



THE FORMATION OF LEGAL RELATIONS ON ALIMONY AND MAINTENANCE AND THEIR SIMILARITIES AND DIFFERENCES

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ABSTRACT

In the article have been analyzed the process of the formation of legal relations on alimony and maintenance and their similarities and differences by the helping scientific literatures and law documents as well.

KEY WORDS: *legal relations, alimony, maintenance, financial support, Roman private law, family.*

INTRODUCTION

The care of close relatives for each other and the financial support of each other have long been considered one of the most important moral values of this society. Relationships are also based primarily on the unconditional care of loved ones and ensuring their material well-being. Even in the days of ancient Roman private law, moral relations between relatives in a straight line, that is, mutual support materially and spiritually, had a stable legal obligation and the corresponding right to mutual support of relatives ("alimony").

At the same time, the legal forms of providing material support to the disabled and the provision of appropriate benefits are not limited to the obligation to provide only relatives or other family members [1, p.85-99]. In some cases, for objective reasons, all members of the family became materially needy and it was difficult to get rid of it without outside help.

METHODS

For hundreds of years, the legislation of many countries has formed a system of measures to treat needy citizens, raise children deprived of parental care [2], prevent delinquency among them, fight poverty, and implement these measures only for individuals, sponsors, close and distant relatives. at the expense of funds, but also through the appropriate

social protection provided by the state. The right of family members to receive alimony is interpreted from a family-legal point of view as a subjective right. Such a narrow approach to the understanding of the right to benefits does not allow to solve social problems aimed at the formation of practical mechanisms for the material security of the lives of disabled people. Therefore, the law on alimony should be approached more broadly from an intersectoral legal perspective.

RESULTS AND DISCUSSIONS

In addition, in the legal regulation of alimony relations, it is expedient to interpret it on the basis of international human rights instruments as an integral part of human rights and freedoms recognized by the international community as a whole. The right to security derives from the fundamental human rights and freedoms established at the international level, in particular the right to life, the right to development, and the right to social security. The main international legal documents of general and special nature (UN Declaration on Social Development and Development of 1969, Declaration of Development of 1968, Social Charter of Europe of 1996, Convention on the Rights of the Child of 1989) show that a state is first and foremost obliged to create an economic system that operates normally for the subsistence of its people. For the life and development of every human being is impossible



without the provision of the means necessary for his survival. [3]

According to the doctrine of the “social state of law” [4, p.192], for the life and development of its members in society who, due to temporary or permanent illness or age and other objective reasons, do not have sufficient funds, as well as the ability to earn and support themselves adequate conditions must be created and guaranteed. Such members of society include people with disabilities, people of retirement age, pregnant women, mothers raising young children, and minors. According to the law, this category of citizens has the right to maintenance - the right to a legally guaranteed marriage at the expense of other persons.

The principle of self-sufficiency applies to the socially active part of the working age population. The main sources of income for the livelihoods of such individuals are their wages, income from entrepreneurial activities and participation in civil affairs. Legal mechanisms for the exercise of the right to security are formed by the state through various forms, means and methods of regulating social relations related to the material security of disabled citizens. Due to their specificity, these social relations can be grouped into species, groups, and the purpose of their legal regulation is directly related to the fairness and legitimacy of material support.

Initially, social relations in this area can be divided into two main types.

First: It includes relations that guarantee the level of the able-bodied population, the income generation of the working population and the ability to not only provide for themselves but also to help others. In this case, depending on the subject and legal nature of these relations, it is appropriate to apply the rules of labor and tax law.

Second: Recognition of the relationship to ensure the livelihood of citizens who are directly disabled and entitled to benefits. In the regulation of social relations, which is recognized as this type, various sources of funding and various legal forms can be used to provide financial assistance to the disabled. Funds for the livelihood of disabled citizens may be provided by certain individuals or borrowed from individuals and legal entities, as well as donated by certain individuals or donated by various foundations.

Subsistence, ie the provision of funds by one person for the marriage of another person, can be carried out not only on the basis of an obligation directly provided by law, but also on the basis of a civil law contract, for example, the Umirbad security contract. Full or partial security may apply in the absence of a legal guarantee in a relationship that does not have an appropriate legal form. In this case, the person providing the security does not assume the

relevant legal obligation. For example, during the actual upbringing of the child.

The right to security in the broadest sense of the general law is a legal opportunity provided to incapable persons to obtain the means of subsistence necessary at the expense of other persons. Within the framework of sectoral specificity, the form, conditions, procedure and subjective structure of the legal relationship, as well as the specific features of this relationship, as well as the mechanisms for exercising the right to security are determined. In the exercise of this right, there is a problem of interdependence of different branches of law.

In cases where the exercise of the right to security arising under the law or contract provides for the provision of material assistance to a particular individual at the expense of another person, the construction of the obligation and the relevant sectoral methods of establishing legal relations for financial assistance. In particular, in civil law, a security obligation arising from a law (e.g., an obligation to compensate for the loss of a breadwinner) or a contract (an obligation to provide for a lifetime) is unilateral or bilateral.

Despite the fact that the state has a wide range of obligations for the social support of disabled people, international legal instruments and national legislation include the idea that the obligation to provide disabled people should be exercised primarily by family members. Therefore, the main role in solving the problem of financial support of disabled citizens is given to the Family Law, which is based on blood relations, relationships between spouses, parents and children. Alimony obligations of family members are one of the sectoral legal forms of security and one of the most common types of family legal relations.

Alimony obligations provide for the provision of benefits to incapable citizens at the expense of the property of persons who have a family relationship with this citizen on the basis of marriage, kinship, adoption. In establishing these legal relations, the legislature takes into account a wide range of circumstances related to the level of material well-being of both parties and the specificity of family life. The amount of support provided by family members is usually higher than the amount of assistance that can be allocated from various general social funds. However, the leading role of the alimony institution in the legal mechanism of financial support of disabled family members should be supported by other branches of law.

In particular, it is the duty of labor and child rights not only to provide for the needs of incapacitated citizens, but also to provide incomes for disabled members of the family to the extent that they can provide material support to minors in the first place.



According to a common view in family law, alimony obligations are an independent legal relationship that arises on the basis of legal facts provided by law. Such legal facts include an agreement between the parties to pay alimony or a court decision. Based on these legal facts, one member of the family undertakes to provide for another member. The other party acquires the right to demand that it be provided. It is in this sense that experts interpret alimony obligations as a type of civil legal relationship [5, p.336]. An analysis of the norms set out in the Family Code shows that although the terms “maintenance” and “alimony” have been used as a means of mutual financial support for family members, there is no clear boundary between them. Nevertheless, there is a situation in a number of literatures to interpret alimony as a type of provision. In this case, in contrast to the voluntary provision of alimony, alimony is determined by a court decision [6, p.36].

Continuing these considerations, it can be noted that the concept of maintenance has a broader legal meaning than the concept of alimony. Such a breadth is not only related to the methods of formation of these tools (voluntary and mandatory), but also differs in its content and scope. This may include the joint obligations of the husband and wife to provide financial support for their children until they reach adulthood.

For example, according to Article 90 § 4 of the Family Code, minors are entitled to receive maintenance from their parents. In addition, the norm stipulates that minors may receive a variety of social assistance, and this provision is used for the upbringing and education of children. The Family Code also stipulates that expenses for children must be covered jointly by the couple.

Alimony obligations, as a form of maintenance, are limited in family law. Another noteworthy aspect is that Section V of the Family Code, entitled “Alimony Obligations of Family Members and Other Persons,” deals with Articles 96-97 of this section. In this case, the legislature provides for the recovery of alimony in the event of voluntary non-performance of the obligation to provide alimony (part 2 of Article 96 of the Family Code).

The mixed and confusing use of the concepts of alimony and maintenance in family law leads to different approaches to the interpretation of these concepts. For example, Article 97.1 of the Family Code stipulates the obligation of parents to “pay alimony” and “provide” for their minor children, while Part 2 provides for the equality of parental obligations in providing for them. It appears that the payment of alimony is a general obligation imposed on the parent, which is understood as the parent's property obligation to the minor child. At the same time, the provision of support is voluntary,

mutual agreement and joint participation in the upbringing of children.

The concepts of maintenance and alimony, in contrast, are also implied in property obligations between spouses and ex-spouses. In particular, Chapter XV of the Family Code stipulates that spouses provide for each other in the form of financial assistance or alimony (Article 117 of the Family Code). Based on these analyzes, two different concepts of alimony can be substantiated on the basis of the provisions on alimony established in the Family Code.

The first concept is based on the idea that the concepts of “obligation to provide” and “alimony obligation” are similar in family law regulation, so the legal relationship of family members on maintenance can be expressed as alimony obligations. At the same time, this aspect is not the basis for distinguishing between the concepts of “supply” and “alimony”. Because the provision of security is not limited beyond the scope of alimony obligations or legal relationship. Certain financial assistance is also allowed outside the scope of alimony obligations. In particular, it is possible to provide material support through various gifts, payment of debt obligations, utility payments, delivery of food products, payment for training courses for children or other household expenses.

According to the second concept, the provision of alimony under a alimony agreement or a court decision can be described by the term “alimony”. However, from a legal point of view, the term “alimony” can be defined as “alimony” in cases where “alimony obligations” are assessed as a stage in the development of legal relations for the provision of security and are not interpreted as an independent family-legal relationship arising from a notarized alimony agreement or court decision [7 , p.24]. In this case, the subjective right to maintenance usually arises when there are conditions established by law for persons who are able to work and need financial assistance from other family members.

The alimony agreement or court decision determines the provision in each life situation taken separately and defines its characteristics. In general, the procedure for exercising the right of family members to maintenance and fulfillment of the obligation to provide support by other family members is determined by these documents. Furthermore, in this case, no new subjective right to security arises as a result of the conclusion of an agreement on the payment of alimony or a court decision. Because from the point of view of subjective protection, each of these documents can be enforced.

It should be noted that the obligation to provide does not always mean that there is a separate legal relationship between family members for the provision of security, because the obligation to



provide may, by its nature, be part of a relatively complex family-legal relationship. For example, parental legal relationships usually include the obligation of parents to provide for minor children.

Under the first concept, the appropriateness of recognition, “obligation to provide” and “obligation to alimony” operate as concepts that are completely similar in the mechanism of family law regulation. “Alimony obligations” arise in cases provided for by law in the event of family legal relations, in which one party provides the other. The other party, in turn, has the right to demand alimony. Such a right arises in the form of an independent, unilateral legal relationship or in the context of another relationship in family law. From the point of view of family law regulation, provision is the legal form of the subjective right of family members to alimony, while the provision of support is the satisfaction of the needs of one subject of family law at the expense of another.

At this point, it is necessary to distinguish the concept of “supply” from the concept of “financial support”. Because financial support can be manifested mainly in actions such as reimbursement of expenses, implementation of voluntary spending expenses between close relatives. This also differs from the provision in the form of alimony. Zero alimony is expressed in the form of a fixed amount and payment within a specified period. Therefore, the concept of supply can be interpreted as a broader concept than the concept of alimony.

CONCLUSION

In conclusion, it should be noted that the concepts of “maintenance” and “alimony” in family law should be differentiated, and in their interpretation, it is necessary to distinguish between the obligation of mutual support of family members from the obligation of alimony. At the same time, it would be expedient to improve the provisions of the Family Code on alimony obligations, using the correct and appropriate legal terms.

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