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## ВИЗНАЧЕННЯ ПРАВОВОГО СТАТУСУ ВІТЧИМА, МАЧУХИ У СІМЕЙНОМУ ЗАКОНОДАВСТВІ УКРАЇНИ

*Мета статті* дослідити теоретичні та практичні проблеми визначення правового статусу вітчима, мачухи у сімейному законодавстві України, охарактеризувати поняття правового статусу вітчима, мачухи та виокремити ознаки цього статусу. *Методологія.* Методологічну основу дослідження склали сукупність загальнонаукових та спеціальних методів пізнання правових явищ і процесів. За допомогою методу системного аналізу було здійснено оцінку стану правового регулювання сімейно-правового статусу вітчима, мачухи у сімейному праві, а також здійснено аналіз наукових праць вітчизняних та зарубіжних учених, поглядів практиків щодо окремих питань правового статусу вітчима, мачухи. Використання порівняльно-правового (компаративістського) методу дозволило здійснити порівняльну характеристику законодавчих положень регулювання правового статусу вітчима, мачухи за законодавством України та за законодавством деяких зарубіжних країн (Англія, Уельс, Німеччина, Швеція та ін.). Метод індукції та дедукції дозволив визначити підстави набуття вітчимом, мачухою правового статусу та виокремити їхні сімейні права та обов'язки. Метод абстрагування та конкретизації використано для можливості визначення особливостей правового статусу вітчима, мачухи в окремих видах сімейних, цивільних, цивільно-процесуальних відносинах за їх участю. *Наукова новизна полягає* у формулюванні низки нових концептуальних положень і висновків щодо поняття та змісту правового статусу вітчима, мачухи, а також встановлено, що правовий статус «вітчима», «мачухи» відрізняється від інших суміжних сімейно-правових статусів суб'єктів, які наділені повноваженнями щодо виховання дітей (прийомних батьків, батьків-вихователів, патронатних вихователів) за підставами виникнення, правовими наслідками, характером та змістом відповідальності. *Висновки.* У висновках констатовано, що на підставі аналізу чинного сімейного законодавства України, а також правової доктрини, під правовим статусом вітчима, мачухи слід розуміти правовий стан особи, яка добровільно, на визначених законом підставах, виконує функції виховання та утримання нерідних їй дітей - пасинка, падчерки. Правовий статус вітчима, мачухи визначається як за допомогою правових категорій, так і з урахуванням моральних засад, дотримання яких є необхідним для забезпечення пасику, падчерці належних умов для виховання та розвитку; обґрунтовано,

що правовий статус вітчима, мачухи належить до категорії спеціального правового статусу особи та характеризується такими ознаками: по-перше, вітчимом, мачухою є особа, яка перебуває в зареєстрованому шлюбі з біологічним батьком (матір'ю) пасинка, падчерки, отже – це пов'язано із сімейним станом особи; по-друге, правовий статус вітчима, мачухи пов'язується із виконанням ними функцій щодо виховання та утримання дитини, з якою вони не пов'язані кровною родинністю; по-третє, такий статус зберігається за вітчимом, мачухою на період, коли вони фактично проживають з дитиною та наділені щодо неї певними правами і обов'язками; по-четверте, сімейно-правовий статус вітчима – це права і обов'язки, які включають індивідуальні якості, особисту культуру та соціальну свідомість вітчима, мачухи, що впливають на виховання пасинка, падчерки та ґрунтуються на приписах СК України, однак не обмежені ним.

**Ключові слова:** правовий статус, вітчим, мачуха, пасинок, падчерка, фактичне виховання.

### DEFINING THE LEGAL STATUS OF STEPFATHER/STEPMOTHER IN THE FAMILY LEGISLATION OF UKRAINE

*The aim of the article* is to analyze theoretical and practical problems of defining the legal status of stepfather/stepmother in the family legislation of Ukraine, to characterize the concept of the legal status of stepfather/stepmother, and to identify the signs of this status. **Methodology.** The methodological basis of the research is a set of general scientific and special methods of learning legal phenomena and processes. With the help of the method of systematic analysis, was made an assessment of the state of legal regulation of the family legal status of stepfather/stepmother in family law, as well as an analysis of the scientific works of domestic and foreign scientists, the views of practitioners regarding certain issues of the family legal status of stepfather/stepmother. The use of the comparative legal (comparativist) method made it possible to compare the family legal status of stepfather/stepmother under the legislation of Ukraine and under the legislation of some foreign countries (England, Wales, Germany, Sweden, etc.). The method of induction and deduction made it possible to describe the grounds for the acquisition of family legal status by stepfather/stepmother and to distinguish their family rights and obligations. The method of abstraction and concretization was used to identify the peculiarities of the family legal status of stepfather/stepmother in certain types of family, civil, civil-procedural relations with their participation. **Scientific novelty** is in formulating a number of new conceptual provisions and conclusions regarding the concept and content of the legal status of stepfather/stepmother, and it is also established that the family legal status of “stepfather” and “stepmother” differs from other related family legal statuses of subjects who are empowered to raise children (adoptive parents, foster parents, foster caregivers) on the grounds of occurrence, legal consequences, nature and content of responsibility. **Conclusions.** The conclusions state that based on the analysis of the current family legislation of Ukraine, as well as the legal doctrine, the legal status of stepfather/stepmother should be understood as the legal status of a person who voluntarily, on grounds determined by law, performs the functions of parenting and support of a stepson/stepdaughter. The legal status of stepfather/stepmother is defined both through legal categories and taking into account moral principles, the observance of which is necessary to ensure a stepson/stepdaughter proper conditions for parenting and development; it is justified that the legal status of stepfather/stepmother belongs to the category of special legal status of a person and is characterized by the following features: firstly, a stepfather/stepmother is a person who is in a registered marriage with the biological father (mother) of a stepson/stepdaughter, therefore — it is associated with the marital status of a person; secondly, the legal status of stepfather/stepmother is associated with the performance of their functions of parenting and support of a child with whom they are not blood related; thirdly, such status is retained by a stepfather/stepmother for the period when they actually live with a child and are endowed with certain rights and obligations in relation to him; fourthly, the family legal status of stepfather/stepmother is the rights and obligations that include individual features, personal culture and social consciousness of stepfather/stepmother that influence the upbringing of a stepson/stepdaughter and are based on the norms of the Family Code of Ukraine, but are not limited to it.

**Keywords:** family legal status, stepfather, stepmother, stepson, stepdaughter, actual parenting.

### **Introduction**

Today, against the background of economic, political and social changes that influence all social relations without exception, the transformation of their most important social institution — the family — is especially clearly visible. First of all, this concerns the general idea of the family as a cell of society, of the forms and culture of family life. The content of family legal relations was greatly influenced by a significant expansion of the circle of their participants. According to some statistics, the number of divorced marriages in Ukraine correlates with the number of registered marriages approximately as one to two. In more than 70 % of cases, the spouses who dissolve the marriage have minor children and about 50 % of those persons remarry within three years from the date of dissolution of the previous marriage. This means that a significant number of children in Ukraine live in families with a stepfather or, less often, with a stepmother.

Persons who have children from a previous marriage and re-marry, create families, which in the legal literature are called reconstituted or blended ones. Therefore, the subjects of the relevant family legal relations acquire a special legal status.

All this suggests that most of the family relations are precisely such relationships, where the subjects are the stepfather, stepmother and, accordingly, stepson, stepdaughter. But, at the same time, it is worth pointing out that the issues of the legal status of stepfather/stepmother are not sufficiently studied in Ukrainian legal science. The relevance of this issue is evidenced by ambiguous judicial practice, especially when resolving disputes related to the provision of maintenance, inheritance by such a category of subjects, etc. (Kaliniuk, 2020, p. 60).

The Constitution of Ukraine proclaimed a person the highest social value (Constitution of Ukraine, 1996), enshrining at the legislative level the rights and freedoms of person and citizen, thereby assuming the obligation to create conditions for the realization of these rights in any sphere of public life, in the field of family relations included. Therefore, freedom, equality, the requirement of the legality of justice and humanity, the inevitability of punishment for violation of law are the principles that should be the basis of the legal system and characterize the legal status of a person as its integral part.

So, from the point of view of modern legal theory and practice, of special importance for the proper regulation of family relations, or rather those family relations, where stepfather, stepmother are called subjects, becomes defining the legal characteristics of the actual and legal status of stepfather/stepmother through such a category as legal status.

The issue of the family legal status of stepfather/stepmother, the content of their rights and obligations, is poorly researched in the family law of Ukraine. For many decades, complex dissertation and monographic studies of this issue have not been conducted, under the current family legislation included. There are few scientific studies (I. Apopii, M. Balabukh, O. Zubareva, A. Kulakova, M. Malykhina, I. Serdechna), in which one way or another were raised individual issues of legal regulation of family relations with the participation of stepfather, stepmother, stepson, stepdaughter. Scientific views on the problem of defining the legal status of stepfather/stepmother in the family legislation of Ukraine are reflected in the studies of such Ukrainian scientists as: I. V. Apopii, L. M. Baranova, T. V. Bodnar, M. V. Boryslavska, V. I. Borisova, V. S. Gopanchuk, M. M. Diakovich, I. V. Zhylinkova, L. V. Krasyska, O. Ye. Kukharev, M. V. Logvinova, B. K. Levkivskiy, N. M. Opolska, L. A. Olkhovik, M. P. Rabinovych, Z. V. Romovska, I. L. Serdechna, R. O. Stefanchuk, Yu. V. Stefaniuk, Yu. S. Chervonyi, Z. L. Chorna, Yu. M. Shevchenko and many others. Nevertheless, there is no grounds to argue that all the problematic aspects of the family legal status of stepfather and stepmother, which are of scientific and practical interest, have been fully studied. Even now, many issues remain debatable and need additional coverage.

### **Methodological Framework**

The purpose of this scientific research is to study the theoretical and practical problems of defining the legal status of stepfather/stepmother in the family legislation of Ukraine, to characterize the concept of the legal status of stepfather/stepmother and to highlight the signs of this status.

### **Presentation of the Main Material**

From the standpoint of modern legal theory and practice, important for the proper regulation of family relations (or rather those family relations where the subjects are stepfather/stepmother becomes defining the legal characteristics of the actual and juridical status of stepfather/stepmother through such a category as legal status.

It is worth noting that in the theory of state and law of Ukraine, special attention is paid to defining the legal status of a person. The most studied is the problem of defining the concept of the “legal status of a person” and its types. For example, V. O. Kotiuk, under the legal status understands the totality of legal rights, freedoms and obligations of a person, which are enshrined in the current legislation and constitute socially permissible and necessary potential opportunities for a person to have subjective rights and obligations and to implement them in the system of social relations (Kotiuk, 1996, p. 100–102). O. F. Skakun, in addition to rights, freedoms and obligations, includes into the structure of the legal status of a person the responsibility, according to which the individual, as a subject of law, coordinates his behavior in the society (Skakun, 2001, p. 378-379). According to P. M. Rabinovych, the legal status of a person is a complex of his subjective rights and obligations (Rabinovych, 2007, p. 84). Similar are L. A. Luts’ approaches to the definition of the concept of the legal status of a person, who by it means the subjective rights and legal obligations of a person enshrined in the relevant legal sources and guaranteed by the state (Luts, 2007, p. 124).

The above-mentioned positions of scientists give grounds for the conclusion that the legal status of a person is defined through the prism of his/her rights and obligations, which will be paid attention to when defining the legal status of stepfather/stepmother.

As for the specific distinction between the legal statuses, the scientific doctrine traditionally distinguishes three types of the status: general, special and individual.

In particular, Yu. V. Stefaniuk points out that the general legal status consists of the main (constitutional) rights and freedoms of a citizen, which characterizes general levels and abilities, initial positions of all those people who are citizens of this state (Stefaniuk, 2016, p. 43). From the point of view of A. M. Shulha, special legal status implies a difference in the rights and obligations of an individual due to a special social, official, property, family or any other situation (Shulga, 2012, p. 20). Scientists have also pointed out the so-called individual legal status, which consists of the rights and obligations of an individual, personified person, which he/she has at the moment (Stefaniuk, 2016, p. 43). P. M. Rabinovych clarifies that this status is characterized by the individual legal capabilities of the subject at a certain point in its existence (Rabinovych, 2001, p. 80). A. M. Shulha also adds to the individual status such signs as gender, marital status and points out that there are as many individual legal statuses as there are people (Shulga, 2012, p. 20).

So, with the help of legal status, the relationship between the state and an individual entity is regulated: no matter what kind of relations a person enters, they will always be part of social relations, and therefore will require certain criteria for evaluating a person. Such considerations can be transferred to the sphere of family relations, where it will be most apparent. For example, one of the spouses raising the child of the other spouse cannot be considered the father (adoptive parent) of the child, since his status as a parent or adoptive parent is not confirmed by the relevant legal documents. In this case, we should talk about such a person as a stepfather (or stepmother). That is, this status must be acquired. Or a parent who does not live with the child does not participate in its parenting and support, but is not deprived of parental rights — he/she has the “parental” status. In this case, we are talking about the fact that the legal status is preserved for him, but his parental functions are actually performed by another person. The existence of such situations further emphasizes the need to define and enshrine a certain legal status for certain subjects of family legal relations.

So, the content of the legal status of a person, which is developed in science and enshrined in state (constitutional) law, acts simultaneously as the direct essence of the legal status of a person (subject) at the sectoral level.

Thus, the analysis of the doctrine and some provisions of family law, allows us to attribute the legal status of stepfather/stepmother to both, special and individual legal status. However, given the peculiarities of the legal regulation of family relations, we still prefer to talk about the special legal status of stepfather/stepmother. We justify our position as follows. Firstly, at the level of the law, it is determined that a stepfather/stepmother is a person who is in a registered marriage with the biological father (mother) of a stepson/stepdaughter, therefore — it is associated with the marital status of a person. Secondly, such status is retained by a person for the period

when he actually lives with a child and is endowed with certain powers in relation to him/her. Thirdly, stepfather/stepmother, realizing his/her right to raise a child, is empowered to take care of the child's rights and interests not only in the family, but also outside it. At the same time, family law operates not only with legal categories, sometimes it also appeals to moral norms, and this greatly expands the idea of the status of stepfather/stepmother (Kaliniuk, 2017, p. 61).

We believe that there is every reason to talk about the special status of these persons, since their attitude to the stepson/stepdaughter largely depends not on the requirements of the law, but on their civic position, level of legal culture, social consciousness and human qualities.

Therefore, in our opinion, the legal status of stepfather/stepmother should be understood as the legal status of a person who voluntarily, by virtue of his/her own convictions and conscious will, took over the functions of parenting and support of a stepson/stepdaughter, with whose father/mother she/he is in a registered marriage. Thus, the legal status of stepfather/stepmother is associated with the performance of their functions of parenting and support of a stepson/stepdaughter, with whom they are not blood related.

Thus, the legal status of stepfather/stepmother belongs to the category of special legal status of a person and is characterized by the following features:

firstly, the stepfather/stepmother is a person who is in a registered marriage with the biological father (mother) of a stepson/stepdaughter, therefore — it is associated with the marital status of a person; secondly, the legal status of stepfather/stepmother is associated with the performance of their functions of parenting and support of a child with whom they are not blood related; thirdly, such status is retained by a stepfather/stepmother for the period when they actually live with a child and are endowed with certain rights and obligations in relation to him; fourthly, the family legal status of stepfather is the rights and obligations that include individual qualities, personal culture and social consciousness of stepfather/stepmother that affect the parenting of a stepson/stepdaughter and are based on the norms of the Family Code of Ukraine, but are not limited to it.

Defining the grounds for creating a family, the law indicates that the family consists of persons who live together, are connected by common life, have mutual rights and obligations. At this, Article 3 of the Family Code of Ukraine does not specify persons who can make up a family (Family Code of Ukraine, 2001). However, Part 2 of Article 2 of the Family Code of Ukraine, along with others, mentions stepmother, stepfather and stepdaughter, stepson as participants of family relations.

It is worth noting that neither the Family Code of Ukraine nor other acts of family legislation contain a legal definition of the concept of stepfather/stepmother. At first glance, the meanings of the concepts of stepfather, stepmother, stepson, stepdaughter do not need clarification. It is presumed that their meaning is clear. However, when it comes to the legal regulation of personal and property relations with the participation of these subjects, and especially the emergence, change and termination (due to the presence of these statuses) of personal non-property and property rights and obligations, obvious becomes the problematic nature of identifying and unanimously enshrining in the legislation the criteria for acquiring and terminating these statuses — stepfather, stepmother, stepson, stepdaughter (Kaliniuk, 2020, p. 61).

Modern domestic scientists, in particular I. V. Apopii proposes by the term “stepfather” to mean a man who is married to the mother of the child, lives with the child in the same family and is not its adopter, trustee or caretaker; accordingly, the “stepmother” is the wife of the child's father who lives with the child in the same family and is not his adopter, trustee or foster caregiver (Apopii, p. 3). I. L. Serdechna calls the stepfather/stepmother any person who has married or actually lives with another person who has minor children (Serdechna I. L., 2018, p. 94). A number of experts claim that the stepmother is the wife (not biological mother) of the child's own father, with whom the father and child live permanently in the same family. Accordingly, the stepfather should be considered the husband (not biological father) of the child's own mother, with whom the mother and child live permanently in the same family (Chervony, 2003, p. 387-388). According to others, a person may acquire the legal status of stepmother/stepfather as a result of registering her/his marriage to the father or mother of the child or living with them in the actual marriage relationship (S. O. Kharitonov, 2006, p. 454).

As we can see, the positions of scientists regarding the interpretation of such concepts as stepfather/stepmother, basically coincide. The statement that the mentioned subjects must be in a registered marriage is unanimous. We adhere to this position, because only the fact of concluding a marriage leads to the

emergence of a complex of marital rights and obligations for man/woman (husband/wife), which, under certain conditions, can be transformed into parental relations (Kaliniuk, 2020, p. 61-62).

The relationship that arises between the stepfather/stepmother is purely family, marital, and therefore, we are convinced that the relationship that develops in such families where stepchildren are brought up, deserve to be parental. Any paternity, even that which does not contain a blood origin, meets the interests of society, respectively, has the right to exist. Reasonable is the position of M. V. Boryslavska, who points out that for such persons the conscious choice of paternity is more valuable than for a certain part of biological parents (Boryslavska, 2014, p. 40).

We have already noted that the legal regulation of personal non-property and property relations with the participation of stepfather/stepmother is very important, and requires legal enshrining of these concepts at the level of law. There is a certain meaning in the possibility of legally defining these concepts (A. Kaliniuk, 2019, p. 100), as is done, for example, to such concepts as adoptive parents, foster parents, foster caregivers. We believe that the official interpretation of these concepts by family law will remove any controversial or debatable aspects from this issue and contribute to more effective regulation of family relations with the participation of stepfather/stepmother, stepson/stepdaughter, including on issues of family legal responsibility. It will also allow further reform of family law, taking into consideration changes in the life of the Ukrainian society.

### Scientific Novelty

The *scientific novelty of the publication* is in formulating a number of new conceptual provisions and conclusions regarding the concept and content of the legal status of stepfather/stepmother, as the legal status of a person who voluntarily, on grounds determined by law, performs the functions of parenting and support of a stepson/stepdaughter; It has also been established that the family legal status of stepfather/stepmother differs from other related family legal statuses of subjects who are empowered to raise children (adoptive parents, foster parents, foster caregivers) on the grounds of occurrence, legal consequences, nature and content of responsibility.

### Conclusions

The analysis of the family legislation of Ukraine as well as of the legal doctrine, gives grounds for the following conclusions:

1. The term “stepfather” means the husband of a mother who has married him and has a child from her previous marriage (or has the status of a single mother); The term “stepmother” should be understood as the wife of a father, whom he married and has a child from a previous marriage (or has the status of a single father). This definitions is based on: the fact of concluding a marriage between a man and a woman, registered in the manner prescribed by law; the presence of a child in the parenting of a woman (man), regardless of whether the paternity of another man is established or not established in relation to a child.

2. The legal status of stepfather/stepmother is the legal status of a person who voluntarily, on grounds determined by law, performs the functions of parenting and support of a stepson/stepdaughter. The legal status of stepfather/stepmother is defined both through legal categories and taking into account moral principles, the observance of which is necessary to ensure a stepson/stepdaughter proper conditions for parenting and development.

3. The legal status of stepfather/stepmother belongs to the category of special legal status of a person and is characterized by the following features: firstly, stepfather/stepmother is a person who is in a registered marriage with the biological father (mother) of a stepson/stepdaughter, therefore — it is associated with the marital status of a person; secondly, the legal status of stepfather/stepmother is associated with the performance of their functions of parenting and support of a child with whom they are not blood related; thirdly, such status is retained by a stepfather/stepmother for the period when they actually live with a child and are endowed with certain rights and obligations in relation to him; fourthly, the family legal status of stepfather/stepmother is the rights and obligations that include individual qualities, personal culture and social consciousness of a stepfather/stepmother that affect the parenting of a stepson/stepdaughter and are based on the norms of the Family Code of Ukraine, but are not limited to it.

4. The possibility of realization by stepfather/stepmother of personal non-property and property rights arises from the moment of registration of marriage with the biological father (mother) of a minor, underage child. The main criterion by which stepfather/stepmother, stepson/stepdaughter belong to family members are: cohabitation, shared parenting and support of children (own and stepson/stepdaughter).

5. Stepfather and stepmother are the actual tutors of a stepson/stepdaughter, who not only have the right to participate in the parenting of a stepson/stepdaughter, but are subject to the requirements of the legislation on the right and obligation to provide the child with proper parenting.

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