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Legal and ethical aspects of caring for dependent parents

Prawne i etyczne aspekty opieki nad niesamodzielnymi rodzicami

Abstract

Aim. The article is devoted to the analysis of legal regulations and ethical obligations regarding the care of a dependent parent who needs support or assistance in everyday life. Although providing care to needy members of the immediate family should be an obvious issue, carried out informally, it is also reflected in the law. The key regulation in this respect is Art. 87 of the Family and Guardianship Code, according to which “Parents and children are obliged to respect and support each other.” However, when considered from an ethical

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perspective, this obligation remains fraught with numerous dilemmas. The aim of the article is to stimulate social awareness by drawing attention to both the moral ambiguities related to care and the legal basis for obligations towards dependent parents. Both aspects were supported by appropriate reference to the current social situation, in which the issues of old age, dependency, and care will increasingly constitute an element of numerous discussions and attempts to find specific solutions.

Methods and materials. Critical analysis of data and bibliographical material, original, creative, problem-based review of the topic.

Results and conclusion. Children, as the closest descendants, have the obligation to provide assistance to their parents not only in connection with illness or disability, but also whenever they need it in their daily existence. Judgement about ethical obligations is not so precise because we are, and will be, faced with the need to make decisions that are highly morally problematic, the vagueness of which generates more questions than seemingly easy answers.

Keywords: care, dependent parent, ethics, law, obligation.

Abstrakt

Cel. Artykuł jest poświęcony analizie regulacji prawnych oraz zobowiązań etycznych dotyczących opieki nad niesamodzielnym rodzicem potrzebującym wsparcia lub pomocy w codziennej egzystencji. Mimo że zapewnienie opieki potrzebującym członkom najbliższej rodziny powinno być oczywistą reakcją każdej osoby, realizowaną w sposób nieformalny, znajduje ono także odzwierciedlenie w przepisach prawa. Kluczowa w tym zakresie jest regulacja art. 87 Kodeksu rodzinnego i opiekuńczego, zgodnie z którą „Rodzice i dzieci są obowiązani do wzajemnego szacunku i wspierania się”. Zobowiązanie to rozpatrywać można także z perspektywy wartości, niemniej jednak nawet wtedy etyczny charakter opieki pozostaje obarczony rozlicznymi dylematami. Celem artykułu jest pobudzenie świadomości społecznej przez zwrócenie uwagi zarówno na niejednoznaczności moralne związane z opieką, jak i na regulacje prawne w zakresie wspierania niesamodzielnych rodziców. Oba aspekty poparto stosownym odniesieniem do aktualnej sytuacji społecznej, w której problematyka starości, niesamodzielności czy opieki będą coraz częściej stanowiły element rozlicznych dyskusji czy prób szukania konkretnych rozwiązań.

Metody i materiały. Analiza krytyczna danych i materiału bibliograficznego, oryginalny, twórczy, problemowy przegląd tematu.

Wyniki i wnioski. Dzieci jako najbliżsi zstępni mają obowiązek zapewnienia pomocy rodzicom nie tylko w związku z chorobą lub niepełnosprawnością, lecz także w każdym przypadku, gdy jej potrzebują w codziennej egzystencji. Orzekanie o etycznych zobowiązaniach nie jest zaś tak precyzyjne, ponieważ jesteśmy i będziemy postawieni wobec konieczności podejmowania decyzji o dużym stopniu problematyczności moralnej, której nieostrość generuje więcej pytań niż pozornie łatwych odpowiedzi.

Słowa kluczowe: opieka, niesamodzielny rodzic, etyka, prawo, zobowiązanie.

Introduction

Parents and children have a special bond, which naturally results in the need for mutual support. This paper is devoted to helping parents who, for whatever reason, are not fully independent in their daily lives. This issue will be presented from a legal and ethical perspective. The legal institutions that specify this obligation towards dependent parents include child maintenance for parents, care leave, care allowance, guardianship for a disabled person, guardianship for a person with limited legal capacity, and legal guardianship for a person with full legal incapacity. Furthermore, in some situations, children will be obliged to cover the living expenses of their parents placed in a nursing home. The section of the article on the legal aspects of caring for dependent parents attempts to discuss the above legal institutions in the context of support provided to parents by their children. It was also indicated that the easement of an apartment and life annuity can be considered a form of assistance to a mother and father in certain life situations. From an ethical point of view, care or assistance is obviously sanctioned by duty. Nevertheless, it is very often the case that moral judgment, unambiguous ethical opinion and a critical tone arise from this duty. Caring for and helping our own carers is a moral obligation that cannot be ignored, but it involves more ambiguity than is commonly thought. The ethical part of the article is an attempt to analyse this ambiguity, which involves more moral dilemmas than would result solely from the obligation to care for a dependent parent.

Legal aspects of caring for dependent relatives

Human life is a process during which changes take place in almost every sphere of functioning. Lucjan Miś (2000) states that the issue of the phases of human life is a subject of interest in various branches of psychology, social sciences and biology. Undoubtedly, it is also an important issue from the point of view of legal sciences. Legal regulations take into account the specific nature of childhood, in particular by guaranteeing the protection of children's rights and formulating the principle of protecting their welfare. They also provide support for individuals and families in difficult life situations, including illness or disability. They respond to the needs of seniors. In this context, the constitutional principle of the good of the family should be emphasised in particular (Sylwestrzak, 2019). Alicja Grześkowiak (2012) emphasises that "The family is an autonomous community with its own rights, which are not the sum of the rights

of its individual members, and the state and its laws are obliged to recognise and respect this autonomy and these rights” (p. 10). It is the principle of autonomy and the primacy of the family that gives priority to the mutual support of its members. State assistance, in accordance with the principle expressed in the Preamble to the Constitution of the Republic of Poland (1997), is of a subsidiary nature. The changes that occur over time in the life of every human being are reflected in the functioning of his or her family. In the first stage of life, a child requires care, attention, upbringing and support from adult family members. These needs are primarily met by the parents within the framework of parental authority. In the next stage of the family’s existence, parents may need support and assistance from adult and independent children. This is closely related to the ageing process that occurs in the entire human body (Wierzbicka, Brukwicka, Kopański, Rowiński, & Furmanik, 2017). Its consequences include greater susceptibility to illness, often leading to disability and a reduction or loss of independence. The obligation of mutual support between parents and children is expressed in Article 87 of the *Kodeks Rodzinny i Opiekuńczy* [Family and Guardianship Code] (1964). Jan Winiarz (1996) emphasises that the obligation arising from this provision is independent of whether the parents exercise parental authority over the child. It is based on the mere fact that the parent and the child are in a legal relationship. This obligation lasts a lifetime. The doctrine emphasises the general nature of the cited provision. However, Krzysztof Pietrzykowski (2023) suggests that mutual assistance can be both personal and financial.

Alimony obligations of children to parents

Krystyna Gromek (2020) rightly notes that Article 87 of the Family and Guardianship Code does not constitute a binding basis for the maintenance obligation, as it is regulated in other provisions of the Family and Guardianship Code. It is child support that provides the greatest support to dependent family members. According to Article 128 of the Family and Guardianship Code, the relationship between parents and children is the source of the child support obligation. However, this obligation will only be fulfilled if the parents are in need. Article 133(2) of the *Kodeks cywilny* [Civil Code] states that only those in need are entitled to maintenance payments*. According to case law, the concept of indigence should not be understood exclusively as the lack of any means of subsistence, but also as a material situation that prevents the satisfaction of justified needs for subsistence and upbringing (Supreme Court Judgments,

* This condition does not need to be met only in the case of the fulfilment of the parents’ maintenance obligation towards a child who is not yet able to support themselves.

1974, 2000, 1999, 1998). Joanna Deputat (2017) notes that more and more elderly people who are unable to buy medicines and meet their basic needs because they live on low pensions, are applying for alimony. The amount of maintenance that a parent will receive from the child/children will be a function of their legitimate needs and the earning and property possibilities of the person obliged to pay (art. 135§1 of the Family and Guardianship Code). Justified needs should be understood as current needs for maintenance (i.e., housing, food, clothing, etc.) and upbringing. Earning and property possibilities, on the other hand, are understood as earnings and income that the obligated party could and should obtain according to their mental and physical abilities with due diligence (*Wyrok Sądu Rejonowego* [Judgement of the District Court], 2021). Furthermore, it should be noted that if the parent entitled to maintenance has several children, each of them will be obliged to pay maintenance according to their earning and property capacity (Article 129§2 of the Family and Guardianship Code). In practice, this means that the amount of maintenance paid by each child to the parent may be different. If one of them is unable to fulfil their maintenance obligation due to a lack of means, the fulfilment of the maintenance claim will be the responsibility of the others, in proportion to their earning and property possibilities (cf. Ignaczewski, Kurman, 2022). If the parent entitled to maintenance is a person with a disability, then by Article 135(2) of the Family and Guardianship Code, some children may fulfil the maintenance obligation in whole or in part by personally providing for their maintenance, while others may cover all or part of the costs of such maintenance. The legislator's decision to allow for the fulfilment of maintenance obligations in different ways makes it possible to fully meet the needs of a dependent parent. Personal care, assistance with daily activities, and preparation of meals appropriate to the state of health are essential and cannot be compensated for by monetary benefits alone. The two methods of providing maintenance payments provided for in Article 135(2) of the Family and Guardianship Code complement each other and make it possible to provide comprehensive assistance to a parent with a disability, a concept which should also include elderly or infirm people (Pawliczak, 2024).

When analysing the child maintenance obligation towards parents, one must not lose sight of the regulations of Article 144¹ of the Family and Guardianship Code, which allows the obligated party to evade the fulfilment of the maintenance obligation towards the entitled person in a situation where the maintenance request would be contrary to the principles of social coexistence. This provision applies to all maintenance obligations except for the maintenance obligation of parents towards their minor children. A child who is obliged to pay maintenance can therefore avoid fulfilling this obligation towards a parent if it would be contrary to the principles of social coexistence, i.e., the basic principles of ethical and honest conduct (*Wyrok Sądu Najwyższego* [Judgement of the Supreme Court], 2004).

Care leave and care benefit

In the context of providing temporary personal care for a parent, the new regulations of the *Kodeks Pracy* [Labour Code] (1974) are very important. On 26 April 2023, the Act of 9 March 2023 amending the Labour Code and certain other acts came into force. It introduced a new type of leave – care leave. According to Article 173¹ of the Labour Code, the employee is entitled to five days of care leave per calendar year. The purpose of this leave is to enable the employee to provide personal care or support to a family member (son, daughter, mother, father, or spouse) or a person living in the same household as the employee who requires care or support for serious medical reasons. Justyna Czerniak-Swędziół (2024) emphasises that the employer is obliged to grant carers' leave based on a correct application from the employee and the statements contained therein. They cannot demand a medical certificate to confirm “serious medical reasons.” Furthermore, the condition of cohabitation is not required for immediate family members (Nałęcz, 2024). In this respect, the regulations on care leave differ from the rules for granting care allowance by the *Ustawa o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa: Komentarz* [Act on Cash Benefits from Social Insurance in the Event of Sickness and Maternity] (1999). According to Article 32 of the Act on Cash Benefits from Social Insurance in the Event of Sickness and Maternity, this benefit is available to insured persons who are exempt from work because they are personally required to provide care for, among others a sick family member (spouse, parents, parent of the child, stepfather, stepmother, parents-in-law, grandparents, grandchildren, siblings and children over the age of 14) provided that they live in the same household as the insured person during the period of care. The care allowance is granted for a period of leave from work, not exceeding 14 days in a calendar year, due to the need to provide personal care for parents (Article 33 of the *Ustawa o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*). Article 35(1) of the *Ustawa o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa* states that “the monthly care allowance is 80% of the allowance base,” which is the average monthly remuneration paid for the 12 calendar months preceding the month in which the incapacity for work arose, and if the period of employment is shorter than 12 months – remuneration for full months of insurance (Radziśław, Tonder, 2022). It should be emphasised that the carer's allowance for caring for a parent will only be granted if there are no other family members besides the insured person in the same household who could provide care for the sick father or mother (Article 34 of the *Ustawa o świadczeniach pieniężnych z ubezpieczenia społecznego w razie choroby i macierzyństwa*). Both care leave and care allowance make it easier for children to care for or support their parents in the event of illness.

Obligation to cover the living expenses of a parent living in a nursing home

If a child's father or mother requires constant 24-hour care that the child is unable to provide, the child may be placed in a social care home (DPS – in Polish: *Dom Pomocy Społecznej*). This is an institution offering 24-hour care to people who, due to age, illness or disability, cannot function independently in everyday life and cannot be provided with the necessary assistance in the form of care services (*Ustawa*, 2004, art. 54 para. 1). Although this form of care for a dependent parent is not provided directly by the children, they may be obliged to bear the costs. Article 61(1) of the *Ustawa o Pomocy Społecznej* [Act on Social Welfare] contains a hierarchy of persons and institutions obliged to pay for a stay in a social welfare home. This obligation is borne in turn by:

- the resident of the home,
- the spouse, descendants before ascendants,
- the municipality from which the person was referred to the nursing home.

According to the principle expressed in Article 61(2)(1) of the Act on Social Welfare, a resident of a social welfare home shall cover the costs of their stay up to 70% of their income. If this is sufficient to cover the total fee, the other persons and the municipality are not obliged to pay. However, if the amount of 70% of the income of a nursing home resident is lower than the amount of the accommodation fee, there is an obligation on the part of the resident's family members and the municipality (Frąckowiak et al., 2019). Considering that, for example, the average monthly cost of living for a resident of nursing homes in the capital city of Warsaw in 2024 is approximately PLN 9,300 (*Rozporządzenie* [Regulation], 2024), it seems that it cannot be fully covered by the resident's income. Warsaw in 2024 is approximately PLN 9300 (*Rozporządzenie* [Regulation], 2024), it seems that it will not be possible in many cases to cover it in full from the income of a person placed in a nursing home. Therefore, family members, including descendants (children), will be obliged to pay at least a partial fee. In case law, it is emphasised that the obligation of a descendant, resulting from Article 61(1)(2) of the Act on Social Assistance (2004), is not an alimony obligation, although it remains functionally related to the alimony provisions contained in the Family and Guardianship Code. It is a public-law obligation arising when a person is admitted to a social welfare home (e.g., *Wyrok Wojewódzkiego Sądu Administracyjnego* [Judgement of the Regional Administrative Court], 2022). In the context of paying for a person's stay in a nursing home by their descendants, the judgement of the Provincial Administrative Court in Wrocław of January 12, 2023, is very important, in which it is stated that

In the case law of administrative courts, it is rightly assumed that Article 61(1) of the Act contains a group of persons about whom it is possible to decide

on the obligation to pay fees for a stay in a social welfare home and at the same time it follows from it the order in which the aforementioned entities pay for this stay. However, there is no question of a rule of sequence in a situation where several descendants are obliged to pay. Each of them has the same obligation to pay, and only the income criterion can differentiate between them (*Wyrok Wojewódzkiego Sądu Administracyjnego* [Judgement of the Regional Administrative], 2023).

Family members, including descendants, pay for the stay of a person in a nursing home based on an agreement concluded with the manager of the nursing home or the director of the social services centre (Article 103(2) of the Act on Social Welfare) Considering the diverse family situations and relationships between individual family members, the rational legislator has provided for situations in which persons obliged to pay fees for a family member's stay in a nursing home may be fully or partially exempted from them. According to Article 64(1) of the Act on Social Welfare, this may occur in particular when:

- [...] 1) they pay for the stay of other family members in a nursing home, support centre or other facility;
- 2) there are justified circumstances, especially long-term illness, unemployment, disability, death of a family member, material losses caused by a natural disaster or other random events;
- 3) spouses, descendants, and ancestors live on one benefit or salary;
- 4) the person obliged to pay is pregnant or raising a child alone;
- 5) the person obliged to pay or their parent was staying in a foster family, family children's home or care and educational facility, based on a court decision on the restriction of parental authority for a person referred to a social welfare home or a resident of the home;
- 6) the person obliged to pay the fee shall present a court judgment dismissing a maintenance claim for the benefit of the person being placed in a social care home or a resident of the home;
- 7) the person obliged to pay the fee shall demonstrate, in particular, based on documents attached to the application, a gross violation by the person referred to a social welfare home or a resident of the home of the maintenance obligation or other

family obligations towards the person obliged to pay the fee (*Ustawa*, 2004).

In addition, if the person obliged to pay for the stay of a resident in a nursing home is their descendant, they are, upon request, obligatorily fully exempted from this fee if they present:

- a legally valid court decision depriving the nursing home resident of parental authority over them and declaring that parental authority has not been restored, or
- a final court decision convicting a nursing home resident of an intentional publicly prosecuted offence committed to the detriment of the person obliged to pay the fee, their descendant, minor or adult who is incapacitated due to age, the mental or physical condition of siblings or their parent, unless the conviction has been expunged (Article 64a of the Act on Social Welfare).

Rufus Frąckowiak indicates that

The introduction of the new regulation *ZmPomSpołU15* on 5 October 2015 was intended to counteract the feeling of injustice among children obliged to pay for their parent's stay in a nursing home. The new regulation *ZmPomSpołU15* was introduced on 5 October 2015 to counteract the feeling of injustice towards children obliged to pay for the stay of a parent in a social welfare home who has been deprived of parental rights (Frąckowiak, 2019, thesis 1).

At the same time, the Author points out that the regulation of Article 144¹ of the Family and Guardianship Code, which allows the debtor to evade the maintenance obligation because it is contrary to the principles of social coexistence, has been deemed insufficient.

Support for parents under the guardianship and legal custody institutions

The legal possibility of a child supporting a parent in certain situations is provided for by the institution of guardianship. In the case of a dependent mother or father, there may be a need to appoint a guardian for a disabled person or a person who is partially incapacitated. According to Article 183 of the Family and Guardianship Code, a guardian is appointed for an adult with a disability if they need support in handling all matters and specific types of matters or in handling a specific matter. The scope of the guardian's powers and responsibilities is determined by the guardianship court. In the literature, it is emphasised that the appointment of a guardian for a disabled

person requires the fulfilment of two conditions: disability and the need for support (Bodio, 2021). About the condition of disability, Joanna Bodio points out that the Family and Guardianship Code does not define this concept or the concept of a person with a disability. They are included in legal acts such as the *Karta Praw Osób Niepełnosprawnych* [Charter of Rights of Persons with Disabilities], the *Ustawa o rehabilitacji zawodowej i społecznej oraz zatrudnianiu osób niepełnosprawnych* [Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities], and the *Konwencja o prawach osób niepełnosprawnych* [Convention on the Rights of Persons with Disabilities] (Bodio, 2021). Dagmara Olczak-Dąbrowska (2014), citing the doctrine in this regard, emphasises that for humanitarian reasons, this premise should be interpreted liberally, in a way that allows for the inclusion of various life circumstances in which a person with full legal capacity needs support in conducting all or some matters, in the hypothesis of Article 183 of the Civil Code. Various life circumstances in which a person with full legal capacity needs support in conducting all or some matters. Mental illness, intellectual disability or other types of mental disorders justifying partial or full legal incapacitation are an exception. The author's research indicates that the curator was most often appointed in connection with age-related illnesses – 43.8% of cases* (Olczak-Dąbrowska, 2014). The legislator only indicates in general terms who can be appointed by the court as a guardian for a disabled person. According to Article 183§12 of the Civil Code, it must be an adult who has given their consent and whose personal qualifications justify the belief that they will duly fulfil the duties entrusted to them. This regulation also introduces the possibility for a person with a disability to nominate a candidate for a guardian. The aforementioned study carried out by D. Olczak-Dąbrowska (2014) shows that in most cases (70.3% of cases), the court-appointed the spouse, relatives or in-laws of the person with a disability as guardians. Both legal regulations and case law prove that a child can support a parent with disabilities in running or taking care of matters as a guardian for a person with disabilities. If a parent is partially incapacitated, following Article 16 of the Civil Code, the child will be able to act as a guardian for the partially incapacitated person. The institution of a guardian for a partially incapacitated person is regulated by Article 181 of the Family and Guardianship Code. This provision covers two very important issues:

- the person acting as guardian for a partially incapacitated person is appointed to represent them and to manage their property only if the guardianship court so decides. According to case law, the guardian of a partially incapacitated person is nevertheless appointed to give consent to the person for whom he or she has been appointed to incur liabilities or dispose of his or her rights

* The research covered 107 cases for the appointment of a guardian for a disabled person, legally finalised in 2011 in 25 randomly selected district courts (Olczak-Dąbrowska, 2014).

in accordance with Article 17 of the Civil Code, despite the lack of court authorisation (*Postanowienie Sądu Najwyższego* [Decision of the Supreme Court], 1977) and acting on their behalf in court proceedings (*Postanowienie Sądu Najwyższego* [Decision of the Supreme Court], 2011),

- legal guardianship ceases by operation of law if the partial legal incapacitation of a person is revoked.

According to Article 178(2) of the Family and Guardianship Code, to the extent not regulated by the provisions that provide for the appointment of a guardian, the provisions on guardianship shall apply accordingly. Therefore, when selecting a candidate to act as a guardian for an incapacitated person, Article 148 of the Family and Guardianship Code, which contains a list of characteristics that a person must not have for the court to appoint them as a legal guardian, and Article 176 of the Family and Guardianship Code, which sets out the rules for the selection of a guardian for a person who has been declared legally incompetent. In Article 176 of the Family and Guardianship Code, the spouse, father or mother are listed as the persons who should primarily be appointed as the guardian of a person who has been completely incapacitated and, by appropriate application, as the guardian of a person who has been partially incapacitated. In doctrine (Gajda, 2023), however, it is emphasised that this provision does not replace Article 149 of the Family and Guardianship Code, which contains a hierarchy for the selection of a legal guardian for a minor. Article 176 of the Family and Guardianship Code should be applied first. However, if it would be impossible to appoint the persons listed therein as guardians or would be contrary to the best interests of the partially incapacitated person, Article 149 of the Family and Guardianship Code will apply, allowing relatives to be appointed as guardians without specifying the line or degree of kinship. Research conducted by Marta Jankowska (2018) indicates that in 13% of the cases studied, the guardianship was held by the child of the incapacitated person*.

If a parent is completely incapacitated, in accordance with Article 13 of the Civil Code, the child may be appointed as their legal guardian. Both the characteristics that a candidate for the legal guardian of an incapacitated person should have and the rules for his or her selection correspond to the principles discussed above for appointing a guardian for a partially incapacitated person. It is therefore possible to appoint a child as the legal guardian of a parent who has been incapacitated. Research conducted by Sławomira Kotas-Turoboyska (2021) shows that children are relatively

* The study covered 157 cases from 18 randomly selected courts from all over Poland, from 2000–2018, concerning the appointment of a guardian for a partially incapacitated person and the change of a guardian (Jankowska, 2018).

frequent candidates for guardians of incapacitated persons – 23.9%. Slightly more often, only the mother was a candidate for this role – 24.4%*.

Servitude of apartment and life estate

The forms of care and support for dependent parents by their children discussed above do not constitute an exhaustive analysis of the legal institutions in this area. Depending on the specific situation of the parent and the resulting needs and abilities of the child, the form of assistance may include, among others, the easement of an apartment (Articles 296–305 of the Civil Code) and a life estate (Articles 908–916 of the Civil Code). Bartłomiej Krzyśko (2022) indicates that the easement of an apartment or a life annuity agreement give parents protection in the form of the right to reside in the house or apartment (or part thereof) in the event that a generational conflict arises after the transfer of ownership of these properties to the children. It should be emphasised that in the case of a life annuity agreement, in accordance with Article 908 § 1 of the Civil Code, the buyer of the property should “[...] in the absence of a different agreement, accept the seller as a member of the household, provide them with food, clothing, housing, light and fuel, ensure them adequate assistance and care in case of illness, and provide them with a funeral in accordance with local customs at their own expense.” The differences between the two civil law institutions are well illustrated by the judgement of the Supreme Court – Civil Chamber of November 19, 2020, which states that

In practice, the servitude of an apartment can occur as part of the right of life estate (Article 908 § 2 of the Civil Code), but in a situation where it occurs on its own, it constitutes only a property right enabling the use of the property to a certain extent, and not the right to demand personal services from its owner (*Wyrok Sądu Najwyższego*, 2020).

A detailed analysis of the institution of the right of usufruct and life estate insofar as they can be a form of assistance for dependent parents is beyond the scope of this study.

* Research into 200 cases for the appointment of a legal guardian for 201 fully incapacitated persons, which were conducted by 45 randomly selected district courts from all over Poland and which were legally concluded in 2020–2021 (Kotas-Turoboyska, 2021).

Ethical aspects – theoretical introduction

Opinions on strictly moral topics, especially when we think they should be standardised, are often infected by subjectivity and the primacy of a very personal sense of good. We often try to perceive the rank of duty as a simple generalisation of evaluative judgements on a difficult moral issue. However, the way we assess a given situation depends on the degree to which the values themselves have been internalised. When we talk about care, concern and help, these values will generate a sense of duty in the way they have been accepted and assimilated by the moral entity. Therefore, it is difficult to expect a uniform sense of duty in every person potentially involved in the practical understanding of these values. However, if we want to look for the overarching meaning of duty that generalises the conscientious, individual potential for searching for regularity, the properties of moral actions, it will not be easy either.

Ethical standardisation is an attempt to find the normative character of moral precepts that would have a universal structure and general binding force. A value judgement, which is an attempt at such a search, differs from evaluative judgements in that it sees the source of duty in an understanding of what value is, not what the moral norm is. If certain values are important to us, the degree of their internalisation is the only guarantee of the perpetuity of the commitment to responsibility. The will may want to respond to the presence of values, but it cannot be forced; that is, it may, but it will not be a free will. If a value is desired, chosen and understood as important, it will be realised indefinitely, without the pressure of punishment or fear, and for the sake of the meaning it brings. An ethical commitment is therefore only complete in the dimension of the responsibility of the will, for which something can be so valuable that it encourages the voluntary acceptance of certain obligations arising from the reason of accompanying these values.

Normative ethics always defines moral obligations towards the vulnerable, the elderly or the dependent due to the value of human dignity. Moreover, regardless of the choice of a particular ethical concept

[...] it is hard to imagine a classical or contemporary value system that discriminates against the old and the helpless. On the contrary, [...] we demand respect for the elderly, which should be seen as repaying the debt for the fact that they endured the hardships of life for so long, that they raised the next generations, that they taught others with their experience (Górnicka-Kalinowska, 2017, p. 21).

The absolute value of dignity and respect for age are the basic guidelines of moral obligations in the context of caring for dependent persons.

Care, carer

The issue of caring for the elderly and dependent people, especially parents, is not clearly defined; “[...] caring for relatives who are losing their independence is always a difficult task and there are no ideal solutions” (Kliszcz, 2019, p. 226). Like old age, it is a problem full of stereotyping, oversimplification, distortion and hasty judgements, often taking the form of a one-dimensional discussion (not so much about the need for care as about the necessity of care). Dependency is not only a question of old age or illness, but can also be the consequence of falling into it for many different reasons. Just as there are at least two ways to grow old (Jarczak, 2017), the forms of assistance can also be more or less dictated by the multiplicity of potential needs for help or care. Moreover, “[...] the family as the closest environment is a natural and primary source of support, of course, assuming that there are healthy and proper relationships between its members” (Janowicz, 2019, p. 69), and these relationships are not insignificant in the context of the search for ethical personal responsibility. “In the event of illness, the family is the primary environment for the dependent person” (Janowicz, 2019, pp. 69–70) and this seems so obvious that it is almost undisputed. The informality of this care is even taken for granted: “[...] society, as it were, gives a moral imperative to care for the oldest members of the family. This stereotypical belief contributes to increasingly frequent neglect of caregiving” (Szostakowska, 2021, p. 77) because the stereotyping of ethical patterns means that we may even be inclined to idealise our own motivations for undertaking caregiving, which in turn is ethically short-sighted. Stereotypes that encroach on the space of moral requirements end up as pseudo-moral obligations that are impossible to maintain in the long term. Whether something is important or necessary for a person certainly has an impact on the approach to caregiving tasks.

It would seem that the meaning of the word *caregiving* is obvious and understandable to everyone. This term is used in many areas of our lives and is commonly used. [...] In general, we also intuitively sense what care is and do not try to define it. It accompanies us in everyday life as something obvious and at the same time indispensable. It is inextricably connected with the everyday practice of every human being, both in the sense of giving it and experiencing it (Badora, 2008, p. 106).

We recognise that care is an obvious manifestation of human activity in the ethical dimension and that it arises “[...] in such life situations in which a person is unable to meet their psychophysical needs on their own, even in a basic way, or does not have sufficient conditions and resources to do so” (Janowicz, 2019, pp. 15–16). Of course, care is not morally neutral. Because it is provided on a continuous or long-term basis,

it carries the risk of judgements, misunderstandings, feelings of guilt or pangs of conscience.

The value of care is not easily subject to processes of ethical standardisation or generalisation of norms due to the complexity of subjective individual conscience in relation to another person in a situation of illness or old age. On the one hand, we are fully convinced that care in the face of a parent's dependence is self-evident, and any discussion in this regard would be outrageous. On the other hand, we can easily forget about the harmfulness of any polarisation in the moral sphere: it is not binary, it does not contain only good and bad solutions, and about the issue at hand, the risk of instrumentalisation and de-subjectification of the person caring for the dependent parent may be just as possible as the risk of moral indifference, lack of moral sensitivity or respect for human age, maturity or experience. "Everyone can be a carer or need care" (Janowicz, 2019, p. 175), so the issue is equally important; trivialising the situation will affect every one of us. It is not, therefore, a question of scaring people with the lack of help and care or the ruthless expectation of sacrifice and self-sacrifice, but rather a balanced analysis of a very sensitive moral issue.

Family

According to a centuries-old tradition, it is the closest relatives who should take care of a sick or old and dependent family member, and provide support in a serious illness and at the end of their life. Spouses, children or grandchildren, siblings or other relatives are expected to help in times of need. This way of thinking stems from Polish tradition, a sense of moral obligation or gratitude for help and love received in the past (Janowicz, 2019, p. 68).

From an axiological point of view, however, it does not matter what generates the duty. It is not about the intentionality of a moral act, but rather about the actual source of what we consider our duty. The stereotypical nature of behavioural patterns means that we do what "one is supposed to do" in a given situation, without necessarily realising the superficiality of this approach. It is true that "the family [...] has always been perceived through the prism of its care-giving function because it guaranteed its existence and durability" (Szostakowska, 2021, p. 73), but it is impossible not to notice and take into account the fact of how much the family model is changing, and not only in the context of an individual choice of specific ways of its functioning but also the consequences of major changes to which it is subject.

The population of multi-generational and large families is decreasing, the num-

ber of divorces is increasing, the perception of the role of women in the family is changing, and many people, especially young people, continue to emigrate for professional or economic reasons. Families are becoming smaller, contacts and bonds less intense, and family circles are disappearing (Janowicz, 2019, p. 75).

Of course, this is reflected in the tasks or challenges in the situation of not being able to rely on one's own parent.

It is much more difficult today to deal in a standardised way with a situation that was once resolved by the family structure itself, which was familiar and functioned efficiently and predictably. So, although the willingness to help today is not natural or even instinctive, the possibilities for it to occur are quite different than they used to be. It can be said that "[...] the old moral precepts sanctioned by culture and environment have ceased to apply in favour of individual norms, dictated by the feelings of family members towards each other and a personal sense of responsibility and loyalty towards social and moral principles" (Jarczak, 2017, p. 38); nevertheless, this does not necessarily indicate a lack of respect for age, depreciation of old age or moral impoverishment of individuals. Nor does it have to be the absolute primacy of one's own opinion, for which moral necessity appears to be hasty commonplace. It is much easier to describe moral obligations when we do not direct them at ourselves; too often we find it easy to judge, especially when the situation does not directly concern us. Few people can boast of such a moral imagination that does not require direct experience of a situation to understand it, rather than just knowing it. Therefore, very often in a situation where they have to care for a dependent parent, carers experience a normative overload of their role in the social perception rather than any understanding, not to mention support. Meanwhile, "[...] in the case of many chronic illnesses, family members acting as carers need social understanding and support. However, instead of them, indifference often appears, and sometimes stigmatisation or social criticism" (Janowicz, 2019, p. 127). Although from an ethical point of view, especially "referring to the theory of duty as care ethics, it is undertaken by family members" (Szostakowska, 2021, p. 31), it is increasingly difficult to fulfil this role in a way that we may have aspired to in the past but are no longer able to.

"A significant part of the ongoing transformations in the family model weakens the caring potential of its members" (Janowicz, 2019, p. 75), regardless of volitional decisiveness. Even if we treat our moral obligations to care for the elderly responsibly, the inability to fulfil the resulting tasks does not necessarily mean that they are depreciated. It seems that we have more moral questions here than easy answers. It is easy to be unfair in a quick judgment. After all, we should share moral categories so that they are more and more universal; judging situations from the perspective of one's axiological hierarchy is very immature.

Commitment

Young people are unable to judge whether they can or should take on the care of an elderly person. Very often, they only realise that the duty of care will fall on them under external pressure from ageing parents or in situations where they notice that an elderly person cannot cope (Szostakowska, 2021, p. 48).

So not only do we not teach how to provide this care, but we also unilaterally approach the obligation of this care as an ethically difficult situation, mainly for the dependent person. Meanwhile, caregiving is hard work, not just a moral obligation: “[...] the role of a family carer does not [...] end at a specific time because even if the patient does not require help at the moment, they remain someone close, with whom the carer has blood ties” (Kliszcz, 2019, p. 227). The attentiveness, vigilance and persistence of the moral tension in the situation of a carer for an elderly and dependent person often cause “[...] frustration, fatigue, irritability and feelings of isolation increase over time; [...] the longer it lasts, the more the carer’s well-being deteriorates, which can affect the quality of the relationship with the person under care” (Kliszcz, 2019, pp. 218–219). In such situations, hardship, regret and powerlessness are intertwined, and there are no easy solutions or advice, especially moral advice. An axiological approach allows us to determine the clash of certain values in such circumstances, but the choice between them is not clear-cut. Expecting protective heroism is just as unfair as indifference.

Ethical forecast

“By 2035, the population of 65-year-olds will increase by 63%, and as a result of the so-called double ageing effect, the number of people aged 80+ will increase by 126%” (Janowicz, 2019, p. 71). What will be the ethical implications of this in a situation where the burden of care is increasing on a scale that often exceeds the mental, psychological or physical capabilities of those who fulfil this role for their parents? The need to care for those who were our first carers can make us realise that they do not become dependent on others by choice, but that it simply happens. How many times will the range of moral family responsibilities towards dependent people, especially parents, increase? Are we able to generate a one-dimensional view of the issue of care in the face of such informal burdens? The problem is more difficult than it seems, and it will not only affect almost every one of us but will also generate non-obvious, perhaps excessive, polarising expectations towards those who are either unworthy or worthy and nothing else.

The changes taking place in global society have burdened the adult child with the unresolved conflict of deciding whether or not to take responsibility for their career and self-development, for the development and upbringing of their offspring, and for the care and well-being of their ageing parents. The individual cannot cope with everything. The state also does not have the instruments to compensate for this care deficit (Błachnio, 2016, p. 448).

The scale of care needs is huge and will get even bigger. On the one hand, we tend to see informal, albeit obvious, carers as the next generation, on the other hand, we should not speak lightly about serious moral burdens, especially those involving accusations, criticism or judgement. The obviousness of a family relationship often does not allow for the acceptance of support, a moment to catch one's breath or the need for respite. Of course, it can be said that the commitment of parents' efforts in raising their children should guarantee moral compensation in the form of this care or guardianship in old age, but it is not that simple. Only

[...] when do we become old? When we feel it as an ailment, when we feel useless and infirm, when we are a burden to our loved ones, to public institutions or healthcare systems. Also, or perhaps above all, when we feel that we are dependent on someone and helpless (Górnicka-Kalinowska, 2017, p. 14).

Therefore, both those who experience it and those who take it upon themselves are aware of this burden. The duty is not a matter of command but of awareness. It can be assumed that it is not a lack of will, but of strength or opportunity that can sometimes be the greatest burden in fulfilling the moral obligation to help or care for a dependent person very close to us; and this is true no matter how much we do not want this task to be treated as a burden. Ethics tries to explain the sources of normativity, but what constitutes a norm can be either a generalisation or an extension of the degree of understanding of duty. Helping the dependent is a moral obligation, but so is helping those who help. If we want objective values and norms, let's not subjectivise requirements and opinions.

Conclusion

The issues addressed in this paper seem particularly important given the current phenomenon of an ageing society and longer human life expectancy. Illness and disability are an integral part of society. They affect people of all ages and are often a result of the ageing process. This is why it is so important for children to support their parents

independently and according to their needs. Raising awareness of the ethical and legal aspects of this issue is important for the public. As the closest relatives, children have to support their parents, not only in the event of illness or disability but also whenever they need help in their daily lives. In many situations, this can be provided informally, e.g., by doing the shopping, helping with errands or using a computer. In specific cases, such as a guardian for a disabled person, a guardian for a partially incapacitated person, or a legal guardian for a fully incapacitated person, a court decision must be made. Deciding on ethical obligations is not as precise and is primarily associated with realising the importance of the issue at hand, which turns out to be not only socially important but also difficult on an individual level. We are and will be faced with the necessity of making decisions of a high degree of moral complexity, the lack of clarity of which generates more questions than seemingly easy answers.

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