus receiving maintenance in the form of monthly payments. The highest amounts of maintenance are generally awarded in the cases of children who pursue expensive sports and hobbies, or in the cases of children who study and live abroad, which results in a significant increase in their costs of living. Even though the maintenance in such cases can reach hundreds or even thousands of euros, the courts have always attempted to follow the legal standard of "reasonable amount", which mainly depended on the criteria of the best interest of the child. The limits to which children's needs are to be met were generally set where a court assessed that the higher amount would not be in the child's best interest, e.g. due to too many extra-curricular activities or to encourage the child to learn how to manage their funds better. However, even these limits were interpreted differently by different courts, which is why the Supreme Court of the Republic of Slovenia finally stepped in and determined the maximum amount of maintenance (paid by one parent) that should not be exceeded at 3.000 EUR.

According to the information presented by the Ministry of Labour, Family, Social Affairs and Equal Opportunities, out of 71.551 cases of children receiving maintenance, 18.279 cases are of adult children taking part in the education process. While the average maintenance in the year 2020 amounted to 138.36 EUR, the largest amount granted this year was 2.000 EUR.⁶³ The data clearly shows that the issues discussed in this article are of crucial importance for a large number of adult children, who are attempting to obtain a degree or professional qualifications and thus improve their chances at a successful life. Given the fact that the calculation of maintenance does not follow a simple mathematical formula and that life circumstances of both the parents and the child are subject to frequent changes, there is no doubt that more interesting cases can be expected in Slovenian case law in the future.

⁶³ Ministry of Labour, Family, Social Affairs and Equal Opportunities, the average maintenance in the year 2020 amounted to 138.36 EUR. For more details, see <https://www.gov.si/assets/ministrstva/MDDSZ/druzina/PREZIVNINE-dne-3.-7.2020.docx> (accessed 30 September 2020).

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OBAVEZA IZDRŽAVANJA PUNOLJETNE DJECE U REPUBLICI SLOVENIJI

Sažetak: U Republici Sloveniji roditelji imaju opću obavezu izdržavanje djece do punoljetnosti (do navršenih 18 godina života), pružanjem, u skladu sa svojim mogućnostima, uvjeta za razvoj djeteta. Ova se obaveza produžava ako dijete, koje je već punoljetno, ostane upisano u srednje ili visoko obrazovanje, ali ne na neodređeno vrijeme. Rad će ispitati uvjete pod kojima se obaveza izdržavanja primjenjuje čak i na punoljetnu djecu i istaknuti razlike između novog Porodičnog zakona (koji se primjenjuje od 2019. godine) i prethodnog zakonodavstva. Posebna pažnja posvetit će se tzv. nadstandardnim platama za izdržavanje, koje mogu doseći hiljade eura i obično se dodjeljuju u korist punoljetne djece koja žive i studiraju u inostranstvu. Uz sve veće mogućnosti stjecanja obrazovanja u cijelom svijetu, nije iznenađujuće da takvi slučajevi, koji se pojavljuju u novijoj praksi slovenačkih sudova, postaju pomalo kontroverzni i otvaraju nova pitanja treba li postojati neko ograničenje na potrebe punoljetne djece koja se uzimaju u obzir pri izračunu izdržavanja.

Ključne riječi: obaveze izdržavanja između roditelja i djece, izdržavanje punoljetne djece, izdržavanje oženjene/udate djece, izdržavanje djece koja su upisana na visoko obrazovanje, iznos plaćanja izdržavanja, nadstandardna naknada za izdržavanje