



Obligations to Provide Support in Marriage and Family Relationships

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SUMMARY

The obligation to provide maintenance is an obligation attached to people who have a marital or blood relationship and is guaranteed by the State to be implemented according to the provisions of law. Within the scope of the article's research on the issue of maintenance between parents and children when the marriage relationship is terminated. The author believes that in order to fully ensure the rights and interests of the parties, the law needs to adjust the above-mentioned maintenance obligation in a flexible and comprehensive manner in all legal issues related to child custody in the law on marriage and family to ensure optimal rights and interests of the parties in accordance with the provisions of law and social ethics.

Keywords: *alimony, relationship, marriage, family*

1. Problem statement

The obligation to provide maintenance is a special obligation in the field of marriage and family, different from ordinary civil obligations such as the obligation to pay, the obligation to deliver goods, the obligation to perform a certain job formed from a civil transaction, or the obligation to compensate arising from an act causing damage. The obligation to provide maintenance is formed from the relationship between people with a marital or blood relationship, regulated by the law on marriage and family.

Considering the maintenance relationship between parents and children formed at the time of divorce or after the divorce, in other words, the maintenance obligation between parents and children is established when the marriage relationship between husband and wife ends, the person who does not directly raise the child must have the maintenance obligation when the child is a minor or an adult child is unable to work and has no property to support himself. Due to its special characteristics, the implementation of maintenance is closely linked to the personal factor in the maintenance relationship, the implementation of maintenance obligation is guaranteed by the State, but the handling by legal sanctions depends on the motives and circumstances of the parties in the process of implementing the maintenance obligation.

Within the scope of the research and analysis of the nature of the alimony relationship, the law regulating it as well as the practice of trial in court, the author points out the shortcomings and inadequacies of the law that make the implementation of the alimony relationship not really flexible and effective in ensuring the rights and interests of the parties, as well as ensuring the implementation of the alimony obligation in order to improve it.

2. Transfer of maintenance obligations

According to the provisions of the Law on Marriage and Family, the obligation to provide support is performed between parents and children; between brothers and sisters; between grandparents and grandchildren; between aunts, uncles and nieces and nephews; between husband and wife according to the provisions of the Law on Marriage and Family. Accordingly, the obligation to provide support cannot be replaced by another obligation and cannot be transferred to another person according to Clause 1, Article 107 of the Law on Marriage and Family 2014. The author believes that the provisions of the law are not comprehensive and only partially suitable for the entire support relationship. Accordingly, the impossibility of transferring the obligation to provide support needs to be approached from two separate aspects, specifically as follows:

Firstly, if considering the recipient of alimony, it comes from the personal factor of the recipient of alimony when satisfying the factors for alimony as prescribed by law. Accordingly, only that person has the right to receive alimony and cannot be transferred to anyone else. When the factors for alimony no longer exist or the person receiving alimony has died, the alimony relationship will also end. This shows that the alimony relationship is completely different from property relationships such as payment obligations, contract performance obligations that cannot be transferred, nor inherited... Therefore, the personal factor plays a very important role associated with an individual's right to receive alimony, so it cannot be transferred according to Clause 1, Article 25 of the 2015 Civil Code.

Second, if considering the subject with the obligation to provide support, the author believes that the obligation to provide support should be transferred if it satisfies the provisions of civil law. Because unlike the subject receiving support, the subject with the obligation to provide support does not rely

heavily on personal factors but more importantly on the ability to fully perform the obligation for the person receiving support. Therefore, if the subject with the obligation to provide support is unable to perform the support obligations, it will affect the legitimate rights and interests of the person entitled to receive support. Therefore, the transfer of obligations in this case will create flexibility to ensure optimal benefits for the person receiving support when the person with the obligation to provide support is unable to perform his/her obligations.

However, the transfer of obligations in this case requires raising many legal issues to ensure that the transfer of rights brings practical effectiveness:

Firstly, the transfer of alimony obligations must ensure compliance with legal regulations on the transfer of obligations as prescribed in the 2015 Civil Code. Specifically, the person with the alimony obligation may only transfer the obligation to another person when the party entitled to receive alimony or their legal representative agrees.

Second, the transfer of obligations is only allowed to be transferred in full for the obligation of support, in order to specifically identify the obligated subject at a specific time, in order to ensure the comprehensive enjoyment of the rights of the supporting party.

Third, the maintenance comes from the connection in personal relationships and the transfer is only intended to ensure that the beneficiary receives the maintenance, not to free the obligated party from the maintenance relationship. Therefore, the author believes that the transfer of the maintenance obligation does not lead to the termination of the obligation for the party transferring the obligation.

3. The person with the obligation to pay alimony does not fulfill the obligation to pay alimony.

In case the person with the obligation to support evades the obligation, at the request of the individual, agency or organization specified in Article 119 of this Law, the Court shall compel that person to perform the obligation to support according to the provisions of this Law. Through this provision, it can be seen that the obligation to support is a mandatory obligation and is guaranteed by the power of the State, but first of all, the performance of the obligation to support still comes from voluntariness, the Court's compulsion of that person to perform the obligation to support according to the provisions is only made when there is a request from the individual, agency or organization specified in Article 119 of the Law on Marriage and Family regarding the issue of the person with the obligation to support evading the obligation. However, if we only consider the aspect of the person with the obligation to provide support avoiding the performance of the obligation as a condition for requesting the Court to force the person with the obligation to provide support, it does not guarantee the rights and interests of the recipient of support, because in reality there are many cases leading to the person with the obligation to provide support not performing or being unable to perform his/her obligation:

Firstly, the person with the obligation to provide support no longer has the financial capacity to pay the support to the person receiving support. According to the provisions of the law on marriage and family, failure to meet the economic capacity is not a basis for terminating the support obligation. In practice, in court trials of disputes over child support, the circumstances of the family and the economic capacity of the obligated party are not accepted by the Court, because child support is the responsibility and duty of the father and mother. For example, in *Judgment No. 33/2019/HNGD-ST of the People's Court of M'Gar district, Dak Lak province*, on the dispute over child support between the plaintiff, Ms. HY Nie, and the defendant, Mr. YS Byă. Accordingly, Ms. HY and Mr. YS mutually agreed to divorce according to the decision recognizing the mutual divorce agreement No. 48/2019/QDST-HNGĐ dated March 15, 2019 of the People's Court of CuM'gar district. According to the decision, Ms. HY directly raised all 3 children and did not request a settlement on child support. Ms. HY filed a lawsuit requesting that Mr. YS be obliged to provide child support for the 2 children YT Nie and Y Tr Nie, each child 1,000,000 VND per month. However, during the process of resolving the case, Ms. HY changed her request and requested that Mr. YS provide child support for Y Tr 1,000,000 VND per month until Tr turns 18 years old. In addition, Mr. YS said that he did not have the financial capacity due to his dependence on his wife's family and did not agree to provide child support. This shows that Mr. YS is not responsible for his children and does not fulfill his responsibilities as a father. Trial result: The Court decided to *"Accept part of the plaintiff HY Nie's petition. Compel YS Byă to provide child support for Y Tr Nie, born on March 17, 2011, 1,000,000 VND (One million VND) per month. The support period is calculated from the date the judgment takes legal effect until Y Tr turns 18 years old."*

Second, the person with the obligation to provide support intentionally delays or fails to perform the obligation to provide support. According to the provisions of Clause 2, Article 162 of the Law on Civil Judgment Enforcement, which stipulates the handling of administrative violations in the enforcement of civil judgments when the person with the obligation has the conditions to enforce the judgment but intentionally delays the performance of the obligation to enforce the judgment. On the other hand, Clause 37, Article 1 of the Penal Code amended in 2017 specifically stipulates the Crime of refusing or evading the obligation to provide support with a maximum penalty of 02 years in prison: "Anyone who has the obligation to provide support and has the actual ability to provide support for the person he/she is obliged to provide support according to the Court's decision but refuses or evades the obligation to provide support, causing the person receiving support to be in a dangerous situation to his/her life or health, or has been administratively sanctioned for this act but still violates, shall be subject to a warning, non-custodial reform for up to 02 years or imprisonment from 03 months to 02 years".

From the above analysis, it can be seen that the performance of the alimony obligation is mandatory. In all cases, the person with the alimony obligation must perform his/her obligation according to the judgment or decision of the Court. Failure to perform the alimony obligation arising from the difficult circumstances of the person with the alimony obligation is not a basis for terminating or exempting the obligation. Therefore, when requested, the Court will force the person with the alimony obligation to perform the alimony, and at the same time consider the level of alimony based on the actual circumstances of the parties. However, the act of failing to perform the alimony obligation will only be subject to administrative and criminal sanctions when the person with the alimony obligation has the ability to perform the obligation but deliberately delays or fails to perform.

4. Request for alimony to be reinstated

According to Article 7 of Resolution No. 01/2024/NQ-HDTP guiding the application of a number of legal provisions in resolving marriage and family cases: *"In cases where the person directly raising the child does not request the person not directly raising the child to provide child support, the Court shall explain to them that the request for child support is to protect the legitimate rights and interests of the child. If it is found that the person directly raising the child has the ability and conditions to raise the child and that their not requesting child support is voluntary, the Court shall not force the other party to provide child support."*

In principle, divorce only terminates the marital relationship but does not terminate the rights and obligations between parents and children. According to Article 81 of the Law on Marriage and Family, it is stipulated that: *"After divorce, parents still have the right and obligation to look after, care for, raise and educate minor children, adult children who have lost civil act capacity or are unable to work and have no property to support themselves according to the provisions of this Law, the Civil Code and other relevant laws"*. Therefore, in practice, the Court's judgment at the time of divorce does not request alimony, but when the Court's judgment and decision come into effect and are enforced. During the time of raising children, the person directly raising children has the right to file a lawsuit in Court to request alimony, specifically

In Judgment 118/2020/HNGĐ-ST dated March 9, 2020 on the dispute over the request for child support at the People's Court of Chau Thanh District, Tien Giang Province between the plaintiff Nguyen Tran Ngoc D and the defendant Phan Ngoc Q. Ms. D and Mr. Q divorced on January 11, 2016 according to the Decision recognizing the consensual divorce and the agreement of the parties No. 14/2016/QDST-HNGĐ dated January 11, 2016 of the Chau Thanh District Court. At the time the Court resolved the divorce, Ms. D did not request child support. However, according to Ms. D's statement, due to difficult parenting conditions, she now filed a lawsuit requesting Mr. Phan Ngoc Q to provide child support at the rate of VND 2,000,000/month until child B turns 18 years old. After consideration, the Court determined that Mr. Q was not the direct caregiver, therefore he had the obligation to provide child support and ruled: *"Mr. Phan Ngoc Q is required to provide child support at the rate of 1,500,000 VND/month. This shall be implemented when the judgment takes legal effect until child B turns 18 years old."*

Thus, although at the time of divorce settlement, the issue of alimony is not raised at the request of the parties, the alimony obligation of the person who does not directly raise the child does not end completely. When there is a request to file a lawsuit for alimony, the Court considers the actual conditions of the parties to force the person who does not directly raise the child to pay alimony at the level of alimony determined in the judgment or decision of the Court. This can be considered the right of children to be raised and cared for by their father and mother, recognized and protected by law to promptly meet the conditions for the care and development of the children.

However, the author believes that the Court only accepts and processes the request for alimony (accepts, partially accepts or rejects the alimony level as requested by the parties) for a case where there was no alimony request at the time of divorce, which is not a comprehensive consideration and handling of the issue. Because the issue of child custody and child support belongs to the personal rights in a divorce case, closely linked to the conditions of care, education, and nurturing to optimally protect the interests of children. Therefore, the author believes that it is impossible to separate and consider the request for alimony as a property right.

Accordingly, the author believes that at the time of the request for alimony, the Court must consider all factors regarding the children, including economic conditions, education, time spent with the children, etc. to determine the person directly raising the children in case the parties do not have an agreement and if the child is 7 years old or older, the wishes of the child must be considered. In case the Court still finds that the person directly raising the children is still qualified to continue raising the children, the Court will consider the plaintiff's request for alimony.

5. Conclude

The obligation to provide maintenance between parents and children is imposed on the person who does not directly raise the child when the couple divorces. However, the termination of a marriage relationship does not mean that a maintenance request arises, but depends on the maintenance request of the parties. In other words, if the parties do not request maintenance in the divorce case, the Court will not consider binding the maintenance obligation for the parties. However, this does not mean that the parties' right to request maintenance will be eliminated, but during the process of raising children, when there are changes in conditions and circumstances that the person directly raising the child needs the support of the other person to ensure and raise the child, they can submit a petition to the Court to request maintenance. The author believes that in this case, the Court needs to consider all legal issues related to child rearing, including child custody, not separate the maintenance relationship to consider in order to comprehensively review and evaluate, optimizing the interests of the parties, especially for the children.

In addition, the author believes that the maintenance relationship does not have the nature of property rights but contains human elements. However, it is necessary to consider that the identity element is only reasonably set out as a binding condition for the person receiving the maintenance, while for the person with the maintenance obligation, it is still essentially a property obligation to ensure the best conditions for the person directly raising the child to ensure the ability to raise and educate the child. Therefore, in the maintenance relationship, it is necessary to separate the nature of the right to receive maintenance and the maintenance obligation, because it is closely linked to the personal element of the person receiving the maintenance, the right to receive maintenance is not transferable, but for the maintenance obligation, the law should allow it to be transferred according to the provisions of civil law to ensure flexibility in implementing the maintenance obligation.

References

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