

BRIEF CONSIDERATIONS ON THE ESTABLISHMENT OF THE AMOUNT FOR THE MAINTENANCE DUE TO CHILDREN

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Abstract

Within the family relations, the legal obligation to maintenance between parents and children is considered as the most important. It is seen as a specific debt, given its finality, namely to insure the material conditions necessary for the fulfillment of the duties related to children's growth, education and training. Starting from these aspects, the current article aims to analyze the legal provisions and practice in the area of the establishment of the amount for the maintenance.

Key words: *family relations; parents; children; the obligation to maintenance; the amount of the maintenance; jurisprudence.*

INTRODUCTION

Throughout history, the family in its ensemble, finds its roots and justifies its reason to be present in the spiritual connections shaped between its members, connections arguing the mutual material and moral support.

Starting from the fact that the existence and evolution of family relations is part of the social life, the legislator has found appropriate to expressly state the personal relations, such as the patrimonial ones between the family members, thus proving the care of the state for the protection of these social relations.

By the express statement of the legal obligation for maintenance between parents and children in the historical succession of the legal provisions (Civil Code of 1864 [1], Family Code [2] and the current Civil Code [3]) it is underlined the importance of the family and the general interest of the society in order to protect the family, and mainly the children.

Currently, the legal obligation for maintenance between parents and children [4] is stated by the Civil Code both in the chapter dedicated to the parental authority, specifically in Art 499 Para 1 stating that "both the mother and father are compelled to provide maintenance for their minor child, by insuring the necessary elements for life, as well as

for education and professional training”, but also by Art 500, Art 510, Art 516 Para 1, Art 525 and Art 529 of the same Code.

SPECIFIC ELEMENTS FOR THE ESTABLISHMENT OF THE AMOUNT FOR THE MAINTENANCE DUE TO CHILDREN

Reiterating Art 94 Para 1 of the Family Code, Art 529 Para 1 of the Civil Code states the general criteria based on which it is determined the amount for the maintenance due to children, namely: the need of the person requesting it and the means of the debtor to support it [5].

For the maintenance due by the parent, its amount shall be determined based on the criteria stated by Art 529 Para 2 of the Civil Code, namely up to a quarter of his monthly net income for one child, a third for two children and a half for three or more children, regardless if they are resulted from marriage, from outside the marriage or adopted or that only some of them have requested alimony.

The guardianship court shall be able to establish an amount for the maintenance, even under this threshold stated by the law, under the conditions in which the creditor’s needs are below and in the same time, it shall take into consideration all the other obligations of the debtor.

If the debtor of the obligation for maintenance has other goods and incomes, beside the continuous ones, the pension shall be calculated also considering these means, thus becoming possible a pension above the thresholds stated by the legislator [6].

The amount of the maintenance due to children, together with the maintenance due to other persons, according to Art 529 Para 3 of the Civil Code, shall not overcome half of the monthly net income of the compelled person.

Unlike the former regulation which referred to the “earnings from work” of the debtor, it can be noticed [7] the fact that the actual law uses the wording “monthly net income”, trying to eliminate the contradictory interpretations given by the jurisprudence for this concept until the entrance into force of the Civil Code.

Thus, in the establishment of the amount for maintenance shall be taken into considerations all cases from which the debtor has permanent incomes (earnings from

work, copyrights, disposal of the use of goods, profit participation, commercial activities, fees etc.), and not random incomes, transfer indemnities, mission allowances, redundancy indemnities [8] or the food norm.

Regarding the latter one, the recent jurisprudence [9] has stated that the intent of the legislator regarding the purpose of the food norm was to insure for certain categories of employees, due to their activity, a certain amount of calories by two means: the insurance of food or an amount of money for the purchase of food. If the equivalent of the food norm would be added to the monthly incomes used for the calculation of the alimony, we would be altering the legislator's purpose by which this indemnity with special destination has been established for.

Also, it has been argued that [10] the food for protection shall be mandatory and free provided by the employer for the employees who work under conditions demanding it. As such, the value-equivalent of this allowance may be considered as a special purpose allowance, which is exempt from any type of pursuit, according to Art 728 Para 7 of the new Civil Code. The purpose of this allowance is for the employee to enjoy a better health condition in order to provide the economic activity, from which the obligation to maintenance due to children be fulfilled.

It has also been shown [11] that no increase in the wages of employees working under special working conditions or the payment of overtime will also be taken into account, since the person who benefits from them takes a risk and an additional effort and they do not give certainty and continuity.

The parent may be compelled to pay the alimony even if he is not employed, but he is fit for work. Therefore, the judicial practice [12] has referred that for as long as the plaintiff is fit for work, he shall not be exempted from the obligation to contribute in the expenses for the maintenance and education of his minor child, found in need, according to the presumption stated by Art 525 Para 1 of the Civil Code. In such case, the amount of the maintenance shall be established by relation to the minimum income level on the national economy, the only objective and general criterion, representing a minimum standard in the area of work incomes which can be earned by the debtor of the obligation for maintenance who is not employed, but has the capacity to work [13].

But, for the case in which the creditor shall prove the incomes registered by the debtor to a different level than the one of the minimum wage, even outside the existence of an individual employment contract [14], and the debtor does not prove otherwise, then the alimony shall be established considering the amount of the incomes proved by the creditor, and not at the level of the minimum wage.

Though, if the parent, even if fit for work, cannot pay the alimony for justified reasons, for instance is registered as student to daytime education, the court shall not be able to compel him to payment [15], for which case the alimony shall be requested from the persons owing it in subsidiary, according to Art 519 of the Civil Code.

Finally, Art 530 Para 3 of the Civil Code states that the alimony may be established as a fixed amount or in a percentage share of the monthly income of the person owing it.

Regarding these provisions, the recent doctrine has justified that the “establishment of the alimony as a fixed amount has great practical advantages and is closer to the legal spirit for the following arguments:

- The difficulty in applying the judicial decision whereby the percentage of the alimony has been established, for the case in which the debtor of the maintenance also benefits from sums not included in the calculation of the net income from which the alimony is being established, namely those non-continual incomes (e.g.: travel allowance);
- There could not be established a percentage for the case in which the debtor is unemployed, has periodical working places or is employed by multiple economic entities;
- The establishment of the alimony as percentage would transfer to the enforcement bodies an attribute of the court, namely to determine the level of income of the debtor of the obligation;
- For the case in which the alimony is being established as fixed sum, it shall be quarterly indexed, according to the inflation rate [Art 531 Para 2 of the Civil Code] [16].

CONCLUSIONS

By the means in which the legislator has drafted in the Civil Code the legal obligation for maintenance between parents and their children, it has aimed to provide a

guarantee of the fair application of the legal provisions and a means to remove the elements which could influence the separation of the family. Though we appreciate the novelties inserted by the current regulation in the area of the establishment of the alimony due to children, we consider that there is room for new additions or modifications.

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