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LEGISLATIVE GAPS IN THE FIELD OF COLLECTION OF ALIMONY FOR MINOR CHILDREN

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ABSTRACT | 摘要 | RESUMEN

Protecting the rights and interests of the most vulnerable alimony recipients – minor children – is one of the most socially significant areas of family law regulation. The basic guarantees of the rights and legitimate interests of the child depend on the correctness of the regulatory provisions on alimony and the quality of the mechanisms for their collection. The lack of legal certainty today in provisions of alimony legislation on the forced collection of alimony confirms the relevance of this study. **Purpose:** to explore the features of modern Russian legal regulation of the judicial collection of alimony for minor children, to identify problems and to formulate proposals for changing legislation. **Methodology:** general scientific dialectical method and special methods were used: systemic-structural, formal-legal, logical and comparative-legal. **Results:** the article analyzed the shortcomings of legal technology and the current legislation regarding legal regulation in the field of alimony legal relations and formed proposals for their legislative elimination. The author sees that, despite the prevalence of writ proceedings, the potentially higher efficiency of alimony payment belongs to a voluntary alimony agreement.

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1. INTRODUCTION

Protecting the rights and legally protected interests of children is one of the main tasks facing Russia and the world community as a whole. These provisions of the Convention on the Rights of the Child¹ correspond to the requirements enshrined in the Constitution of the Russian Federation, which stipulate the need to ensure, on the basis of standards generally accepted in welfare states, parents and other persons raising children, the opportunity to adequately perform relevant social functions. The purpose of this article was to analyze the problems of legal regulation of relations for the collection of alimony, identify current innovations in this area and offer recommendations for their improvement [1].

National legislation enshrines these obligations in Part 1 of Art. 38 of the Constitution of the Russian Federation, which establishes the state's protection of family, motherhood and childhood. It follows from this that the forced collection of alimony payments to provide for children under the age of majority is one of the main goals of the Russian Federation, implemented by the FSSP of the Russian Federation. According to the latter's reporting data, alimony debt in the Russian Federation currently exceeds 150 billion rubles, and the decrease in the balance of unfinished enforcement proceedings for the collection of alimony (from 791.7 thousand to 782.5 thousand for 2021)² is characterized, although positive, but weak trend. This confirms the existence and relevance of controversial issues in the legal regulation of the judicial procedure for collecting alimony, requiring close attention of the legislator [2].

According to paragraph 1 of Art. 80 of the RF IC, the obligation to support children under the age of majority is one of the main parental responsibilities. At the same time, it is not the child who has the right to collect alimony, but those persons who support him and are the subjects of the alimony obligation on the plaintiff's side, and the child has, backed by the coercive force of the state, the right to upbringing and maintenance received from the persons among whom he lives. The subject of the alimony obligation has a special purpose - alimony is collected in favor of the plaintiff, but only for the maintenance of the child, and the existence of this obligation is determined by its purpose [12].

Usually, the obligation to pay alimony is fulfilled voluntarily, and the parents themselves determine the conditions for maintaining the child, with the exception of cases of refusal to provide maintenance to

¹ Convention on the Rights of the Child (approved by the UN General Assembly on 20.11.1989) (entered into force for the USSR on 15.09.1990). - URL: http://www.consultant.ru/document/cons_doc_LAW_9959/ (date of circulation 03.01.2023).

² The final report on the results of the activities of the Federal Service for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2021. URL: <https://fssp.gov.ru/2765741/> (access date: 09.01.2023).

their children, as a result of which controversial cases arise. The most common of the latter are associated with: collection of alimony, changing its amount, exemption from paying alimony, changing the agreement reached under which alimony is paid voluntarily, as well as the application of liability to obligated entities who have not made payments on time [7, 8, 10, 11].

Each case from the presented categories has its own specifics, which is expressed in the direction of proof, namely in how the burden of proof is distributed between the subjects. Thus, each party to the dispute has the responsibility to prove the circumstances that justify their position, demands and objections. For example, when establishing paternity (clause 4 of Article 48 of the RF IC) in relation to an adult child, if he consents, the court must take into account a number of factors, including whether the father knew about the existence of this child and whether he provided assistance in his maintenance. Moreover, if the court does not establish the fact of evasion of alimony payments without good reason, then the claim is not subject to satisfaction, and it will not be possible to apply for alimony.

The current Code of Civil Procedure of the Russian Federation allows an interested party to go to court with a demand for the collection of alimony both through a claim and through writ proceedings. The course of the claim proceedings ends with the issuance of a court decision, and the result of the writ is a court order, which has the status of a court decision issued by a single judge [3].

Guardianship and trusteeship authorities are actively involved in filing claims for the collection of alimony for minor children. In this case, the court will need to establish such facts as the presence of the parents of a minor child, the existence of rights and obligations, including the payment of alimony, between the minor child and the person in respect of whom the corresponding demands are made, the conclusion of a child support agreement by the parents, as well as the presence of a minor a dependent child of the entity bringing the claim (guardianship and trusteeship authorities).

2. DIFFICULTIES FOR THE ALIMONY RECIPIENT

In the course of carrying out both claim and writ proceedings for the collection of alimony, a number of acute problems arise, in particular, with the cancellation of a court order by the alimony-obliged person. According to Art. 129 of the Code of Civil Procedure of the Russian Federation, the cancellation of a court order takes place in a “simplified form”, which does not take into account the validity of the

evidence of the alimony debtor in the event of his objections and does not provide for an appeal procedure. This gives rise to such difficulties for the claimant as the need to re-apply to the court with a statement of claim, additional legal costs, which in turn only delays the process of collecting alimony for minor children and gives the debtor the opportunity to conceal property. This legal omission in this matter can be considered an unacceptable obstacle to access to justice, which does not correspond to the objectives of protecting the right of minors to receive alimony [6].

Another similar legal non-settlement, associated with the discrepancy between the claimant and the child in one person, can have an extremely negative impact on the legitimate interests and subjective rights of minors. This is confirmed by an additional indication of the law that the order for the collection of alimony in relation to children must contain information that in the writ of execution is already mandatory for the claimant, in accordance with Part 1 of Art. 27 Code of Civil Procedure of the Russian Federation. Enforcement proceedings are terminated in the event of the death of the claimant or his submission of an application for the return of the writ of execution, which clearly violates the property interests of the child. Moreover, if a parent is deprived of parental rights, then there are no grounds for terminating enforcement proceedings.

The right to receive alimony can be exercised by a person at any time. This means that the corresponding application to the court can be filed whenever the holder of the right wishes to do so. Regardless of at what point the court issues the final procedural document, payments will be awarded from the moment the plaintiff applied to the court to receive it. This feature is characteristic of disputes related to civil proceedings. In other types of cases, the award of payments is made only from the moment the legal force of the court decision is obtained. An interested party can make demands regarding the payment of child support only until the child reaches adulthood [5].

Once children reach the age of majority, the court can consider only those appeals that relate to the accumulated debt. At the same time, it is worth considering that the obligation of parents to provide financial assistance to children studying at a higher institution without employment opportunities is not enshrined in law, and, as we believe, depends only on the alimony agreement concluded between the parties [8]. In this case, only disabled children (disabled and needy adults) can be eligible for alimony. Alimony obligations of this type are regulated in detail in Russian law (in particular, in the issue of the contractual form of securing such alimony obligations (clause 2 of Article 85)), in contrast to a number of states - including the continental system of law, where these relations are regulated by civil legislation.

The issuance of a judicial act on the collection of alimony in favor of a minor child depends on the establishment of legal facts related to the emergence of an obligation for maintenance (first-degree relationship of the alimony payer and the child, failure to provide maintenance voluntarily, including by concluding an agreement on the payment of alimony or otherwise form), as well as circumstances indicating a violation of the rights of alimony recipients (establishing the fact of a culpable evasion of the alimony obligation from fulfilling an obligation, or the fact of providing maintenance in an amount insufficient to meet the material needs of the child or below that established by law). This is evidenced by the provisions of Art. 80 and Art. 24 of the RF IC aimed at ensuring a balance of interests of minor children and their parents within the framework of alimony relations, as well as the purpose of civil proceedings - the protection of violated or disputed rights, freedoms and legitimate interests (Article 2 of the Code of Civil Procedure of the Russian Federation)³.

One of the important circumstances for the court is a change in the marital status of one of the parties, in particular the appearance in the family of the recipient or payer of alimony of persons who are dependent and supported by them (the birth of children of the alimony payer in a new marriage or the incapacity of the parents of the recipient of the alimony), so and material condition, for example, its improvement or deterioration due to a significant change in the income of the recipient or payer of alimony, which may affect the amount of alimony established by the court. At the same time, the judge may take into account other circumstances worthy of attention, such as the onset of disability or illness that prevents the continuation of previous work, as well as the child's employment or participation in entrepreneurial activity.

It is worth noting such difficulties for the alimony recipient as the legally unfixed minimum amount of alimony to meet the minimum needs of the child, as well as an outdated approach to determining the amount of alimony subject to judicial collection, with a share of the payer's income, which can lead to negative consequences in the event of concealment or change in the amount of income by the alimony-obliged person [7, 10, 11].

³ Determination of the Constitutional Court of the Russian Federation of December 21, 2011 № 1844-O-O-O "On refusal to accept for consideration the complaint of citizen Usenko Sergey Vladimirovich on violation of his constitutional rights by paragraph 1 and the third paragraph of paragraph 2 of Article 24, paragraph 2 of Article 80 and Article 81 of the Family Code of the Russian Federation". - URL: <https://base.garant.ru/70136728/> (date of circulation: 09.01.2024).

In case of failure to receive maintenance on a voluntary basis, the alimony recipient protects his rights in court, which is a last resort measure for the fulfillment of the alimony obligation in favor of minors, which is more common (but not preferable) than concluding an alimony agreement, which is equivalent to a writ of execution after certification by notary. An agreement on the payment of alimony, regardless of whether the parents are married or not, sets out all the conditions and circumstances that are important to the parties, where the eligible and alimony-obliged persons can agree on the frequency of alimony payments, including a lump sum payment of the entire amount, or provide transfer of any property to pay alimony.

According to the dispositive nature of the alimony norms of the RF IC, when the parties enter into an alimony agreement, the parties are not deprived of its judicial implementation in a settlement agreement on the collection of alimony for minor children, which is approved by the court after checking the legality of its contents, in accordance with Part 2 of Art. 39 of the Code of Civil Procedure of the Russian Federation, and agrees on any terms of payments, except for the amount of alimony as stated in Art. 103 RF IC [4]. Often the parties entering into such an agreement do not know about the possibility of its forced execution upon request, in accordance with Part 2 of Art. 153.11. Code of Civil Procedure of the Russian Federation.

3. CROSS-BORDER DISPUTES OVER THE PAYMENT OF ALIMONY

However, for parents living in different states, controversial issues arising in relation to agreements on the payment of alimony, which provide for any method convenient for the parties to pay alimony, cause certain difficulties. In accordance with Art. 118 of the RF IC, a person leaving for permanent residence in a foreign state has the right to enter into such an agreement with family members to whom he is legally obliged to provide maintenance. Accordingly, if it was not possible to reach an agreement with the parent obliged to pay alimony, the interested person (the parent with whom the child lives) has the right to apply to the court with a demand to determine the amount of alimony in a fixed amount and for a one-time payment of alimony or for payment of alimony in another way, but the question arises which court should be addressed⁴.

⁴ Family Code of the Russian Federation of December 29, 1995 N 223-FZ. URL: <http://ivo.garant.ru/#/document/58053191/paragraph/133080:0> (date of reference: 09.01.2024).

In the case of cross-border alimony, you can file a claim for the recovery of alimony against the debtor in a national court in the Russian Federation and a further petition for recognition of its decision in the territory of the relevant state with forced execution or directly in a court of a foreign state. A more detailed procedure is enshrined in the Methodological Recommendations dated July 30, 2014 No. 0007/18, which guide bailiffs when organizing work to fulfill international obligations within the framework of enforcement proceedings⁵. It should be noted that these guidelines are of an organizational nature and contain internal rules that guide bailiffs in their work, and are not an act of implementation of the rights and obligations of the parties in enforcement proceedings.

There are situations where bailiffs do not have sufficient information about which government institution a child without parental care is in. This complicates the procedure for collecting alimony payments in their favor. In order for the presented problem to be resolved, it is necessary to develop a database that will contain information about the transfer of children to state institutions, about their transfers from one state institution to another. Difficulties may also arise in a situation where the child's guardians do not exercise their right to replace the claimant in the writ of execution. As a result, the child does not receive child support, which is an infringement of his rights. Violation of the child's interests also occurs if his legal representatives untimely apply for alimony payments. The problem can be eliminated through widespread dissemination of information regarding the collection of alimony [14].

It should be noted that the law does not contain instructions on the right of a parent to refuse alimony payments, for example, due to the voluntary and conscientious fulfillment of alimony obligations by the defendant (if we do not take into account Article 39 of the Code of Civil Procedure of the Russian Federation). Moreover, if such voluntary fulfillment was formalized by an alimony agreement, then the claim remains without consideration, and if it was a simple transfer of funds or other property, then additional proceedings will be required. In every case where the plaintiff refuses a claim for the collection of alimony for minor children, the court must be guided primarily by the interests of the minor child.

However, when considering the plaintiff's motives for refusing the claim, it should be taken into account that intra-family relations are determined not only by legal, but also by moral and ethical norms, which are so diverse and not provided for by law. For example, a parental conflict can cause an emotional

⁵ Methodological Recommendations on the organization of the work of the bailiff-executor on the execution of international obligations in the framework of enforcement proceedings from 30.07.2014 № 0007/18. - URL: http://www.consultant.ru/document/cons_doc_LAW_120109/ (date of circulation: 09.01.2024).

appeal to the court with demands for the collection of alimony, the amount of which, based on a court order, may be significantly less than the amount of money that was paid by the alimony-obliged person on a voluntary basis. It can be assumed that in this case, the prohibition on the exercise of the right to refuse a claim by the legal representative of a minor child clearly does not meet the property interests of the latter [13].

Therefore, in order to exclude such violations of the rights of a minor by his legal representative, it would be necessary to establish certain control on the part of state bodies and a mechanism for verifying all the circumstances that served as the motive for the plaintiff's refusal of the claim. Accordingly, positive court decisions when the plaintiff refuses a claim in cases of collection of alimony must be supported by the provision of a notarized agreement of the parties on the payment of alimony or by establishing the fact that the parents have resumed running a common household or living together.

In matters of collecting the maintenance of minors, there are still a number of controversial issues that require further research. In particular, considering judicial practice, we can highlight the issue of the existence of an actual presumption of provision of maintenance to a child by a parent living with him, despite the equal obligation of parents to support minor children. The unilateral effect of such a presumption causes a high probability of refusal by the court to satisfy the demands of the alimony-obligated parent to terminate alimony payments for the period of cohabitation with the child.

Such a violation of the principle of equality of spouses results in an actual presumption of the mother's preemptive right to keep the child with her when the parents live separately, and with the law's failure to ensure the right to maintenance for the ex-husband, even if he remained with the minor child and maintains him in the first 3 years after birth, in contrast to the child's mother, who has such a right according to Art. 89 RF IC. All this deserves the attention of the legislator and reasonable gender neutralization of family law norms [9].

4. CONCLUSIONS

Thus, when considering cases related to ensuring the legitimate interests of minor children, first of all, the court must guarantee the protection of their rights in each specific case, including when accepting the plaintiff's refusal of the claim and concluding a settlement agreement on the payment of alimony,

which determines the conditions, but not the amount of the required maintenance for minor children. Because, this agreement, unlike settlement agreements on disputes from other alimony legal relations, where it is possible to bypass some restrictions, can only confirm existing alimony legal relations or specify their content, but in no way reduce the amount of alimony payments.

In any case, the voluntary fulfillment of the alimony obligation, carried out with the help of a simpler alimony agreement in comparison with the judicial one, from the point of view of real material assistance in relation to minors in need, is more rational than a repressive order. A higher commitment to the latter among alimony recipients is mostly associated with a psychological problem, rather than a lack of consensus with the payer, which aggravates the already problematic institution of alimony agreements. In this situation, it seems advisable to retain the opportunity to find consensus and formalize your alimony agreements by concluding a settlement agreement not only in pre-trial proceedings, but also in court.

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ABOUT THIS ARTICLE

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VACÍOS LEGISLATIVOS EN MATERIA DE COBRO DE PENSIONES ALIMENTICIAS A MENORES DE EDAD

RESUMEN

La protección de los derechos e intereses de los beneficiarios de pensiones alimenticias más vulnerables (los hijos menores) es una de las áreas socialmente más importantes de la regulación del derecho de familia. Las garantías básicas de los derechos e intereses legítimos del niño dependen de la corrección de las disposiciones reglamentarias en materia de pensión alimenticia y de la calidad de los mecanismos para su cobro. La falta de seguridad jurídica actual en una serie de disposiciones de la legislación sobre alimentos sobre el cobro forzoso de alimentos confirma la relevancia de este estudio. Propósito: explorar las características de la regulación legal rusa moderna del cobro judicial de la pensión alimenticia para hijos menores, identificar problemas de regulación legal y formular propuestas específicas para cambiar la legislación. Base metodológica: en la elaboración de la investigación se utilizó el método científico dialéctico general y métodos especiales: sistémico-estructural, formal-jurídico, lógico y comparativo-jurídico. Resultados: El artículo analizó exhaustivamente las deficiencias de la tecnología jurídica y las características de la legislación vigente en materia de regulación legal en el campo de las relaciones jurídicas alimentarias y formuló propuestas para su eliminación legislativa. El autor considera que, a pesar de la gran prevalencia de los procedimientos judiciales en los casos de cobro de alimentos, la eficiencia potencialmente mayor del pago de los alimentos corresponde a un acuerdo voluntario de alimentos. Conclusiones: el estado actual de la regulación legal de la institución de la pensión alimenticia para menores, incluidas las deficiencias de carácter sustantivo y procesal, se caracteriza por la imperfección e ineficacia de una serie de disposiciones reglamentarias del Código de Familia de la Federación de Rusia, que a su vez puede afectar la estabilidad y eficiencia de las decisiones y órdenes judiciales y necesita reformarse.

Palabras clave: pensión alimenticia, obligaciones alimentarias de los padres, derecho de familia, procedimientos de ejecución, procedimientos judiciales.

未成年子女抚养费征收领域的立法空白

摘要

保护最脆弱的抚养费接受者——未成年子女——的权益，是家庭法规范中最具社会意义的领域之一。儿童权利和合法利益的基本保障取决于抚养费监管规定的正确性及其征收机制的质量。今天，在抚养费立法中关于强制征收抚养费的一些规定缺乏法律确定性，这证实了本研究的相关性。**目的**：探讨现代俄罗斯对未成年子女司法征收抚养费的法律监管特点，找出法律监管的问题，并提出改变立法的具体建议。**方法论基础**：在研究准备过程中，使用了通用的科学辩证方法和特殊方法：系统结构法、正式法律法、逻辑法和比较法律法。**结果**：本文全面分析了法律技术的不足和当前抚养费法律关系领域法律监管的特点，并提出了立法消除这些不足的建议。作者认为，尽管在抚养费征收案件中，书面诉讼的流行程度很高，但抚养费支付的潜在高效率属于自愿抚养费协议。**结论**：当前对未成年人抚养费制度的法律监管状况，包括实质性和程序性的缺陷，是因为俄罗斯联邦家庭法典的一些监管规定不完善和无效，这反过来又可能影响法院裁决、命令的稳定性和效率，因此需要进行改革。

关键词：抚养费、父母的抚养费义务、家庭法、执行程序、司法程序。