
"ALIMONY" or "MAINTENANCE"

M. S. Usmonova

Senior Lecturer, Department of Legal Education,
Fergana State University Doctor of Philosophy (PhD) in Legal Sciences

Abstract:	Keywords
<p>Alimony is a material thing that one person pays to another person forcibly, from the Latin "alimentum", which means "food", "support", "funds for maintenance".</p> <p>In most legal literature, maintenance is considered as alimony, while other types of scholars recognize the collection of alimony as a form of maintenance.</p>	

Introduction

Legal scholars O.S. Ioffe, E.A. Posse, T.A. Fadeeva, A.M. Nechaeva distinguish between “maintenance” and “alimony” and emphasize that “maintenance” is a broader concept.¹

Yu.F. Beshpalov, listing the differences between the two above concepts, emphasizes that alimony may not satisfy even the most basic needs of the child, but the provision may go beyond the most necessary types of assistance (food, clothing, school supplies). Compulsory alimony is only monetary funds, the amount of which is small and, as mentioned above, is not always enough to meet the child's needs.²

In our opinion, as we noted above, “maintenance” is a broader concept, alimony is a form of maintenance, and as maintenance, objects and items that do not have a monetary nature, but provide various needs in kind, can also be collected. The collection of maintenance in kind can be carried out mainly when a mediation agreement is reached by the husband and wife.

A.M. Nechayeva, describing alimony, notes the following:

- serves as a source for the existence of a child in the family;
- has conditionally strict characteristics for the provision of minors;
- is paid regularly, represents the obligation of each of the parents, regardless of the level of their economic well-being;
- has a completely personal nature;
- allows the child to maintain the level of material security that his parents are able to provide, is paid from the birth of the child until he reaches adulthood³.

Our current legislation stipulates that a husband and wife may conclude an agreement on the payment of alimony in the event of a future divorce.

¹ Иоффе О.С. Советское гражданское право. – М.: 1965. – С. 260; Поссе Е.А., Фадеева Т.А. Проблемы семейного право. Учебно методическое пособие для студентов заочного отделения. – Ленинград: ЛГУ, 1976.

– С. 83; Нечаева А.М. Семейное право. Курс лекций. – М.: Юрист, 1998. – С. 251.

² Беспалов Ю.Ф. Защита гражданских и семейных прав ребенка в Российской Федерации. Учебно-практическое пособие. – М.: Ось-89, 2004. – С. 109.

³ Нечаева А.М. Семейное право. Курс лекций. – М.: Юрист, 1996. – С. 248.

According to Professor O. Okyulov, an agreement on alimony is similar to a gift contract, an agreement on alimony is a unilateral obligation. That is, the alimony payer has the obligation to pay alimony, and the alimony recipient has the right to demand the payment of alimony⁴. Professors B. Gongalo and F. Otakho'jaev also showed that alimony obligations are free and gratuitous.

Speaking about the legal relations arising from the payment of alimony, legal scholars have different approaches to its connection with other branches of law. Professor O. Okyulov argues that even if family law is recognized as a separate branch of law, it is impossible to deny its genetic (hereditary) connection with civil law, and it is impossible to deny that legal relations arising from the payment of alimony have the essence of arising through civil legal obligations.⁵, deb ta'kidlasa; A.P. Sergeyeva, Yu.K. Tolstoy ham aliment to'lash to'g'risidagi bitimga fuqarolik-huquqiy shartnoma sifatida baho berishadi⁶. Professors F. Otakho'jaev and Sh. Yuldasheva refuted this idea, emphasizing that family-legal relations resemble civil-legal relations in some of their features, but this similarity is only superficial, that there are significant qualities and differences between family and civil-legal relations in terms of content, and that the basis of civil-legal relations is property relations, while the basis of family-legal relations, on the contrary, is non-property personal relations.⁷. These scholars also emphasize that a specific aspect of family-legal relations is that these relations are indefinite and continuous, and that subjective rights and obligations within the framework of this type of family-legal relations are not transferred to other persons. For example, if parents or adoptive parents transfer custody of children to another spouse who raises the children, this does not mean that parental rights have been transferred to other persons.⁸.

P.V. Krashennnikova, B. Gongalo, L.Yu. Mikheyeva recognize the agreement on the payment of alimony as a civil law contract and list the following features of this agreement:

- gratuitous, that is, one party undertakes to give something to the other without receiving anything;

- unilateral, that is, one party is liable, and the other party has the right to demand its fulfillment;

- consensual, that is, the agreement is considered concluded from the moment of reaching an agreement on the contract in the form established by law⁹.

According to M.V. Anatolskoy, an agreement on the payment of alimony is a type of civil law agreement.¹⁰

⁴ Oqyulov O. va boshqalar. Ayollar va bolalar mulkiy manfaatarini aliment munosabatlari orqali ta'minlash masalalari. – T.: Yangi asr avlodi, 2019. – B. 13.

⁵ Oqyulov O. va boshqalar. Ayollar va bolalar mulkiy manfaatarini aliment munosabatlari orqali ta'minlash masalalari. – T.: Yangi asr avlodi, 2019. – B. 8.

⁶ Сергеев А.П., Толстой Ю.К. Гражданское право: Учебник. – М., 2005. – С. 569.

⁷ Отахо'jayev F., Yo'ldosheva Sh.. Oila huquqi. – T.: Adolat, 2007. – B. 79.

⁸ Отахо'jayev F., Yo'ldosheva Sh.. Oila huquqi. – T.: Adolat, 2007. – B. 84.

⁹ Гангало Б.М. и другие. Семейное право. Учебник. – М.: 2008. – С. 194.

¹⁰ Кузнецова И.М. Комментарий. Семейный кодекс РФ. – М.: Бек, 1996. – С. 276.

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However, Yu.F. Besspalov denies that such an idea can be agreed upon.¹¹ In his opinion, by their nature, alimony agreements are sharply different from civil law contracts. The similarity of the procedure for their conclusion, amendment, termination and invalidation under the rules of the contract does not provide sufficient grounds for classifying these agreements as civil law transactions.¹²

According to Kh.B. Abdurakhmonova, “alimony is considered a family-legal relationship and is an amount of money that is forcibly paid by one family member to another family member by court decision or mutual agreement.”¹³

In our opinion, relations related to alimony obligations are purely family-legal relations, and property relations are not only related to civil-legal relations, but also affect labor-legal relations, and labor law is also a separate branch of law, so family-legal relations also have their own uniqueness. In addition, there are blood ties between the subjects of family-legal relations, and the relations between them arise on the basis of mutual internal feelings.

In addition, based on the above, the payment of alimony is considered mandatory, that is, imperative in nature, and it cannot be canceled unilaterally. That is, the executor does not have the right to cancel the obligation to pay alimony, while in civil-legal relations there is the right to be released from the fulfillment of obligations by unilaterally canceling any contract or declaring it invalid.

¹¹ Беспалов Ю.Ф. Защита гражданских и семейных прав ребенка в Российской Федерации. Учебно-практическое пособие. – М.: Ось-89, 2004. – С. 112.

¹² O'sha joyda.

¹³ Abduraxmonova X.B. Ota-ona va bolalar aliment huquqlari va majburiyatlarining kollizion tartibga solinishi. – T.: TDYuI, 2015. – B. 11.