

ALIMONY, LEGAL LIABILITY AS WELL AS SOCIAL: ALBANIAN CASE

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Abstract: Albanian legislation establishes the legal framework that guarantees, protects and solves family disputes. According to the Constitution, Albanian Family Code protect minors and their best interests, relationship with their parents, the right for good upbringing and education. It is a legal responsibility as a social, economic and emotional one from the parent's side towards their children and vice versa. Separation, divorce, migration, abandonment of minors or elderly peoples are associated with lack and indifference on fulfilling the legal obligations towards the family, especially in the case of minors or elderlies. The article is focused on these cross-breeding responsibilities between generations, parents to their children and children to elderly parents. Parent's divorce has produced a defaulting and debtor parent towards children just as children who abandon their parents because they live abroad. The relations and problems among them are part of this analysis of the legal and social plan.

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1. INTRODUCTION

Legal Framework regarding children's alimony

1.1 The Constitution of the Republic of Albania

The Constitution of the Albanian Republic (1998) has sanctioned as one of its fundamental principles, the principle of equality of citizens before the law: "Everyone is equal before the law. No one may be unjustly discriminated against for reasons such as gender, race, religion ... art.18". The Constitution is the fundamental guarantor of every individual's right, to marry and have a family, a right that enjoys special protection from the State. The legislator and the Albanian government must take all the necessary measures to regulate legally the relationship and the marriage dissolution. The art. 53 of the Constitution is focused on the protection of the two most important institutions of the society related to its existence like marriage and family. It states that: "Everyone has the right to get married and have a family; Marriage and family enjoy the special protection of the state; The entering into and dissolution of marriage are regulated by law". In this way, the Constitution protects the family created by marriage as well as the family created by coexistence or "free union" of two persons of different genres. Special protection offered by the Constitution, to the family created by a single mother or father, expressly guaranteeing the equality of children born out of wedlock with them born out of marriage. But, in the concept of the family, the Constitution establishes, immediately after Article 53, another one, which is related to the protection of children's, as special protection guaranteed by the State (art. 54).

The legal protection of children was based on the formalism of the family, which consisted of the right to recognize by law their motherhood and paternity and the real enjoyment of the right to normal family life. In this sense, the constitutional concept of the family is fully consistent with the Family Code, which regulates, in particular, the family relationships and the entire rights and obligations that are the product of this relationship for the parties. In this way, we conclude that the entirety of constitutional provisions guarantees

the right to create a family; The right to live with/in the family; The right to respect the spousal equality, as well as the guarantee for special protection of children, through a legal framework according to these provisions.

International framework related to the protection of children's rights and recognized by the Albanian legislation:

1.2 Albanian Family Code

The Family Code of the Albanian Republic, sanction all the rules and legal provisions that guarantee, protect and resolve the disagreements in family relations. In respecting the Constitution, the Family Code guarantees and considers the most important thing, the protection of the minor and his/her highest interest (art.2). In the Family Code, regarding the relationship of the child with the parents and the family, or relating to the child's education, special attention is addressed to the rights and obligations of their parents, family or their legal representatives. According to this Code, parents are responsible for the upbringing and education of their children (art.3), with special attention to the obligation and the right of parents to take care of the child's nutrition, education, health, and upbringing. The Family Code has foreseen the duty and the right of parents to hold, teach and educate the recognized children or them came out of wedlock (Article 4), who are, if necessary, assisted by the State.

Article 50 of the Family Code provides that: "Within marriage, men and women have the same rights and obligations. Marriage partners... for cooperation in the interest of the family and cohabitation"

Article 155 of the Family Code provides: "..., the court must obtain the recommendation of a psychologist or a social worker, who, before giving an opinion, should investigate the material and moral situation of the family, their living conditions and the most appropriate place for the child to live.".

Article 158 of the Family Code provides: "The not tutor parent maintains the right to supervise the care and education of the child and consequently be informed and consulted for important choices related to the life of the child. S/he should contribute to the care and education of the child in accordance with his/her resources and those of the other parent. The right for visits, based on the conditions specified by the court, cannot be refused, except for serious reasons that damage the interests of the child". Thus, the parent who has been assigned the parental responsibility by a court decision should create a good family and spiritual conditions, a stable environment, and show care efforts and dedication to the child. While under the Article 158 of the Family Code, is foreseen that, the parent who has not been given the child's custody for growth and education, should establish an effective relationship with the child by having frequent contact with s/he and must contribute to the growth and upbringing of her/his child, taking into account the family, economic and financial situation of both parties.

Article 161 of the Family Code provides: "A divorce decree may provide for child support and alimony pursuant to provisions of this Code in the chapter "Persons Liable for Support". From the wording of this provision, it results that the allocation of the necessary amount for the expenses related to the child upbringing will be examined by the court even in cases if the parties do not ask about it. The material contribution has primary importance for the child's wellbeing, so, the law has considered that its definition can't be left exclusively to the child's parents. Protecting the child's highest interest implies the intervention of the court, which, as the case may be, resolves the conflict between the parents if they do not agree on the specific amount, part of this obligation.

In the circumstances when Albanian family law does not envisage the measure of maintenance obligation related to the determination of a minimum and also to a maximum limit, the Supreme Court has estimated that the first instance courts, referring to the legal criteria provided on the Articles 158 and 201§ 2 of the Family Code, with the right to determine this contribution, have taken into account the ratio of the income sources of the plaintiff to those of the respondent and this income to the needs of the child and the economic viability of plaintiff. Thus, the courts have set the amount of maintenance obligation of the plaintiff for the child based on the ratio between (i) the needs of the child (s) and (ii) the economic opportunities of the plaintiff as the parent obliged to provide sustainable manner about the child and the economic possibilities of the respondent as the responsible parent to take care about the child.

Article 192 of the Family Code provides that: "Persons owing a duty of support, according to familiar relation are: a) a spouse to the other spouse and children to their parents; b) parents to their children..."

Article 196 of the Family Code provides: "Parents are not discharged from their support obligation even if they have been divested of their parental responsibility". Article 197/3 of Family Code (F.C.) provides: "A child support obligation continues as long as an adult child is in high school or graduate studies, up until the age of twenty-five".

Article 201 of F.C. stipulates that "Support can only be requested by a party who is needy and not able to provide for his/her essential needs. The amount of support should be determined based on the needs of the beneficiary and on the economic ability of the payer.....".

Albanian case law has estimated that the obligation for maintenance of the children is related to the material well-being of them, so the obligation to feed is the essential obligation that derives from parental responsibility. In determining the obligation for food, the court is based on the highest interest of the child, but also the concrete economic resources and conditions of the parties. In determining the amount of money as a food contribution, the court takes into account, in addition to the economic situation of the respondent and the most basic and vital needs of the respondent, as well as the age and the material needs of the minor child for upbringing and education process.

According to judicial practice, it has been emphasized that at any moment the economic situation of one of the parents may change, not only the respondent may voluntarily contribute to the upbringing of his or her child, but in any case, based on in the Article 207 of the Family Code, each of the parents has the right to request the addition, removal or reduction of the maintenance obligation.

Article 209 of the Family Code provides: "The payer of the support has the right to choose the method of payment either through a direct payment or bank payment, that is prepaid periodically or by allowing the beneficiary to reside with him/her.....".

Article 210 of the Family Code provides: "The support obligation begins from the date of the filing of the petition. ...".

Article 215 of the Family Code provides: "Parental responsibility includes a set of rights and obligations aimed at assuring the emotional, social and material well being of the child, taking care of him/her, maintaining personal relations with him/her, assuring him/her nurture, education, edification, legal representation and administration of his/her wealth".

1.3 The food obligation among family members

Another special chapter of the Family Code is focused on the obligation to feed family members, according to familial relation which is: a) a spouse to the other spouse and children to their parents; b) parents to their children; c) successors to their predecessors, who are not parents, according to the closest lineage; ç) predecessors to their successors, who are not their children, in accordance to the closest lineage; d) brothers and sisters to their brothers and sisters, in accordance with the closest lineage. (Article 192). In addition to these family reports, Article 194 of the Family Code also foresees the obligation between step-parents to maintenance their minor stepchildren, unless another person is liable for maintenance for them and is able to provide such support. Law also envisages the obligation of stepsons and stepdaughters to support their stepfather and stepmother, when the step-parents have provided support and care for them during youth, for a period of not less than 10 years. Under these circumstances, stepchildren are liable for support in the same manner as to their parents.

1.4 The Law on Child's Rights

Law No. 10347, dated 4.11.2010 On the Protection of the Child Rights determines the rights and the protections enjoyed by each child, the responsible mechanisms that ensure the effective realization of the protection of these rights and the special care for the child (Article 1). Its purpose consists of the special protection rights of the child through the realization of a fully legal and institutional framework under the Constitution, the international acts in this field and the legislation in force. Taking measures to provide the exercise of child rights following the development of his/her personality, based on his/her highest interest; taking measures to ensure the child's livelihood, survival, and development; as well as ensuring cooperation between structures and central and local authorities, as well as organizations that protect the rights of the child (Article 2).

As a fundamental part of it, the law relies on the principle of the best interest of the child, as a prevailing consideration in all decisions concerning the child, taken by public or private providers of social care services, courts, administrative or legislative authorities. Among the other principles, pillars of this law, are those of equality and elimination of all forms of discrimination or punishment of a child due to the position, activity, expressed opinions or convictions of the parents/ legal representatives or his/her family members. This law guarantees respect for the responsibilities, rights, and duties of parents / legal representatives of the child. For the child, this law requires the creation of conditions for maximum survival and development, respect for the child's opinion, in accordance with his age and maturity (Article 5).

Article 8 of the law recognizes the right of a child to stay with his parents and not to be separated from them unless such a thing has been judged by the Court which has assessed that it is by the best interest of the child.

Pursuant to Article 18, the law guarantees the right to an appropriate level of life for the child in accordance with his physical, mental, spiritual, moral and social development. Another protection that the law guarantees is the social protection provided to the juvenile by the parent / legal representative, a protection which is given in consideration of the child income's and the conditions and the persons responsible for keeping it, as well as any other consideration that is related with the request for assistance, made by the child or on his/her behalf.

Another guarantee for the child's upbringing and education constitutes the exercise of parental care that provides the emotional, physical, social and material well-being of the

child. For the exercise of parental responsibility, the parent / legal representative person for the upbringing, education, the legal representation and the administration of the child's property, requires the responsible state authorities the assistance and specialized help.

2. THE MEANING OF FOOD OBLIGATION AND ITS CHARACTERISTICS (ART. 192-214 F.C):

Food obligation means all the necessary manners needed to meet the material and cultural needs of life, including food, clothing, housing, light, water, education costs, special expenses (hospital, etc.)

The main condition for fulfilling the food obligation is that the obliged person and the one who benefits belong to the same family in the wide sense of the word. However, even non-family relationships in some cases constitute a condition for compulsory education, such as the relations of the former spouses after the settlement of their marriage. The obligation to feed is non-countervailing, so the beneficiary should not make or give anything as a counterfeet.

When the persons obliged to give food are unable to fulfill it, the obligation passes wholly or partly to persons in the following queue. The right to food can't be alienated, so it can't pass on to other persons, for example, it can't pass on the heirs by inheritance. Also, the right to food can't be sequestered and can't be compensated, since the obligation to feed includes only the necessary means of living.

The variety of these obligations is based on a very close relationship between blood, gender, family, and cohabitation, fully verified. The food obligation consists of regular, periodic and compulsory services in favor of family members, which consist of providing the means of subsistence and the necessary means of education. In general, the requirement for food includes the fulfillment of the beneficiary's living needs and is supplemented in its definition of services that satisfy the life needs of the individual including those of an economic and social character. On the one hand, the obligation to care the underage children is seen as a contribution to the needs of the family in proportion to the substance and the capacity to work professionally or at home for everyone. In the case where parents can not fulfill their children's affiliation because they are unable to do it, according to the legal order, the legitimate or natural predecessors are obliged to fulfill this obligation.

When we talk about the obligation of keeping and caring we see this very closely related to the relationship between the spouses and between parent-child, the food obligation is added to other family members. The obligation to provide food is the responsibility of a broader group and more specifically the one provided on article 192 of Family Code.

What is noticeable about the food obligation is the fact that it is given to a person who is in a "state of need" and can't take care of him/herself and this nutrition obligation is given in accordance with the needs of the person who seeks for it based on the economic conditions of the person who has to provide for it. In the case of changing the economic conditions of the benefiting person or those of the person who is offering it is the judicial authority that can decide about the dismiss, the reduction or the increase of the amount of money under the new conditions. The payment of the maintenance obligation can be fulfilled by the choice of the obliged person through a periodic payment (check) or by taking the person in need of his/her home as he/she is obliged by law to take care about him/her. In this case, is the court who decide how this will be realized, going to the point that in the case when the obliged person is decided by the court, even against his/her will, the obliged person must fulfill the obligation by taking home the person who has this right.

2.1 The conditions for fulfilling the food obligation

According to the law, the food obligation arises only when the person who claims this obligation is incapable of work and does not have sufficient means to live. Food obligation is a family obligation for the relatives who are in the right line and for brothers and sisters. Also, the closest family members have the obligation ahead of those who come after them according to the level of their proximity. The food obligation of one of the spouses to the other, after the marriage conclusion, precludes the obligation of the other relatives, of the beneficial spouse. However, the obligation to feed a spouse by the other one persists during the period of 6 years after the marriage as concluded and the claiming spouse is incapable of work and without sufficient means of living. Meanwhile, the burden of nutrition on brothers and sisters is limited to the indispensable needs, such as education costs, living, and food expenses when it comes to minor brothers or sisters. The obligation to feed can only be sought by the one who is in need and unable to provide the necessary necessities of it. The food obligation should be determined in relation to the needs of the one who seeks it and the economic opportunities of the one who is compelled. This obligation must not go beyond what is necessary for the life of the benefiting person, according to the circumstances of his life. A parent's nutrition obligation to the child is the wider obligation. The child has the right to have the same level of living as his/her parents. Parents are obliged to provide food benefits to the child who is not yet able to take care of his/herself unless the child has sufficient resources to cover his / her life needs. Parents can't evade the obligation to pay their children's food allowances, even when their parental responsibility is removed. Also, parents can't be justified that they have insufficient income to provide the child with a nutritional obligation. The parent is obliged to share with his or her child, any income, however small, that is. Even in certain cases, parents are obliged to sell their property, or part of it, to make possible the fulfillment of their obligation, for example, to save the health or the life of the child. Besides, according to the Family Code of the Republic of Albania, the obligation to feed continues for the time that adult children attend high school or universities, until the age of twenty-five (Art.197F.C).

The food obligation for family members who are further in the vicinity of the blood arises only if the obliged persons due to the greater proximity have died or when these persons are unable to meet the obligation. When the persons in charge of providing the food obligation are unable to give this in whole or in part, this obligation passes wholly or in part to the persons who are in the following queue. Parents are not relieved of the obligation to feed their children, even if parental responsibility has been removed.

Another case is the one regarding the children who come into life from a relation "of fact/di fatto" with the obligation of their parents to fully be compelled to pay the food obligation. This can be applied even in the case of a mother who is fully compelled to fulfill all her child's needs for upbringing and education. While in the case of a father, whether his paternity is recognized voluntarily by him or if the paternity is verified by a court decision, then, the food obligation may be claimed by the minor directly, by his custody person or his/her mother. In the case of a lawsuit raised for paternity verification, the subject of this lawsuit is also the requirement for the alimony.

The question is whether *the alimony is related to parental authority or with the fact that the parent should prove their financial situation?* The Family Code has determined that the removal of parental responsibility does not imply the dismissal of the parent from his/her obligations to the child. The removal of parental responsibility indicates that the parent's power over the child has been misused by the parent and he can't continue to exercise this power in the future. The food obligation, in this case, does not have the features of

punishment with the parent, but it is simply an obligation to ensure the growth and the upbringing of the child. Food obligation is calculated taking into account the legitimate needs of the child as well as the wealth, the opportunities to provide the compulsory income and the extent to which the parent who has the obligation to provide the food obligation to care personally for his or her growth and upbringing. The enforcement of the compulsory obligation, in relation to the child, which is incapable of sustaining itself, may consist entirely or in part in personal efforts for his/her growth and education.

But even in very specific cases, family law allows the possibility of obtaining food benefits from more remote members of the child's family, so, not only by the parents. The nutritional obligation of a person with not a close relation to the child arises when the obligation of the person with the greatest range of closeness is impossible to perform because the person is either dead or he is unable to meet his/her obligations. In such a case, grandparents may also be forced to pay the child's nutrition allowance, since they are directly related persons who having the greatest proximity to the child. This is also due to the fact that under the law, the obligation to feed is also linked to one another. In the case when grandparents cannot care for themselves, then according to the law, are other descendants who are forced to provide the food for them (like grandchildren).

It should be emphasized, that even in case there are persons who are related to the child but not in the first links and are in a better financial situation, this doesn't be a reason to remove this bar from those who are in close relation with the child. This means that, if grandparents are in a better economic state than the child's parents, this does not automatically imply transferring this obligation from the parents of the child to his/her grandparents, because this is an alienable obligation and related to the personal characteristics of the person, the child-parent. Likewise, the law allows the child to benefit from his or her stepfather/stepmother when there are no other persons obliged to feed them and are able to fulfill this obligation. The children have the obligation to feed their stepmother/stepfather when they have a feed and take care of the minor for not less than 10 years, as well as for their parents.

3. THE AMOUNT OF THE MAINTENANCE OBLIGATION DETERMINED BY THE COURT AND THE CASES WHEN IT CAN BE REASSESSED

Always the food obligation will be able to be fulfilled at the moment when it is requested by the person, who has the right, in the court. The court's decision has fixed the amount of the maintenance obligation for the parent obliged to pay in favor of his/her child or the obliged person on behalf to the person in need, according to his/her needs for the improvement and education as well as the economic situation and the possibility of the fulfillment of the obliged person.

In the case of changing the circumstances, the interested party can request to change the amount of alimony in the court. Such a change of circumstances presupposes that we face a change in the level of income, but also a significant change in the benefits and obliged person's lives. For example, a reasonable increase of beneficiary's needs (if the child moves from a village to a large city, usually is presumed that the parent will face an encasement of needs level), or a significant reduction in the level income of the obliged persons (in case of changing of employment, or job loss, illness or a new family beginning) may serve as a reason to demand the reassessment of the measure of alimony decided by the court. However, in any case, the court must take into account the specific situation of the beneficiary person as well as the obliged person, their socio-economic conditions and the functions and goals that the institute of alimony fulfills.

4. THE FOOD OBLIGATION AFTER THE MARRIAGE DISSOLUTION

This is one of the main obligations for each parent on behalf of his/her child after the dissolution of their marriage. In arranging the alimony for the child, the court considers the needs for the child on leaving, food and education as well as the economic situation of the parent who is obliged to fulfill the obligation.

The amount for the alimony is not a fixed one, but it is assessed by the court which takes into account the different needs of the involved persons. The obligation of parents to nurture their children lies in the first place on the minor children who do not have enough means to live despite their ability to work. However, according to the provisions of the Family Code, the parent's alimony continues with adult children, who are attending high school or universities up to 25 years old. Parents are not relieved from their obligation to feed their children even if their parental rights are removed.

The main condition for fulfilling the alimony is that the obliged person and the one who benefits should belong to the same family. However, there is also a case where even though persons who are not part of the same family, the obligation to feed can be arisen, for example in case of the food obligation between former spouses after their divorce.

The Family Code provides that when a marriage is finished, the spouse who is unable to work and does not have sufficient means to live has the right to apply for maintenance right on behalf of the ex-partner. This nutrition obligation is granted for a period of up to 6 years after the marriage is dissolved. The right of a spouse to have the right of food can be stopped before this period in cases:

- when he is engaged in a new marriage or acquire the ability to work;
- when s/he is no longer in need conditions because s/he provides sufficient means for the living;
- when the court, considering the circumstances, finds it is not worthy to take advantage of this right.

As circumstances that make the ex-spouse unworthy to take advantage of this right may be: spreading of humiliating words on behalf of the ex-spouse, provoking scandals against him/her, publicly insulting/offense. In such cases, the removal of the maintenance obligation before the deadline must be made by a court decision, because the court is the only competent body to assess whether the conditions of unworthiness have been established.

The alimony ceases with the death of the obliged person even in cases where there is a final court decision that has not been executed or if the marriage between the parent and stepfather/mother is dissolved.

The food obligation is based on a benefit of economic nature (payment of an amount of money) made by an obligated subject (mainly the man), based on the principle of mutual assistance and solidarity within the family, on behalf of a beneficiary who is in a situation of need. The obligation will not arise if there is a person in need and is unable to provide for himself a livelihood without having (for various reasons) the opportunities to work.

Food obligation is a form of economic aid which, in case of divorce or separation, obliged the spouse economically wealthy to pay to the other one (the spouse) in need, in order to meet his/her basic needs.

4.1 The characteristics of alimony

The obligation to provide food for the purposes and conditions under which it is conditioned is strictly personal: it ceases in case of death of one of the two subjects (it is not transferable due to death); the beneficiary can't donate its credit to the foreign (non-transferable), nor it can constitute an object for confiscation (it may not be "obliged" to fulfill the other credit claims).

In addition, on the regulation of food obligation, compensation is prohibited.

If the person who has the right to alimony is indebted with the obliged, this one can't refuse to grant the obligation on the basis of his/her credit: the persons in need must be helped and satisfied as long as the alimony is more important compared to any other payment obligation.

Acts of alimony for the future: they are provided by the date of filing the lawsuit in the court or when the debtor is notified to fulfill it.

The difference between the food obligation (F.O.) and the compensating contribution (C.C.)

The right to compensatory contribution is to ensure to the economically weaker spouse the most essential things to maintain the standard of living achieved during marriage.

This right belongs to the spouse who had no responsibility for the divorce request.

The foundation of the right of food is the reverse, the state of necessity, in which a spouse without money is unable to provide for himself, wholly or in part, the livelihood, through the opportunity to work.

The most noticeable differences between alimony and compensatory contribution can be summarized as follows:

1. C.C. is offered only in the case where the spouse is not responsible for the divorce, whereas F.O. can be asked even s/he is guilty;
2. C.C. is paid regardless of the condition of the recipient's need, F.O. is based precisely on the assumption of the need situation of a spouse who is unable to secure living condition for himself;
3. Differently from C.C. which is always revocable (spouses may decide not to give it or to pour it into a single sum), F.O. is irrevocable;
4. C.C. may be required even in the case where the beneficiary works but wins slightly, F.O. only if the recipient does not work and is unable to do so.

The food obligation has as limits not to exceed the needs of the beneficiary: this criterion is not absolute but relative, considering the social position.

Reviewing of C.C.

The payment of C.C. should be adapted to the needs of the spouse in difficulties and the economic conditions of the debtor spouse and, therefore, there is no fixed term and a certain measure of this payment. This payment may cease if the spouse is no longer in need or if the economic conditions of each party have changed, it may be reduced or increased.

Spouse's behavior may also affect the change of the amount of the C.C.: if the spouse who benefits from this sum, has many times a punishable or disorderly behavior, the other may require a reduction of the amount that can be changed in any time.

At the request of the interested party, in fact, the judge may order the amendment or revocation of the relevant measures in question, in relation to C.C., as well as, in case if one of the spouses is in delay, the judge can order the confiscation of a part of the property of the debtor spouse or can order to a third party (the employer, the pension funds ...) that periodically part of the money of the obliged spouse should be directly delivered to the person who has the right according to his/her latter's request.

5. DECISIONS WITH THE OBJECT “DETERMINING THE FOOD OBLIGATION” AND THEIR EXECUTION

Judicial decisions on child alimony after the parent’s divorce are not executed at 70%, while in many cases the courts make abusive decisions in violation of the law. The data part of the monitoring conducted by the Center for Legal Civic Initiatives, Tirana on the court decisions of the First Instance Court of Tirana, with the object “Seeking and altering the measure of alimony” in cases of divorce. In total, 655 decisions were monitored for the period from January to December 2014, focusing on the economic empowerment of the divorced women and the welfare of children who are growing up with divorced parents.

After reviewing the decisions, a number of violations and problems encountered in the determination of the alimony for children. During the monitoring, it was noted that the court did not proceed beyond the predetermined reference limits of the alimony measure and there isn’t a pre-prepared scheme to refer to the determination of the food obligation’s sum. In the court decisions, a calculation of alimony from an independent expert or by the interested party is missing. The calculation of the expenses that the interested party needs for the upbringing and education of the child, except in cases when there are requested additional money for the private courses, are very rare.

In many cases, the court decides the measure of alimony only in the decision’s clause and doesn’t explain the factors on which it relied to determine the measure of food obligation. Likewise, there are also cases when the court has not fixed the food obligation because the children’s parents were unemployed, affecting in this way the standards and the quality of the court decision. The court risks giving a decision completely contrary to the law, as the Family Code in Article 196 provides that: parents are not relieved of the obligation to feed their children, even if the parental responsibility has been removed. The court in a decision should set a food obligation for the adult child, but did not find the amount because the adult child renounced to the food obligation, a procedure which is against the law, Article 214 of the Family Code, where is stated that: the alimony right for the future is worthless.

5.1 The execution of decisions

The fact that about 70% of judicial decisions remain unenforceable depend on several factors and causes such as the former husband is not employed and has no property; the former spouse is an informal employed and does not declare incomes; the former husband has property or is employed, but the state bailiff office does not yet execute the decision; the former spouse is an immigrant and the execution of the decision by the competent state organs has not yet been realized; the former husband is in prison according to the law in case of debtor person who doesn’t pay the obligations or interrupted the payment of alimony, or the mother doesn’t fill the suit law /complaint on time.

Such a situation requires the attention of institutions, like courts, the Ministry of Justice, public and private bailiff offices, as well as lawyers, making the decisions more easily executable. This, because bailiff officers should be more present during the process of execution of alimony based on the request made by the creditors.

Today in Albania, the amount of child alimony is different, reaching values of 800 ALL (this figure looks surprising but there are cases where the food obligation amount was settled years ago and the beneficiary did not seek into the court to increase the conditions according to the today's economy) up to a maximum of 4,000 / 15,000 ALL (approx 40.00 – 110.00 Euro), that, the court has estimated as an obligation of one of the parents for the child custody. In many cases, families don't know the procedure for the increment or they do not follow them, so causing that the execution of these obligations remains in such low figures.

In case when the payment of the obligation remains unenforceable for many reasons, the creditor sets up a suit law for non-payment of alimony. The court then proceeds with the trial. In many cases, the court acts through fines, towards the responsible person but there are also cases when the court decides the measure of "prison's sentence". This form of proceeding somewhat has given its fruits where the accused party was sentenced by imprisonment or fine (paid to the state and not to the creditor) by being liable to pay all their obligation together with the fine, as they agreed to go to prison than to pay the alimony.

The Public Bailiff's Office, in fine cases, as the competent body, completed all the procedures for the execution of fines imposed by the court. But in case of fiscal amnesty (decision of the Council of Ministers), the debtors fined by the Court have benefited from the remission of these fines, even though who didn't pay their obligations to their children.

Another problem is the fact that immigrant parents leave no trace of income and parents in Albania, which makes impossible the payment of alimony and these cases are growing nowadays.

6. THE DIFFERENCE BETWEEN THE ALIMONY AND THE ECONOMIC AID OBLIGATIONS

Alimony, with such a wide range of beneficial subjects (family members), creates the idea that we are living in another society. The model of the patriarchal family was characterized by the wide solidarity among its members who relied only on this solidarity, without claiming any support from the public "assistance" which was inexistent. But it is stated on the Constitution of the Albanian Republic, the social context, where the State assumes its role as a guarantor of social welfare, as the obliged subject on the realization of the social rights of its citizens and so on to the family members, fulfilling the social solidarity obligations among them. This includes the support functions fulfilled by the State such as social services (health, education) for all citizens, the protection system for workers, assistance to all job seekers who are unable to secure their livelihood. Today, such services are provided by the State through a well-defined apparatus where each sector strives to provide a full assistance service, a practice which in some of these cases has been delegated to local government as the closest provider to the vulnerable groups and well informed about the different issues of them. (economic aid, health service, education, housing.)

Many of them may think that the sphere of nutrition may be in contrast with an advanced social protection system: in reality, it gives the impression that this contrast does not exist because the food obligation and the benefit of social assistance (economic aid) respond to logics and moves in completely different directions: one belongs to the private sphere and the other one to the public, without the possibility of being connected and in worse cases being mixed. For this reason, the idea that public assistance is addressed to the poor people only in the form of "social support" when there are no relatives who can fulfill the food obligation is not based.

That's because the assistance was an essential function of the modern state. Its duties and responsibilities can't be delegated or dismissed exclusively to the family. This need finds a typical procedural approach that doesn't give to the entity for economical support the right to suit the parent or relatives obliged for the alimony on behalf of the beneficiaries. This is a private relationship between the subject of the right and the relatives obliged without any opportunity to intervene by the public authority. It will be the person, who is deprived of any food means and, at the same time, the beneficiary of public services and financial support by the State, to decide on his discretion, whether to act against the alimony or not. Any procedural substitution would be unacceptable.

Excluding any possibility of action by the economic aid provider who has no legitimacy to seek out by the obliged relatives the alimony, the provider may eventually direct the "poor" person to ask for legal aid (but always if he intends to start a process for alimony). In the case when the poor person will not be able to secure his/her interests, the Prosecution Office will be, if it deems it reasonable, to initiate the criminal proceedings. The discretion for the process initiation will be on behalf of the person who has the right. The fact is that the relatives obliged may be charged with criminal liability for breaches of family assistance obligations (not giving food), but again only on the basis of a lawsuit filed directly by the concerned person.

Caring for the interests of the poor persons and their legal representation before an administrative authority and in the court is a prerogative of the essence of the law. The legal norm has always been interpreted (and can't be only that) as a defensive and supportive one for the "poor people" who have been seen as a class or group rather than a single person. Using an instrument of private law, such as the act of the unjust enrichment, which is generally referred as the last resort ... when there are no other sources to refer to, can't have good effects. In any case, the reference is quite wrong. It is not possible to speak out of unjust enrichment for the obliged relatives on offering the alimony as long as they have not been asked by the interested person (the one who has this right).

So, there is no possibility of replacement or compensation by the economic aid provider. Of course, such claims do not require that the family will be encouraged to break the obligations towards one of its members, obligations that are moral than they are legal, so emphasizing that food obligation and economic welfare responds to different logics which should not be misunderstood (although confusion and blending will serve more to those who - and they are many - in the level of the economic crisis, preach the end of social protection systems).

7. CONCLUSIONS

- In practice, the alimony for minors is treated as a consequence of the marriage dissolution without proving during the process if they have sufficient economic means, therefore the court should investigate carefully in case of alimony assignment.

- There is no judicial practice regarding cases where minors who have income from their work or property, have demanded food obligation because these incomes are not enough to fulfill their needs. In such cases, the court will make an assessment of the child's needs and the income earned by him or her by the work or property and the parent will cover only the difference.

- In the courts, practices may raise problems regarding the concepts of 'normal life' and 'excessive expense' (luxury). Judges should be careful in determining the types of expenditures and in fact, will be taken into consideration the case of the concrete need by

case. The requesting party has to prove the necessity, indicating the lack of less costly alternatives. In the case of less costly alternatives, judges should calculate the average cost to meet a particular need. In any case, should be used the same formula for different cases.

- The judicial practice has difficulties in certifying job incomes or any other permanent property right of an obliged parent, because of the informality of the labor market or the registration from real estate property incomes, for example, the incomes of the rent. Although, in fact, food obligation follows the principle of proportionality, so, the court decides based on the ratio of the needs and the possibilities of the obliged person, the basic needs, considering the characteristics of each case about children's situation. Food obligation is not dictated by the inability of the parent to complete totally or partially this obligation.

- The fact that the law provides the possibility to spread the range of obliged persons on more than one person, indicates that the needs of the beneficiary as long as they are within the margins of the necessity for a safe life are prevailing over the possibilities of obliged person. In these cases, it is possible to call, according to the order, other obliged persons, based on Articles 192 and 204, paragraph 2 of the F.C. In practice, its rare or missing, the call of other persons under the Article 192 of the Family Code.

- Albanian legislation does not foresee a certain formula where the judge relies on the calculation of the indispensable living expenses for the child. These costs will be calculated by the applicant himself, specifying them by special items or by an expert. Which field is the expertise of the expert and in practice do we have precedents? In this case, the costs for such a process are even higher, often unaffordable by the parties, which may limit the right of access to the court. Rarely are cases when judges take into consideration only the needs of the child and his normal development and establish the alimony amount, regardless the economic status of the parent or refer to the Article 196 of the F.C. Lastly, the People's Advocate has calculated the minimum subsistence rate, concretely 16,000 ALlek per capita, where 8,000 ALleks includes expenses for food and 8,000 ALleks includes other expenses for clothing, housing, heating, medical service, education, and entertainment. The article 533 of the Civil Procedure Code provides that the debtor's salary can be part of diminishing up to 1/2 part of it. Can we use this provision as an orientation point regarding the ratio of income tax, so that, the food obligation does not exceed more than half of the income from the debtor's salary? In roundtables is suggested to set minimum and maximum fixed tariffs for food obligation based on the level of income in the public and private sector; For unemployed parents should be offered the possibility to work, for example, 10 days/month in a special sector set up in the municipality, so this money can be spent by/for the child; Determination of sanctioning measures (for example, removal of parental responsibility) in case of non-enforcement of this obligation fixed through court's decisions or in Family Code.

- It is noted that judicial decisions in the reasoning part are referring not so often to "the highest interest of the child" as a very important constitutional and international principle.

- Since the Family Code has been provided for the divorce through an agreement, in practice, there may be cases when the spouses consider the child's alimony as a simple property obligation calculated during the negotiation of the agreement as a credit or debit, together with other property rights. In this context, depending on the age of the child, the monthly amount for which the two parents are agreeing is calculated the total amount of the alimony and its payment. In this case, this compensation would be unlawful and also the pursuing of renunciation from this obligation too.

- The court has decided a certain measure of the child's alimony, stipulating that, this obligation starts from the date of filing of the lawsuit. The trial is the first and the second instance, up to the final decision, lasts more than six months. The creditor executes this decision immediately after it becomes final without exceeding 6 months from the date it enters into force. In practice, even in such cases, the bailiff officer calculates the alimony amount only for the last 6 months and not according to the court's decision since the day the lawsuit was filed.

- It is argued that in case of marriages with children, the plaintiff can sue in different times: a separate lawsuit only for "marriage dissolution", a separate lawsuit only for "alimony cases", a separate lawsuit only for "child custody".

- According to the subject of the lawsuit, in practice, it is requested only the marriage dissolution, but in their claims, the parties also seek to resolve the consequences of the divorce with the exercise of parental responsibility and the alimony amount. In such cases, the court has two positions:

One, where the parties are oriented to correct the object of the lawsuit by adding other searches related to the exercise of parental responsibility and the alimony amount. Another, even it is not written explicitly in the subject of the lawsuit, solving the consequences of exercising parental responsibility and the alimony but are alleged during the process, the court considers them within the mandatory resolution of these consequences with the dissolution of this marriage.

The unifying decision of the High Court which provides that the court in solving the case should not be limited to the object designated by the parties, but also what the parties claim during the trial.

In these cases, the process affects some problems, because the court is in a situation where it cannot decide on the custody of the child and the amount of alimony for the fact that it is impossible to obtain or receive substantial evidence on the merits of these researches. Meantime, the plaintiff has an interest in continuing with the request for divorce for many reasons, one of which may be the stipulation of a new marriage.

What will be the court's reaction in such cases with the absent defendant?

- When the claimant has requested in the object of the suit-law only the marriage dissolution without claiming the solution of the consequences about child's custody and alimony;

- When the claimant has solicited the marriage dissolution on the object of the lawsuit but has claimed during the trial the resolution of the consequences for the child's upbringing and alimony;

- When the plaintiff has requested in the object of the lawsuit the marriage dissolution and its consequences like the child custody and the alimony amount;

- If the alimony is required during the process with an increment of lawsuit object, which will be the date for the beginning of this obligation, the date of the lawsuit or the date of this second request?

- Cases of provisional execution of an alimony decision are made only in cases when the parties are seeking it during the process.

- The proposals aim to address the issue of child-care obligation, which should be automatic with the initiation of a marriage-dissolution process, leaving no space to the judge's

judgment and the party's request. The alimony obligation is the responsibility of parents towards children and as such, it must be decided automatically upon the beginning of the process. This initiative aims at some additions and changes to the articles 317 and 365 of the Civil Procedure Code.

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