

DUTY OF CHILD SUPPORT IN THE LAW OF RUSSIA AND THE USA

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Abstract

The disintegration of families is quite common in the modern world. The family as a social institution is going through difficult times. The United Nations indicates that the United States ranks third in the world in the number of divorces: 4.34 cases per 1,000 people, about 40 percent of first marriages and 60 percent of remarriages break up [H. F. Lewis. 9/10/2019]. Statistics in Russia is no better. In 2017, according to the Federal State Statistics Service (FSSS), there were 4.2 divorces per 1,000 people, and the first half of 2019 it was 4.0. Meantime, it should be noted that the number of marriages in Russia is falling. According to the FSSS, the number of marriages decreased from 1,049,735 in 2017 to 893,039 in 2018. [Data of the Federal State Statistics Service]. Indeed, the complex economic, political and social processes taking place in the world do not contribute to the strengthening of marriage. Modern realities require the creation of a comprehensive system to protect the interests of the most vulnerable from the negative consequences of the breakdown of a family - children, including the creation of a detailed mechanism of child support obligations. As the United States Children's Support Council (CSEC) pointed out, a growing number of parents who deliberately avoid fulfilling their responsibilities to their children has become a national problem. Today, more than 106 billion dollars for child benefits remain disbursed. [GAO Report; 2019]

The study analyzes the laws of the United States and the Russian Federation to determine the critical points of protecting the interests of minor children during the divorce of their parents. This study is of interest not only from the theoretical point of view but also practical. Numerous marriages between the citizens of Russia and the USA and, as a consequence, many divorces require a specific synchronization of the legal and social systems for the protection of minor children.

The purpose of this study is a comparative study of theoretical and practical problems, gaps in legal regulation, doctrinal definition, and practical implementation of child duty of supports in Russia and the United States.

In conducting the study, the authors used a set of philosophical, general scientific, specific scientific methods of understanding of theoretical and empirical material. The implication of the dialectical materialist method allows to analyze the norms of the family, civil, and procedural law in their interconnection, interdependence, and contradiction. Using the method of comparative legal research, the authors studied the system of measures to protect the interests of children during a divorce, taking into account the need to preserve the level of well-being of children in the new conditions of interaction between parents in their upbringing and maintenance, the dynamics of changing approaches to determining the amount of child support obligations. The authors also applied general scientific (analysis, synthesis, deduction, induction, systemic) and specific scientific (historical, comparative-legal, formal-legal, technically legal, social modeling of research) methods of cognition which allowed to ensure a comprehensive study of existing methods in maintaining the well-being of minors.

The study analyzes the laws of the USA and Russia to determine the critical points of protecting the interests of minor children during the divorce of their parents. This study is of interest both from the theoretical and

practical points of view. Numerous marriages between the citizens of Russia and the USA and, later many divorces require a specific synchronization of the legal and social systems for the protection of minor children.

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Keywords: divorce, maintenance of children, child support obligations, child support agreement, parents, divorce.

1. INTRODUCTION

The protection of children, the creation of a friendly environment for them, ensuring effective intellectual, moral, physical development - should be a priority for parents. It is necessary to recognize that the responsibility of the financial support of children in the disintegration of the family is mostly executed only by one parent with whom the children live. The impersonal statistics of various countries lead to the conclusion that evasion from the obligation to provide financial support to children is becoming widespread throughout the world. Strengthening measures of state coercion did not bring the expected result. Thus, according to the Federal Bailiff's Service, in 2017, 39.000 people were brought to administrative responsibility for failure to support the children under Art. 5.35.1 of the Code of Administrative Offenses of the Russian Federation, 19.3 thousand criminal cases were initiated under Art. 157 of the Criminal Code of the Russian Federation. [Report of the Federal Bailiff's Service]. To compare, in 2018, the Federal Bailiff's Service has initiated 116,500 administrative cases [Final Report on the results of the activities of the FBS of Russia in 2018]. The situation with the fulfillment of the obligation to support the children in the United States is not easy either. According to statistics, less than 50% of children receive maintenance support in full. [Debrina Washington; 2018]. At the same time, the US legislation, both state and federal, establish sufficiently harsh penalties for "deadbeat dads." Under the US Constitution, the regulation of family relations is within the jurisdiction of the states. However, given that the protection of the family is a state priority, the regulation of these issues is provided to a certain extent by federal legislation. It is at this level that basic standards are established to ensure the protection of children and families, which are subsequently reflected in state legislation. A systematic violation by a parent of his/her obligation to support a child, any non-support, or the use of various methods to reduce them is a federal crime. [18 U.S.C. § 228 Federal law on child support enforcement].

For many parents, maintenance payments are often the only source of income after a divorce. While ensuring proper education, moral and physical health of the child, these payments do not allow the custodial parent to pay more attention to his/her career, education, all the spare time is spent taking care of the minor and, as a result, such a parent's earnings are insignificant. In these cases, the failure of the second parent to maintain the child is an act that essentially endangers the child's life and health. It is out of the question that one of the main tasks of the family law regulation is the construction of family relationships based on mutual assistance and responsibility of all its members to the family (Clause 1, Art. 2, Family Code of the Russian Federation). A special place in the solution of this task is given to the duty of supports, first of all - the obligations of parents for the maintenance of minor children, since not only the physical, mental, intellectual, moral development of children, but also the spiritual potential of Russian society and the economic development of the state depend on their proper implementation. [Yu. Artemyeva, N. Ivanovskaya, V. Koncheva, E. Sitkareva; 2018]

Proclaiming that the family, motherhood, and childhood are under state protection, the Constitution of Russia established that taking care of children is an equal right and duty of their parents [Article 18 of the Constitution of the Russian Federation]. The Family Code repeatedly points out: parents are not only financially responsible for maintaining their children, but also bare responsibilities for upbringing, education, and development. (Art. 63 of the FC of the RF). As the Family Code emphasizes, ensuring the interests of children is the main concern of their parents (Art. 65 of the FC of the RF). The United Nations documents have repeatedly stressed the need to take into account, above all, the level of the child's well-being when

resolving issues of keeping minors. At the meantime, well-being is understood not only as a level of financial well-being but also as an issue of intellectual, moral development, care, and communication. [Rule 5.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice]. However, determining the well-being of children as a priority in determining the child support obligations, one must take into account the totality of many factors that are of no small importance for creating a harmonious social environment. It is the need to maintain a balance of interests and financial capabilities of the former spouses, profession, health status, employment, efforts made by the parent to provide for their children, and some other factors. The Family Code of the Russian Federation, adopted in the era of economic and political transformations in 1995, unfortunately, does not take into account these factors and does not reflect the realities of modern society. The mechanism of duty of supports enshrined in the Code, in fact, is reduced only to transferring the funds, required at the statutory interest rates without taking into account the responsibilities of parents to ensure the moral and physical development of the child and care for him/her. Meanwhile, these responsibilities are important for the harmonious upbringing of the child. Even the amendment to the Family law of Russia on the right of parents to agree on child maintenance does not allow parents to voluntarily regulate the procedure for performing other parental duties other than paying child maintenance. The one-sided perception by the Family law of Russia of the allotment duties of parents after a divorce only through the prism of paying the child support does not meet the interests of the child: after the divorce, the parent with whom the child does not live is excluded from the full life of the child. (Under Art. 81 of the FC of the RF, in the absence of an agreement, child support is collected by the court from their parents every month in the amount of one quarter for one child, one thirds for two children, and for three or more children half of the earnings and (or) other income of parents.) The child needs the care of his/her both parents during the marriage and after the divorce. The lack of a legal mechanism for regulating incorporeal maintenance payment obligations is a significant obstacle to the well-being and harmonious development of minors after the breakup of the family. In this regard, the approach of the American legislator who takes into account all the circumstances of the participation of a non-custodial parent in the child's life in determining the extent of the child support, encouraging participation in children's life through flexible regulation of the amount of maintenance payment, and reducing the amount of payment for parents, paying more attention to the upbringing, education and care of the child(ren).

It is necessary to recognize that the current system of child support of minors in Russia needs to be reformed, new tools and mechanisms should be implemented to help maximize the potential of each child, create conditions for a decent life, and self-fulfillment in the future. The experience of the United States, which has accumulated significant, both positive and negative, experience in the legal regulation of duty of supports and social support for children in a market economy, is useful for finding effective methods.

2. METHODOLOGY

The study was prepared and conducted to systematize and study the problem, characteristic not only of the Russian Federation but also of foreign countries, and the search for effective methods to protect the interests of minor children during the disintegration of the family. In the current conditions of development of the migration mobility of the population, increasing the number of inter-ethnic marriages, it is necessary to develop academic knowledge that allows studying legal problems considering the positive and negative international experience. The erasing of borders between countries in the academic environment allows not only to learn foreign legislation, but also to improve the domestic legislation taking in light of national, historical and economic features, as indicated by M. Dudin, N. Ivashchenko, E. Frolova, A. Abashidze (2017), M. Dudin, E. Frolova, O. Protopopova, Yu. Artemieva, A. Abashidze (2016), Yu. Artemyeva, N. Ivanovskaya, N. Voykova, E. Frolova (2016), M. Dudin, E. Frolova, S. Kovalev, E. Ermakova, A. Kirsanov (2017).

The study used general information on existing approaches to the use of private legal methods in case of violation of antitrust laws abroad of such authors as R. Williams (1987), Debrina Washington (2018), Stoner Katherine E (2015), Zemmelman M.L. (2014), Karly Schlinkert (2014), Wellbank A.V., Ball J (2017), Brough M. (2018) and others.

The study of the works of Russian legal scholars Yu. Bespalova (2019), O. Ilina (2019), M. Danilyan (2015), E. Usacheva (2017), D. Savlev (2017) P. Yakushev (2017) and others allowed to provide a comprehensive analysis of existing approaches in Russia to solve the problem of determining the mechanism for ensuring the maintenance of minor children in case of the family collapse.

Research of the jurisprudence of Russia and the United States allows identifying the real problems of child support and the main trends in judicial interpretation of legal norms.

3. RESULTS

3.1 The concept of Duty of Supports

The Family Code (FC) of the Russian Federation establishes the obligation of parents to maintain their minor children. In dissolution of the marriage, one of the parents is obliged to pay child support for the maintenance of a minor child to a parent with whom the child resides. The well-known concept of maintenance payment is associated with the concept of *alimentum* used in ancient Roman law, which meant maintenance [D. Saveliev; 2017]. This term was applied to the obligation of the state to provide food for orphans and children from low-income families. In Russian reality, despite the difference in legal approaches, in fact, it all comes down to providing maintenance. So, S. Grishaev defines child support as a special kind of public obligations with a complicated specific subject composition, based on imperative norms of Family law [Grishaev; 2011]. O. Kosova emphasizes that the institute of duty of supports is the basis of support for family members and the manifestation of "care" as a specific manifestation of family relations [Kosova; 2005; 39]. A. Nechaev and Yu. Bespalov point out that the cost aspect of child support is not the primary manifestation of the content of the duty of supports, the main fact of providing maintenance as a "care" for the child development. [A. Nechaev; 2007; 49] Not all the scholars support this point of view; for example, M. Stolbov indicates that child support is primarily money that is allocated for the maintenance of the child. Consequently, the quantitative factor of the funds allocated reflects the degree of participation in the life and development of the child. [M. Stolbov; 2002; 3] It seems that when approaching the definition of duty of supports, a more comprehensive approach is needed. For its development, it is necessary to understand what is the duty of supports.

The following properties are typical for this type of obligations:

- Personal nature of the obligation, with no succession;
- Purposeful nature of the obligation, aimed at exclusively to the support and maintenance of minor children;
- Gratuitousness of the obligation, characterizing the inadmissibility of consideration. Although the opportunity to receive maintenance payments from an adult child in old age to a certain extent can be considered as a form of consideration; (Clause 1 of Art. 87 of the FC of the RF indicates that parents with disabilities who need help are entitled to require maintenance from their non-disabled adult children. Payment of maintenance by the parent without any other participation in his/her life still means the obligation of the adult child to keep the disabled parent. [Resolution of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017 No. 56 "On the application by the courts of legislation in consideration of cases involving the recovery of alimony." para.39])
- The continuing nature of the obligation, usually until the child reaches the age of majority;
- The impossibility of waiving the right to child support: this agreement will be void;
- Only the property character, while the child support may not necessarily be installed in the form of money. Submission of child support in the form of property or property rights is allowed. Additional funds may be collected as a recovery above maintenance payments, for reimbursement of additional expenses necessary for the maintenance of the child in exceptional cases (Article 86 of the FC of the RF);
- Legally defined certainty of the subject composition of the participants does not allow broad interpretation;

A distinctive feature of duty of supports concerning minor children is its pre-establishment in the law and belonging exclusively to family relations. Under Art. 47 of the FC of Russia parental rights and obligations are based on the origin of children, confirmed as prescribed by the law. Therefore, even despite the presence of definite kinship, it is impossible to refer to the duty of supports an agreement given by the uncle, or a cousin or, what is worse, a man to a child with unidentified paternity, and so on. Is it possible to state that the maintenance payment is a form of manifestation of the "care" of a parent? Caring is a thought or activity aimed at the well-being of a child, and therefore, it is more than just paying child support. Under Art. 63 of the FC of the RF, parents are obliged to take care of the health, physical, mental, spiritual, and moral development of their children. The maintenance payment, in the amounts formally defined by law, is the fulfillment of a duty, supported by the possibility of the state to apply coercive measures to the offender. Is the amount of maintenance payment secondary to the duty of supports? No, the parent is obliged to ensure the welfare of the child, including material, child support payments are the means of existence and development of the child. Insufficient maintenance payment may mean the lack of proper medical care, inadequate living conditions, and development of the child. Therefore, the quantitative aspect of child support

is a manifestation of improper fulfillment of the obligation to maintain a minor. Of course, many factors need to be taken into account even with the little payment of child support. For example, the degree of participation of a parent in a child's life, the state of a child's health, a parent' health, and some others. However, with all the diversity of living conditions, the interests of minor children are priorities, and capable adult citizens, becoming parents, are obliged to measure their actions firstly by the interests of their children.

In the United States, the term "alimentum" (alimony) is mainly used concerning spouses or parents; the term "child support" is used with children. Uniform Interstate Family Support Act Part 1 Art. 5-B General Provisions defines the "Duty of support" as an obligation imposed by law to support a child, including monetary support, medical care, education, development. As stated in North Carolina General Statutes Chapter 50, Divorce and Alimony, funds for the maintenance of a minor child must be in an amount that would satisfy the reasonable needs of the child in health care, education and maintenance, provide the usual level of life of the child and his parents, taking into account the income of each parent and their participation in the care of the child. Such an approach seems to be more justified, since it obliges a parent not to be limited to a formal transfer of the amount established by the law, but to fully participate in all aspects of a child's life and bear the corresponding expenses, just like the other parent with whom the child lives, taking into account the preservation of the level of well-being necessary for him.

The Family Code of the Russian Federation somewhat contradictory uses the terms of maintenance and alimony. Thus, Art. 80 of the FC of the RF states that parents have the right to independently determine the order and form of the maintenance of children, but if no agreement is reached, the court will do this. (Art. 80 of the FC of the RF). However, the Code further states that if the parents do not provide maintenance to the children, then funds - alimony for the maintenance of the children will be recovered in a court order (part 2 of Art. 80 of the FC of the RF). Hence, it turns out that the alimony is not the maintenance payments, but funds for maintenance exacted in court. Therefore, as follows from Art. 80 of the FC of the RF, voluntarily determined funds for children are maintenance payments. D. Saveliev; 2017 and B. Gongalo, 2016 adhere to this point. According to the authors, this position is refuted in a thorough study of the norms of the Family Code. Chapter 16 of the Family Code of the Russian Federation defines the order and form of the voluntary maintenance of minors. In it, the legislator establishes a particular form of family law contract, an agreement on the payment of alimony. (Chapter 16 of the FC of the RF).

Article 60 of the FC of the RF states that alimony is a source of funds placed at the disposal of parents or persons for the maintenance, upbringing, and education of a child. It turns out that alimony, together with other types of sources of income, refer to the maintenance of the child but is not identical to the maintenance, and the maintenance of the child does not include the upbringing and education of the child. Such inconsistent use of terminology in the Family Code leads to the factual reduction of one of the parents' responsibilities after the dissolution of the marriage. After all, if it establishes the duty of a parent after the dissolution of a marriage only to pay a certain sum formally, without taking into account the needs of children for physical, moral and intellectual development, then the fundamental postulates of family-parent relations and the equal responsible participation of parents in the upbringing of children are violated. The approach enshrined in the legislation permanently exempts one of the parents from fulfilling his/her parental duties after a divorce, leaving him/her only the obligation to pay a part of the income without taking into account the real needs of the child and the obligation to develop and care for the child.

Thus, it can be concluded that the concept of "maintenance" is a broader concept that includes not only funds for child support or other types of property, but any property that provides the harmonious development and life of a child, childcare activities for his upbringing, the manifestation of "care." It may be an apartment for living and recreation, equipment for the development or hobby of the child, property rights, washing his clothes, visiting a doctor, school, walking, and other things. Duty of supports is a narrower obligation and is exclusively property in nature. They arise based on the imperative norms of the Family law; are characterized by a complex subject composition; are an element of publicity and are clearly defined by the state. Obligations for the maintenance are carried out exclusively in a deliberate manner and volume, determined independently.

3.2. Subjects of Duty of Support

Responsibility for the maintenance of minor children is assigned to parents. (Art. 80 of the FC of the RF). This obligation is unconditional and is not related to any circumstances, such as, for example, the child's place of residence, his citizenship, need, and financial well-being of the parent. The basis for the duty of support is the fact of lineal consanguinity. The rights and duties of parents and children arise from the origin of children, certified under the procedure established by law (Art. 47 of the FC of the RF). Para. 29 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 16.05.2017 No. 16 "On the

application by the courts of the legislation in the consideration of cases, related to the identification of the origin of children" indicates that the relationship as a legal fact, can only be established by state registration of birth, and confirmed by the fixation of the mother and/or father of the child in the acts of civil status, and issued the birth certificate. The fact of kinship can be refuted in a court. However, in exceptional cases in the interests of the child, given the presence of established moral and emotional ties, long-term active participation in education and upbringing, the lack of lineal consanguinity will not prevent the court from recognizing the fact of kinship between the child and the parent. Then, despite the absence of a biological link, parental duties and rights are preserved, while maintaining legal status and documentary evidence of paternity [Yu. Artemyeva; 2014; 72] For example, the Kirovsky District Court of Volgograd (case No. 2-2962 / 2016) examined the case on the claim of a Mr. X, regarding the recognition of the agreement on the maintenance payment as void.

In his lawsuit, Mr. X. indicated that the child's mother had misled him regarding paternity. The child was born in marriage and before its dissolution, considering the boy to be his son, he agreed on the duty of support, in which he assumed the obligation to voluntarily pay funds for the maintenance of the child, his leave and treatment. Later, after the genetic examination, it was established that he is not the father of the child and, according to the court decision, changes were made to the birth record. The court, having considered all the circumstances of the case, declared the duty of support to be void, indicating that they cannot be imposed on a person who has no kinship with the child.

Duty of supports may be imposed not only on parents. Articles 93 and 94 of the Family Code of the Russian Federation state that the duty may be imposed by the court on relatives of the second line: grandparents, brothers/sisters. The Supreme Court of the Russian Federation stresses that the maintenance duties by grandparents to support their grandchildren are similar to the maintenance duties of able-bodied adult brothers and sisters for maintaining their minor and disabled adults and siblings and are collected when the need is established, as well as their inability to receive support from their parents, and lack of financing from relatives. [Review of judicial practice in cases involving the recovery of maintenance payments for minor children, as well as adult disabled children, 2015]. These individuals may be forced to perform their obligations as additional persons if it is impossible for the immediate parents to fulfill their obligations under the court decision. It is explained by the abstract nature of the right of a minor to receive child support from the subsidiary alimony payers, which can be transformed into a specific duty only based on a judicial act. [Yu. Artemyeva, N. Ivanovskaya, V. Koncheva, E. Sitkareva; 2015; 860] The child support agreement entered into without a judicial confirmation is a civil law deal and will not have the full force of the agreement legalized by the Family Code, i.e. its compulsory fulfilment will be possible only after receipt of the judicatory civil order (*fieri facias*).

Analyzing the imposition of the duty of supports on persons who are not parents, of course, the question arises on the reason(s) of these additional obligations imposed on them. Parents of a capable adult citizen cannot be held responsible for someone else's decision about the birth of a child. If the transfer of duty of supports to grandparents can at least somehow be explained by the need to be responsible for the inadequate upbringing of their child as a result of which he grew up unable to answer for his actions and adequately take care of his children, then the legislators' imposition of the duty of supports on brothers and sisters has no logical explanation. Family relationships are individualized, relative relationships built on the personal connections of specific subjects. Relativity of relations means that at a particular expression of will one subject acquires the right, and another corresponds to a duty. Any obligations do not bind brothers and sisters: each of them makes independent decisions for which he/she must be responsible. [Yu. Artemyeva, A. Zimakov, V. Sergeeva, 2018]

The inability of one of the parents to pay child support is most likely the fault of the other parent who did not make the right choice of partner, and indeed not brothers (sisters). Therefore, the legislators' approach to shifting the maintenance obligations to the relatives of the second stage cannot be explained other than by the unwillingness of the state to provide funds for needy children. In addition to the illogicality of this position, it is necessary to note the social danger of such a legal position, which, in fact, encourages the reluctance of citizens to take a responsible approach to the issues of choosing a spouse and having a child, which allows them to avoid negative consequences arising from the decision.

Several experts believe that attracting the obligated of the second stage is necessary if the funds paid by the parent are insufficient to protect the interests of the minor child. [O. Alekseeva, L. Zayets, L. Zvyagintseva, 2015]. In this regard, the presence of even indirect kinship is a reason to bear the burden of maintaining a child. It seems that this approach was justified in the days of the tribal clan building of society; thus, at the present stage imposing a duty on a "blood" basis seems to be an atavism. However, the Russian courts

adhere to this position. As an example, the authors mention the decision of the magistrate of the Leninsky district of Makhachkala city (Russia), who collected maintenance payments from the grandmother to a minor disabled child. The lawsuit was filed by the mother; in support of her claim, she stated that she had three children from different fathers. The father of the child is imprisoned and cannot assist either her or her child. She is unable to work because taking care of three children takes up a lot of her time. Higher courts have confirmed the validity of imposing child support obligations on the grandmother, indicating that the solution to the difficult financial situation of the mother is possible only with the help of an obliged second stage person. [Section V of the Review of Judicial Practice in cases related to the recovery of the child support and Disabled Adult Children of 2015].

The Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation dismissed the decision of the Yegoryevsk City Court of the Moscow Region of November 21, 2011, which refused to collect maintenance payment from the grandfather. [The definition of the Judicial Collegium in civil cases of the Supreme Court of the Russian Federation dated June 25, 2013, No. 4-KG13-16.] The definition stated that Ms. L. filed a lawsuit against the former spouse A. claiming to increase the amount of child support collected from 1/3 of all types of earnings and other income, but not less than 6000 rubles monthly to 1/2 from earnings, but not less than 15,000 rubles. In support of her claims, the plaintiff pointed out the insufficiency of funds collected by the court for the maintenance of two children, one of whom is a disabled child. At the same time, it was emphasized that, because of the care for children, she could not work. In case of a shortage of funds from the payer, she demanded to waive the ownership of the apartment to improve the quality of life of the children. Yegoryevsky District Court rejected the claim, stating that the respondent's earnings were 11,159 rubles per month. At the time of consideration of the case, he was registered with the state institution of the Moscow region "Egoryevsk Center of Employment" as an unemployed person, and he was assigned a minimum unemployment benefit of 850 rubles. Thus, the respondent was paying the child support funds in the amount even exceeding the amount established by law. The court did not establish grounds for waiving responsibility for the payment of child support funds on the grandfather. The father is a non-disabled citizen capable of working. Besides, having two children does not preclude the mother from working. Parents bear equal responsibilities for the maintenance of children, and therefore, the mother must also make a material contribution to the maintenance of children. The Supreme Court of the Russian Federation did not agree with this position, limiting itself to the establishment of formal signs, without analyzing the causes of mother's unemployment and the father's low income. Having established the fact of the neediness of children, the lack of income of the maintenance payer, the court indicated the need for the court of first instance to consider the matter of collecting child support funds from grandfather, who has income in the form of a pension and additional irregular income. The situation seems to be quite absurd; the obligation to support the children of his adult, able-bodied, capable child is shifted to the elderly citizen. The mother of these children is also able-bodied but does not take any efforts to get any income: not only for her children but even for herself. At the same time, the court does not take into account that the size of pensions in the RF does not allow to satisfy the minimum demand for a life of a pensioner, and the maintenance of grandchildren means a significant drop in the standard of living for the grandfather. This approach encourages the infantilism of parents who do not want to make efforts to provide a minimum of life for their children.

In the United States, as well as in Russia, parents are the main subjects of duty of supports. As the California Family Code indicates, the parent's primary obligation is to maintain their minor children following the circumstances and status of the parent. [Family Code - FAM, CHAPTER 2. Court-Ordered Child Support 4053] The Idaho State Guidelines emphasizes that both parents are responsible for maintaining the child, taking into account their financial and marital status [Section 4 (a) Idaho Child Support Guidelines]. It is the father and mother who are obliged to maintain a minor child.

California Family Code in Art. 3930 indicates that the parent is not obliged to support the child from his child. There are exceptions to this rule. Responsibility for the maintenance of a minor child is transferred from an under-aged parent to his parents, i.e., grandmother and grandfather are required to maintain a minor grandson, bearing full responsibility for the grandson instead of his child. They will fulfill obligations to maintain the grandson until his father (mother) reaches the age of majority or undergoes emancipation procedures. It is necessary to emphasize that they can be charged only with the obligation to provide financial support for the child based on the established living standards; the assignment of responsibility for the upbringing and development of the child (grandchild) is unacceptable. The North Carolina state code emphasizes that if a child has an under-aged parent, second-level relatives (grandparents) pay child support for the maintenance of their grandson. [NC GEN ST § 50-13.4.] It is noteworthy that, as a general rule, relatives are responsible for the maintenance of the grandson from both the father and the mother. In this case, the payment of maintenance will be from two sides, even if only one parent is an under-aged.

However, the court may take into account the totality of all factors and, in exceptional cases, impose a duty on the maintenance of grandchildren only on the parents of the father and mother. In determining the size of the maintenance, the court, in the interests of the child, may oblige the grandparents to provide any individual property in favor of the grandson, usually in terms of real estate or the right to receive income. It is interesting that this favor may not be terminated after the parent(s) reach(es) the age of majority. [NC GEN ST § 50-13.4. "b") If the parents of a child are of legal age, child support from grandparents for the benefit of their grandchildren are possible only if "Loco parentis" relationship is established. This fact is established by the court not only on the basis of cohabitation or temporary custody but also established relationships, duties performed, moral and emotional bond. [Zemmelman M.L.; 2014; 18]

Child support in the United States is generally paid before his eighteenth birthday. [Brough M.; 2018/2019; 10] However, there are exceptions to this rule. In North Carolina, it is:

- Emancipation of the child;
- When studying at a primary or secondary school, child support is paid before the end of education or reaching 20 years of age. Absences of studies, inadequate diligence in education allow parents to stop paying without waiting for the twentieth anniversary;
- When enrolling a child in an innovative high school program, (a cooperative innovative high school program) approved in accordance with Part 9 of Article 16 of Chapter 115C of the General Statutes, child supports must be effected before the end of the fourth year of study, subject to proper implementation of the curriculum and academic discipline. [NCGS § 50-13,4 (c)]

In the states of California and Idaho, the parents of a minor child are equally responsible for maintaining their child until the end of grade 12 of the school or age of 19 years. [H. F. Lewis; 2018] Besides, the Family Code indicates that parents are responsible for their child, regardless of their age and within their capabilities, if, due to certain insuperable life circumstances, they are unable to earn a living and do not have sufficient means for subsistence. [California Family Code - Sections: 3900, 3901.3910, 4052]

Lawmakers in the state of Texas, Arkansas, Maryland established the obligation to pay child support until the child reaches 18 or the end of high school, depending on what happens later. The exceptions are emancipation, marriage, disability, death. [Texas Statutes; Family Code, Chapter 153, Arkansas Code 9-12-312, 9-14-102, 9-14-106]

It should be noted that the legislation of almost every state allows parents to conclude an agreement on the payment of child support even after the age of majority and this agreement will be valid. [Stoner Katherine E.; 2015] For example, the California Family Code in Article 3587 indicates that, despite the general rule, when an agreement is reached in the prescribed form, the courts approve the parents' agreement to support an adult child or to continue paying child support after their son/daughter reaches 18 years of age. This is not possible in the Russian Federation. The condition of agreement on the payment of maintenance after the age of majority by virtue of Art. 99 of the FC of the RF is claimed invalid. It seems that the restriction of assistance to a child until he is 18 years old does not take into account the current economic realities and the obligation of parents to assist in getting a proper education by the child.

3.3. The Amount of Duty of Supports

The Family Code of the Russian Federation in article 81 imperatively establishes the necessary level of maintenance. Not less than one-quarter is paid monthly for one child, one-third for two children, and one-third for three or more children — half the earnings and (or) other income of parents. By agreement of the parties, the amount of paid maintenance can be increased and even exceed the amount of monthly income. The Supreme Court of the Russian Federation as an example in its Review of Practice points to a court decision in which a child maintenance agreement with an established amount of payment for three minor children in the amount of 300,000 rubles was recognized when the father earned 200,000 rubles. [P. 11 Review of Judicial Practice in cases involving the recovery of maintenance payment for minor children, as well as for disabled adult children (approved by the Presidium of the Supreme Court of the Russian Federation on 13.05.2015)]. Considering the claim of the Bank of Moscow on invalidation of the agreement on maintenance payment regarding the fact that father's payment for one child support in the amount of 70% of salary made it difficult to disburse the loan under the liabilities, the court indicated that the parties to the agreement should be guided by the priority of the well-being of children after dissolution of marriage. After the divorce, due to the lack of work, maintenance payments are the only source of income and, therefore, to maintain the level of well-being, the parties were entitled to set such an overstated amount. [Cassation definition of December 20, 2010 case No 33-3119]. In exceptional cases, taking into account the financial or

marital status of the parties and other necessary circumstances, the maintenance for the child may be set by the court at a rate lower than that established by law (clause 2. Article 81 of the FC of the RF). The Supreme Court of the Russian Federation explained that the circumstances allowing to reduce the amount of maintenance payment are low wages, the poor health status of the payer. [p.19 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017 No.56]. The reason to reduce the statutory amount of maintenance payment can become the high level of income of the payer. In this case, taking into account the discrepancy between the amounts paid and the necessary funds to meet the child's reasonable needs, payments are made in a fixed amount, taking into account Federal Law No. 134-FZ of October 24, 1997 "On the minimum cost of subsistence in the Russian Federation." The Supreme Court of the Russian Federation indicated that the high-income level of the maintenance payer is not an unconditional basis for reducing the amount of payment, but if several circumstances lead to the conclusion that funds paid are excessive, a reduction in payments is permissible.

It is necessary to note the issue of reducing the amount of maintenance paid in case of a high income is relevant in the United States. [Debrina Washington; 2018] Recently, judicial practice on this issue has changed. Previously, the courts (in the states which have a percentage system for calculating child support) have proceeded from the unconditional duty to pay maintenance funds in the amount, established by law. For example, the New York Appellate Court indicated that by virtue of the New York Child Support Standards Act (CSSA), a parent who receives more substantial income, is required to pay the other parent more to ensure an equal standard of living for children, thus improving the standard of living of the parent with whom the child lives. Significant amounts of child support should help to minimize the differences in the standard of living of the children with either parent. In determining the size of the support, the cost of food, clothing, housing, medical care, and proper education should be taken into account. The support is not limited only to the things necessary for life: it extends to the things necessary to support the child, taking into account his social status as well as his parents, the customs of the social circle in which he was raised and lived until the family broke up and still lives. [Levoritz Yonatan; 2017]

However, in recent years, the approaches of courts in determining the amount of support have changed. Pennsylvania Court of Appeals (Superior Court of Pennsylvania), considering the case Diane P. Rich v. John W. Rich indicated that the Pennsylvania Family Code requires the calculation of the reasonable needs of children separately from the needs of the parents with whom they live. The standard of living of children with a mother is lower than with a father since she has assets of lower value and lack of income. However, her financial capacity and the reasonable amount of child support set by the court allow her to provide healthy development and maintenance for children. Ensuring an adequate standard of living does not mean equal living conditions for divorced parents, but speaks of adequate conditions of maintaining. [Wellbank A.V., Ball J.; 2017]

The Court of Appeals of Wisconsin during the consideration of the case Lynne S. Ayres v. John D. Ayres noted that the strict implementation of standards for the determination of child support would be unfair and unreasonable concerning one of the parents. A large amount of child support, prevailing the amount necessary to maintain the standard of living of a similar level before the divorce will be detrimental to the children and will not be their generous support, but the financial needs of the former spouse. [Ayres v Ayres, 023 NW 2d 132; 1999] An exciting position was formulated by the Court of Appeal in North Carolina in the Brind'Amour v Brind'Amour case. The former spouse filed a claim for the recovery of child support in a more significant amount than was provided for by law. As a justification, she pointed out the need to meet the needs of children at a level appropriate to the children before the dissolution of the family, i.e. maintaining a nanny, renting a car for the nanny, organizing holidays and recreation for children, living in expensive housing, studying in a private school, buying expensive clothes and accessories. The court carefully analyzed all the arguments of the parties.

Moreover, it concluded that the need for a nurse is absent because the mother has a flexible work schedule; the children are with her only 60% of the time. The need to provide a particular car for the nanny is absurd: the mother owns a car. The father's position on the need to instill in children thrift and modesty in spending, despite the high income he receives is reasonable. When children live with him, their expenses are significantly lower while the quality of life is decent. Children enjoy benefits that are beyond the reach of most children. They are convenient and expensive housing, travel, extracurricular educational programs, quality education, sports, art, visiting theaters, shows, museums. Mother and father disagree about their way of life for their children. In joint custody, parents jointly make decisions on important issues affecting the lives and health of children. Everyday decisions such as nannies, cars, entertainment, extracurricular activities are made by the parent with whom the child is at this time. Therefore babysitters, holidays, travel must pay the parent with whom the child spends time. A different approach means the discriminatory assignment of the

duties of one parent to another and the hidden satisfaction of the financial needs and ambitions of the former spouse under the guise of maintaining a child. [Brind'Amour and Kelle Brind'Amour; 2009].

4. FINDINGS

The study made it possible to conclude the presence of many similarities in the approaches of the legislators of Russia and the United States in the definition of duty of supports. At the same time, the peculiarities of historical, economic development, mentality determined significant differences. In determining the content of the duty of supports, both in Russia and the United States, they proceed from the personal position of the duty of support associated with "blood kinship." The laws of the United States and Russia allow the possibility of transferring the responsibility for the maintenance of children from parents to relatives. However, in the United States, this possibility is limited only to the responsibility of the grandparents if the parent(s) of the newborn is/are minors. In Russia, this list is much broader and comes down to the obligation to maintain a grandson if one of the parents is unwilling to do so. Of course, this approach is unfair, but the automatic transfer of the American experience on this issue to Russia will entail a significant violation of the interests of children. The established system of state social support for children in the United States ensures the satisfaction of the child's reasonable needs when the father or mother fails to fulfill the maintenance duties. Federal standards of the United States for social support allow to determine the real needs of children for harmonious development and maintenance and based on them to make calculations of the amounts of state support or a duty of supports. Under the conditions of the Russian economy, the state is not able to assume obligations for the maintenance of children in a malicious evasion from maintenance payment by one of the parents, therefore by shifting the obligation to grandmothers/grandfathers, siblings, the legislator is trying to at least to some extent provide financial support for children during the dissolution of marriage.

The American experience in determining the amount of child support is of undoubted interest. The absence of criteria allowing to take into account the contribution of parents to the upbringing, physical, and moral development of a child is an essential gap in Russian legislation. As the long legislative experience of the United States shows, the court's obligation, even giving the percentage formula when considering parent's participation in the minor's daily life is a valid legal mechanism to encourage parents to take part in the child's life, harmonize family relations, even after divorce. This approach would correspond to the essence of Russian Family Law, indicating equal participation of parents in the maintenance and development of children: it might ensure comprehensive protection of the interests of the child not only in financial, but also spiritual, social development, fair distribution of responsibilities among parents for raising a child and achieving the goals of Family legislation, and would eliminate the existing contradiction between the principles declared by the Constitution of the Russian Federation and the Family Code of the RF and the legal acts regulating the procedure for copulating duty of supports.

In a market economy, a deepening gap in the incomes of citizens, the Russian legislator must establish reasonable minimum standards for spending on reasonable nutritional needs, accommodation, clothing, health care, school and extra-school activities, development of abilities, and recreation. Guided by them, the court will be able to determine a fair amount of maintenance payment. The consolidation in the Family Code of the Russian Federation of the general rule on the rule of courts to decrease (increase) legislatively determined amount of maintenance payment creates legal uncertainty, reduces guarantees for the protection of children's rights and leads to the creation of conflicting judicial practice. In this case, it is necessary to improve the Russian law, based on extended practice guidelines of the US courts for calculations of child support based on federal standards for caring children.

Considering the specifics of the state, social, and economic structure in determining the amount of maintenance payment for Russia, it would be reasonable to take into account the following factors: income, needs and responsibilities of both parents; the ability of both parents to earn income and participate in the child's life; reasonable needs of the child in receiving care, education, upbringing, taking into account his physical, psychological state; special abilities of the child that were developed and encouraged before the dissolution of the marriage. It seems that the consideration of the proposed factors when calculating the amount of maintenance payment in Russia will best ensure the standard of the well-being of children in case of divorce.

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REFERENCE LIST

1. Alekseeva, O., Zaets, L., Zvyagintseva, L. [et al.]. (2015) Commentary on the Family Code of the Russian Federation (reference book), Moscow, Russia. "Prospect", Yekaterinburg, Russia: "Institute of Private Law", p. 229
2. Artemyeva, Y., Ivanovskaya, N., Koncheva, V., Sitkareva E. (2018) Current Problems of Concluding an Agreement on the Alimony Payment for Minors in Russia *Advanced Research in Law and Economics*, [S.l.], Vol. 9, n. 3(33), pp. 859-869, ISSN 2068-696X.
3. Artemyeva, Yu., Zimakov, A., Sergeeva, V. (2018). Legal aspects of the application of the duty of support for minor children in Russia. *Socio-political sciences*. No. 5, pp. 188-197.
4. Artemyeva, Yu., (2014) Agreement on the payment of maintenance for a minor child. *World of Economics and Law* No. 12, pp. 70-74
5. Besimalov, Yu. (2019) All about child support recovery. Theory and practice. Scientific and practical manual. Moscow, Russia. Prospect, ISBN: 978-5-392-29706-1
6. Besimalov, Yu., Ilyina, O. (2019) Positions of the Supreme Court of the Russian Federation on family disputes. An anthology. Moscow, Russia. Prospect, ISBN: 978-5-392-29692-7
7. Brind'Amour and Kelle Brind'Amour. (2009) Court of Appeals of North Carolina. No. COA08543. Retrieved from <https://caselaw.findlaw.com/nc-court-of-appeals/1197320.html>.
8. Brough, M. *Child Support Handbook: 2018/2019*. // CPAG; 26 ed edition (10 July 2018). ISBN-10: 1910715379
9. Cassation ruling of December 20, 2010, case No. 33-3119, Ulan-Ude, Russia. Retrieved from <http://www.gcourts.ru/case/441578>
10. Danilyan, M. (2015). Parents' obligations on the maintenance of minor children and responsibility for violation: abstract of the dissertation for the degree of PhD in law. Moscow, Russia, 27 p.
11. *Deadbeat Parents Punishment Act*. Retrieved from <https://www.justice.gov/criminal-ceos/child-support-enforcement>
12. Debrina, Washington. *Failure to Pay Child Support. 6 Potential Penalties for Parents Who Don't Pay*.// The balance small business. 2.09.2018 Retrieved from <https://www.thebalancesmb.com/failure-to-pay-child-support-penalties-2997972>.
13. Diane P. Rich v. John W. Rich. (2009) Superior Court of Pennsylvania. Retrieved from <https://caselaw.findlaw.com/pa-superior-court/1173477.html>.
14. Dudin, M., Frolova, E., Kovalev, S., Ermakova, E., Kirsanov, A. (2017) Migration Processes In The Context Of Political Collisions: Factors And Social And Economic Consequences. *Journal of Applied Economic Sciences*. Vol. 12. No.1 (47). pp. 85-94. ISSN 18436110
15. Dudin, M., Frolova, E., Protopopova, O., Artemieva, Yu., Abashidze, A. (2016) Latin America And Russia On The Course Of Mutual Contingence Under Conditions Of Global Economic Crisis. *International Journal of Applied Business and Economic Research*. Vol. 14. No.15. pp. 11161-11170. ISSN : 0972-7302
16. Dudin, M., Ivashchenko, N., Frolova, E., Abashidze, A. (2017) Institutional Approach to Establishment of a Structural Model of the Russian Academic Environment Development. *European Journal of Contemporary Education*. Vol. 6. No. 1. pp. 22-38. E-ISSN: 2305-6746.
17. *Family Code California - FAMC enacted by Stats. 1992, Ch. 162, Sec. 10* Retrieved from https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=FAM&division=9.&title=&part=1.&chapter=3.&article=1.
18. Federal Law of October 24, 1997 No. 134-Φ3 "On the Minimum Living Wage in the Russian Federation." *Rossiyskaya gazeta* of October 29, 1997 No. 210.
19. Final report on the results of the FSSP of Russia in 2018. Retrieved from http://fssprus.ru/files/fssp/db/files/02019/itogovvj_doklad_za_2018_god_20193181711.pdf.
20. GAO Report on Child Support Enforcement July, 2019 Retrieved from

http://www.csecouncil.org/pdf/gaoreport_childsupport.pdf. Uniform Interstate Family Support Act Part 1. Article 5-B General Provisions. Retrieved from <https://www.nysenate.gov/legislation/laws/FCT>. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Adopted by General Assembly resolution 40/33 of 29 November 1985. Retrieved from <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>.

21. Gongalo, B. (2016) Duty of support. Family and Housing Law. No 5. pp. 15 - 16.
22. Idaho Child Support Guidelines. Updated as of May 20, 2010. Retrieved from https://web.archive.org/web/20100805042852/http://www.isc.idaho.gov/Idaho_ChildSupport_Guidelines.pdf.
23. Kosova, O. (2005). Family Code of the Russian Federation on child support. Law. No. 10. pp. 39 - 40.
24. Levoritz, Y. What is my Child Support Obligation If I Have a 50/50 Custody. Retrieved from <https://www.levoritzlaw.com/5050-custody-child-child-support-obligation/>.
25. Lewis, H. (2018) Divorce Statistics in the United States and California. Retrieved from <https://www.michaelagardner.net/blog/2018/10/09/divorce-statistics-in-the-united-193973>.
26. Lynne S. Ayres, v. John D. Ayres. Court of Appeals of Wisconsin. No. 98-3450. 602 N.W.2d 132 (Wis. Ct. App. 1999) Retrieved from <https://www.courtlistener.com/opinion/1934239/in-re-marriage-of-ayres-v-ayres>. North Carolina General Statutes. Retrieved from <https://codes.findlaw.com/nc/chapter-50a-uniform-child-custody-jurisdiction-and-enforcement-act-and-uniform-deployed-parents-custody-and-visitation-act/#!tid=N1AFB68E0B05C11E2AB9DFFB0A5D83A53>.
27. Nechaeva, A. (2007) Family law: current problems of theory and practice. Moscow, Russia, Yurait-Publishing House, p. 49.
28. Report of the Federal Bailiff Service according to the results of 2017. Retrieved from <http://fssprus.ru/news/document2583820>.
29. Resolution of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017 No. 56 "On the application by the courts of legislation in consideration of cases involving the recovery of maintenance." Rossiyskaya gazeta, December 29, 2017 No. 297.
30. Review of judicial practice in cases related to the collection of maintenance for minor children, as well as for disabled adult children (approved by the Presidium of the Supreme Court of the Russian Federation on May 13, 2015) Bulletin of the Supreme Court of the Russian Federation, July 2015, No. 7.
31. Saveliev, D. (2017) Family Agreements: A Study Guide. Moscow, Russia, Prospect, ATP Consultant Plus.
32. Schlinkert, K, (2014) The Numbers Game: Why California's Child Support Formula Should Be Amended to Avoid Parental Abuse, 44 Golden. Gate U. L. Rev. 257 Retrieved from <http://digitalcommons.law.ggu.edu/ggulrev/vol44/iss2/7>.
33. Statistical data of the Federal State Statistics Service. Retrieved from <https://www.fedstat.ru/indicator/31268>
34. Stoner, K. (2015) Divorce Without Court A Guide to Mediation & Collaborative Divorce. 4th Edition.
35. The decision of the Kirovsky district court of Volgograd dated October 17, 2016 (case No. 2-2962/2016) Retrieved from <http://sudact.ru/regular/doc/8qprzs50PI11/>
36. The definition of the Judicial Collegium in civil cases of the Supreme Court of the Russian Federation dated June 25, 2013, No. 4-KG13-16. Bulletin of the Supreme Court of the Russian Federation, January 2014, N 1.
37. The Family Code of the Russian Federation of December 29, 1995, No. 223-F3 as amended by May 29, 2019. Collection of legislation of the Russian Federation. 1996. No. 1. Article 16.
38. Usacheva, E. (2017) Agreement on the payment of child support in Russian Family law: an abstract of a dissertation for the degree of PhD in law. Moscow, Russia
39. Wellbank, A., Ball, J. (2017) The Insiders' Guide to Child Support: How the System Works. Montcolo, LLC.

40. Williams, R. (1987) Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report, at II-67. US Dep't of Health and Human Services, Office of Child Support Enforcement.
41. Yakushev, P. (2017) Disputes about children: traditional values and judicial practice. Monograph. Prospect: Moscow, Russia.
42. Zimmelman, M. (2014) Building a Parenting Agreement That Works: Child Custody Agreements Step by Step. 8th Edition. Nolo.