

Legal Control of Duty Support for Minor Children in Russia and the USA

Artemyeva Y.A.^a, ^aRUDN University. Law Department. Ph.D., Associate Professor of Civil Law of the Department of Civil Procedural and Private International Law. Miklukho-Maklaya st., 6, 117198 Moscow, Russia, Email: artemyeva_yua@pruf.ru

Marriage crisis as a social phenomenon is a distinctive problem for many countries of the World. There were 4.34 cases of divorce per 1,000 people recorded in the United States in 2018, about 40 percent of first marriages and 60 percent of remarriages part away [H. F. Lewis. 10/9/2019]. There are no fewer depressing statistics in Russia. In 2017, according to the Federal State Statistics Service, there were 4.2 divorces per 1000 people; the first half of 2019 was 4.0. The seeming improvement is illusory. Decreasing of divorces occurs because of the significant decrease in the number of marriages. According to the state statistics, the number of marriages in 2018 decreased by almost twenty percent compared to the previous year. [Statistical data of the Federal State Statistics Service.] In this regard, the consequences of family breakdown, especially the protection of children, is becoming increasingly important. Parental divorce is not only a psychological trauma for a child; in many cases it's a removing of one of the parents from participation in his/her life, which negatively affects the harmonious development of the child. As to United States Child Support Council (CSEC), the growing number of parents deliberately avoiding their responsibilities to their children has become a national problem. [GAO Report; 2019]. The key objective is to study the laws and judicial practice of the United States and Russia in order to determine an effective legal mechanism to ensure the well-being of minor children in the event of their parents' divorce. The research appeals not only from a theoretical point of view, but also from a practical one. Numerous marriages between citizens of Russia and the United States, and as a result no less numerous divorces, require a certain synchronisation of the legal and social system for the protection of minor children. The research objective is a comparative analysis of theoretical and practical problems, gaps in legal regulation, doctrinal definition and practical implementation of parents' duty support for the maintenance of minor children in Russia and the USA.

During the research, the authors used a combination of philosophical, general scientific, private scientific methods of cognition of theoretical and empirical material. The usage of these methods made it possible to create a comprehensive objective research of the legal regulation of child support for minors, taking into account the totality of factors ensuring the preservation of the level of well-being of children in the new conditions for the interaction of parents on their upbringing and content.

Key words: *Divorce, children maintenance, duty support, maintenance agreement, parents, dissolution of marriage.*

Introduction

The priority task of parents is to create conditions for their children to ensure harmonious intellectual, moral, and physical development. Increasingly, divorce means the exclusion of one parent from participation in the life of the child. Statistics show a deviation from the obligation to provide material support for children, becoming a common phenomenon throughout the world. According to the Russian Federal Bailiff Service, 39.000 people were brought to administrative responsibility for neglect of maintenance under Art. 5.35.1 of the Code of Administrative Offenses in 2017, [Report of the Federal Bailiff Service]. In 2018, the situation worsened, the FBS of Russia has already initiated 116,500 administrative cases [Final report on the results of the activities of the FBS of Russia in 2018]. In the United States, less than 50% of children receive child support in full. [Debrina Washington; 2018].

Duty support for many parents raising children after a divorce is often the only source of income. Ensuring the full education, moral and physical health of the child does not allow the parent to the guardian to pay more attention to their own career and education, as all their free time is taken care of by the minor and, as a result, the income of such a parent is negligible. In these cases, the non-fulfillment by the second parent of the obligation to support the child is an act of endangering the life and health of the child. [Artemyeva Y., Ivanovskaya N., Koncheva V., Sitkarev E.; 2018]. However, in determining the amount of material support for children, it is necessary to take into account the interests of the maintenance creditor and his ability to lead a full life. Establishing the priority of the child's interests, it is necessary to balance the interests and financial capabilities of the former spouses.

The reduction of duty support only to material support is a simplified perception of parental responsibilities. Having proclaimed that the family, motherhood and childhood are protected by the state, the Russian Constitution established that caring for children is an equal right and obligation of their parents [Article 18 of the Constitution of the Russian Federation]. The United Nations has repeatedly indicated that when resolving issues of the maintenance of

minors, the level of well-being of the child must be taken into account. At the same time, well-being includes not only material support, but also the components of intellectual, moral development, care and communication. [Clause 5.1. United Nations Standard Minimum Rules for the Administration of Juvenile Justice]. The Family Code of the Russian Federation, adopted in the era of economic and political transformations in 1995, unfortunately, does not take these factors into account and does not reflect the realities of modern society. The mechanism of duty support fixed by the code, in fact, boils down only to the transfer of money by the parent at the statutory interest rates without taking into account the parents' responsibilities for ensuring the moral, physical development of the child, and caring for him. Meanwhile, these responsibilities are important for the harmonious education of the child. The one-sided perception by the Russian family law of the duty support of parents after divorce only through the prism of paying money does not meet the interests of the child in the first place, since after the divorce, the parent with whom the child does not live is excluded from the normal life of the child. A child needs care of two parents after a divorce. The absence of a legal mechanism for regulating non-material duty support is a significant obstacle to ensuring the well-being and harmonious development of minor children after the breakup of the family. In this regard, the approach of the American lawmaker taking into account all the circumstances of the involvement of the parent not the guardian in the child's life when determining the amount of content, encouraging the participation in the children's life by flexible regulation of the amount of maintenance, and reducing the amount of maintenance to parents who pay more attention to development, education and care are followed. It is necessary to recognise that the current system of child support for minors in Russia needs to be reformed, new tools introduced new and mechanisms that contribute to the maximum realisation of each child's potential, create conditions for a decent life perspective, and self-realisation in the future. To search for effective methods, the US experience is useful, having accumulated significant positive and negative experiences in legal regulation of duty support and social support for children in a market economy.

Methodology

The research was carried out and prepared to systematise and study the problem that is characteristic not only of the Russian Federation, but also of foreign countries, and of the search for effective methods of protecting the interests of minor children during the breakup of the family. In modern conditions of the development of migratory mobility of the population and an increase in the number of interethnic marriages, it is necessary to develop academic knowledge that allows studying legal problems to take into account positive and negative international experiences. Erasing borders between countries in the academic environment allows not only the learning of foreign legislation, but to improve their own, taking into account national, historical and economic characteristics, as pointed out by

lawyers in such works as Dudin M.N., Ivashchenko N.P., Frolova E.E., Abashidze A.H. (2017), Dudin M.N., Frolova E.E., Protopopova O.V., Artemieva J.A., Abashidze A.H. (2016), Artemyeva Y.A., Ivanovskaya N.V., Voykova N.A., Frolova E.E. (2016) Dudin M.N., Frolova E.E., Kovalev S.I., Ermakova E.P., Kirsanov A.N. (2017).

The research used general information about existing approaches to determine duty support by authors such as R. Williams (1987), Debrina Washington (2018), Stoner Katherine E (2015), Zimmelman M.L. (2014), Karly Schlinkert (2014), Wellbank A.B., Ball J. (2017), Brough M. (2018) and others. The works of Russian jurists Bespalov Y.F. (2019) Ilyina O.Y. (2019), Danilyan M.A. (2015), Usacheva E.A. (2017), Savelyev D.B. (2017) Yakushev P.A. (2017) and others made it possible to provide a comprehensive analysis of the existing approaches in Russia to solving the problem of determining the mechanism for ensuring the maintenance of minor children during the breakup of the family. Research of judicial practice in Russia and the United States allows us to identify the real problems of minor children support and the main trends in the judicial interpretation of legal norms.

Results

The subject of duty support

The Family Code of the Russian Federation establishes the obligation of parents to support their minor children. In the case of divorce, one of the parents is obliged to pay child support for the maintenance of a minor child to the parent with whom the child resides. In Russian science, despite the difference in legal approaches, it all comes down to the presentation of material content. So, Grishaev S.P. defines alimony as a special kind of public obligation with a complex special subject composition based on peremptory norms of family law. [Grishaev S.P. ; 2011]. Kosova O.Y. emphasises that the payment of alimony is an exhaustive manifestation of parental care. [Kosova O.Y.; 2005; 39] In development of this thought, Nechaev A.M. points out that the cost aspect of alimony does not characterise the degree of care, the fact of providing funds exhaustively indicates the fulfillment of parental obligations. Stolbov M.G. indicates that child support is primarily money that is allocated for the maintenance of the child. Therefore, the quantitative factor of the allocated funds reflects the degree of participation in the life and development of the child. [Pillars M.G.; 2002; 3] Thus, the whole discussion in Russia about the content of duty support comes down only to assessing the quantitative size of child support. It seems that a more comprehensive approach is needed when approaching the definition of duty support. Transfer of child support for the form of parental “care”? Of course. Payment of funds to meet the needs of the child is a form of care. Is caring for a child exhausted by transferring funds for its maintenance? No. In accordance with Art.63 of the Family Code of the Russian Federation, parents are required to take care of the health, physical, mental, spiritual and moral development of their children. The payment of alimony, in the formally determined amounts by law, is the fulfillment of an

obligation, reinforced by the possibility of the state applying coercive measures against the violator. Is child support a secondary amount of support? No, the parent is obliged to ensure the well-being of the child, including material, paid child support as a means of subsistence and development of the child. An insufficient amount of alimony can mean a lack of proper medical care, inadequate living conditions and development of the child. Therefore, the quantitative aspect of alimony is a manifestation of improper fulfillment of the obligation to maintain a minor. Of course, there are many factors that need to be considered even when paying minor alimony. For example, the degree of participation of the parent in the life of the child, the state of health of the child, parent, etc. The interests of minor children are priority, adult capable citizens; parents are required to balance their actions with the needs of their children. But needs must be reasonable and correlated with life realities.

In the USA, the term “alimony” is mainly used in relation to parents. “Child support” is used in relation to children. Uniform Interstate Family Support Act Part 1, Article 5-B General Provisions defines the duty of support as a legal obligation to support a child, including financial support, medical care, education, and development. As stated in the North Carolina General Statutes Chapter 50. Divorce and Alimony, the funds paid 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 the life of the child and his parents, taking into account the income of each parent and their participation in caring for the child. Such an approach seems more fair, since it obliges the parent not to be limited to the formal transfer of the amount established by law, but to fully participate in all aspects of the child’s life and bear the corresponding expenses, like the parent with whom the child lives taking into account the maintenance of the level of well-being necessary for him.

Alimony payers

It is assumed that the responsibility for the maintenance of minor children rests with the parents. (Article 80, Family Code of the RF). This obligation is unconditional and not related to any circumstances, such as, for example, the child’s place of residence, his citizenship, poverty or financial well-being of the parent. The basis for maintenance obligations is the fact of consanguinity. The rights and obligations of parents and children arise from the origin of the children, certified in the manner prescribed by law (Article 47, Family Code of the RF). In paragraph 29 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 16.05.2017 N 16 "On the application by the courts of the law when considering cases related to the determination of the origin of children" it is indicated that kinship, as a legal fact, can only be established by state registration of birth, and confirmed by fixing the mother and (or) father of the child in acts of civil status, and issued on the basis of this certificate of birth of the child. In special cases, in the interests of the child, given the existing moral and emotional ties, prolonged active participation in life and upbringing, the



lack of blood communication will not prevent the court from recognising the fact of kinship between the child and the parent. [Artemyeva Y.A.; 2014; 72].

Duty support can be assigned not only to parents. Articles 93 and 94 of the Family Code of the Russian Federation establish that the responsibility for the support of minor children may be imposed by the court of relatives of the second stage - grandparents, brothers or sisters. The Supreme Court of the Russian Federation emphasises that the maintenance obligations of grandparents for the support of grandchildren are similar to the maintenance obligations of able-bodied adult brothers and sisters for the maintenance of their minors and disabled adult brothers and sisters, and are exacted when the fact of need is established, the impossibility of receiving support from their parents and the availability of financial opportunities from relatives. [Review of judicial practice in cases related to the collection of alimony for minor children, as well as for disabled adult children in 2015] These people may be involved in the performance of obligations as additional persons, if it is impossible for immediate parents to fulfill their obligations only by the court. [Artemyeva Y., Ivanovskaya N., Koncheva V., Sitkarev E; 2015; 860] An example is the decision of the justice of the peace of Leninsky district of Makhachkala, who collected child support from a grandmother for a minor child with a disability. The lawsuit was filed by the mother, as a justification for her claim; she indicated that she had three children from different fathers. The child's father is sentenced to imprisonment and cannot help either her or her child. She cannot work, so taking care of three children takes her a lot of time. Higher courts have confirmed the legality of laying an alimony obligation on a grandmother. Solving the difficult financial situation of a mother is possible only with the help of an alimony support of the second level. [Section V of the Review of Judicial Practices in Cases Related to the Collection of Alimony for Minor Children, as well as for Disabled Adult Children 2015]

The Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation canceled the decision of the Yegoryevsk City Court of the Moscow Region on November 21, 2011, which refused to collect duty support from the grandfather. [Definition of the SC on civil cases of the Supreme Court of the Russian Federation of June 25, 2013 N 4-KG13-16.] The determination stated that citizen L filed a lawsuit against ex-spouse A to increase the amount of the collected alimony from 1/3 of all types of earnings and other income, but not less than 6000 rubles monthly up to 1/2 of earnings, but not less than 15,000 rubles. In support of her claims, the plaintiff pointed out the insufficiency of funds recovered by court order for the maintenance of two children, one of whom is disabled. It was emphasised that due to the care of children, she could not work. In case of lack of funds from the payer, she asked to transfer to her ownership of the apartment belonging to the defendant, to improve the quality of life of children. The Egorievsky District Court dismissed the plaintiff's claim, indicating that the defendant's earnings were 11,159 rubles per month. At the time of the consideration of the case, he was registered in the state institution of the Moscow region "Yegoryevsky



Employment Center" as an unemployed person, and he was assigned a minimum unemployment benefit of 850 rubles. Thus, the defendant paid child support in an amount even exceeding the limit established by law. The court did not establish grounds for transferring responsibility for the payment of alimony to the grandfather. The father is an able-bodied citizen who is able to work. In addition, the presence of two children does not preclude the mother from working. Parents have 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 analysing the causes of unemployment of the mother and low income of the father. Having established the fact of the need of children, the insufficient income of the payer of alimony, the court indicated the need for the court of first instance to consider the issue of collecting alimony from the grandfather, who has income in the form of a pension and additional irregular earnings. The situation seems rather absurd; the obligation to support the children of his adult, able-bodied, capable child is shifted to a citizen of advanced years. While the mother of these children is also able-bodied, but does not take any efforts to receive 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 Russian Federation does not allow satisfying the minimum living pensioners and the maintenance of grandchildren means a significant drop in the grandfather's standard of living. This approach, in fact, encourages the infantilism of parents who do not want to make efforts to provide for their children.

Analysing judicial acts in accordance with which duty support are transferred to persons who are not a parent; of course, the question arises on what grounds is the circle of alimony obligations so broadly determined? Parents of an adult capable citizen cannot be held responsible for someone else's decision on the birth of a child. If the transfer of maintenance obligations to grandparents can be somehow explained by the responsibility for the insufficient upbringing of his child as a result of which he grew incapable of taking responsibility for his actions and adequately taking care of his children, then the legislator's laying on maintenance obligations for brothers and sisters is not amenable to no logical explanation. Family relationships are individualised, relative relationships built on personal relationships of specific entities. Relativity of relations means that, with a certain expression of will, one entity gains the right, and the other corresponds to the obligation. Brothers and sisters are not bound by any obligations; each of them makes independent, independent decisions for which he must be responsible. [Artemyeva Y.A., Zimakov A.M., Sergeeva V.V.; 2018] A number of experts believe that attracting second-rate alimony obligations is necessary when there are insufficient funds paid by the parent to protect the interests of a minor child. [Alekseeva O.G., Zaets L.V., Zvyagintseva L.M. 2015]. In this regard, the presence of even an indirect kinship is the basis to bear the burden of maintaining a child. It seems that this approach was justified during the tribal construction of society, at the present



stage, in the conditions of the destruction of family ties; the assignment of responsibility on the basis of "blood" is a relic. The inability of one of the parents to pay child support is more likely the fault of the other parent who made the wrong choice of partner, and certainly not brothers (sisters). Therefore, it is impossible to explain the legislator's approach to shifting maintenance obligations to second-order relatives, except by the state's reluctance to provide materially needy children. In addition to the inconsistency of this position, I would also like to note the social danger of such a legal position, which, in fact, encourages the unwillingness of citizens to take a responsible approach to the issues of choosing a spouse and giving birth to a child and allowing avoiding the negative consequences arising from the decision.

In the USA, as well as in Russia, parents are the main subjects of duty support. As the California Family Code points out, a parent's primary obligation is to support their underage children in accordance with the circumstances and situation of the parent. [Family Code - FAM, CHAPTER 2. Court-Ordered Child Support 4053] The Idaho State Guidelines emphasise that both parents are responsible for the support of the child based on property and marital status [Section 4 (a) Idaho Child Support Guidelines]. It is the father and mother who are required to support a minor child.

California Family Code 3930 clearly indicates - the parent is not required to support the child of his child. There are exceptions to this rule. Responsibility for the support of a minor child is transferred from the minor parent to his parents, i.e. grandmother and grandfather are required to support a minor grandson, bearing full responsibility for the grandson instead of their child. Obligations to ensure the maintenance of the grandson will be fulfilled by them until his father (mother) reaches the age of majority or undergoes the procedure of emancipation. It must be emphasised that they can be assigned only the obligation to provide material support for the child on the basis of established standards of life, and the assignment of the obligation to raise and develop the child (grandson) is unacceptable. The North Carolina Code of Laws emphasises that if a child has a minor parent; second-level relatives (grandparents) pay child support for their grandson. [NC GEN ST §50-13.4.] It is noteworthy that, as a general rule, relatives of both the father and the mother are responsible for the maintenance of the grandson. In this case, the payment of alimony will be from two parties, even if only one parent is a minor. However, the court can take into account the totality of all factors and, in exceptional cases, assign the responsibility for the maintenance of grandchildren only to the parents of the father and mother. When determining the amount of maintenance, the court, in the interests of the child, may oblige grandparents to provide any separate property in favor of the grandson; usually it is about real estate or the right to receive income. It is noteworthy that this presentation may not stop after the parent reaches the age of majority of the grandson under certain conditions. [NC GEN ST §50-13.4. "b"].



Amount of duty support

Article 81 of the Family Code of the Russian Federation imperatively establishes the necessary level of duty support, which the payer of alimony is obliged to pay. For one child, at least one quarter is paid monthly, for two children - one third, for three or more children - half the earnings and (or) other income of the parents. By agreement of the parties, the amount of paid content may 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 an alimony agreement with a fixed amount of alimony for three minor children in the amount of 300,000 rubles was recognised when the father earned 200,000 rubles. [P. 11 Review of judicial practice in cases related to the recovery of alimony for minor children, as well as for disabled adult children (approved by the Presidium of the Supreme Court of the Russian Federation on 05/13/2015)]. Considering the claim of the Bank of Moscow Joint-Stock Commercial Bank on recognition of the agreement on the payment of alimony invalid in respect of payment the child support for one child by the father in the amount of 70% of the salary, in connection with which it is difficult to recover funds under the loan obligation, the court indicated that the parties to the agreement should be guided by the priority of the well-being of children after marriage distress. After a divorce due to a mother's lack of work, child support is the only source of income, and therefore, to maintain the level of well-being, the parties were entitled to establish such an overestimated amount. [Cassation ruling of December 20, 2010, case No. 33-3119.] In cases taking into account the material or family situation of the parties and other circumstances noted, the content of a child may be established by the court in an amount less than that established by law (Clause 2. Art.81 Family Code of the RF). The Supreme Court of the Russian Federation clarified that the circumstances that reduce the amount of alimony are low wages and poor health of the alimony payer. [p.19 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 26, 2017 N 56]. The reason for reducing the legislatively determined amount of alimony can serve as the opposite, and vice versa, the high level of income of the payer. In this case, taking into account the mismatch between the amounts paid and the necessary funds to meet the reasonable needs of the child, payments are made in a fixed amount, taking into account Federal Law of October 24, 1997 No.134-FL "On the Living Wage in the Russian Federation". The Supreme Court of the Russian Federation indicated that a high level of income from a parent-payer of alimony is not an unconditional basis for reducing the amount of alimony, but if there are a number of circumstances that make it possible to conclude that the funds paid are excessive, a reduction in payments is permissible.

It should be noted that the issue of reducing child support at a high income is relevant in the US. [Debrina Washington; 2018] Recently, judicial practice on this issue has changed. Previously, the courts (in the states of which a percentage system for calculating alimony was established) proceeded from the unconditional obligation to pay alimony 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 earns more income is required to pay another parent more to ensure that children have an equal standard of living with both parents, improving the standard of living of the parent with whom the child lives, first of all, the life of the child improves. Significant amounts of alimony should help minimise the differences in the standard of living of children between mother and father. When determining the amount of maintenance, the cost of food, clothing, housing, medical care and proper education should be taken into account. The content is not limited only to things necessary for life, it extends to things necessary for the maintenance of the child, taking into account their social status and their parents in society, the customs of the social circle in which they were brought up and lived before the family breaks up and lives or can live, and conditions. [Levoritz Yonatan; 2017]

However, in recent years, the courts' approaches to determining the amount of alimony are changing. Superior Court of Pennsylvania Court of Appeal for Diane P. Rich v. John W. Rich pointed out that the Pennsylvania Family Code requires calculating the reasonable needs of children separately from the needs of the parents with whom they live. The standard of living of children when living with their mother is lower than when living with their father, due to the fact that she has assets of lower cost and lack of income. However, her financial resources and the reasonable amount of child support established by the court make it possible to provide children with comfortable development and maintenance. Ensuring an adequate standard of living that does not mean equal living conditions for divorced parents, but speaks of adequate conditions of detention. [Wellbank A.V., Ball J.; 2017]

The Wisconsin Court of Appeals in the case of Lynne S. AYRES and John D. AYRES noted that strict adherence to child support standards would be unfair and unreasonable to one of the parents. A large amount of child support paid in excess of the amount necessary to maintain a standard of living at the same level as before divorce will be harmful to children and not be their reasonable maintenance, but the financial needs of the former spouse. [Ayes v Ayres, 023 NW 2d 132; 1999] An interesting stance was formulated by the North Carolina Court of Appeal in the Brind'Amour v Brind'Amour case. The ex-wife filed a lawsuit to recover child support in a larger amount than was prescribed by law. As a justification, he pointed out that it is necessary to meet the needs of children at a level corresponding to the breakdown of the family, i.e. the maintenance of the nanny, renting a car for the nanny, organising holidays and vacations for children, living in expensive housing, studying at a private school, buying expensive clothes and accessories. The court carefully analysed all the parties' submissions and it was concluded that there is no need for a nanny because the mother has a flexible work schedule and children are only with her 60% of the time. The need to provide a special car for the nanny as the former spouse does not own a car was suggested. The father's position on the need to inculcate thriftiness and modesty in expenses for

children, despite the high income received by him, is a reasonable position. When children live with him, their expenses are significantly lower while the quality of life is decent. Children enjoy benefits that are not available to most children. The convenient expensive housing, travels, extracurricular educational programs, quality education, sports, art, visiting theaters, shows, museums. Mother and father disagree on lifestyle for their children. In joint custody, parents jointly make decisions regarding important issues that affect the life and health of children. Everyday decisions, such as babysitting, cars, entertainment, extracurricular activities, are made by the parent with whom the child is at this time. Therefore, nannies, holidays, travel must be paid by the parent with whom the child spends time. A different approach means discriminating from one parent to another and covertly satisfying the financial needs and ambitions of the ex-spouse in the guise of keeping a child. [Brind'Amour and Kelle Brind'Amour; 2009].

Findings

The research led to the conclusion that there are many similarities in the approaches of the legislators of Russia and the United States in determining child support obligations. At the same time, the features of historical, economic development, and mentality caused the presence of significant discrepancies. When determining the content of maintenance obligations in both Russia and the United States, we proceed from the position of the personal nature of the duty support associated with “consanguineous relationship”. The laws of the United States and Russia allow the possibility of transferring the obligation to support children from parents to relatives. However, in the USA, such an opportunity is limited only to cases of responsibility of grandparents in the event of minority of the grandson's parents. In Russia, this list is much wider and boils down to the obligation to maintain a grandson if one of the parents does not want to do this. Of course, this approach is unfair, but the automatic transfer of American experience on this issue to Russia will entail a significant violation of the interests of children. In the conditions of the Russian economy, the state is not able to take on obligations to support children in the case of malicious evasion of child support by one of the parents, therefore, shifting the responsibility to grandparents, brothers/sisters and the legislator, in trying to at least to some extent, provide material support for children as is the case of family breakdown.

The lack of criteria to take into account the contribution of parents to the upbringing, physical and moral development of the child is an essential gap in Russian family law. As the long legislative experience of the United States shows, the establishment of the obligation of the court, even with the percentage formula for calculating child support, to take into account the factors of the parent's participation in the daily life of the minor is an effective legal mechanism to encourage active participation in the child's life, harmonisation of family relations, even in conditions of divorce. This approach would also correspond to the essence



of Russian family law indicating equal participation of parents in the maintenance and development of children, would allow for comprehensive protection of the interests of the child not only in material, but also spiritual, social development, fair distribution of responsibilities for raising a child among parents and achievement of tasks family law, eliminated the existing contradiction between the principles declared by the Constitution of the Russian Federation and the Family Code of the Russian Federation and legal acts regulating the order of mouth copulating maintenance obligations.

When calculating the amounts payable for the duty support of a child, it is necessary to take into account not only the needs of the child in care, education, upbringing, taking into account his physical, psychological state; the special abilities of the child that were developed and encouraged before the divorce, but also the income, needs and responsibilities of both parents; the possibilities of both parents in generating income and participating in the life of the child. It seems that systematic accounting of the totality of these factors will ensure a balance of interests of parents and children.

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