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УДК 347.615

DOI <https://doi.org/10.32842/2078-3736/2023.2.2.43>

ALIMONY OBLIGATIONS

The article examines the national legislation of Ukraine on the regulation of alimony relations and alimony obligations. The text presents its own interpretation of alimony relations, as family material relations, where one party, in accordance with the law and existing conditions, is obliged to support the other party, and the latter has the right to demand the fulfillment of this obligation. The signs of alimony relations as part of family relations are analyzed in detail.

The question of which persons are considered «other family members» was considered, and it was determined that this category includes stepmother, stepfather, stepdaughter and stepson, as well as the actual tutor and pupil. It is also noted that this group can include a man and a woman who live together without registering a marriage, as well as persons who have mutual custody and care relationships.

It is noted that the subjective alimony obligation is a measure of the proper behavior of the person liable for alimony. A legal obligation also has its own structure: the need to perform certain actions; the need to suffer the negative consequences of not fulfilling one's duty; the need of the obliged person to respond to the legal demands addressed to him by the person who has the relevant subjective right. Alimony obligation by its nature is active - it is an obligation to perform those actions that are required from the obligated party in a legal relationship.

The question of the occurrence of alimony obligations was considered. It is assumed that such occurrence is not associated with family membership, but with being married, a certain degree of kinship and kinship.

The issue of such a necessary condition for a person's participation in alimony legal relations, as having legal personality, i.e. the socio-legal possibility (ability) to be a participant in family, in particular, alimony relations, is highlighted.

Key words: *alimony, legal relations, alimony obligations, family, family member.*

Адамова О.С., Личко В.С. Аліментні зобов'язання

У статті розглянуто національне законодавство України щодо регулювання аліментних правовідносин та аліментних зобов'язань. У тексті подано власне тлумачення аліментних правовідносин, як сімейних матеріальних зв'язків,



де одна сторона, відповідно до закону та наявних умов, зобов'язана утримувати іншу сторону, і остання має право вимагати виконання цього обов'язку. Детально проаналізовано ознаки аліментних правовідносин як частини сімейних відносин.

Розглянуто питання щодо того, які особи вважаються «іншими членами сім'ї» та визначено, що до цієї категорії належать мачуха, вітчим, падчерка та пасинок, а також фактичний вихователь та вихованка. Також відзначено, що до цієї групи можуть входити чоловік та жінка, які проживають разом без реєстрації шлюбу, а також особи, які мають взаємні відносини опіки та піклування.

Зазначено, що суб'єктивним аліментним обов'язком є міра належної поведінки аліментозобов'язаної особи. Юридичний обов'язок також має свою структуру: необхідність вчинити певні дії; необхідність зазнати негативних наслідків невиконання свого обов'язку; необхідність зобов'язаної особи відреагувати на звернені до неї законні вимоги особи, що має відповідне суб'єктивне право. Аліментний обов'язок по своїй природі є активним - це обов'язок здійснити ті дії, котрі вимагаються від зобов'язаної сторони у правовому відношенні.

Розглянуто питання щодо виникнення аліментних зобов'язань. Зазначено, що таке виникнення пов'язується не з членством у сім'ї, а із знаходженням у шлюбі, певним ступенем спорідненості та свояцтва.

Висвітлено питання щодо такої необхідної умови участі особи в аліментних правовідносинах, як наявність у неї правосуб'єктності, тобто соціально-правової можливості (здатності) бути учасником сімейних, в особливості, аліментних відносин.

***Ключові слова:** аліменти, правовідносини, зобов'язання щодо аліментів, сім'я, член сім'ї.*

Introduction. According to Art. 51 of the Constitution of Ukraine, family, childhood, motherhood and parenthood are protected by the state, at the constitutional level, I also found the consolidation of parents' obligations to support minor children, which emphasizes the importance of these relationships [1].

The Concept of State Family Policy states that the family is an integral indicator of social development, which reflects the moral state of society and is a powerful factor in demographic potential [2].

Setting the task. The family in all countries and peoples is the main center of society, life proved the absurdity of the claims of communist ideologues about the demise of the family as a social institution and alimony relations. In modern civil society, the family performs a number of functions, one of which is the function of obtaining a livelihood for family members. Alimony relations related to the performance of this function are of an important nature at the current stage of socio-economic development, especially this concerns the maintenance of minor children by parents. Therefore, the study of the topic of alimony obligations is relevant from both a theoretical and a practical point of view.

Research results. Regardless of the level of state social assistance to the family, the individual factor of financial support of family members retains its importance, moreover, in a difficult socio-economic situation, the state is unable to provide all citizens with a high standard of living at the expense of social assistance. As noted in the Concept of State Family Policy, the transition to market economic relations changed the ratio of sources of family support, and today the responsibility for maintaining and raising children rests with parents to a much greater extent than with the state.

In general, the word «alimony» comes from the Latin «alimentum» - feeding, support [3]. In legal literature, you can often find the word «alimony», which is used in the meaning of the word «maintenance». But not all authors agree with this point of view. Views on the nature of alimony have repeatedly changed.



In the 1920s, there was a point of view that alimony was a «surrogate for social security» and that the development of the social security system would lead to the death of alimony obligations. Later, this theory was refuted [4, p. 20-22]. We consider the falsity of this theory to be obvious, because despite the fact that both the social security system and alimony obligations are aimed at providing material assistance to those who need it (disabled, low-income, etc.), these relationships are completely different both the reasons for their occurrence and the goal to which they are directed.

Considering the position of the Family Code of Ukraine (hereinafter referred to as the Family Code of Ukraine), one should firmly note the legislator's position regarding the synonymy of the concepts of «maintenance» and «alimony». Taking into account, for example, Part 1 of Art. 77 of the Civil Code of Ukraine, we see: «Maintenance of one of the spouses is provided to the other spouse in kind or in cash with their consent» [5], and part 2 of the same article emphasizes that alimony is awarded to one of the spouses, as a rule, in cash. It should be emphasized that the article does not exclude the provision of alimony in kind, which equates the concepts of «alimony» and «maintenance». However, in general, the concept of «maintenance» is broader than the concept of «alimony».

Family relations are characterized by the principle of mutual moral and material support. This is one of the prominent features of the family.

It is possible to draw up the following definition of alimony legal relationship: alimony legal relationship is a family material relationship in which one party is obliged by virtue of the law to support the other party in the presence of appropriate conditions, and the latter has the right to demand the fulfillment of this obligation.

For the comprehensive consideration of the concept of alimony legal relations, those features that complement the features of alimony legal relations as family legal relations deserve attention, in particular, they:

- 1) are made in connection with material goods - security that can be provided in kind or in cash;
- 2) are regulated using both the imperative method and the dispositive method (the parties can regulate their rights and obligations by agreement, which manifests itself as dispositive);
- 3) have a relative nature (since their subject composition is always specified, they are personal - they are not transferred, are not alienated, do not allow crediting of alimony claims with other counterclaims);
- 4) have a gratuitous nature (that is, the provision of maintenance does not create any obligation for the person receiving alimony towards the person liable for alimony).
- 5) have an ongoing nature (regardless of what period has passed since the right to maintenance arose, the authorized person has the right to demand alimony).

In the writings of many scientists, the concept of alimony does not appear at all - they replace it with the concept of alimony obligation [see, e.g. 6].

Article 509 of the Civil Code of Ukraine defines the general concept of obligation - this is a legal relationship in which one party (the debtor) is obliged to perform a certain action for the benefit of the other party (the creditor) (transfer property, perform work, provide a service, pay money, etc.) or refrain from a certain action, and the creditor has the right to demand from the debtor the fulfillment of his obligation [7].

As aptly emphasized by Z.V. Romovska, alimony obligation is not only an obligation of one party. This is, first of all, a legal relationship in which the obligation of one party corresponds to the corresponding right of the other [8, p. 121-122]. L.V. Afanasieva [9, p. 40] also agrees with the given point of view of Romovska Z.V. In our opinion, an alimony obligation arises and exists regardless of whether family ties are broken or not, as well as whether the obligations are fulfilled voluntarily.

Having considered the concept of alimony relationship (obligation) in family law, attention should be paid to its structural elements.

Both in every legal relationship and in alimony, their structure consists of three elements:

- 1) the subject of maintenance legal relations;



- 2) object of alimony relationship;
- 3) content, which in turn is divided into subjective right and legal obligation.

None of the families can be free from internal duties, including legal ones. In the Marriage and Family Code of 1969 [10], this was confirmed primarily by the provision contained in Art. 32: «Spouses must financially support each other.» And in Article 58 of the same Code, which was entitled «Reciprocity of duties of parents and children», it was written that «parents and children are obliged to provide mutual moral support and material assistance».

In Art. 2 of the Civil Code of Ukraine clearly indicates the participants in family relations, which are regulated by this normative act [5]. The Civil Code of Ukraine regulates property (including alimony) relations between spouses, parents and children, adoptive parents and adopted children, mothers and fathers of children, relations between grandmother, grandfather, great-grandmother, great-grandfather and grandchildren, great-grandchildren, siblings, stepmother, stepfather and stepdaughter, stepson and other family members specified in it.

From the above two articles, the question arises, which persons are considered «other family members»? Studying the family legislation, one can come to the conclusion that Chapter 22 of the Civil Code of Ukraine defines such persons as the stepmother, stepfather, stepdaughter and stepson, as well as the actual educator and pupil. From the provisions of the above-mentioned act, a man and a woman living in the same family without registration of marriage, persons related by relations of custody and care should also be distinguished from other family members.

But are all subjects of alimony relations family members? Probably not. After all, just as, for example, spouses can become «former family members» (according to the general rule, upon divorce, they do not lose the right to maintenance from each other), so relatives can never in their lives and never be part of the family, one of the signs of which is common residence and household management. However, this does not exclude their possibility to be part of this cell of society. The law connects the occurrence of alimony obligations not with family membership, but with being married, a certain degree of kinship and kinship.

Kinship is a relationship between a relative of one spouse and the other spouse, as well as between relatives of each spouse (these are relationships, for example, stepfather and stepson, stepmother and stepdaughter). Kinship is based neither on descent nor on blood relationship.

A necessary condition for a person's participation in alimony legal relations is that he has legal personality, that is, the socio-legal possibility (ability) to be a participant in family, in particular, alimony relations.

Alimony capacity is narrower than family capacity. This is the ability to have property rights and obligations provided for by law. It is accepted that family legal capacity, although it arises from the moment of birth, expands over the years with the onset of the legal age. This also applies to alimony relations. Alimony depends on the person to whom it concerns. For example, the legal capacity for maintenance of one of the spouses can be acquired only after the age of 18 (as an exception - from the age of 14 as determined by the Central Committee of Ukraine in the order of emancipation) - it is acquired together with the ability to enter into marriage. But the child's legal capacity for maintenance in relation to the parents is acquired precisely from the moment of birth.

Regarding alimony capacity - the ability to exercise one's rights and obligations - it can be emphasized that its presence is not a mandatory condition in alimony legal relations. Using the example of the relationship between a minor child and parents, we can see that one of the subjects - the child - is always partially or incompletely capable of action, but his incapacity must always be supplemented by the actions of legal representatives. By analogy with civil law, we believe that incomplete alimony capacity should also be distinguished, when, for example, a child, after reaching the age of 14, participates in the conclusion of an agreement on the termination of the right to alimony in connection with the transfer of ownership of immovable property (residential building, apartment, land plot, etc.).

Alimony delictual capacity is an independent element of alimony legal personality. This is the ability of a natural person to bear responsibility for an offense committed by him in family legal relations regarding maintenance. The direct content of family tort capacity consists of the potential



and real capabilities of a person to bear the measures of responsibility imposed on him, provided for by family legislation. If you apply this to alimony obligations, firstly, the responsibility will be the compulsory order of payment of alimony in the amount clearly established by the court and with a clear periodicity. To a certain extent, in our opinion, this responsibility will also include compulsory payment of executive and court fees. But the above-mentioned performance of duties will be rather not a measure of responsibility, but a measure of protection. Consequently, wrongdoers will have no incentive to voluntarily fulfill their obligations if there is no additional responsibility beyond the simple protection of the violated right. For non-fulfillment of the obligation to pay alimony according to a court decision, the law provides for administrative (when a fine is imposed by the state executive in the amount of 10 to 30 of the non-taxable minimum income of citizens, and socially useful works (Article 31-1) of the Civil Code of Ukraine) and criminal (Article 164, 165 of the Criminal Code of Ukraine) responsibility.

When it comes to the object of the alimony legal relationship, it is the property itself (the so-called «material assistance» in the language of the SC of Ukraine). The Family Code of Ukraine distinguishes two forms of maintenance: in kind and monetary.

The monetary form of alimony can have two manifestations: it is paid as a share of the earnings (income) of the subject of the legal relationship or in a fixed monetary amount. It can be a one-time or periodic payment. It is interesting that alimony is awarded, as a rule, in monetary form by a court decision (Part 2 of Article 77 of the Civil Code of Ukraine).

As for the natural form of maintenance, it includes all things, divisible and indivisible, individually defined and generic, consumable and non-consumable, movable and immovable, except for money that is not restricted or prohibited in circulation or provided in any way prohibited by law. As a general rule, such things are food, clothing, household items or housing.

Regarding the content of alimony relations, they consist of subjective alimony rights and subjective alimony obligations.

Conclusions. It can be assumed that the fairly traditional term «subjective right» is used, rather, to emphasize the difference of the latter from «objective right» or «right in the objective sense», which (also quite traditionally) was part of the terminological toolkit of jurists than for the purpose of accurately characterizing the concept of law belonging to a certain person. In this regard, it can be concluded that such an emphasis on the «subjectivity» or «objectivity» of the law should gradually lose its meaning, since it is already clear from the context of the relevant relationship whether it is the right of an individual to a certain behavior, or about a set of norms and rules of behavior established for a certain category of persons.

The subjective alimony right is defined as a measure of possible behavior of the authorized entity, which is ensured by the legal obligations of other participants in the alimony relationship and serves to satisfy his interests. Thus, the right of one of the spouses to support is matched by the obligation of the other spouse to pay it under the conditions stipulated by law. Subjective law, as a rule, includes three powers:

the right to demand the performance of an obligation from another person;

the right to own legally significant active behavior;

the right to demand protection - the possibility to activate the apparatus of coercion against the obliged person.

Subjective alimony obligation is a measure of proper behavior of the person liable for alimony. A legal obligation also has its own structure:

the need to take certain actions;

the need to suffer the negative consequences of not fulfilling one's duty;

the need of the obliged person to respond to the legal demands addressed to him by the person who has the relevant subjective right.

Alimony obligation by its nature is active - it is an obligation to perform those actions that are required from the obligated party in a legal relationship.



Bibliography:

1. Конституція України від 28.06.1996 р. URL: <https://zakon.rada.gov.ua/laws/main/254%D0%BA/96-вр>
2. Про Концепцію державної сімейної політики: постанова Верховної Ради України від 17.09.1999 р. URL: <https://zakon.rada.gov.ua/laws/main/1063-14>
3. Ісвіня О. Аліментний договір: до питання значення, термінології та поняття. *Мала енциклопедія нотаріуса*. 2019. № 1.
4. Афанасьєва Л.В. Аліментні правовідносини в Україні: дис. ... канд. юрид. наук: 12.00.03. Харків, 2003. 187 с.
5. Сімейний кодекс України від 10.01.2002 р. URL: <https://zakon.rada.gov.ua/laws/show/2947-14>
6. Чепис О.І. Аліментна правовідносини: поєднання приватних інтересів та імперативного регулювання. *Науковий вісник Ужгородського університету*. 2008. С. 216-218.
7. Цивільний кодекс України від 16.01.2003 р. URL: <https://zakon.rada.gov.ua/laws/show/435-15>
8. Ромовська З.В. Сімейне право - перспектива розвитку. Основні напрямки реформи цивільного права в Україні: збірник статей. К., 1997. С. 120-130.
9. Афанасьєва Л.В. Аліментні правовідносини в Україні: моногр. Луганськ: РВВ ЛДУВС, 2006. 224 с.
10. Кодекс про шлюб та сім'ю України від 20.06.1969 р. (втратив чинність). URL: <https://zakon.rada.gov.ua/laws/main/2006-07>

