

LEGAL REGULATION OF MAINTENANCE OF ALIMONY OBLIGATIONS THE EXPERIENCE OF FOREIGN COUNTRIES

A. B. Minojiddinov

independent researcher TSUL

E-mail: abduralminojiddinov176@gmail.com

Annotation: Alimony obligations are expressed not only in our national legal system, but also in the legislation and legal experience of foreign countries. Studying and comparing legal issues in this regard will help to develop approaches to ensuring alimony obligations, correct identification of existing problems, and development of suggestions for elimination.

Keywords: alimony, minor children, material support, court decision, alimony payment agreement, spouse.

It should be noted that the Romano-Germanic legal system, in other words, does not have a certain systematicity in the continental legal system. The Roman group of civil law is based on the French Civil Code adopted in 1804, and the Germanic group is based on the German Civil Code adopted in 1896.¹

According to N.Rakhmankulova, in contrast to other legal relations complicated by a foreign element, in marriage relations, in particular, in marriage and its annulment (property is considered the object of the relationship in matters related to the marriage contract), the object (equipment) does not participate. In his opinion, marital relations complicated by a foreign element are relations in which one party is a foreign citizen or a stateless person, and the creation, change and annulment of which took place abroad.²

The German Civil Code is the main normative array of codified civil law adopted in 1896. The German Civil Code consists of five books: the General Part, the Law of Obligations, the Law of Property, the Law of the Family and the Law of Inheritance. While the first three of these books form the core of civil law, family law and inheritance law are described as special legal subjects³.

The German Civil Code, unlike the French Civil Code, also has a general part, which is the first book (paragraphs 1-240), the second book on the law of obligations (paragraphs 241-853), the third book on material rights (paragraphs 854-1296), the fourth book on the family law (paragraphs 1297-1921), the fifth book covers inheritance law (paragraphs 1922-2385). The code consists of 2385 paragraphs in total. The GFT conforms to the doctrine of *padekt* law. This situation is explained by the separate interpretation of the right of obligation and the right of property. Many researchers believe that the provisions on property rights in the GFT were influenced by Germanic common law, while the section

¹ Зокиров И.Б. Фукаролик ҳукуки: Дарслик. I қисм. Қайта ишланган ва тўлдирилган бешинчи нашр. –Т.: ТДЮИ, 2009. (611 б) 67 б.

² Рахмонкулова Н.Х. Халқаро хусусий ҳуқуқда никоҳ муносабатларининг тартибга солиниши. Юрид.фан.номз.дисс...автореф. Т.: ТДЮИ, 2010. 12 б.

³ Шапп Я. Основы гражданского права Германии. Учебник. М.: Бек, 1996. (-304 с) -6 с.



on obligations was influenced by Roman law. It is also worth noting that this code influenced the formation and development of civil legislation in different countries⁴.

The modern legal system of France was formed as a result of the French Revolution in 1789-1794. During this period, a number of important documents were adopted, including the Declaration of Human and Civil Rights (1789). In 1804, a code known and famous as the French Civil Code was adopted. Its original text contained 2281 articles. Over time, a number of changes and additions were made to the FFK, some sections were removed and some sections were added. The rules on the regulation of family legal relations in the first book of the Civil Code have undergone many changes.

A minor who is capable of entering into marriage can enter into any agreements arising from marriage. Agreements and gifts made by them are considered valid if their implementation is approved by the persons necessary for the recognition of marriage (Article 1398). At the same time, an adult under guardianship or sponsorship cannot enter into marriage agreements without the consent of persons whose consent to marriage is necessary⁵.

In the Dutch legal system, family norms are expressed in the Civil Code and other legal documents. Also, the European Union Convention on Human Rights is recognized as a source of law. In the Netherlands, it is possible to use the institution of agreement in matters related to guardianship and sponsorship⁶.

Anglo-sakson huquq tizimi huquq tizimlari ichida o'ziga xos jihatlari bilan ajralib turadi. Uning rivojlanishi tarixiy jihatlarga ega bo'lib, umumiy huquq (Common law) sifatida ma'lum bo'lgan va uch yo'lni bosib o'tgan ya'ni, umumiy huquqni shakllanishi, uni adolat huquqi bilan to'ldirilishi (Eduity law) va statlurni talqi qilish (Statute law).

At the same time, the law of precedent occupies a central place in this system and is also the main source. In this case, the decision issued once is a binding norm for all subsequent cases. Currently, there are about 800,000 court precedents in England alone, and their number increases by 20,000 every year⁷.

In many countries of the European Union, a unified approach has been developed to determine the amount of maintenance for children by concluding an appropriate contract. The practice of concluding such contracts voluntarily by the parties is now widespread.

It can independently determine the amount and order of financial support for minors without state intervention. An example is the legislation of Latvia. It provides for the conclusion of an agreement with the participation of a notary on the payment of alimony in the amount agreed upon by the parties during the divorce. This document has the same force as a court decision and must be executed with the same strictness. If the parties cannot reach an agreement on these issues, a foreclosure action may be filed in court.

When applying to the court, the parent who is with the child must indicate the amount necessary to meet all the needs of the child. The court considers the property situation of the couple, substantiates the amount specified in the claim and makes a decision on the case. As a rule, payments continue until the child reaches adulthood, in some cases, the period can be extended up to 23 years, for example, in connection with his studies at the university.

⁴ Правовые системы мира. Энциклопедический справочник. //Отв. Ред. А.Я.Сухарев. –М.: Норма-инфра, 2000. (-840 с.) -159-161 с.

⁵ Code Civil. Texte Centieme edition redigee avec le concours de. 2001. 100 e edition. Editions Dalloz. 1398 art. 1161 s. www.dalloz.fr

⁶ Правовая система Нидерландов. // под ред. В.В. Бойцовой и Л.В. Бойцовой, М.: изд. Зерцало, 1998 г.

⁷ Саидов А.Х. Ҳозирги замон асосий ҳуқуқий тизимлари. Дарслик. Т.: ТДЮИ, ЖИДУ, ТИУ, 2004. (428 б). 250-252 б.



If the party obliged to pay alimony does not fulfill its obligations properly or even refuses to fulfill them, the recipients of alimony will not be defenseless. The state envisages a mechanism for providing material assistance at the expense of the Guarantee Fund during the legal proceedings with the obligee. The content starts flowing from the fund after the corresponding application is submitted.

This practice, in which funds for child support come from a certain state fund in case of failure of one of the parties to pay alimony, is very interesting and useful, because it helps the child not to be in a difficult situation in such a situation.

If we consider the experience of countries that have such a guarantee of the protection of children's rights, then we can give the following definition: alimony fund means a certain state institution or state body, which is one of its powers. In the cases specified by law, instead of parents who refuse or cannot fulfill their maintenance obligations, children can be supported at the expense of the country's budget⁸.

An alimony fund exists in a number of other countries, such as Sweden. In this country, there is a social insurance agency, which performs the functions of the fund. The state parents are obliged to support and care for children who are unable or unable to fulfill their duties due to certain circumstances. Such reasons include: cases where parents could not agree on the amount of alimony; one of the parties does not have funds to pay alimony, etc⁹.

But if we consider this issue from the point of view of protection of children's rights, then it is appropriate to pay attention to the experience of Austria, which is one of the most developed countries in terms of social protection. Here, the law stands on the side of the child and the parent who remains with him. Therefore, the spouse has the right to claim alimony for minor children (a) from the first days of the divorce proceedings in court or from the time of filing such an application.

For each minor child, the state calculates a monthly alimony advance depending on the child's age, after which the state collects the advance amount from the alimony payer by a court decision. The term of payment of advances for technical service is a maximum of five years.

In Austrian law, the amount of alimony depends on:

1. Financial opportunity of parents (income, ability, education, etc.). For those on sufficiently high incomes, maintenance payments can be up to two and a half times the standard cost of childcare. Legal documents do not set the limits of the amount that can be recovered from the obligation, so each case is considered separately. If the parent evades payment by quitting his job or moving to a low-paid job that is not in his specialty, that is, if he deliberately reduces his income, when calculating the amount of alimony payments, the actual income that he refused is taken into account.

2. The needs that appear in children at a certain age. They can be divided into simple (for example, housing, clothing, education, etc.) and special (in case of a child's illness, medical expenses not covered by insurance, etc.).

3. Number of children and their age. Depending on the age of the child, the percentage of the non-resident parent's net income increases. Under Austrian law, if the child is studying or has a degree, the rate rises from 16 percent for 6-year-olds and 22 percent for under-18s. At the same time, for each subsequent child, the amount of alimony increases by 1% until the age of 10, and by 2% for children aged 10 and older.

⁸ Чекулаев С. С. К вопросу об алиментных фондах как способе обеспечения детей: зарубежный опыт / С.С.Чекулаев, К.В.Гордеев, М.Р.Леонов //Вестник Костромского государственного университета. - 2020. - Т. 26. - № 1. - С. 184-189.

⁹ Мязина Ю.С. Алиментное обязательство на несовершеннолетних детей. Сравнительный анализ российского права и стран Европейского союза / Ю.С.Мязина, Е.В.Ерохина //Юридический факт. - 2021. - № 124. - С. 3-5.



In addition, it is very interesting that if one of the parents lives separately, according to Austrian law, the child automatically receives the right to child support. Also, alimony payments are made regardless of whether the parents are married or not. Attention is drawn to the fact that one of the parents is separated from his children¹⁰.

If we turn to French legislation, a similar situation is resolved differently there. According to Article 271 of the French Civil Code, the court takes into account the following circumstances when determining the amount of alimony: the financial situation of the person receiving alimony, his ability to earn independently; professional qualifications of each spouse; standard of living of the family at the time of marriage; age of both spouses; physical and mental condition of the alimony recipient; financial situation of the alimony payer.

Such criteria make it possible to study the family situation in detail and determine the amount of alimony for this specific situation.

The amount paid for each individual case should correspond to the standard of living of the child. In order to reduce the emotional pain of a child deprived of normal living conditions after the divorce of his parents, it is recommended to link the amount of alimony with the standard of living of this family during the marriage when the child was born¹¹.

In our opinion, many useful and interesting cases can be observed in the legal documents on alimony in foreign countries, which can have a positive effect on the development of alimony legislation. In some countries, for example, Latvia and Sweden, it is possible to see such a phenomenon as a fund, where money is provided to meet the needs of the child, in case of non-fulfillment of the obligations to pay material support to the parents. This practice helps to protect the rights and interests of the child, and also eliminates the situation where the child is left without financial support. In addition to the existence of the fund, attention can be paid to the Austrian experience, where priority is given to the monetary form of child support, which allows the child's interests to be more widely provided, since he is the child, the parents who live with him Together with his mother, he decides what the transferred amount will be used for.

Despite a sufficient number of shortcomings in the alimony payment system, the punishment and responsibility measures of persons who in any way evade the obligation to support and support the child deserve special attention.

¹⁰ Кнышова В. В. Сравнительный анализ алиментных обязательств родителей и детей по действующему законодательству России и стран Европы / В.В.Кнышова, Ю.А.Тулуб // Инновации. Наука. Образование. - 2021. - № 27. - С. 150-156.

¹¹ Мохова А.А. Сравнительный анализ определения размера алиментов на несовершеннолетнего ребенка в России и зарубежных странах. Молодежь Сибири - науке России: Материалы международной научно-практической конференции. В 2-х томах, Красноярск, 21 апреля 2021 года. - Красноярск: Сибирский институт бизнеса, управления и психологии, 2021. - С. 321-324.



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