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ELDERLY PEOPLE IN SOCIETY – WHOSE DUTY IS IT TO CARE FOR THEM?

Keywords: elderly people, care facilities, right to state aid, duty of care

Summary

This article addresses the obligation to care for the elderly and the constitutionally guaranteed right to state assistance in case of old age and disability. According to the Constitution of Republic of Estonia, the duty to take care of family members in need rests with the family. At the same time, everyone has the right to state assistance in case of old age, which also includes the right to social welfare services. Although the Estonian Constitution provides for the right to state assistance, this assistance must be provided by legislation passed by the parliament. A care reform has been carried out in Estonia, and one of its goals is to reduce the burden on people in financing care facility places and to simplify the possibilities to family members in caring for persons in need. Although the state aspired to offer more support to people in the financing of care facility places, it has not succeeded because of the increasingly expensive prices of care facility places.

Introduction

The population in Europe as a whole is aging. This means that the proportion of older people is greater than that of younger people. As the proportion of the elderly increases, there is a growing need for corresponding care. If an elderly person can no longer manage on their own, the solution would be to place them in a care facility. The main question here is who has to guarantee the duty of care – is it the state or the family, who may rely on the assistance from the state, but it is not guaranteed.

Principle 18 of the European Pillar of Social Rights stresses that everyone has the right to affordable long-term care services of good quality, in particular homecare and community based services. The European Pillar of Social Rights action commits the EU-27 to further work on this.

Population ageing is expected to lead to a sharp increase in demand for long-term care. The number of people potentially in need of long-term care in the EU-27 is, therefore, projected to rise from 30.8 million in 2019 to 33.7 million in 2030 and 38.1 million in 2050.¹

Long-term care has a pronounced gender dimension. Almost 90% of workers in the sector are female, and so are most informal carers. In addition, 33% of all women aged 65 or over need long-term care compared with only 19% of older men. Older women have lower incomes, including pensions, and thus are potentially less able to afford care. Adequate and affordable formal long-term care services, together with policies to improve working conditions in the sector and reconcile paid employment and caring responsibilities, could thus help support gender equality.

Ensuring adequate social protection for long-term care contributes to social fairness. Older people with lower levels of income are more likely to have long-term care needs, whereas they are potentially less able to afford it. Adequate social protection thus plays an important role in ensuring that long-term care needs can be met.

Informal carers, mostly women, carry out the bulk of care-giving in many Member States. The use of solely informal care varies from around 30% to around 85% across Member States. However, while informal care is sometimes a matter of preference, it may often be the only option due to a lack of accessible and affordable formal care. The availability of informal care is likely to decrease due to increased participation by women in the labour market, extended working lives, greater geographic mobility, and other demographic trends.²

It is also important to bear in mind that long-term care expenditure is projected to be one of the fastest rising social expenditure items, thus requiring sustainable financing mechanisms. The level of expenditure on long-term care is highly differentiated across the EU-27. In Member States with higher expenditure on long-term care relative to GDP, social protection coverage for long-term care is also higher, whereas a lower-than-average share of the residents of Member States with low current public expenditure use formal long-term homecare services.

Increasing the efficiency of long-term care expenditure can contribute to addressing the financing challenge. A key role in delivering high-quality care at lower cost can be played by the effective deployment of new technologies, investment in active and healthy ageing policies, as well as health promotion and disease prevention.

¹ European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Long-term care report – Trends, challenges and opportunities in an ageing society. Volume II, Country profiles, Publications Office, 2021. Available: <https://data.europa.eu/doi/10.2767/183997> [viewed 03.12.2023.], pp. 12–14.

² Ibid.

Despite differences, Member States generally face four common challenges in relation to long-term care:

1. providing affordable and adequate access to long-term care services for all in need;
2. providing long-term care services of good quality;
3. ensuring an adequate long-term care workforce with good working conditions, and of supporting informal carers; and
4. financing long-term care in times of rising demand for care.

The number of people in society who need assistance and long-term care in Estonia is also constantly growing. According to different scenarios, by 2050, the share of people over 65 in the Estonian population will increase to a third of the population. Already, a large number of people with severe disabilities live in Estonia. As the population is ageing, the proportion of these people increases.

According to statistics from 2020, the number of people who required additional services in the population was between 56 000 and 75 900 people. The older the age group, the greater the need for assistance and services. The need for state guaranteed assistance and services is growing rapidly for people aged 80 and older, more than a half of whom use assistance and 22% consider themselves as requiring additional services. About 18 000 people in Estonia estimated that they might need a permanent 24-hour general care service in the next 12 months.

Regardless of the need for care, a person's primary choice is to live in a familiar and safe environment – at home. However, for some people, 24-hour general care service, i.e. a care facility, is an unavoidable need. The availability of high-quality help that meets a person's real needs is very important.

Long-term care can be defined differently. Long-term care (LTC), also defined as long-term care services, and support (LTCSS), refers to the “help needed to cope, and sometimes to survive, when physical and cognitive disabilities impair the ability to perform activities of daily living (ADL), such as eating, bathing, dressing, using toilet and walking”³. That is, it refers to services and supports provided to people with a reduced degree of functional capacity who need support in a residential setting or at home with their activities of daily living.⁴

WHO and OECD (2021) define them as “a range of services and assistance for people who, as a result of mental and/or physical frailty and/or disability over an extended period of time, depend on help with daily living activities and/or are in need of some permanent nursing care”. They involve a range of services including medical and nursing care, personal care services, assistance services and social

³ Grabowski D. Encyclopedia of Health Economics – Long-Term Care, Volume II. Encyclopedia of Health Economics, Amsterdam, 2014, pp. 329–331.

⁴ Global Report on Long-Term Care Financing. London School of Economics and Political Science, 2022. Available: <https://www.lse.ac.uk/business/consulting/reports/global-report-on-long-term-care-financing>, pp. 7–9 [viewed 08.01.2024.].

services that help people live independently or in residential settings when they can no longer carry out routine activities on their own.⁵

This article analyses the duties and responsibilities of the state, individual and local government in providing care services. The aspects of the Estonian care reform are also discussed.

1. Constitutional requirements

A number of rights and obligations connected to the care duties arise from the Constitution of the Republic of Estonia. According to § 27 of the Estonian Constitution, the family is obliged to take care of family members in need. Pursuant to Constitution's § 28, a citizen of the Republic of Estonia has the right to a state assistance in case of old age, disability and poverty. From the interaction of these two provisions, it is possible to conclude that the primary responsibility for taking care of family members rests with the family. The Constitution does not specify to what extent the family must bear responsibility for caring for family members in need.⁶ Likewise, it does not define the amount of the assistance nor the conditions for its provision in terms of state assistance. Parliament must pass a law that determines the role of the state and the individual in meeting the need for care.⁷

Although family members are obliged to care for their relatives in need, many care facility services remain unused. The high price of the service is one of the reasons why families try to cope with care themselves. In 2021, the average service cost was 852 euro per month, and according to Statistics Estonia, the average old-age pension in the same year was 551 euro. Since 90% of people living in care facilities are 65 years old and older, it can be concluded that for a large part of the service recipients, their main source of income (old-age pension) does not cover the care facility accommodation fee. Therefore, family members of the service recipient often have to contribute financially as well, which negatively affects their livelihood. The people in need of care depend upon the people of working age who have the primary responsibility to ensure the maintenance of their minor children and grandchildren. By putting them in a situation compelling a choice between providing professional care for their parents at an unaffordable price or remaining as caregivers themselves, working people of various professions are taken out of the labour market.

⁵ Barber S. L., Van Gool K., Wise S., Wood M., Or Z., Penneau A., et al. Pricing long-term care for older persons. World Health Organization and the Organisation for Economic Co-operation and Development, 2021, pp. 1–3.

⁶ Madise U. (ed.). Eesti Vabariigi põhiseadus. Kommenteeritud valjaanne [Constitution of Republic of Estonia. Commentary]. Tallinn, Juura, 2020, pp. 413–417.

⁷ Ibid.

In addition to the above, a significant consideration must also be given to the local government. In the Social Welfare Act, the responsibility for social welfare services is imposed only upon the local government.

According to § 156 of the Constitution, all issues of local life are decided and organized by local governments, which act independently, pursuant to legislation.

Obligations may be imposed on the local government only on the basis of the law or an agreement with the local government. The costs related to the state obligations assigned to the local government by law are covered from the state budget.⁸

The Constitution does not specify whether welfare services can also be organized by local government. However, according to the aforementioned Social Welfare Act, the local government is responsible for organizing social welfare in its territory.⁹

Taking into account the provisions of the Constitution, three parties involved in the provision of welfare services are the family, the state and the local government.

When fulfilling the state's obligation, it is important to answer the question whether the state must provide the care service itself, or it is possible to delegate it to another agent.¹⁰ While the state itself does not provide this service, the question arises as to what the state is responsible for. According to the Social Welfare Act, the state takes over the responsibility of paying for care facility services. The state does not provide the corresponding service itself, but only guarantees the availability of the service. Ensuring the availability of the service in this way is also in line with the constitutional requirement of the right to the state assistance in case of old age and in need.

In a situation where the state has transferred the provision of welfare services to another legal entity, the state is still not released from the obligation stipulated by the Constitution to provide assistance in case of need and old age. The individual still has a claim against the state. In order to receive assistance from the state, the law must provide for the conditions for the provision of this assistance.

The Supreme Court of Estonia has analysed what assistance in old age means.¹¹ In a court decision assessing the constitutionality of changes to the pension system, the court decreed that it was necessary to ensure decent assistance in old age. Decent assistance means that a person's income in case of an old-age pension does not decrease significantly compared to his working income. A similar

⁸ The Constitution of the Republic of Estonia. Available: <https://www.riigiteataja.ee/en/eli/530122020003/consolide> [viewed 03.12.2023.].

⁹ Social Welfare Act. Available: <https://www.riigiteataja.ee/en/eli/531072023003/consolide> [viewed 03.12.2023.].

¹⁰ Viirsalu M-L. Die Verantwortungsstruktur bei der Privatisierung der Rehabilitationsleistungen im estnischen Sozialrecht, *Juridica International*, No. 26, 2017, pp. 94–102.

¹¹ Judgement of the Estonian Supreme Court, of 20 October 2020 in Case No. 5-20-3. Available in Estonian: <https://www.riigikohus.ee/et/lahendid/marksonastik?asjaNr=5-20-3/43> [viewed 03.12.2023.].

approach can be used for the care services. Every person has the right to decent living conditions. These conditions include the possibility of obtaining a place in a care facility.

According to the Constitution of Estonia, the state shall promote voluntary and municipal welfare services. Therefore, the task of the state is to provide support to the local governments in the provision of these services.¹²

In order to ensure the obligation stipulated in the Constitution, the Constitution itself has not determined how the corresponding services must be financed. According to the Social Welfare Act, local government must provide thirteen different social services, including welfare (care) services.¹³ Although the state has stipulated obligations, the financial means necessary for the fulfilment of these obligations are not unambiguously regulated. According to § 156 of the Constitution, the obligations for local governments prescribed by the state are also guaranteed with financial means, but this has often not been the case. The Estonian Supreme Court in its case law has highlighted that the provision of services at the level of the local government must still be ensured, even if the local government does not have the required financial resources. If there are no financial means, the additional funds will be requested from the state.¹⁴

Regardless of how the state ensures the provision of care services, whether it provides it directly with the help of various state care facilities or takes over the responsibility of financing, the individual still has the individual right to turn to the state for assistance. If the state has not provided a separate legal regulation for this purpose, it is possible to oblige the state to establish the respective legal framework in order to ensure the realization of the constitutional rights of individuals.

2. Care reform in Estonia

However, in order to ensure appropriate assistance for individuals and to fulfil the requirement arising from the Constitution, in the summer of 2023, Estonia carried out a care reform with the aim to ensure the availability of a place in a care facility and the ability of people to pay for their place in a care facility. The main motivation behind the reform has been political promises, one of the messages – an average old-age pensioner can obtain a place in a care facility. One of the main pillars of the care reform was the increase of co-financing from the state and

¹² The Constitution of the Republic of Estonia. Available: <https://www.riigiteataja.ee/en/eli/530122020003/consolide> [viewed 03.12.2023.].

¹³ Olle V. Valdade ja linnade korraldatavate kohustuslike kohalike sotsiaalteenuste probleemide [Problems of guaranteeing services in rural municipalities and towns]. *Juridica*, No. 1, 2019, pp. 30–42.

¹⁴ Judgement of the Estonian Supreme Court, Constitutional Review Chamber of 9 December 2018 in Case No. 5-18-7. Available in Estonian: <https://www.riigikohus.ee/et/lahendid/marksonastik?asjaNr=5-18-7/8> [viewed 03.12.2023.].

the increase in the share of the local government. Thus, the funds for a place in a care facility come from three sources: the person in need of help, the local government and the state. Based on such a financing scheme, the place in a care facility is guaranteed. At this point, it must be clarified that the state does not have care facilities. All care facilities either belong to the local government or constitute separate legal entities. In order to fulfil the obligation arising from the Constitution to ensure the provision of assistance in case of need and old age, the state can purchase the corresponding service from other legal entities. If a person is able to pay for a place in a care facility only by using their pension, then this would mean that the state has fulfilled its constitutional task.

The care reform that entered into force on 1 July 2023 means that the state will help pay for the care. If until now the person had cover 100% of the care facility accommodation fee, as of 1 July 2023, the accommodation fee is divided between the person requiring the service and the local government.¹⁵

Care reform does not only mean the funding for a place in care facilities. Municipalities can use the funds provided by the state to organize care facility services, as well as home care. According to the principle that applies in welfare, priority should be given to the kind of help that supports a person in their own home. Institution-based care is only necessary if living at home with assistance is not possible.

The state covers the part of the care costs, which are the costs of the care staff employed by the care facilities. The person's own contribution funds the rest – accommodation and meals in the care facility, as well as other expenses related to personal needs.

The costs and fees of care facilities differ, and the local government may define limits for the payment of care costs. The limits are not an obstacle to finding a place in a care facility, but the available funding may be insufficient to cover the costs of care in all care facilities and additional payment must be considered.

In order to receive the necessary care service, the social worker assesses the need for care and can offer services that support living at home instead of entering a care facility.

One of the important aspects of the care reform is the increase in financial support from the state. State support is distributed among local government units proportionally, based on the number of residents aged 65–84 and those aged 85 years and above. The purpose of such distribution is to give the municipality an opportunity to organize the entire spectrum of social services for the elderly in long-term care – from one need-based service to another, giving preference to the services that support living at home.

When financing the care reform, the local government's own contribution has been taken into account. Municipalities are left with the right to decide how to

¹⁵ Many municipalities hold care reform unconstitutional. Available: <https://www.err.ee/1609154065/mitu-omavalitsust-peab-hooldereformi-puudulikku-rahastust-pohiseadusvastaseks> [viewed 03.12.2023.].

carry out the task: they can establish a ceiling for care costs and assess whether a person's need for assistance can be better supported at home or in a care facility.

Although financial support to finance places in care facilities comes from the state, each municipality has the right to set a limit on care costs, which must ensure the availability of services to people in at least some care facilities. The threshold cannot be so low that it is not possible to receive a service with such care costs in any care facility. However, the limit does not have to cover care costs in every care facility. When choosing a care facility, a person must proceed from this and make a choice considering the ability to pay for themselves or their dependents.

People's participation in paying for a place in a care facility is expected to decrease. In the future, the state will cover part of the care costs, which are the care staff costs of the care facility. The person's own contribution funds the rest – accommodation and meals in the care facility and other expenses related to personal needs.

The local government will pay the care cost part of the care facility accommodation fee. Care costs include the labour costs of care workers and auxiliary care workers, as well as the costs of work clothes, health checks and training. The care facility must calculate and disclose these costs per service recipient.

The prerequisite for municipal financing is the assessed need for the service. The local government will establish, for each respective person, whether help can be better provided by guaranteed home services or entering a care facility.

An increase in state aid is certainly important. Different analyses show that the care burden on the Estonian families is heavy.

According to the data of the study completed in 2021, 22% of Estonian residents aged 16 and older, or an estimated 230 000 people, care for or help someone with a long-term health problem or activity limitation, most often an elderly relative who needs help to cope at home. Of these, nearly 30 000 people contribute more than 40 hours in a week.

More than 40 000 people help or care for their household members for more than 20 hours a week. Approximately 25 000 people assist or care for their relatives for forty hours or more, according to a survey of residents' activity restrictions and care needs.

It is estimated that 50 000 people need a service, which is not funded including 20 000 people who would need a home service, which they currently cannot obtain. Welfare statistics show that, while the number of people receiving general care services has been constantly increasing, the number of home service recipients has remained at the same level for years.

In 2020, approximately 70 000 people felt significantly restricted in their daily activities (age group 16 years and above). About 160 000 people of the same age group felt moderate restrictions. About 180 000 people aged 16 and over used the assistance of relatives or acquaintances due to a health problem or activity limitation.

Conclusions

1. An increase in the proportion of elderly people in Estonian society is inevitable.
2. The duty of care of family members, as it is written in the constitution, increases. It is inevitable that the need for help from the state will become even more important.
3. The Estonian welfare reform is a step in the right direction; the current situation shows that it serves the set goals.
4. The number of care facility places has not increased, services have become more expensive. Although local self-governments have been promised more state support, this has not materialized.

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