

UDC 347.6

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## CHILD-SUPPORT ALIMONY AS THE ISSUE OF LEGISLATION AND PRACTICE

The article is devoted to issues about legislative regulation improvement on support maintenance by the way of alimentation of children which were adopted by other persons. There were made conclusions about the necessity of legislative consideration the possibility of deprivation of parental rights of one of the parent and adopter and alimony collection for child maintenance from both of them.

**Key words:** alimony, child support, adoption, deprivation of parental rights.

**Problem statement.** The aim of any social, legal state is child welfare and protection, first of all with the help of formation and improvement of legislation in mentioned sphere, and especially in the part concerning child support maintenance by the means of alimentation.

**Analysis of recent researches and publications.** The investigation of problems regarding maintenance (alimony) of family members is widespread among native scholars. These researches were performed by such scientists: Y. Chervoniy, I. Zhylinkova, Z. Romovska, L. Sapeyko, V. Croitor, Y. Novokhatska. These and other authors also paid attention to the issues of adoption. Despite the fact that the scientists' interest to legal problems of alimentation is not exhausted, many of these issues have not yet found its solution. Analysis of the legislation on child support by parents and adopters has many defects in the practice of its implementation. On-going nature of alimony relationship determines the possibility of reiterated appeals to the court with the suit for alimony, change of its size, terms of payments or exemption from them, as well as for other items related to effectuation of right on alimony and execution the maintenance obligations.. That's just the question of alimony «destiny» levied on parents in case of adoption, deprivation of parental rights left unattended legislator.

**Paper purpose.** Taking into account mentioned information, the issues about discharge of obligations on child support maintenance by the means of alimony payments for the child that has been adopted requires individual research. The purpose of this article is to highlight some of the results of such research.

**Paper main body.** Deprivation of parental rights as a specific and the highest sanction of family legal liabilities is characterized by complete cessa-

tion of legal relationship of the child with its parents and at the same time preserving the obligation of child financial support. In case of deprivation of parental rights, parents lose their hereditary right concerning the child, the right to receive child support from child and other rights. However, the child has certain rights, including the right to receive alimony, hereditary right, proprietary right or the right to use habitable dwelling, etc.

Taking into account the fact that deprivation of parental rights does not relieve parents from the obligation to support the child, along with deprivation of parental rights, the court may, upon request of the applicant or upon its own initiative, to decide the issue of levying maintenance for the child (Section 2, Art. 166 of the Family Code of Ukraine).

Thus, the right to receive alimony from parents *certainly* kept in the case of the child custody or care determination (Section 2, Art. 247 of the Family Code of Ukraine), placing in health institution, educational or other child care center, foster family (Par. 2, Art. 248, Par. 4, Art. 256<sup>3</sup> of the Family Code of Ukraine), to children's community of domestic type (Par. 256<sup>7</sup> of the Family Code of Ukraine). *And can be saved* in case of child adoption. Considering the 1st part of Art. 232 of the Family Code of Ukraine regulations of the determination of this decision are left to the mind of the parent with whom the child is stayed.

Moreover, according to Part 1 of Art. 1183 of the Civil Code of Ukraine parents shall be obliged to indemnify for the damage inflicted by an infant in respect of whom they are deprived of parenthood within three years after being deprived of parental rights, unless they prove this damage is not resulted from their negligence of the parent obligations.

Thus, the obligations of a certain material support for a child, to which parents deprived of parental rights also remains after this. The Family Code of Ukraine establishes two alimony payment schemes by parents for child — voluntary and compulsory. Each of these schemes also has a gradation according to the factual circumstances of the relationship. Hereby in case of termination of child support rights the form of maintenance — in cash and (or) in kind — has an importance.

The difficulty of alimentary juridical relationships between parents and children is repeatedly increasing when we have to deal with parental responsibilities to provide maintenance for the child in case of adoption. But termination of alimony may occur in connection with adoption of child for the maintenance of which was collected child support since this indirectly mentioned in Part 1 of art. 232 of the Family Code of Ukraine. Such legislative uncertainty or diffidence causes a lot of judicial contest on alimony exemption of parent for the child, which was adopted. And dispose of this question entrust with the court.

According to Art. 207, 282 of the Family Code of Ukraine the adoption shall be the acceptance by the adopter in his/her family of a person as his/her daughter or son, such acceptance being effected based on the judicial decision, but in the event that adoption by a national of Ukraine of a child who is a national of Ukraine but resides outside the limits of Ukraine is made in

a consular post or diplomatic mission of Ukraine. Thereby, adoption is the adoption of an adoptive in their family the person, made by a court (legal act), which resulted between the adopter and his relatives, on the one hand, and the adopted and his descendants — on the other hand, appear the same rights and liabilities as between parents and children, and relatives origin.

Part 1 of Art. 232 of the Family Code of Ukraine provides occurrence of legal consequence for the adoption, namely — upon completion of an adoption, personal and property rights and responsibilities cease to exist between the parents and the adopted person, as well as between the latter and his/her relatives by origin. If a child is adopted by only one person, these rights and responsibilities may be retained upon the mother's wish whenever the adopter is a man, or upon the father's wish whenever the adopter is a woman.

Analyses of the mentioned reduce to two conclusions. The first one — the act of the law of adoption changes the subjective structure of parental juridical relationship — parents of an adopted person cease to be subject to parental rights and liabilities, and at the same time between the adopter and the adoptive establish legal relations that exist between parents and children. The second one — subjective structure can be not changed, but enlarged since parental rights and liabilities concerning to the child will be performed by both parents and adopters.

It should be borne in mind that in Art. 171 of the Family Code of Ukraine it is provided in respective cases to due regard to the child's views in deciding matters related to his/her life and also remember about the demands of Part 2 of Art. 218 of the Family Code of Ukraine about the necessity to inform the child on legal consequences of the adoption. Herewith, for the record of the adoptive mother, father requires the consent of the child who has reached 7 years, except under Part 4 of Art. 218 of the Family Code of Ukraine, namely — except if he/she lives in the adopters' family and considers them as his/her parents.

Thus, the need to inform the child about the legal consequences of adoption should be subject to the regulations of Part 1 of Art. 218 of the Family Code of Ukraine, which requires considering child's consent to be adopted. A child gives consent to the adoption in the form, which is consistent with his/her age.

Other words, taking into consideration mentioned requirements to inform the child, it should be informed about such a consequence as the preservation or termination of the right to receive its alimony. We believe that in this case the child should be informed that the realization of this right depends on the will of parents, with whom she/he lives. Indeed, as noted above, the termination or abandonment of alimentations obligations depends exactly on the will of one of the parents.

It should be noted that the adoption has resulted in more and inability restoration of parental rights if the child has been adopted and the adoption is not canceled or revoked by the court (Par. 2, Art. 169 of the Family Code of Ukraine). Imperative that the rules associated with the fact that «under the law on adoption the consent of parents which are deprived of parental rights is

not required and similar dispute could negatively affect the morale of the child and the adopters and hampered in their rights and interests with regard to legal effects of adoption (Art. 232 of the Family Code of Ukraine) [1, p. 499].

We believe that in the case of adoption of a child the rights on child support that is received from parents should be stopped.

Here are some arguments. First, according to Par.1, Art. 179 of the Family Code of Ukraine alimony received for a child is the property of the name of parent to whom they are paid, and should be used for the intended purpose. That alimony is exclusively intended use. However, we know that there is no mechanism to monitor the targeted use of alimony funds. Parents are not required to restore the integrity of evidence concerning the implementation of targeted spending in the interest of the child. However, today in Ukraine has already formed a wealthy stratum of society and child support can greatly exceed its expenditure needs and become an opportunity for abuse by unscrupulous parents.

Second, legislator left unattended the question of the termination of the right to child support in connection with the acquisition of the right to real estate, as foreseen in Art. 190 of the Family Code of Ukraine. We believe that there should be at least some reservations about this in Part 1, Art. 232 of the Family Code of Ukraine.

Third, actually the word «alimony» (from the Latin *alimentum* — food, maintenance) means advances in the cases determined with the law by one person on hold of other person who need financial assistance [2, p. 96]. Obviously, the child needs financial aid in any case whether or not this help is given by the parents, adopters or the state.

However, temporary assistance for the maintenance of the child by the state, provided in Part 8 of Art. 181 of the Family Code of Ukraine which is obtained without reasons, is the basis for the damages caused to the state, and the invalidity of receipt of child support by a parent is not even mentioned.

Fourth, the question of deprivation of parental rights of adopter remains uncertain in accordance with Art. 242 of the Family Code of Ukraine. The procedure and grounds of deprivation of adopter, which was recorded as a mother, father of adopted child, parental rights are the same as in the case of birth parents' deprivation of parental rights. Equally, there are consequences of termination of parental rights.

Thus, there are situations where a parent receives child support from one of parent and the adopter. This can be avoided by reviewing existing legislation regarding alimentation of adopted children.

For example, from Russian Federation laws, if one of the parents of the adopted child, before delivery of a judgment about adoption in court order, he according to Par. 2, Art. 120 of the Family Code of Russian Federation is exempt from taxes. This question is managing by the court at the request of the parent who must pay child's maintenance, as became final court decision of adoption, which is the absolute reason for termination of alimony payments.

However, the court decision of adoption does not relieve his father, which was charged with alimony by the court decision, from its subsequent pay-

ments, if the child is adopted by this parent in accordance with Par. 3 of Art. 137 the Family Code of Russian Federation were saved personal property and non-property rights and responsibilities. In that case, all issues related to the change in the amount of child's maintenance, exemption from the payments, should be considered by the court in accordance with the action proceeding at the request of interested parties.

There is a duty to keep own child stops after adoption in the legislation of Kazakhstan (Par. 2, Art. 69 of the Law of the Republic of Kazakhstan on marriage and family)[3].

According to the law of France the duty to provide alimony is kept between the adopted person and his father and mother. However, father and mother of the adopted child must provide maintenance only when it can not get maintenance from the adopter (Art. 367 of the Civil Code of France)[4, p.174].

With regard to international law, although Ukraine is not a party to most conventions in the field of adoption, let's turn to their standards. Thus, the European Convention on the Adoption of Children of 1969 provides that from establishing rights and obligations of the adoptive and adopted, lapse similar rights and obligations that existed between the adopted and his father, mother or other person or institution.

However, the law may allow that the spouse of the adopter retains his rights and obligations in respect of the adopted person if the latter is his (her) legitimate, illegitimate or adopted child.

In addition, the legislation may retain parents' obligations to provide financial assistance to the child, maintain, organize his life and provide a dowry if the adopter does not fulfill any of these duties [5].

Article 26 of the Convention for the Protection of Children and Cooperation in Respect of International Adoption of 1993 points that the recognition of adoption includes recognition of termination of legal relationship between the child and her mother and father, still exist if the adoption has the following effects in the contracting State in which it happened. If the adoption results to the termination of the legal relationship between the child and parents, once available, the child receives in the receiving state and any other contracting state where the adoption is recognized, the same rights arising from adoption, which took place in each such State [6].

Thus, the question of the conditions under which parents of adopted children may require maintenance from the other parent who is deprived of parental rights, needs to be addressed.

The Family Code of Ukraine does not contain articles that would identify all grounds for termination of alimony obligations to the child. The study of its text enables identification of only a few reservations about the termination of maintenance obligations, which are: suspension of the right to child support in connection with the acquisition of rights to real estate (house, apartment, land, etc) (Art. 190) and termination of the maintenance of adult daughter, son, who stopped education (Art. 199).

It is logical to predict that this is not all reasons that stop alimony relationship even without their legislative consolidation. For example, the termi-

nation of maintenance obligations as liabilities are inextricably linked with the personality of the payer and the recipient of maintenance is in connection with the death of the person who receives child's support, as well as those entrusted with the duty to pay maintenance.

We believe that the Family Code of Ukraine should include such a ground for termination of maintenance obligations as adoption. Such a rule requires judicial practice.

Thus, the claims for exemption from payment of alimony, alimony cease and exemption from debt for child support in connection with the adoption of a child, the maintenance of which they are levied, are common in litigation. Moreover, regardless of whether the adoption was carried out with parental consent for adoption (Art. 217 of the Family Code of Ukraine) or without parental consent (Art. 217 of the Family Code of Ukraine).

Often parents who are charged by the alimony, in their objections to the payment of maintenance complain that they were not informed about the adoption. Note that the courts are not required to report on adoption parents deprived of such children on parental rights.

Perhaps in that case if the parent has not been deprived of parental rights has given consent to the adoption, at the same time the question of waiver of obtaining maintenance must be resolved. This would, firstly, define the issue of child maintenance between former spouses, secondly, courts would be freed from unnecessary disputes, thirdly, would facilitate the registration of adoption as an act of civil status.

If the parent is not deprived of parental rights, the record of the state registration of birth and its origin remains.

At the same time, adopter has rights to be recorded as a mother, father and child court satisfies the following statement of adopter in the decision to adopt, if it is in the interest of the child (Art. 229 of the Family Code of Ukraine). According to Part 7, Art. 255 of the Family Code of Ukraine to amend the record of the birth of the adopted child or adult the copy of the judgment shall be sent to the state civil registration at the place of decision, in cases of adoption of children by foreigners — to the competent governmental authority. In the case when the adoptive parent is recorded as the child's father, corresponding record of the father must be annulled by a court respectively to Par. 1 of Part. 1, Art. 24 of the Law of Ukraine «On State Registration of Civil Status».

Thus, if one parent is not deprived of parental rights and recorded as the father of the child and the adoptive parent must be recorded as the child's father in accordance with the court decision, there is a conflict and a judgment cannot be enforced by state civil registration.

**Conclusions.** To summarize, the following conclusion can be shown.

It is required the legislating of such a ground for termination of maintenance obligations in respect of the child as its adoption if the court decides to record adopter as a father's, mother's child. We consider it is necessary to supplement the Family Code of Ukraine with separate article that would identify all grounds for termination of maintenance obligations.

Given the legislative strengthening of the right of the adopter to be recorded as a mother, father of a child, it is required to coordinate the regulation of the state registration of such acts of civil status as state registration of birth and parentage of the child.

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## АЛІМЕНТИ НА УТРИМАННЯ ДИТИНИ ЯК ПИТАННЯ ЗАКОНОДАВСТВА І ПРАКТИКИ

### Резюме

Стаття присвячена питанням удосконалення законодавчого регулювання утримання шляхом аліментування батьками дітей, які були усиновлені іншими особами.

За чинним законодавством позбавлення батьківських прав не звільняє батьків від обов'язку щодо утримання дитини, а при усиновленні одним із подружжя дитини іншого з подружжя вирішення питання про подальше утримання одним із батьків дитини залежить від бажання матері, якщо усиновлювачем є чоловік, або від бажання батька, якщо усиновлювачем є жінка. Це зумовлює значну кількість судових спорів про звільнення від сплати аліментів, про припинення стягнення аліментів та звільнення від сплати заборгованості за аліментами у зв'язку з усиновленням дитини, на утримання якої вони стягувалися.

На підставі аналізу судової практики, вітчизняного та зарубіжного законодавства в частині аліментування батьками усиновлених дітей, зроблено висновки про необхідність законодавчого врахування можливості позбавлення батьківських прав одного з батьків і усиновлювача і стягнення аліментів на утримання дитини з обох.

**Ключові слова:** аліменти, утримання дитини, усиновлення, удочеріння, позбавлення батьківських прав.

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## **АЛИМЕНТЫ НА СОДЕРЖАНИЕ РЕБЕНКА КАК ВОПРОС ЗАКОНОДАТЕЛЬСТВА И ПРАКТИКИ**

### **Резюме**

Статья посвящена вопросам совершенствования законодательного регулирования содержания путем алиментирования родителями детей, усыновленных другими лицами.

По действующему законодательству лишение родительских прав не освобождает родителей от обязанности относительно содержания ребенка, а при усыновлении одним из супругов ребенка другого из супругов решение вопроса о дальнейшем содержании одним из родителей ребенка зависит от пожелания матери, если усыновителем является муж, или от пожелания отца, если усыновителем является жена. Это влечет значительное количество судебных споров об освобождении от выплаты алиментов, о прекращении взыскания алиментов и об освобождении от выплаты задолженности по алиментам в связи с усыновлением ребенка, на содержание которого они взыскивались.

На основании анализа судебной практики, отечественного и зарубежного законодательства в части алиментирования родителями усыновленных детей, сделан вывод о необходимости законодательного учета возможности лишения родительских прав одного из родителей и усыновителя и взыскания алиментов на содержание ребенка с обоих.

**Ключевые слова:** алименты, содержание ребенка, усыновление, удочерение, лишение родительских прав.