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## **TYPES AND LEGAL NATURE OF SUPPORT RELATIONS**

The article focuses on the classification of support relations and the definition of their legal nature. The author proves that such a criteria of support relations classification as subjects' structure is very important for creation of the system of support relations. The thesis that public and private principles are combined in the family law mechanism of paying support, the aim of which is to ensure the effective application of legislation and to improve the quality of family legal relations, has been stated in the article.

**Keywords:** alimony, alimentary legal relations, child support, spousal support.

**Problem statement.** It's rather difficult to define the legal nature of a support relation. The combination of private and public, dispositive and imperative methods is inherent to it. Perhaps that's why there are discussions among scientists about the question of implementation and protection of rights and interests of subjects of support relation.

**Analysis of recent research and publications.** The questions of support relations are partially subject of publications of scientists such as: I. Pergament, A. G. Drizhchan, I. V. Zhilinkova, L. V. Afanasyeva, L. V. Sapeyko, G. M. Akhmach. At the same time, many questions which are features of support legal relations were not studied by scientists.

**Paper purpose.** The aim of this article is to give a definition of types of support relations under the family legislation and to study legal nature of such relations.

**Paper main body.** Norms of the Family Code of Ukraine according to their legal and technical structure are similar to the norms contained in the Code on Marriage and Family of USSR, because there is not a special section in the Family Code of Ukraine, which would regulate all types of support obligations and solve general questions of support of any kind.

The duty of family members to maintain each other is regulated in the general system of rights and duties between the family members. The provisions about duty of parents and children to maintain each other are placed after the norms which govern the personal non-propriety relations between parents and children and their relations concerning property. The norms about personal non-propriety and propriety rights and duties of married couple are placed on the same logic.

The duty of family members to maintain each other is regulated by the Family Code of Ukraine. Thus, it is supposed that such duty can be carried out both voluntarily and forcibly. The general rule in family law is that there is a presumption of voluntary execution of the duty of family members to maintain each other. Under Para. 1 of Art. 75 of the Family Code of Ukraine, the wife and the husband should materially support each other, however, under Para.1 of Art. 99 of the Family Code of Ukraine, the parties may agree on providing support to one of spouses irrespectively of his/her ability to work and need in material support, on conditions set forth in the marriage contract. According to Para. 1 of Art. 180 of the Family Code of Ukraine, the parents shall have the duty to maintain the child till he/she comes of age. Appropriate execution of these legal standards supports normal existence of the family, and eventually of the society.

But, «the support obligation can't arise in itself. Its emergence is possible only as far as there is a duty to provide the support and this duty isn't carried out, either carried out incorrectly, either all or some of participants of the corresponding relations wished emergence of alimentary obligation» [1, p. 23].

L.V. Afanasyeva says that in scientific literature there is no unity in used of the terms "support", "alimony", "duty to support", "alimentary obligation", which are using in legislation and literature [2, p. 37-39].

It is interesting to note that in some textbooks of family law the support legal relations between the former spouses mainly are called support, and the legal relations between parents and children – support and alimentary obligations.

From our point of view, "support" is a broader concept because it includes the joint duty to care about maintaining the family financially, to provide the family

members with means for life which is carried out voluntary or forcibly. This duty also has to appear in case of the emergence of right to support of one of the participants of family legal relations which isn't capable to support itself because of disorders or insufficiency of personal abilities. And "alimentary obligations" ("alimony") correspond with the term "support" as the part with the whole because they are reflect a compulsory or forced fulfilment of the duty to maintain. A. M. Nechayeva adheres to the similar position [3, p. 251].

Scientists distinguish the support relations depending on different standards. So, Y. V. Novokhatskaya divides the parents and children relations depending on the obliged person into two main groups, each of which has the subgroups. Firstly, there are parents support obligations to maintain the child which include: duty of parents to maintain the child till he/she comes of age (Art. 180 of the Family Code of Ukraine); parents' duty to maintain an adult daughter, son that continue studying and in this connection need material support (Art. 199 of the Family Code of Ukraine); parents' duty to maintain their adult daughter, son that is unable to work and in need of material support (Art. 198 of the Family Code of Ukraine); parents' duty to pay additional expenses on the child, appeared in connection with special circumstances (Art. 185 of the Family Code of Ukraine). Secondly, there is a support duty of adult children to maintain their parents which consisting in the duty of adult children to maintain their parents that are unable to work and in need of material support (Art. 202 of the Family Code of Ukraine); duty of adult children to take part in additional expenses on the parents which are called by a serious illness or disability, feebleness (Articles 203, 206 of the Family Code of Ukraine) [4, p. 167].

From our point of view, support relations can be differentiated using several criteria.

Firstly, depending on subjects' structure of support legal relations arising between: spouses; former spouses; parents and minor children; parents and adult children; the person, who was an adopter and when adoption was nullified or

cancelled, and the child; other family members and relatives and children or disabled adult persons needing financial support.

Secondly, depending on manifestation of will: voluntary; compulsory.

Thirdly, on way of realization: contractual; authorized by the state.

Fourthly, on way of collection: in a share of earnings (income); in a fixed cash sum.

It is possible to allocate also other criteria, but these, in our opinion, are the most important. Thus, the corresponding legal regulation and procedure of emergence, action and termination are inherent in each of types, but the system forming type of support legal relations, in our opinion, can be only the first – on subjects' structure. Others have an auxiliary value.

To support legal relations as to any family legal relations the close connection with norms of morals is inherent, but in this case, in our opinion, there is a coincidence of moral and legal requirements. As for the last, there is also a combination of private and public beginnings.

The existence of private-law beginnings in the family support relations is being shown in opportunity to apply to it the general civil provisions of law of obligations. The analysis of provisions of Chapter 15 of the Family Code of Ukraine gives the chance to subsume the support legal relations under the relations of obligations. Article 181 of the Family Code of Ukraine directly calls the duty to maintain the child the support obligations, and Article 8 of the Family Code of Ukraine directly provides the possibility of application to regulation of the family relations of the Civil Code of Ukraine. As far as the meaning of "support obligation" is not defined in the Family Code of Ukraine, it's logic to apply the standards of the civil legislation for the definition of support obligation and the bases of its emergence, namely – Art. 509 and 11 of the Civil Code of Ukraine.

In the mechanism of legal regulation of support relations, the penalty (pecuniary penalty) is the most successful sanction for inadequate execution or non-execution of the duty to maintain. Under Art. 196 of the Family Code of Ukraine, if the debt arrears because of the person that has the duty to pay support

under court's decision, the support payee is entitled for the penalty (pecuniary penalty) in the amount of one per cent of the sum of unpaid support for each day of delay. However, this traditional civil way of protection for untimely fulfilment of the obligation not always is an effective one. In addition, failure to comply with this duty causes the problem of real recovery of money, besides there is a threat to reduction of the size of penalty by court in view of the financial and family status of the support payer.

The state, interested in protection of the citizens that need it, regulates in details the support sphere of the social relations that's why they are public. Although, the changes in legal regulation of family legal relations which gave the chance to sign support contracts, it is difficult to subsume such legal relations under contractual in civil sense because in the Family Code of Ukraine the circle of support legal relations participants is imperatively defined, the freedom of contract of such participants, that is inherent to civil legal relations participants, is limited or excluded, and the freedom equality doesn't mention.

The public interest in support legal relations is also evidenced by the fact, that the state authorizes the bodies to rise in defence of those who need it. For example, the state guaranties the control of permitted use of alimony by the Custody and Care Authority checks (Art. 186 of the Family Code of Ukraine), and the Custody and Care Authority as public authority can give permission for the conclusion of agreement on termination of the right to support for the child in connection with the transfer of ownership for real estate (house, apartment, land lot, etc.). (Art. 190 of the Family Code of Ukraine).

It is obvious that administrative and criminal legal sanctions, urged to provide the right of child to support and education, are directed to protection of public interest. In this case, public interest is expressed in reduction of number of street children, prevention of crime, etc. However, not always application of such sanctions guarantees achievement of the material purpose – provide the child with all needed for life – house, clothes, food, etc. So, the community service and the imprisonment – sanctions provided by Art. 164 of the Criminal Code of Ukraine

for malicious evasion from payment of the funds established by judgment for the support of children (alimony), and also malicious evasion of parents from the support of minors or disabled children – don't promote the fulfilment of duty for the child support, but in general exclude possibility of compulsory execution of support duty.

The responsibility measures provided by Art. 184 the Code of Ukraine on Administrative Offences for evasion of parents or persons replacing them, from the fulfilment of duty to provide minor children with necessary living conditions, care and education in the form of notice or penalty are inefficient in ensuring proper support of children.

**Conclusions.** Therefore, it is necessary to draw the following conclusions.

Although, there are a variety of types of support legal relations, the subjects' structure of support legal relations plays the most important part for definition of legal regulation of these relations and for establishment of concrete subjective rights and duties of their participants.

The combination of public and private beginnings in the family legal support mechanism testifies a great importance of the process in the view of realization of one of the basic principles of family law, state protection of the family, and the mutual penetration of public and private beginnings, on condition of normal (effective) law application, influences on the quality of family legal relations.

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