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LEGAL RELATIONSHIP OF ALIMENTATION AS A WAY TO
SUPPORT THE NEEDS OF THE ALIMONY RECIPIENT

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Private International Law

Abstract of the thesis
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The relevance of the dissertation research topic is explained by the acute social nature of the problem of alimony in society and the necessity to find a balance between intra-family (private) maintenance and external (public) material support. The problem needs to be resolved precisely at the present time when we are at the turning point in family law regulation. The concept of state family policy in the Russian Federation is adopted for the period up to 2025. The Family Code of the Russian Federation was adopted more than 25 years ago. The elapsed period allows us to objectively assess the current family law norms and their compliance with the goals of family law regulation. The study contributes to replenishing theoretical and methodological insufficiency of the scientific development of the problems of alimony in family relations, filling doctrinal gaps, and resolving problems of law enforcement. The author of the research puts forward the idea of a flexible structure of the legal relationship of alimony and a new mechanism for determining the amount of alimony, proposes to direct the vector of family policy towards the development of family self-sufficiency, its strengthening, creation of clear rules and state guarantees in the field of alimony, to ensure a balance of material support of the family between its own and external resources in order to strengthen traditional family values and ensure the quality of childhood.

The above mentioned indicates the **relevance** of the dissertation research on the topic “Legal relationship of alimony as a way to meet the needs of the alimony recipient” at the present stage of family law and family legislation development.

The degree of the scientific problem development is determined on the basis of the available theoretical and practical studies of the legal relationship of alimony in dissertations for the degree of Doctor of Law: O.Yu. Kosova "Family-legal regulation of relations for the provision of maintenance to family members" (M., 2005); A.I. Pergament "Maintenance obligations under the Soviet law" (M., 1951); A.M. Rabets "Methodological and theoretical problems of legal regulation of relations on mutual alimony" (Tomsk, 1992). The dissertations for the degree of Candidate of Law, devoted to the issues of alimony should also be noted. Their authors are: M.A. Danilyan “Alimony obligations of parents for the maintenance of

minor children and responsibility for their violation” (M., 2015), O.V. Kapitova “Legal nature of the alimony mechanism in the Family law of the Russian Federation” (M., 2009), D.A. Kokova "Characteristics of the content of family legal relations" (M., 2017), G.V. Kontseva "Alimony obligations in private international law" (Saratov, 2015), E.Yu. Kostyuchenko "Maintenance obligations of parents and children under the legislation of Russia and Germany: a comparative legal analysis" (M., 2007), D.S. Ksenofontov "Legal guarantees in the field of alimony" (Kazan, 2015) and others. All of them consider particular aspects, but do not cover the problems of the legal relationship of alimony in the doctrine of Russian family law in general, in the context of balance of private and public maintenance in the family, private law and public law means of stimulating the debtor to proper performance and the development of trends in the legal regulation of the alimony relationship at the present stage under the conditions of digital transformation of society.

Thus, the problems of legal relationship of alimony have been studied by the scientists, but need further development, since there is no modern theory of the legal relationship of alimony to claim to present an integrated approach to the issue under study.

The goal and objectives of the research are to form the concept of the legal relationship of alimony as a way to meet the needs of the alimony recipient, which makes it possible to establish a balance of private law and public law means of stimulating the debtor to its proper execution, to determine trends in the development of legal regulation of alimony relations at the present stage on the basis of scientific, theoretical and practical analysis of the theory and practice of alimony.

The achievement of the goal is ensured by solving the following objectives:

- to analyze theoretical ideas of alimony and the concept of alimony in historical interpretation, taking into account Russian and foreign experience;
- to analyze trends in the development of alimony relations abroad in order to involve positive elements in the Russian legal system;
- to propose a methodology for the study of alimony obligations for the doctrine of Russian family law;

- to substantiate the concept of the need of the alimony recipient in the science of family law and in legislation;
- to consider the legal status of participants in alimony relations using new classification criteria, the degree of involvement and the need for alimony;
- to determine the degree and format of state participation in relations on family maintenance;
- to reason the multilevel nature of meeting the needs of the alimony recipient as the basis for building relationships for intra-family maintenance, in order to improve the quality of meeting the alimony recipient's needs;
- to reveal the essence of the subjective alimony right as an element of the legal relationship of alimony and determine its significance in meeting the needs of the alimony recipient;
- to determine the content of the subjective alimony obligation as an element of the legal relationship of alimony and offer guarantees for its execution in order to ensure the needs of the alimony recipient;
- to determine the main trends in the development of legal regulation of the relationship of alimony, taking into account the individualization of the family's implementation of its economic function and the digital transformation of society.

The object and subject of the research. The object (or scope) of the study is the relationship in the field of alimony, as a phenomenon of legal and social reality. The subject (or the target) of the study is the regulations of the Russian Federation and several foreign states, bills, doctrinal views of domestic and foreign scientists, as well as law enforcement practice on the research topic.

The theoretical and methodological basis of the research. The theoretical basis of the research is based on an integrated approach to the legal relationship of alimony. The theoretical and methodological basis of the work is made by the works of the following domestic and foreign authors: S.S. Alekseev, M.V. Antokolskaya, N.A. Barinov, Yu.F. Besspalov, O.E. Blinkov, V.V. Butnev, E.V. Vavilin, V.A. Waipan, P.A. Varul, A.B. Vengerov, E.M. Vorozheikin, A.V. Gabov, B.M. Gongalo, V.P. Griбанov, N.M. Ershova, A.I. Zagorovsky, V.V. Zaitsev, O.V.

Zaitsev, A.G. Zdravomyslov, I.A. Ilyin, O.Yu. Ilyina, O.S. Ioffe, O.V. Kapitova, A.A. Kartskhiya, D.A. Kerimov, E.G. Komissarova, Yu.A. Korolev, P.V. Krashenninnikov, O.A. Kuznetsova, V.V. Kulakov, D.S. Ksenofontova, N.V. Letova, A.N. Levushkin, Yu.G. Leskova, R.P. Manankova, L.B. Maksimovich, G.K. Matveev, N.I. Matuzov, N.I. Malko, I.A. Mikhailova, L.Yu. Mikheeva, S.Yu. Morozov, K.A. Nevolin, V.S. Nersesyants, A.M. Nechaeva, A.I. Pergament, K.N. Pobedonostsev, A.M. Rabets, L.S. Rzhantsyna, O.A. Ruzakova, V.A. Ryasentsev, G.M. Sverdlov, O.A. Serova, V.M. Syrykh, S.N. Tagaeva, N.N. Tarusina, O.A. Khazova, R.O. Khalfin, E.A. Chefranova, D.M. Chechot, N.S. Sherstneva, G.F. Shershenevich, T.V. Shershen, V.F. Yakovlev, A. Rashidi (Iran), A. A. Tait (USA), L. Bergschneider (Germany), N. Dethloff (Germany), T. B. Larkin (USA), D.R. McCarthy (Great Britain), M. A. Rangel (Brazil), S. Dieter (Germany), F. Burton (England), C. P. De (Great Britain), C. L. Starnes (USA), R. Edwards (Great Britain) and many others.

The studied and analyzed scientific works allowed the author to base own ideas on the theoretical conclusions formulated by the noted and other researchers, while, having perceived them, to offer individual ideas and judgments in the development of the problems under study.

The methodological base of the dissertation research is traditional for jurisprudence general and particular scientific methods of cognition: analysis and synthesis, analogy, classification, method of legal modeling, interpretation, explanation, historical and structural-functional method and other research tools of modern socio-humanitarian studies. The completeness of the analysis of the studied phenomena and processes is ensured by systemic, functional, socially oriented and temporal approaches.

The information base of the research is the Constitution of the Russian Federation, the Family Code of the Russian Federation, the Civil Code of the Russian Federation, other Russian and foreign legal acts of substantive and procedural law, including those that have become invalid, and projects, acts on the strategic objectives of the development of the Russian Federation and other legal

acts related to the research topic, as well as extensive materials of law enforcement practice and statistical reports.

The validity and reliability of the research results. The results of the study are based on the use of a large list of Russian and foreign sources on the topic, both doctrinal and normative, which confirms the high degree of reliability of the dissertation. The research methodology corresponds to the object, subject, and goal of the research, and is marked by consistency of approaches and the variety of research methods.

The scientific novelty of the study lies in the author's holistic scientific understanding of the legal relationship of alimony both as a private legal relationship in the doctrine of family law and the way to meet the needs of the alimony recipient by determining its essential qualities and main elements of content (subjective alimony right and subjective alimony obligation). Theoretical and methodological approaches to the study of the legal relationship of alimony are determined: the theoretical ideas of alimony and the methodology for studying the alimony obligation are formulated. The concept of the legal relationship of alimony as a way to meet the needs of the alimony recipient (multilevel legal regulation of the legal relationship of alimony), which is most consistent with the state of the alimony relationship at the present stage of its development is worked out. Within the framework of the concept of the needs of the alimony recipient, the provisions on the subjective alimony right are formulated and substantiated, with the definition of the boundaries of the alimony recipient's requests and the inadmissibility of abuse, and the content of the subjective alimony obligation, justifying the need to determine the amount of alimony, taking into account the need, age, as well as marital status, property status and region of the subject's residence. A new format for the participation of the state in relations on family maintenance is proposed.

The following provisions are put forward for defense:

1. The legal relationship of alimony is a private law relationship that arises between equal and equally liable subjects: the alimony recipient, the bearer of the subjective alimony right and the alimony payer, the bearer of the subjective alimony

obligation, aimed at resolving the relations that arise between them in terms of intra-family maintenance, based on the balance of interests of the parties. Through the legal relationship of alimony, the implementation of the regulatory function of family and civil law which allows equalizing the property chances of each of the parties, in contrast to the implementation of the protective function currently provided through the maintenance obligation should be ensured. Without diminishing the status of the alimony payer, the center of attention in the legal relationship of alimony is focused on the personality of the alimony recipient, as a person in need of alimony.

2. Intra-family maintenance is a system of relations, which is understood as a consistent set of levels of legal regulation of relations for intra-family maintenance, including alimony relations, based on the possibility of multilevel support for the needs of the alimony recipient. It is proposed to single out four levels in the multilevel nature of meeting the needs of the alimony recipient. They are the level of self-organization of the participants in relations for intra-family maintenance; the level of contractual regulation; application level, provided by state guarantees of alimony payments in the minimum amount; the level of judicial settlement of alimony relations as an exceptional one. The multilevel system of organization of legal regulation of alimony relations is determined by the multi-level provision of the needs of the alimony recipient as minimal, basic and individual. The system built in this way will allow the state to solve the problem of the cause, and not an effect, making it possible to prevent the development of an acute conflict situation and to prevent problems with law enforcement. The parties will be required to go through the procedures for reaching agreements on the intra-family issue of organizing maintenance of children or each other with the involvement of state or other guarantees at certain levels, and only when they are exhausted and there is a dispute about the intra-family maintenance they will be entitled to judicial resolution as an exclusive right.

3. Such concepts as material support in the family (intra-family or private relations for family maintenance) and material support for the family, primarily by

the state, are distinguished from the standpoint of arranging state social policy, fixing the provisions of state family policy in regulations, focused on external material support for the family. The state provides external material support to the family through a system of social payments and benefits or the provision of state guarantees, while family maintenance and material support within the family are provided by members and former family members: close and distant relatives, other persons. The concretization of understanding is necessary to distinguish between the content and subjects of the respective obligations and build their relationships with each other. Thus, theoretical and practical necessity of a subject-oriented approach in matters of family maintenance is proved.

4. Classification of the subjects of the legal relationship of alimony in order to eliminate the doctrinal gap in terms of determining the status of persons - holders of the alimony right and the alimony obligations in the legal relationship of alimony is made on the following grounds: a) a legal fact (neediness, kinship, degree of solvency, degree of ability to work, age) as the basis for the emergence of the status of alimony payer or alimony recipient; b) the degree of kinship, as the basis for referring to the group: close relatives, other relatives, other persons, to determine the burden of maintenance obligations; c) the degree of working capacity, as the basis for dividing into such groups as able-bodied, disabled and partially able-bodied persons, for determining the amount of maintenance obligations; d) the degree of need, for the following groups of people: with high, medium and low income for the possibility of taking into account the level of income when determining the need for alimony and the amount of alimony. Without diminishing the importance of such a legal basis as family membership, for classifying the subjects of alimony, the author, without being a supporter of understanding of the family in its broadest sense, reasons the fact that in relation to alimony relations, the basic classification criterion for subjects is the criterion of the degree of kinship.

5. "Other relatives" and "other persons", though subjects of family law, do not thus automatically become family members. For the relatives, it is the degree of relationship that matters. The sequence and volume of their participation in alimony

relations depends on the degree of relationship. Alimentation obligations should not be imposed on other persons: the absence of grounds for including them in the number of alimony-obligated persons is justified. It is proposed to exclude foster-children, stepsons and stepdaughters from the current list of subjects liable to alimony in the category "other persons". The norms on alimony in relation to foster-children, stepsons and stepdaughters do not work, they are not applied in legal practice. It is impossible to exclude the possibility of participation of "other persons" in relations for family maintenance, but such relations should be of an initiative nature. The subjects from the category "other persons" should not be obliged to pay alimony. In general, the problem of streamlining of understanding of the relevant subjects' status is being solved as a whole.

6. When considering the subjective alimony law as an element of the legal relationship of alimony, social aspects must be taken into account. It is not enough to be guided only by its legal analysis as a type and measure of the possible behavior of an authorized person. The subjective alimony law is a tool with which its owner can ensure receiving alimony as a means of subsistence, ensure the possession of good one can count on. The social significance and meaning of the subjective alimony law in meeting the needs of the alimony recipient lies in the value and guarantee of the benefits which this law provides the individual with the opportunity to count on.

7. Tools for excluding or minimizing possible abuses of the subjective alimony law are proposed: defining the boundaries of the alimony recipient's requests; control of the degree of subjects' need in alimony through foundation of interdepartmental interaction; control of the target alimony expense, the practical implementation of which is possible with the help of digitalization tools for the setup of control system; organization of monitoring of current and overdue debts on maintenance payments.

8. The content of the subjective maintenance obligation as an element of the legal relationship of alimony includes: the provision of alimony in the amount prescribed, that is, in a certain amount of alimony; payment on time, that is, a certain

frequency and (or) one-time payment; in the established way - by paying money or providing property; in the prescribed manner - that is, in accordance with the established procedure for organizing payments (by transfer to a special account (which is preferential), cash payment, or another procedurally agreed procedure) and on a certain basis, depending on the level of the legal relationship of alimony in the multi-level system of meeting the needs of the alimony recipient, with the establishment of guarantees for the fulfillment of the maintenance obligation in order to improve the quality of meeting the alimony recipient's needs.

9. Introduction of a single unified concept of "payment (non-payment) of alimony" will develop the theory of law, contribute to the certainty of understanding the content of social relations and be important for the legislator in order to stimulate the proper fulfillment of the alimony obligation. Until now there has been terminological heterogeneity, there are problems in law enforcement in matters of application of measures of responsibility for non-fulfillment of maintenance obligations provided for by family, criminal and administrative legislation. It is necessary to correct the preterition of the legislator, to bring the norms of the codes to uniformity. The unified concept of "payment (non-payment) of alimony" will provide possibility of legal regulation of alimony relations in the norms of three legal acts: the Family Code, the Code of Administrative Offenses of the Russian Federation, the Criminal Code of the Russian Federation. An additional argument for introducing a unified concept of "payment (non-payment) of alimony" into the doctrine and legislation is the need to distinguish between the regulatory nature of the legal relationship of alimony and the protective nature of the norms of administrative and criminal law on bringing to responsibility for non-payment of alimony.

10. It is proposed to change the share procedure for determining the amount of alimony, which has been in force since 1936, as not meeting the needs of the child, not taking into account such important circumstances as the age of the child, his place of residence, the actual possibilities of the payer and the recipient of the alimony. The necessity of establishing a procedure for determining the minimum

amount of alimony for minor children, which guarantees the recipients of alimony the opportunity to overcome the "poverty threshold", ensures targeting of alimony payments, and provides for state guarantees is substantiated. The minimum alimony payment is guaranteed by the state through the Federal Alimony Fund (FAF). The exemption from this obligation is not allowed under any circumstances. Payers of alimony, established in minimum amount, in case of failure to fulfill their obligations, will have to pay off the state that guarantees alimony payments. The new procedure takes into account: the level of income of citizens; the income structure of citizens; the factor of possible instability of income; individual financial situation of subjects; the economic situation in the country as a whole and determines the minimum amount of child support at half the subsistence level. The procedure for establishing maintenance payments in this amount should be administrative, and not contractual or judicial.

11. In order to individualize the satisfaction of the needs of alimony recipients and considering the possibilities of persons liable to alimony, proposals have been formulated:

- on the calculation of the amount of alimony payments when determining the amount of maintenance for a child, considering the age of the child (divide children into three age groups at the age of 0 to 6 years, from 7 to 12 years and from 13 to 18 years),
- on the development of rules for calculating the amount of maintenance payments in favor of other entities, considering their needs, age, property status: receiving other payments, including social ones, and the availability of property, marital status and property status of persons liable to maintenance, taking into account the region of residence, which is possible to implement using new information technologies and which will help to simplify the organizational procedures for alimony, under the levels of legal regulation of alimony relations proposed by the author.

12. The new concept of "alimony amnesty" means a measure applied to persons who are in arrears in the payment of alimony by decision of a public authority. The

essence of the alimony amnesty lies in the complete or partial release from the payment of debt, or recalculation of the amount of debt, especially if the debt is a penalty for late payment of alimony for the period when it was charged at a rate of one second percent of the amount of unpaid alimony for each day of delay. The right to alimony amnesty is obtained by a person from the moment it is announced by a state body, subject to the procedure for reconciling the debt on the payment of alimony on the date of the announcement of the alimony amnesty and registration in the unified alimony register.

13. The legal regulation of alimony relations, taking into account the transition to a new technological stage in the development of society, should be modified. The digital transformation of society is associated with an increase in data and information flows and the need to streamline them and turn them into a resource for socio-economic development. Under the influence of new technologies, the organization and self-organization of relations between recipients and payers of alimony and their relations with third parties, their accounting and interaction is changing. It is necessary to use digital opportunities for the organization of legal regulation of self-organization and control of alimony, in connection with which it is proposed: to introduce into circulation the concept of "unified alimony registry" (UAR), which means a database of participants in the legal relationship of alimony for maintenance in a single alimony registry based on platform solutions (as part of a single digital ecosystem) of electronic accounting of payers and recipients of alimony; fixing the status of alimony payer (alimony recipient) in the digital profile of an individual while ensuring the protection of personal data.

Theoretical and practical significance of the research lies in the fact that the provisions formulated as a result of the study together form a holistic scientific understanding of the legal relationship of alimony as a private law relation in the doctrine of family law by determining its essential qualities, subjects, object, such content elements as subjective alimony law and subjective alimony obligation, identification of the trends of its legal regulation development, proposal of a new

concept of the legal relationship of alimony as a way to meet the alimony recipient's needs (multilevel legal regulation of the alimony relationship) at the present stage.

Practical significance of the dissertation research is related to the application of its results in law-making activity to resolve the systemic problem of alimony non-payments, possibility of using it in the legislative process framework and is also confirmed by the proposals presented to improve legislation in the area under study.

The dissertation is built in classical traditions of scientific research and the essence of the problem statement starts with the Introduction, where the relevance of the research topic is substantiated, the degree of development of the scientific problem is analyzed, the goal and the objectives of the research are defined, the object and subject are determined, the theoretical and methodological basis of the research and its information base are indicated, scientific novelty, validity and reliability, information about the results approbation, theoretical and practical significance are characterized, the main provisions submitted for defense are formulated.

In the first chapter of the work "*Theoretical and methodological approaches to the study of the legal relationship of alimony*", consideration and analysis of the theoretical ideas of alimony in their historical interpretation are consistently carried out. Taking into account temporality of the approach to the consideration of issues of alimony against the background of the historical stages of their development, the author notes that certain ideas (concepts) of alimony correspond to certain historical stages.

The author has developed the concept of the alimony recipient's need in the science of family law and in the legislation, which has become the basis for the idea of considering the legal relationship of alimony as a way to ensure the alimony recipient's needs. It is proposed to consider the need of the alimony recipient as a basic category in the legal relationship of alimony, affecting the method and volume of its provision, and as a result mediating the legal regulation of the entire array of alimony relations. The noted approach makes it possible to update the legislation on alimony in the direction of its greater efficiency.

The second chapter of the study "*The legal status and the degree of various categories of subjects involvement in alimony relations*" is devoted to such categories of subjects as close relatives and spouses, as well as other relatives and other persons in the legal relationship of alimony. The author comes to the conclusion that in relation to the relationship of alimony, it is the criterion of the degree of kinship that should be the basic classification criterion for subjects. The right to meet the needs of the alimony recipient acts as a prerequisite for the legal provision of a decent standard of living, and the legal relationship of alimony is a way to ensure the alimony recipient's needs, which depends on the degree of the subjects' involvement in the alimony relationship.

The third chapter of the study "*The multilevel nature of ensuring the needs of the alimony recipient*" contains a detailed analysis of the subjective alimony right and the subjective alimony obligation as elements of the legal relationship of alimony. In the third chapter, such new ideas as the idea of alimony amnesty, guarantees of the proper fulfillment of the alimony obligation by the state, a unified understanding of the term "payment (non-payment) of alimony" are proposed.

It is in the third chapter that the legal relationship of alimony is presented as a regulatory legal relationship in which the potential of regulatory norms due to both stereotypes that have developed in society and generally accepted law enforcement practice of collecting alimony mainly through the courts is not used.

Meanwhile, the legal relationship of alimony is a private law relationship that arises between equal and equally liable subjects: the alimony recipient, the bearer of the subjective alimony right and the alimony payer, the bearer of the subjective alimony obligation, aimed at resolving the relations arising between them in terms of intra-family maintenance, based on the balance of interests of the parties.

It is proposed to single out four levels in the multilevel provision of the alimony recipient's needs, determined with the multi-level provision of the alimony recipient's needs as minimal, basic, and individual.

The final fourth chapter "*Trends in the development of legal regulation of alimony relations*" considers the main routes for the development of state family

policy in the direction of strengthening traditional family values and the quality of childhood, the use of new digital technologies such as big data, artificial intelligence and others for the alimony relations organization.

In the Conclusion, the main results of the study are presented.

The author's publications cover certain issues analyzed in the course of the dissertation research. These are more than 50 publications, including 24 publications in journals included in the list of HAC, 2 monographs, 3 collective monographs, more than 20 publications of reports at scientific and scientific-practical conferences.