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A.B. Sarsenova, M.Zh. Tazhigaliyeva, L.Zh. Shadanova

Atyrau State University named after H. Dosmukhamedov
aigerim_81@mail.ru marta82atyrau@mail.ru, Liazzat_75@mail.ru

FAMILY LEGAL RELATIONS AND ALIMENT OBLIGATIONS

Abstract. Family is a social phenomenon. The content of the family relationship form the subjective rights and obligations of its subjects. The scope of rights and obligations of family members (as well as the grounds for their occurrence, change and termination) is specified in separate institutions of family law. The article analyzes the problem of the application of legislation in the field of family law, arising from the implementation of maintenance obligations. Currently in the Republic of Kazakhstan, a significant part of civil cases are disputes arising from family relationships. This category also includes cases of collecting alimony, changing the amount of alimony, terminating their recovery, or adding or reducing arrears of alimony. If there is no alimony agreement or agreement between the parents, then the order of payment and the amount determined by the court, taking into account the financial situation of both parents.

Keywords: family relationships, alimony obligations, protection of civil rights, the agreement on the payment of alimony, the recovery of alimony, the maintenance of minor children, the responsibility of parents.

INTRODUCTION

Family legal relations are volitional personal (non-property) or property relations defined by family law and regulated by family law norms, the participants of which are legally bound by rights and duties.

The family acts as an independent subject of law. Family is primarily a social phenomenon. In the sociological sense, a family is a small social group of people united by blood-related and other equal relations, as well as mutual rights and obligations. The current legislation does not contain a legal definition of a family, but if we analyze the family legislation, we can conclude: a family is an association of, as a rule, cohabitants associated with mutual rights and responsibilities arising from marriage, kinship, adoption or other forms of child organization on raising a family.

Family law does not indicate the age at which full family capacity arises, since it is not always important for the emergence of a family relationship. Most often, this age coincides with the moment when legal capacity arises (for example, the opportunity to marry arises simultaneously with the achievement of a marriageable age by a citizen).

MAIN PART

The concept of maintenance obligations represents the obligation to maintain the maintenance and property support of the relevant persons associated with the payer family-legal relations in accordance with applicable law. Such relationships are personal property-value and gratuitous in nature. The very nature of their implies the transfer of funds from the payer to the recipient if there are appropriate grounds.

Maintenance relationships consist of certain elements:

- subjects (parties);
- object of obligations;
- direct content.

The parties to such an obligation are the recipient and payer of funds. The recipient is the individual (including the minor), who is in a family relationship with the alimony payer and has a reason to receive money from him for living.

MAIN PART

Minor children have the right to child support, and in some cases disabled adults in need of family members.

One of the main duties of parents is to provide maintenance to minor children, as well as disabled children in need of adult children (clause 1. article 138, article 143 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family" [1].

This duty, as a rule, is performed without any coercion, and the parents themselves determine the size, type and procedure for providing the content to the children.

The meaning of the term "alimony" is to provide material content from one person to another. Such provision can occur for various reasons, primarily socio-economic.

If parents do not voluntarily provide funds for the maintenance of their children, then alimony obligations arise, the performance of which is possible on the basis of an agreement on the payment of alimony, or by a court decision.

An agreement on the payment of alimony (the amount, conditions and procedure for the payment of alimony) is between the person obliged to pay alimony and the recipient of alimony - between the legal representatives of these persons [2]. Not fully capable persons conclude an agreement on the payment of alimony with the consent of their legal representatives.

Alimony paid for the maintenance of minor children are one of the child's livelihoods;

- have a strictly intended purpose - the maintenance of a minor;
- paid monthly;
- represent the responsibility of each of the parents, regardless of their economic well-being;
- are purely personal;
- are paid from the moment the child is born until he reaches the age of majority (this should take into account the time he applied for alimony and full legal capacity until the age of majority);
- paid for each minor, regardless of his security and where he is (in another family or children's institution);
- retained with the deprivation of parental rights and restrictions in parental rights;
- are a family-legal obligation, the failure of which entails the application of family-legal responsibility, and malicious evasion from the payment of alimony - criminal liability [3].

Children left without parental care are determined because of the death of parents, deprivation of parental rights or restriction of parental rights, recognition of incapacitated court, illness of parents, long absence of parents, evasion of parents from raising children or protecting their rights and interests, including when parents refuse to take their children from educational institutions, medical institutions, social protection institutions and other similar institutions, does not release their parents from the obligation to pay Alimony, and the protection of the rights and interests of children is entrusted to the guardianship authorities. Alimony for children without parental care is paid by their parents to the guardian (caregiver) of the children, their foster parents, or transferred to educational institutions.

According to Article 139 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family," in the absence of an agreement on alimony, alimony for minor children is collected by the court from their parents monthly in the amount per one child — one quarter, two children — one third and more than half of the earnings and other income of parents.

The size of these shares may be reduced or increased by the court, taking into account the material or marital status of the parties and other circumstances worthy of attention.

Family law provides for two ways of collecting alimony for minor children in court:

- in the form of monthly payments in proportion to the earnings or other income of parents;
- in the case when the recovery of alimony in the proportion of the earnings or other income of the parents is impossible, it is difficult or substantially violates the interests of one of the parties, the court has the right to determine the amount of alimony collected monthly in a fixed amount of money or simultaneously in shares and in a fixed amount of money [four].

Such cases include the recovery of alimony from parents who have irregular, changing wages and (or) other income in whole or in part in kind.

A novelty in family law of the Code of the Republic of Kazakhstan is to collect maintenance for children enrolled in the system of general secondary technical and vocational [5] post-secondary education in the higher education system for full-time education under the age of twenty-one, in the absence of an agreement on the payment of alimony order in a solid sum of money.

The size of the fixed sum of money is determined by the court on the basis of the size of the monthly calculation index (MCI) in the amount of the maximum possible preservation of the child's previous level

of security, taking into account the material and marital status of the parties and other noteworthy circumstances.

If at each of the parents there are children, the amount of alimony from one of the parents in favor of the other, less secure is determined in a fixed sum of money, collected monthly and determined by the court [6].

A partial method of collecting alimony is provided in case of a person obliged to pay alimony to a foreign country for permanent residence: if an agreement is not reached, the interested person has the right to go to court with a request to determine the amount of alimony in a fixed sum of money and a lump sum of alimony, or to provide a certain amount property in the expense of alimony in another way, for example, by providing the property (simultaneously or periodically) during the agreed periods

For the court to recover alimony in a solid sum of money, one of the above grounds is sufficient. Moreover, the court has the right to determine the amount of alimony in a fixed sum of money, both on its own initiative and at the request of any of the parties [7].

It should be noted that the recovery of alimony in a fixed sum of money is precisely the right, and not the court's responsibility, in contrast to the recovery of alimony by equity or the enforcement of an agreement on the payment of alimony. The court may not agree with the motives of the applicant, insisting on receiving alimony in a fixed amount.

Family law establishes the principle of the maximum possible preservation of the child's previous level of material security [8]. His goal is to create psychological comfort and material well-being for children in new living conditions. It is also significant that the previous level of provision of the child is purely individual and the court is in no way bound by any average statistical boundaries defined in other alimony disputes. The level of security itself is not a fixed value and breaks down into a number of property components (funds for food, funds for clothing, funds for education, funds for leisure, etc.). Therefore, there is no need to fix in the law any approximate register of expenses for the maintenance of a minor. The task of the court is to evaluate all these elements and determine the total amount of content that most closely provides the child with the previous volume of material benefits. At the same time, the court must not only evaluate the evidence of the costs associated with maintaining a minor in the family, but also other special issues. In particular, in deciding on the recovery of alimony in a fixed amount, the nature of the payer's professional activity, his lifestyle, inclinations and habits should be taken into account. Nor should the idea of preserving a minor's previous level of income be absolutized. On the one hand, in some cases, the court may appoint a child with a higher level of maintenance payments as compared with the funds received earlier.

This is possible when the alimony person directed his income to other goals for the family (gambling, buying expensive personal belongings, etc.). On the other hand, it is unwise to blindly focus on the amount of expenses for a child in an extremely high income family. The fixed amount of money determined by the court must preserve the minor's available volume (quantity and quality) of material benefits necessary for its development. The latter do not include luxury items or things that go beyond the rational needs that actually existed in the payer's family. Therefore, when determining the amount of alimony in a solid amount, the court, as in the case of a share collection of alimony in a solid amount, should turn to the study of the material and family status of the parties to the alimony obligation, as well as other relevant circumstances. Their assessment is made according to the same criteria as with a decrease (increase) in the amount of alimony, charged in shares.

According to Article 99 of the Code "On Marriage (Matrimony) and the Family," agreements on alimony may be entered into between the person obliged to pay the alimony and their recipient. Based on this, it can be concluded that only those family members who are entitled to receive alimony by family law norms, and only with persons who are alimony required by law, are entitled to conclude a maintenance agreement. The question arises whether the agreement on the gratuitous, periodic provision of funds for maintenance with a person who, according to the norms of family law, is not entitled to receive alimony will be valid. In this case, it is necessary to distinguish two categories of persons. The first category includes family members who have the right to collect alimony only in the presence of certain circumstances. The question is whether they can enter into an agreement on the payment of maintenance in the absence of these circumstances. For example, a spouse has the right to recover alimony through the courts only if he needs and is disabled. Will the agreement on the payment of maintenance for an able-bodied spouse be valid? The second category includes persons who are generally not entitled to

receive legal support, for example, actual spouses, guardians and trustees, persons connected by distant degrees of kinship. In our opinion, family members in the first category, of course, have the right to conclude a maintenance agreement, since the conditions for the provision of maintenance by agreement are determined by the contracting parties themselves and, therefore, they have the right to provide for the right to receive alimony in the absence of conditions provided by law (for example, need or disability). With regard to the second category of persons, the situation is somewhat more complicated. The answer to this question depends on the recognition or non-recognition of family law as an independent branch of law and on the assignment of maintenance agreements to the category of civil law contracts.

The amount of alimony is determined by agreement of the parties. If the recipient of the alimony is legally capable, the parties are free to establish any amount of alimony. When determining the amount of alimony for the maintenance of a minor or legally capable adult, the same restriction applies as with respect to the conditions of their granting. The amount of alimony can be arbitrarily higher than that for which the recipient of alimony could claim by law. However, the ability to reduce it is limited. With regard to agreements concluded by a parent paying alimony for minor children, there is a direct indication of the law (paragraph 2 of Article 161 of the Code of the Republic of Kazakhstan "On Marriage (Marriage) and Family" that the amount of alimony cannot be less than what the children received if the alimony were collected in court. When determining the amount of alimony for other incapacitated adult or minor family members, the parties also cannot agree that it will be significantly lower than what the incapacitated person could receive. When compulsory alimony. If the amount of maintenance would be extremely low, the agreement may be invalidated on the basis of Article 160 of the Code of RK "On Marriage (Matrimony) and Family" as significantly violating the interests of minors or incapacitated persons.

When paying alimony in a solid sum of money in conditions of high inflation inevitably raises the question of their indexation. Parties have the opportunity to provide for any method of indexing alimony in accordance with their wishes. However, if the agreement does not contain provisions on indexation, it is made in accordance with the procedure established by Article 173 of the Code of the Republic of Kazakhstan "On Marriage (Matrimony) and Family", which provides for the indexation of maintenance payments charged by a court.

CONCLUSION

The agreement on the payment of alimony is in writing and is subject to notarization. Failure to comply with the notarial form entails the recognition of the alimony agreement void. The notarial form is necessary for the alimony agreement, because this agreement is lasting and affects the very essential interests of the parties. In connection with these, it must be made in a form that excludes any inaccuracies and doubts. The notary form makes it possible to enforce under this agreement without additional procedural difficulties. A notarized agreement has the power of a writ of execution. This means that for the enforcement of such an agreement, it is sufficient to send a notarized copy of it to the bailiff or directly to the administration of the enterprise, institution or organization in which the debtor works, who produce the enforced collection of alimony in the manner in which the enforced collection of alimony is executed issued on the basis of a court decision.

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А.Б. Сарсенова, М.Ж. Тажигалиева, Л.Ж. Шаданова

Х. Досмұхамедов атындағы Атырау мемлекеттік университеті

ОТБАСЫЛЫҚ ЗАҢДЫ ҚАРЫМ-ҚАТЫНАСТАР ЖӘНЕ МІНДЕТТЕМЕЛЕР

Аннотация. Отбасы - бұл әлеуметтік құбылыс. Отбасылық қарым-қатынастың мазмұны субъектілердің субъективті құқықтары мен міндеттерін құрайды. Отбасы мүшелерінің құқықтары мен міндеттері (олардың пайда болу себептері, оларды өзгерту және тоқтату себептері) отбасылық құқықтың жекелеген институттарында көрсетіледі. Мақалада отбасылық құқық саласындағы міндеттерді орындаудан туындайтын заңнаманы қолдану мәселесі талданады. Қазіргі уақытта Қазақстан Республикасында азаматтық істердің маңызды бөлігі отбасылық қатынастардан туындайтын даулар болып табылады. Бұл санаттағы алименттерді жинау, алимент мөлшерін өзгерту, оларды қалпына келтіруді тоқтату немесе алиментті өтеу бойынша берешекті қосу немесе азайту туралы істерді қамтиды. Егер ата-аналар арасындағы алимент туралы келісім немесе келісім болмаса, онда төлемнің тәртібі мен ата-аналардың қаржылық жағдайын ескере отырып, сот анықтайтын сома.

Түйін сөздер: отбасы қатынастары, алименттік міндеттемелер, азаматтық құқықтарды қорғау, алимент төлеу туралы келісім, алименттерді қалпына келтіру, көмекке толмаған балаларды қолдау, ата-аналардың жауапкершілігі.

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А.Б. Сарсенова, М.Ж. Тажигалиева, Л.Ж. Шаданова

Атырауский государственный университет им.Х.Досмухамедова

СЕМЕЙНОЕ ПРАВООТНОШЕНИЕ И АЛИМЕНТНЫЕ ОБЯЗАТЕЛЬСТВА

Аннотация. Семья – явление, прежде всего социальное. Содержание семейного правоотношения образуют субъективные права и обязанности его субъектов. Объем прав и обязанностей членов семьи (а также основания их возникновения, изменения и прекращения) конкретизируется в отдельных институтах семейного права. В статье анализируется проблема применения законодательства в сфере семейного права, возникающих при осуществлении алиментных обязательств. В настоящее время в Республике Казахстан, значительную часть гражданских дел составляют споры, возникающие из семейных правоотношений. К данной категории относятся и дела о взыскании алиментов, изменении размера алиментов, о прекращении их взыскания, о сложении или уменьшении задолженности по алиментам. Если же не имеется алиментное соглашение или договоренность между родителями, то порядок оплаты и размеры определяется судом, учитывая при этом материальное положение обоих родителей.

Ключевые слова: семейные правоотношения, алиментные обязательства, защита гражданских прав, соглашение об уплате алиментов, взыскание алиментов, содержание несовершеннолетних детей, ответственность родителей.

Information about authors:Aliya Sarsenova - Master of law, Atyrau state University.Kh, <https://orcid.org/0000-0002-9826-6231>;Sadanova Lyazzat Zhanatovna - St. Teacher, master of pedag. Of Sciences, Atyrau state University. Kh, <https://orcid.org/0000-0002-0085-8424>;Tigliev March Anabaena - St. Lecturer, Atyrau state University im.Kh, <https://orcid.org/0000-0002-5633-8292>**REFERENCES**

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