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L.Zh. Shadanova *

Karaganda University of the name of academician E.A. Buketov, Karaganda, Kazakhstan
(E-mail: liazzat_75@mail.ru)

**Improvement of the mechanism for recovering alimony for the
maintenance of a minor child under the legislation
of the Republic of Kazakhstan**

The article analyzes the problems of protecting the right of a child to receive maintenance from his parents and other family members, which are guaranteed by the Constitution and family legislation of the Republic of Kazakhstan. The purpose of the study is to analyze the norms of the legislation that regulate the procedure for collecting alimony for the maintenance of minor children, as well as to consider and propose effective mechanisms for solving the problems of non-execution of judicial acts on the recovery of alimony in the cases where a parent evades the obligation to support a child. Comparative-legal, dialectical, formal-legal methods were used. As a result, the authors of the study provided theoretical conclusions and proposals for improving family legislation and law enforcement practice in ensuring the right of the child to receive maintenance from his parents and other family members. The article concludes that the recovery of alimony should not act as a measure of property liability of the other parent. It is necessary to improve the mechanism for collecting alimony and to create a system that will stimulate the debtor's responsibility to fulfill his obligations. One of the ways to pay off debts on alimony in case of default by parents on alimony obligations is the payment of benefits to a minor child from state funds for the material support of children from single-parent families.

Keywords: alimony, alimony relations between parents and children, alimony obligations, alimony fund, recovery of alimony, minor child, parents, family, claimant, debtor.

Introduction

Alimony obligations are one of the important legal institutions of the family law. Until today, in the science of Kazakh family law, the problems of legal regulation of maintenance obligations have not received sufficient development in the form of a comprehensive scientific study. The legal regulation of maintenance obligations in the Republic of Kazakhstan has not become the subject of a monographic study; a comparative scientific study of national and foreign legislation has not been carried out; an extended study of the issues of legal regulation of legal relations has not carried out in the following cases: on the recovery of alimony, on the reasons for non-execution of court decisions and court orders, on the relationship of the socio-economic situation in society with the legislation governing alimony legal relations, on the problems of exacerbating conflicts in the family. It also became necessary to reveal the essence of new provisions in the legislation, to study the effectiveness of the application in practice of the norms of the legislation on marriage and family, on enforcement proceedings, as well as to assess their practical significance.

The problems of legal regulation of maintenance obligations were considered in the works of the following Russian and domestic scientists: M.V. Antokolskaya, M.T. Akimzhanova, A.M. Belyakova, E.M. Vorozheykina, I.P. Grishina, S.P. Grishaeva, N.M. Ershova, M. Zhaskayrat, D.A. Dzhandarbek, E.Yu. Kostyuchenko, G.K. Matveeva, L.M. Pchelintseva, V.A. Rysantseva, A.M. Rabets and others.

Currently, the questions of collecting alimony for the maintenance of children in the framework of judicial proceedings are problematic. Therefore, they require constant attention from the state.

Article 27 of the Constitution of the Republic of Kazakhstan states: “Marriage and family, motherhood, fatherhood and childhood are protected by the government. Taking care of children and their upbringing are a natural right and duty of parents” [1]. The purpose of the government is to protect the rights of minor children, to improve the financial situation of children who need the help of parents who do not fulfill their constitutional duties. Based on this provision, the Code of the Republic of Kazakhstan “On Marriage (Matrimony) and Family” establishes the duty of parents: “Parents shall be obliged to maintain their minors. Order and form of provision of maintenance of minors shall be established independently by parents” (Article 138) [2].

Unfortunately, not all parents voluntarily fulfill their responsibilities for the maintenance of children. In this regard, the alimony legal relations are still relevant until this time. The emergence of such legal relations is facilitated by objective and subjective reasons (for example, an increase in the number of divorces, unemployment, and a decrease in the standard of living of the population). As a result, there are problems with the material support of disabled and needy family members, especially minor children.

The enforcement agents had 210 thousand cases on the recovery of alimony in production in the first half of this year, in the same period of the last year — 192 thousand cases. Despite the fact that there are more cases of alimony recovery, the number of cases when alimony is not paid for three months or more has decreased: 13,269 cases this year against 14,744 cases of the last year.

Marat Beketayev noted that the reduction in the number of defaulters was carried out due to the joint efforts of the Ministry of Justice and local executive bodies which helped debtors with work. In just six months, more than 2 thousand people were employed. “In general, I would like to note that 93 percent of payers make payments on alimony cases on time”, minister said, “6.3 percent are the problematic cases” [3].

The scientific novelty of the research is the development of proposals for improving the family legislation based on a systematic and comprehensive analysis of the problems of legal regulation of alimony obligations of family members.

Experimental

The methodological basis of this study is the methods of scientific cognition. During this study following methods (general, private and special techniques of cognition) were used: The method of scientific abstraction, the method of system analysis, concrete-historical method, comparative-legal method, formal-dogmatic method, and others.

Scientific and monographic studies, practical materials on the problems of collecting alimony for family members, judicial practice in the civil cases on the recovery of alimony were studied. The legal norms of national and foreign legislation that regulate alimony legal relations were analyzed.

Results

The total number of alimony debtors in Kazakhstan is 220,785 people as of May 1, 2021. At the same time, 17,638 enforcement proceedings are problematic, they have debts in the amount of 12.050 billion tenge. Moreover, debts on 8294 documents are not repaid at all, which is equal to 5,216 billion tenge. Despite the fact that there are more cases of alimony recovery, the number of cases when alimony is not paid for three months or more has decreased [3]. The reduction in the number of defaulters was carried out due to the joint efforts of the Ministry of Justice and local executive bodies which helped debtors with work. In just six months, more than 2 thousand people were employed [4].

In order to improve the legal mechanism for recovering alimony, amendments and additions were made to the current legislation, new provisions were adopted. On January 15, 2014, the Law of the Republic of Kazakhstan “On Amendments and Additions to some Legislative Acts of the Republic of Kazakhstan on improving enforcement proceedings” was adopted. According to the amendment to the Law of the Republic of Kazakhstan, dated April 2, 2010 “On Enforcement Proceedings and the Status of Enforcement Agents”, the legislator put into effect “The Unified Register of Debtors — a unified electronic data bank that contains information about debtors in enforcement proceedings” in the republic (Paragraph 2 of Article 1 of the Law). Information about debtors is posted on the official Internet resource.

In accordance with Article 99 of the Law, if it is impossible to collect alimony payments from salary or other incomes within three months, the debtor's property is foreclosed on, except for property that cannot be levied.

Previously, alimony was collected from a non-working debtor based on the minimum wage. For example, in 2013 it was slightly more than 18 thousand tenge, when calculated for 1 child, it turned out only 4500 tenge, which is equal to the established 25 %. Since January 29, 2015, it has been determined that if the debtor does not work or has not submitted documents confirming his wages, then alimony should be collected based on the middle monthly salary in the Republic of Kazakhstan at the time of debt collection. (Part 3 of Article 169 the Code "On Marriage (Matrimony) and Family"). In case of arrears on alimony payments due to the debtor's evasion from paying them, a penalty is accrued on top of the debt under Article 353 of the Civil Code. This change made it possible to reduce the number of alimony defaulters who hide behind the absence of work and conceal their incomes. In December 2021, the average monthly nominal salary of an employee was 268,051 tenge.

There were discussions about the recovery of alimony debts based on the average monthly salary in the Republic of Kazakhstan. This provision of the law was not supported due to the different sizes of the average monthly salary in different regions of the country (depending on the constant regional pricing). It is believed that for the majority of debtors, the amount of alimony is unaffordable in regions where the average monthly salary is set much lower. This leads to the fact that "debtors get a job formally, with a significantly reduced salary (other offenses in the field of labor law and taxation may arise here) only in order not to pay alimony based on the average salary in Kazakhstan. In such cases, it is difficult for the claimant to prove that the debtor actually has more earnings. It is also possible that debtors begin to hide from enforcement agent that creates obstacles in enforcement proceedings for the claimant himself, and this leads to lengthy litigation and unnecessary nervousness. It was proposed to "determine the alimony arrears according to the size of the average monthly salary in the debtor's region of living (in the region, capital or city of republican significance)" [5].

One of the effective measures introduced by the law is the temporary restriction of the debtor to travel outside the Republic of Kazakhstan if the debt amounts more than twenty monthly calculation indices, as well as if the enforcement documents on the collection of periodic payments have not been executed for more than three months. According to Article 33 of the Law, in accordance with the statement of the claimant, the enforcement agent takes a decision on a temporary restriction on departure, which is authorized by the court, and for execution he sends it to the Border Service of the National Security Committee of the Republic of Kazakhstan and to the debtor.

In accordance with Subparagraph 3 of Paragraph 1 of Article 34 of the Law "On Enforcement Proceedings and the Status of Enforcement Agents", in the event of a debt on enforcement documents for the recovery of alimony, the enforcement agent sends to the court a submission on a temporary prohibition to issue licenses, permits and special rights to the debtor, as well as requests the suspension of licenses, permits and special rights previously issued to the debtor. Such measures are also effective because they will lead to positive results and the repayment of all existing debts. For example, according to the results of the consideration of the submission of the Prosecutor's office of the Shyngyrlau district of the West Kazakhstan region, "the enforcement agent took measures to suspend the actions of 11 debtors who have driver's licenses until the full repayment of the alimony obligations. Currently, the district court has fully approved the submissions of the enforcement agent on the suspension of the debtors' driver licenses" [6]. The father of one family fully paid the debt for two children only after the court satisfied the idea of temporary suspension of the driver's license, while the amount of debt is equal to 1,769,050 tenge [7].

By the end of 2020, 5,180,497 enforcement documents were in the production of private enforcement agents in the republic, of which 261,037 related to the recovery of alimony.

If the executive documents are distributed among family members, then for the following number of cases, relatives must pay alimony to each other: 253,636 cases for minor children, 4,460 cases for spouses, 1,053 cases where children owe parents, 1,880 cases against tutorship and guardianship authorities, as well as 8 cases for brothers. The most cases are in Karaganda (25,903), Almaty (23,167), and East Kazakhstan (22,256) regions. Today, the number of problematic enforcement documents for the recovery of alimony, that is, for those who do not pay at all in the republic, is 16,102 cases [8]. In this regard, in 2020, the Law "On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on improving enforcement proceedings and criminal legislation" was adopted. Due to its adoption by the legislator, amendments were made at once into two normative legal acts concerning the procedure for calculating and recovering alimony — to the Code "On Marriage (Matrimony) and Family" and to the Law "On Enforcement Pro-

ceedings and the Status of Enforcement Agents”. If it is impossible to recover alimony payments from wages or other incomes, the law obliges enforcement agents to make a resolution on determining the debt and take measures to ensure the execution of enforcement documents in accordance with Article 32 of the Law within 3 months. Further, foreclosure is levied on the debtor’s property, except for property that cannot be recovered. The enforcement agent determines the alimony arrears quarterly (Paragraph 1 of Article 99 of the Law of the Republic of Kazakhstan “On Enforcement Proceedings and the Status of Enforcement Agents”). If “the enforcement measures established by this Law are not applied to a socially significant category of cases of enforcement documents within one month”, the enforcement agent may lose his license (Subparagraph 4) of Paragraph 2 of Article 144) [9].

At the same time, administrative measures are being taken against the debtor who evades the payment of alimony. In accordance with Article 669 of the Code of the Republic of Kazakhstan on Administrative Offences, if a court decision or other judicial act and executive document are not executed, this entails a fine of five monthly calculation indices or administrative arrest for up to five days for individuals, and a fine of twenty monthly calculation indices or administrative arrest for up to five days for officials, private notaries, enforcement agents, lawyers.

In 2019, 20,898 alimony debtors were banned from leaving, along with 1,707 citizens were brought to administrative responsibility. Another 816 debtors were employed [10].

The next tough measure against a debtor who evades paying alimony is criminal prosecution. In accordance with Article 139 of the Criminal Code of the Republic of Kazakhstan, if a parent does not pay funds by court decision for the maintenance of minor children, disabled children who have reached the age of eighteen, for more than three months, then this person is punished by restriction of liberty for up to two years or imprisonment for the same period.

Since alimony debts amount to 2–3 million tenge each, the enforcement agent has the right to submit to the criminal prosecution body a representation on bringing to criminal responsibility persons who maliciously evade the execution of judicial acts (Paragraph 16 of Article 126 of the Law). According to the Republican Chamber of Enforcement agents, in the first quarter of 2021, 24 debtors were brought to criminal responsibility in the republic, 1016 people were received administrative punishment [11].

The tightening of the legislation has given a positive result, since this measure is an effective way to influence debtors who evade paying alimony. Statistics show that after receiving news about the sending of materials for the purpose of initiating a criminal case, even the most malicious defaulters prefer to pay their existing debts. For example, a civil servant Zh. after receiving a notice of criminal prosecution, immediately repaid the debt that had accumulated since 2003, and also paid 9,483,420 tenge in advance. Similar repayments for the largest amounts were made by citizen M. (1,600,000) and citizen A. (1,200,000 tenge), as well as 8 other citizens of the capital city for amounts from 950 to 1,000,000 tenge [12].

The most effective among the coercive measures taken by enforcement agents were the latest submissions that were sent to the police to suspend special rights and bring the debtor to criminal responsibility. The enforcement agent of the Aktobe region Almas Kulzhanov collected more than 2 million tenge from the debtor for alimony obligations in favor of the mother and child. In 2021, the enforcement agents of the region employed 390 people through employment centers, and this means that children who did not know or occasionally received alimony began to feel the support of their fathers [13].

Difficulties arise in the process of collecting alimony from debtors-parents who have left for permanent residence in foreign countries. The problem is aggravated by the fact that Kazakhstan has not concluded international agreements on legal assistance with many countries. In the event that the debtor resides in another State, the rules on the Convention on the Recovery of Alimony Abroad, which was adopted within the framework of the United Nations on June 20, 1956, apply. Kazakhstan joined the Convention in 1999.

Currently, interstate cooperation on international alimony recovery is regulated by the Hague Convention on the International Procedure for the Recovery of Alimony for Children and Other Forms of Family Maintenance, which was adopted on November 23, 2007 by the Hague Conference on Private International Law. The Convention has created opportunities for the recognition and enforcement of court decisions on the recovery of alimony in foreign countries, also in order to be able to apply for the recovery of alimony in another state. The advantage is the possibility of using modern technologies to simplify cooperation. The Republic of Kazakhstan joined the Hague Convention in 2016, due to the fact that many measures are currently being taken in the republic, which are provided for in the Convention of effective measures for the execution of decisions. Because of this Convention, it has become easier for citizens of our republic to seek child support payments from parents living abroad.

Alimony legal relations between parents and children are determined by the legislation of the country in which the children permanently live. Kazakhstan has ratified Conventions that regulate international legal relations between the CIS member states on the recovery of alimony for minor children. These are the Convention on legal assistance and legal relations in civil, family and criminal matters, adopted in Minsk on January 22, 1993, the Convention on legal assistance and legal relations in civil, family and criminal matters, adopted in Chisinau on October 7, 2002.

Unfortunately, the current mechanisms for collecting alimony are still ineffective. It is paramount to improve the mechanism of recovery, to create a system that will protect children from violation of their rights to a favorable decent quality of life and, at the same time, will stimulate the debtor's responsibility for non-fulfillment of his duties.

One of the ways out of repayment of debts on alimony obligations is the payment of benefits to a minor child from state funds for the material support of children from single-parent families in a situation where parents do not fulfill alimony obligations. Such alimony funds exist in many foreign countries: Spain, Sweden, France, Estonia, Latvia, Poland, Israel, the USA, Bahrain, and other countries.

In Spain, the Alimony Guarantee Fund (Fondo de Garantía del Pago de Alimentos) was established in 2007 by Royal Decree No. 1618/2007 [14]. The state guarantees the payment of alimony that was recognized and unpaid to minor children in accordance with a judicial agreement or court order. The fund is managed through the Ministry of Economy and Finance of Spain. The fund's resources are replenished by payments, which are included annually in the general state budgets, and by reimbursing advances, in cases where this is provided for by law. The amounts paid from the fund have the status of advances and must be reimbursed or returned to the government in accordance with the procedure provided for by the royal decree (Article 3). The amount of the advance is 100 euros per month and is paid for 18 months instead of the debtor parent. Payment is made for monthly payments that are overdue. If a minor receives other benefits or benefits of the same nature and purpose from the government, an advance from the fund is not provided.

In Sweden, the Social Insurance Agency (Försäkringskassan) provides child support instead of an alimony-obligated parent. If the parents do not have the opportunity to fulfill alimony obligations or if the parents could not reach an agreement on alimony, the state provides for the maintenance of the children instead of the parent.

Maintenance from the state will be provided only if the parent does not pay alimony or cannot otherwise guarantee it for the child. The Swedish Social Insurance Code establishes that a parent is obliged to reimburse the funds that were allocated for the maintenance of his child from the state budget.

Child support is provided in the following amount: SEK 1,673 per month before the child turns 7 years old; SEK 1,823 per month from the month following the child's seventh birthday until the month when the child turns 15; SEK 2,223 per month from the month after the child reaches the age of 15 (20§, the regulation comes into force on July 1, 2022)) [15]. The financing of alimony support in Sweden is carried out at the expense of funds from the state budget, as well as through special contributions from municipalities and individuals.

In 2017, amendments were made to the law "On Family Allowances" in Estonia, which establish the organization of an alimony fund to provide monthly subsistence money for children raised by one parent, only if there is a condition that one of the parents does not fulfill his duties for the material maintenance of the child. The Law establishes that the Estonian Social Insurance Board, funded from the state budget through the Ministry of Social Affairs of Estonia, has the authority to pay benefits. The purpose of the allowance is to ensure the maintenance of a minor if the obligated person (hereinafter referred to as the debtor) does not fulfill its maintenance obligations during court proceedings (hereinafter referred to as maintenance allowance during court proceedings) or during enforcement proceedings (hereinafter referred to as maintenance allowance during enforcement proceedings) (§ 47). The peculiarity of the payment of benefits in Estonia is that the law guarantees two types of benefits: Maintenance allowance during the trial and maintenance allowance during the enforcement proceedings.

Maintenance allowance during the trial is paid if the debtor does not fulfill the obligation to maintain the child to the extent provided in Part 1 of Article 101 of the Family Law. The following persons have the right to receive maintenance allowance:

- 1) a minor child whose parent does not fulfill alimony obligations;
- 2) a child who receives basic, secondary or higher education or enters formal vocational education as an adult, but not more than until he reaches the age of 21, and whose parent does not fulfill the maintenance obligations (§ 48).

3) The amount of the allowance for the maintenance of one child during the trial is 100 euros per calendar month. The maintenance allowance during the trial is paid within 150 days from the date of the decision on the payment offer or the decision on securing the claim (§ 49) [16].

(1) Maintenance allowance during enforcement proceedings is paid based on a court decision on the payment of alimony or a decision of an administrative body, which is considered equivalent to a court decision. The amount of alimony allowance during enforcement proceedings for one child is up to 100 euros per calendar month and is paid based on the amount of alimony paid by the debtor.

(2) Maintenance allowance in the course of enforcement proceedings is paid if four months have passed since the initiation of the enforcement case for the recovery of alimony and only after that such arrears have arisen (§ 50) [16].

In France, the Family Benefits Fund (CAF) has been established. The parent receives help with a court decision on the compulsory recovery of alimony, and then a special department of CAF searches for the debtor. Thus, alimony funds are additionally engaged in the search for the debtor.

In Israel, the National Insurance Service, or “Bituah leumi”, has been established to influence debtors on alimony obligations, which pays alimony on the basis of a decision of the family court or the rabbinical court. Payments for a child are made before they reach the age of 18, but in some cases payments may be stopped earlier, for example, if the alimony recipient decides to simultaneously try to collect benefits through the Enforcement agent Service. In addition, if the parent who receives alimony is employed, then the amount to be paid is assigned to be very insignificant, or maybe not paid at all [3].

Thus, foreign experience shows us that alimony funds are an effective mechanism for the execution of a judicial act to recover debts on alimony obligations for the maintenance of children, and also allows for the implementation of the constitutional norm on the protection of family and childhood by the state.

Discussion

In legal science, there are critical opinions of scientists regarding the mechanism of alimony recovery, for example, the Russian scientist M.L. Shelyutto notes that «the recovery of child support in Russia does not always meet the criteria of reasonableness and fairness. The legislation develops one-sidedly, the purpose of which is to exert pressure on debtors through restrictions and sanctions [17; 31]. Many scientists point out that the interpretation in judicial practice of a number of norms on the recovery of alimony deprives the law of the flexibility that is inherent in it [18]. An agreement with such opinions is appropriate, since it is impossible to resolve the conflict between the child’s parents only by imperative methods. It would be much more effective to resolve the conflict by alternative methods by concluding an alimony agreement, using mediation on disputes that arise from alimony obligations.

The discussed problem in the legal literature is the determination of the minimum amount of alimony. Scientists propose to introduce a minimum amount of alimony, which is equal to 1/2 of the subsistence minimum approved for children [19; 25].

I.A. Tolstova and P.A. Matveev noted that the norms of the Family Code of the Russian Federation still reproduce the Soviet system of alimony amounts, when citizens had a constant incomes: 1/4 wages — for one child; 1/3 — for two children; 1/2 wages and (or) other incomes — for the maintenance of three or more children. At the same time, neither the legislator nor the Supreme Court of the Russian Federation give instructions on the minimum amount of alimony that is payable to meet the minimum needs of the child in food, housing, education [20; 28]. We agree with this opinion because due to the uncertainty of the minimum amount of alimony, cases of concealment of real incomes are common, and a quarter of the minimum wage will be a “meager” amount. The establishment of the minimum amount of alimony in the law guarantees the protection of the child's right to receive maintenance from his parents and other family members, thus the welfare of children raised in single-parent families should improve. In addition, the number of facts of concealment or understatement of incomes received will be reduced by alimony payers.

In the process of considering a case on the assignment of alimony to a minor child, it is necessary to clarify the property status of both parents to avoid concealment of incomes, including earnings from doing business. In this regard, scientists suggest that during the consideration of the claim for the recovery of alimony, the court should be empowered to independently clarify the financial situation of both parents. In this case, it is important to give not the right, but the obligation to request relevant information from credit institutions about the existence of obligations under loan agreements and the availability of deposits, as well as from the Pension Fund about the places of work and earnings that are received. Then, the judge will have the

most complete picture of the property status of both parents to make a legitimate and reasonable decision [21; 12].

Currently, the problems of non-execution of a judicial act on the recovery of alimony for the maintenance of minor children are often discussed in society. Officials and legal scholars offer various options for improving the mechanism for collecting alimony. A. Kuznetsova, the Commissioner for Children's Rights of the Russian Federation, believes that one of the solutions to such a problem can be an alimony fund, which will allow a parent who is raising a child to receive money for raising a child when there are no alimony payments monthly [22].

Various opinions are offered on the question of what the fund's financing mechanism is and what its powers are. For example, K. Ordov proposed to organize an alimony fund according to the type of pension fund, which guarantees the payment of alimony on time and in full, at the same time, the tax authorities receive the right and obligation to keep in this fund the incomes that the debtor receives. If the fund's expenditures exceed revenues, the state budget will have to finance the deficit [22].

E. Babkina proposes to pay benefits to repay alimony arrears at the expense of the social insurance fund, but this will require an increase in social contributions [22].

Some scientists propose the organization of a system of state and non-state alimony funds, which are similar to compulsory and voluntary health insurance. "The activities of state funds should be associated with guaranteed payments from the government in cases established by law. The activities of non-state funds may constitute insurance in case the alimony payer is unable to fulfill obligations to his minor child. The first model is characterized by the presumption of a "payer", in connection with which the state will demand the return of funds after they have been spent on the benefit of a minor child. The second model assumes the presumption of a "defaulter" [23; 188].

In 2021, a voluntary public alimony payment fund was established in Kazakhstan under the Republican Chamber of Enforcement agents. Its budget will be formed by members of the Republican Chamber at the expense of membership fees and voluntary donations. M. Beketaev noted: "The main purpose of the fund is to provide assistance to citizens who are sides of enforcement proceedings and are in a difficult social and financial situation, for example, mothers who do not receive alimony for the maintenance of children. The budget will be formed by members of the Republican Chamber at the expense of membership fees and voluntary donations. Therefore, the fund's funds will be limited. Control over the work of the foundation is assigned to the Board of Trustees of the chamber" [24].

In our opinion, the alimony fund can be organized by the state and the financing will be from the state budget. The source of the alimony fund formation, in addition to the state budget, may be fines and penalties from non-payers for overdue days of payment of alimony payments, as well as repayable funds from debtors on alimony obligations.

Conclusions

As a result, we came to the following conclusions.

If it is impossible to find the location of the person who, by a court decision, pays alimony, a search for the defaulter is announced. There are cases when the debtor has no incomes, and it is impossible to execute a judicial act to recover alimony for the maintenance of children due to the absence of property that can be foreclosed on. In such cases, alimony is not collected, and accordingly, the interests of the child are not protected. Therefore, the child needs support from the state. The solution to this problem can be the organization of the State Alimony Fund, funded from the government budget. Also, the social fund should receive penalties from non-payers for overdue days of payment of alimony payments and repayable funds from debtors on alimony obligations. The Fund will have to pay benefits to children who live below the poverty line, due to the fact that one of the parents does not pay alimony. Thus, a monthly allowance will be paid instead of unpaid alimony.

The State Alimony Fund is an organization that provides state support to families in need of maintenance of a minor child, if alimony obligations are not fulfilled by one of the parents. In the event of a parent's evasion from paying alimony or declaring a search for a person who is obliged to pay alimony, benefits will be paid from the State Alimony Fund in the amount of monthly alimony established in court. Later, this expense will be collected from the debtor.

The reasons for non-execution of judicial acts on the recovery of alimony are different: Concealment of the place of work, as well as incomes from entrepreneurial activity or intentional understatement of incomes

received by the alimony payer. This problem can be solved by creating a single database of information about the data of employees who work on basic and additional work under an employment contract.

It is necessary to strengthen the responsibility of debtors for evading the payment of alimony. To resolve this issue, it is proposed to apply correctional work (work with a probationary period) as a sanction of criminal liability. The incomes from this work should not go to the benefit of the government, but to the alimony payment in favor of the child.

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Л.Ж. Шаданова

Қазақстан Республикасының заңнамасы бойынша кәмелетке толмаған баланы күтіп-бағу үшін алиментті өндіру механизмін жетілдіру

Мақалада Қазақстан Республикасының Конституциясы мен отбасы заңнамасымен кепілдік берілген баланың өзі ата-аналарынан және отбасының басқа да мүшелерінен күтіп-бағу қаражатын алуға құқығын қорғаудың мәселелері талданған. Зерттеу жүргізудің мақсаты кәмелетке толмаған балаларды күтіп-бағуға алиментті өндірудің тәртібін реттейтін заңнаманың нормаларына талдау жүргізу, ата-ана баланы күтіп-бағу міндетін орындаудан бұттарған жағдайда алиментті өндіру бойынша сот актісінің орындалмауы мәселелерін қарастыру және оларды шешудің тиімді механизмдерін ұсыну болып табылады. Ғылыми зерттеуді жүргізу үшін салыстырмалы-құқықтық, диалектикалық, формальды-заңдық әдістер қолданылды. Жүргізілген ғылыми зерттеудің нәтижелері бойынша баланың ата-аналарынан және отбасының басқа да мүшелерінен күтіп-бағу қаражатын алуға құқығын қамтамасыз ету саласындағы отбасылық заңнама мен құқыққолдану тәжірибесін жетілдіру бойынша теориялық қорытындылар мен ұсыныстар жасалған. Мақалада алимент өндіріп алу басқа ата-ананы мүлтік жауапкершілікке тартудың шарасы ретінде болмауы керек, өндіріп алу механизмін жетілдіру ғана маңызды емес, борышкердің өз міндеттерін орындауға жауапкершілігін ынталандыратын жүйені құру қажет деген тұжырым жасалды. Алименттер бойынша берешектерді өтеудің бір жолы ата-аналары алименттік міндеттемелерді орындамаған кезде толық емес отбасыларда тәрбиеленіп жатқан балаларға материалдық қолдау көрсету үшін мемлекеттік қорлардан кәмелетке толмаған балаға жәрдемақы төлеу болып табылады.

Кілт сөздер: алименттер, ата-аналар мен балалардың алименттік құқықтық қатынастары, алименттік міндеттемелер, алименттік қор, алименттерді өндіру, кәмелетке толмаған бала, ата-ана, отбасы, өндіріп алушы, борышкер.

Л.Ж. Шаданова

Совершенствование механизма взыскания алиментов на содержание несовершеннолетнего ребенка по законодательству Республики Казахстан

В статье проанализированы проблемы защиты права ребенка на получение содержания от своих родителей и других членов семьи, гарантированные Конституцией и семейным законодательством Республики Казахстан. Целью исследования является проведение анализа норм законодательства, регламентирующих порядок взыскания алиментов на содержание несовершеннолетних детей, рассмотрение и предложение эффективных механизмов решения проблем неисполнения судебных актов по взысканию алиментов в случаях уклонения родителя от обязанности содержать ребенка. Для проведения научного исследования были применены сравнительно-правовой, диалектический, формально-юридический методы. По результатам проведенного научного исследования сформулированы теоретические выводы и предложения по совершенствованию семейного законодательства и правоприменительной практики в сфере обеспечения права ребенка на получение содержания от своих родителей и других членов семьи. Авторами сделан вывод о том, что взыскание алиментов не должно выступать мерой имущественной ответственности другого родителя, важно не только совершенствовать механизм взыскания, нужно создать такую систему, которая будет стимулировать ответственность должника на выполнение его обязанностей. Одним из выходов погашения задолженностей по алиментам является выплата пособий несовершеннолетнему ребенку из государственных фондов для материального поддержания детей из неполных семей при неисполнении родителями алиментных обязательств.

Ключевые слова: алименты, алиментные правоотношения родителей и детей, алиментные обязательства, алиментный фонд, взыскание алиментов, несовершеннолетний ребенок, родители, семья, взыскатель, должник.

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