

CONCEPTS AND TYPES OF AGREEMENTS BETWEEN MOTHER, FATHER AND CHILDREN IN FAMILY LAW

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DOI <https://doi.org/10.61345/1339-7915.2023.4.14>

Annotation. The scientific article investigates the concept and legal nature of agreements between mother, father and children in family law, as well as the types of this category of agreements are revealed. The methodological basis of the research is a combination of qualitative research methods, literature review and analysis of relevant legal acts. To achieve the goal of the article, the author used the following methods: (1) literature review; (2) analysis of normative legal acts; (3) qualitative research methods and (4) comparative analysis. The scientific article defines the concepts and types of agreements between mother, father and children in family law, taking into account the achievements of family law doctrine. The scientific article shows that the current family law does not limit the possibility of contractual settlement of family relations between mother, father and children only to the conclusion of agreements that are directly defined by family law; in the family legal doctrine, among the agreements not mentioned in the family legislation, agreements are distinguished: on the participation of one of the parents in additional expenses for children; about maintenance of adult children of disabled parents; about maintenance of an adult child during the period of study or a child with a disability; about maintenance of parents by an adult child or a minor child, if she has sufficient income and is able to provide maintenance; on determining the procedure for using common property of family members and other agreements. Agreements between a mother, father and children can also include an agreement on guardianship over a child in the event that the placement of a child in the family of a foster carer is carried out at the request of the parents. The legal nature of agreements between a mother, a father and a child provides for a number of features: they can regulate any issues of family relations between parents and a minor or underage child, except when such regulation is contrary to the interests of the child; on the other hand, only those family relations with the participation of an adult child related to the implementation of his obligation to provide support to incapacitated parents can be settled contractually; a child as a subject of contractual legal relations arising in connection with the conclusion of such an agreement is a minor or an underage person, in relation to the exercise of whose rights an agreement is concluded, which ensures the exercise of the relevant rights of him as a child; an exception is an agreement concluded on the provision of maintenance by parents who are unable to work, the child in this legal relationship is an independent participant with full family and civil legal capacity; contractual regulation of family relations between parents and children should not conflict with the minimum guarantees provided by family law, although it may significantly supplement and expand them.

Key words: family agreement; parents; baby; agreements between mother, father and children; family rights and obligations; interests of the child.

1. Introduction.

According to Art. 9 of the Family Code of Ukraine, spouses, parents of a child, parents and children, other family members and relatives, the relations between which are regulated by this Code, may regulate their relations by agreement (contract), if this does not contradict the requirements of this Code, other laws and moral the foundations of society [1]. A family contract is characterized by the orientation of the parties to the implementation of their family rights and obligations, the establishment of the

procedure for the implementation of family rights and obligations defined in the legislation or the consolidation of such subjective rights and obligations that are not established in the legal minimum requirements for the parties, inadmissibility deterioration of the property situation of the parties to the contract in terms of rights and guarantees provided for by family law [2, p. 117]. Agreements concluded between the mother, father and children, being both legal and social instruments for regulating family relations between them, determine the specifics of the exercise of parental rights and obligations, the rights and obligations of the child in personal non-property and property family legal relations. The legal regime established by these agreements is aimed at better ensuring the rights and interests of the mother, father and child compared to the legal legal regime, primarily on issues such as participation in the upbringing of the child and communication with it, ways of maintaining it for the parent who lives separately from the child, determining the procedure for managing the child's property, while the child's interests prevail over the interests of his parents. Some of these agreements are named in the Family Code of Ukraine, however, family law does not limit the possibility of contractual settlement of family relations between mother, father and children only to the conclusion of contracts that are directly defined by family law, allowing any contractual regulation of legal relations that arise between mother, child's father and child.

2. Analysis of scientific publications.

The analysis of existing scientific works, including dissertation studies and publications, allows us to indicate that the issue of determining the legal nature of agreement between mother, father and children has become the subject of consideration by such scientists as V.K. Antoshkina, H.M. Akhmach, I.V. Apopii, V.I. Borysova, V.A. Vstras, K.S. Verkhovets, A.O. Dutko, I.V. Zhylinkova, L.V. Krasyska, O.M. Kucherenko, M.V. Lohvinova O.I. Lukiianchuk, M.O. Nimak, O.V. Rozghon, Z.V. Romovska, L.V. Sapeiko, V.I. Truba, S.Ya. Fursa, Ye.D. Khanovych. At the same time, these scientists researched the issue of contractual regulation of family relations between mother, father and children not enough, there is a discussion about the classification of this category of agreements, essential conditions, subject, content and scope of contractual regulation of each of the selected types. The above determines the relevance and importance of researching the concept and types of contracts between mother, father and children.

3. The aim of the work.

The purpose of the study was to study the concept and types of agreements between mothers, fathers and children. The methodological basis of the research is a combination of qualitative research methods, literature review and analysis of relevant legal acts. To achieve the goal of the article, the author used the following methods: (1) literature review; (2) analysis of normative legal acts; (3) qualitative research methods and (4) comparative analysis.

4. Review and discussion.

It is necessary to start the scientific research with the determination of the legislative regulation of the possibility for parents and children to enter into agreements regarding the exercise of their family rights and obligations, and in the future it is necessary to move on to the family legal doctrine.

As A. O. Dutko notes, the main purpose of a family agreement is to focus on the emergence, change and termination of family rights and obligations [2, p. 138]. This can fully apply to agreements between mother, father and children. The Family Code of Ukraine outlines three main issues related to the fate of the child, which must be settled contractually in the event of the parents' divorce and/or parents living separately. They are: determination of the child's place of residence, exercise of parental rights and fulfillment of duties by those of them who live separately from the child, and maintenance of the child (payment of alimony). These issues constitute the content of the right to ensure the maximum guarantees of upbringing and development of the child, provided that the parents live separately [3, p. 29]. Agreements between a mother, father and children, the possibility of concluding which is

expressly provided for by the Family Code of Ukraine (are agreements named in the family legislation) are agreements: regarding the determination of the order of children's residence in case of separation of parents (in case of divorce) and participation in ensuring living conditions of a child of one of the parents who lives separately (Part 1 of Article 109 of the Family Code of Ukraine); on the exercise of parental rights and the fulfillment of duties by those of them who live separately from the child (Part 4 of Article 157 of the Family Code of Ukraine), on the payment of alimony for the child (Article 189 of the Family Code of Ukraine), on the termination of the right to alimony for of a child in connection with the transfer of ownership of immovable property (Article 190 of the Family Code of Ukraine). Also, as follows from the provisions of Art. 93 of the Family Code of Ukraine, the property rights and obligations of spouses as parents can be defined in the marriage contract (provided that the scope of the child's rights established by the Civil Code of Ukraine is not diminished, and neither spouse is placed in an extremely unfavorable financial situation [1]).

At the same time, the issues of providing maintenance to a child in the form of incurring additional costs for the child, providing maintenance in kind, providing maintenance to incapacitated parents by adult children, determining contractual liability for failure to fulfill the obligation to provide maintenance, can also be regulated in a contractual manner. determining the procedure for managing the child's property, etc. The purpose of all the above agreements is to realize the family rights and interests of parents and children, primarily the child's right to upbringing, the child's or his parents' right to maintenance, as well as the child's right to be brought up in the family, the right of parents to exercise their right to the personal upbringing of the child, as well as the rights of parents and children related to the ownership of certain property (both jointly owned by parents and children, and owned by a minor or minor child). In particular, in the agreement regarding the exercise of parental rights and the fulfillment of duties by those of them who live separately from the child, any important nuances for the parties may be recorded: the place of communication, its frequency, duration, the need for the presence of third parties during communication, etc. The main thing in this and other agreements between the mother, father and children is that it should not contradict the interests of the child [4, p. 166]. These agreements are essentially unnamed in family law.

The legal nature of agreements between a mother, a father and a child provides for a number of features: they can regulate any issues of family relations between parents and a minor or underage child, except when such regulation is contrary to the interests of the child; on the other hand, only those family relations with the participation of an adult child related to the implementation of his obligation to provide support to incapacitated parents can be settled contractually; a child as a subject of contractual legal relations arising in connection with the conclusion of such an agreement is a minor or an underage person, in relation to the exercise of whose rights an agreement is concluded, which ensures the exercise of the relevant rights of him as a child; an exception is an agreement concluded on the provision of maintenance by parents who are unable to work, the child in this legal relationship is an independent participant with full family and civil legal capacity; contractual regulation of family relations between parents and children should not conflict with the minimum guarantees provided by family law, although it may significantly supplement and expand them.

We can distinguish other classifications (apart from agreements named and unnamed in family law) of agreements between mother, father and children.

Thus, an interesting approach expressed by I.V. Zhylinkova: the scientist singles out two groups of agreements between the mother, father and children: agreements of parents regarding the upbringing and maintenance of the child (in which the child is not a formal party to the agreement, but is rather a beneficiary) and agreements between by parents and children (which can be concluded regarding the maintenance of an adult child during the study period or a child with a disability, or regarding the maintenance of parents by an adult child or a minor child, if she has sufficient income and is able to provide maintenance) [5, p. 46-47]. The second category of agreements is unnamed in family legislation, therefore, parents and children have the right to conclude agreements on the implementation of other rights and obligations (not only alimony), including on issues of the exercise of the right to communicate with grandchildren, the implementation of property rights in relation to joint property. Although the last group is to some extent named, but in civil legislation: these are agreements between the mother, father and children on the order of ownership and use of joint property (Article 358 of the Civil Code of

Ukraine), the agreement on the ownership of fruits, products and proceeds from use of joint property (Article 359 of the Civil Code of Ukraine), an agreement on the allocation in kind of a share of real estate (Part 3 of Article 364 of the Civil Code of Ukraine); it can also be noted on purely family agreements, such as: an agreement on the transformation of joint co-ownership into joint partial ownership, an agreement on determining the order of use of joint property of family members [6, p. 105]. A similar classification of agreements between a mother, father and child into agreements regarding the upbringing and maintenance of a child and agreements between parents and children is highlighted by V.M. Cherneha [7, p. 103] and M.V. Boryslavska [8, p. 196]. On the other hand, V.M. Cherneha singles out the following three groups of agreements in the legal relationship between mother, father and children: agreements of parents regarding the upbringing and maintenance of a child and agreements between parents and children [7, p. 103]. As M.V. Logvinova notes, there are two groups of agreements between mother, father and child: regarding the exercise of parental rights and fulfillment of parental responsibilities and regarding child support [9, p. 304-305].

O.V. Rozghon in the system of family agreements singles out a group of agreements aimed at regulating relations between parents-educators and the body of guardianship and care with the transfer of orphaned children to a family for upbringing (patronage contract; contract on placement of children in foster care agreement on the organization of activities of a family-type children's home) [3, p. 72-73]. Parents are not a party to the contracts on placement of children in a foster family and on the organization of family-type children's homes, therefore these contracts cannot be considered as contracts in the legal relationship between mother, father and children. On the other hand, the child's parents are a party to the said guardianship agreement in the event that the placement of the child in the family of the foster carer is carried out at their request, and therefore this agreement can be considered a special contract between the mother, father and children, as it provides for their placement to the family of a foster carer for the purpose of temporary care, education, rehabilitation of the child for the period when the child and his parents overcome difficult life circumstances, ensuring the protection of the rights of the child who due to difficult life circumstances cannot temporarily live with his parents, providing him and his family with of services aimed at reintegrating the child into the family or providing the child with an appropriate status for making further decisions taking into account the best interests of the child to ensure his right to upbringing in the family or in conditions as close as possible to family ones [10]. Therefore, in our opinion, agreements between a mother, father and children can also include an agreement on the guardianship of a child in the event that the placement of a child in the family of a foster carer is carried out at the request of the parents.

Z.V. Romovska distinguishes family agreements according to the following criteria: as "understanding" ("agreement", ordinary family contracts), as small family contracts concluded orally, and "serious" family contracts. The latter category primarily includes contracts named in family legislation, the former – unnamed. Unfortunately, the scientist does not highlight the list of unnamed contracts between the mother, father and children [11, p. 26-27]. O.V. Mykhalniuk agrees with Z.V. Romovska. She singles out two groups of agreements: alimony agreements (spousal maintenance agreement; spousal agreement on termination of the right to alimony in connection with the acquisition of ownership of real estate or receipt of a one-time cash payment; agreement on the payment of alimony; agreement on the termination of the right to alimony for a child in connection with the acquisition of ownership rights to immovable property; an agreement between a wife and a husband, concluded upon dissolution of marriage, about what material participation in providing for the lives of their children will be taken by the parent who will live separately) and agreements on raising children (an agreement on the exercise of parental rights and obligations by parents; an agreement between a wife and a husband, concluded upon dissolution of marriage, on which of them the children will live with after the dissolution of the marriage, which non-property participation in providing for their lives will be taken by the parent who will live separately). On the other hand, the scientist does not recognize as family law the so-called "quasi-family contracts", i.e. contracts that mediate the relationship of transferring children to a family for upbringing (patronage contract; contract for placement of children for upbringing and cohabitation in a foster family's; agreement on the organization of activities of a family-type orphanage; agreements on surrogate motherhood) [12, p. 87-88]. At the same time, we cannot agree with this opinion regarding the legal nature of the child guardianship agreement, since the latter, as previously determined, is aimed at securing and protecting the family rights and interests of the child, as well as his parents.

5. Conclusions.

On the basis of the above, we can conclude that the current family legislation does not limit the possibility of contractual settlement of family relations between the mother, father and children only to the conclusion of agreements that are directly defined by the family legislation; in the family legal doctrine, among the agreements not mentioned in the family legislation, agreements are distinguished: on the participation of one of the parents in additional expenses for children; about maintenance of adult children of disabled parents; about maintenance of an adult child during the period of study or a child with a disability; about maintenance of parents by an adult child or a minor child, if she has sufficient income and is able to provide maintenance; on determining the procedure for using common property of family members and other agreements. Agreements between a mother, father and children can also include a contract on guardianship over a child in the event that the placement of a child in the family of a foster carer is carried out at the request of the parents.

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