

The Right of Full Age Children's to Upkeep: Experience of Russia and Germany

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Abstract--- *The article is devoted to the study of the rights of full age children to receive maintenance from their parents from the standpoint of Russian and German family law. In the course of the study, it was concluded that there are differences between the Russian and German law in regulating the rights of full age children to receive maintenance in the grounds for the emergence of the rights of full age children, in age categories of full age children who are entitled to receive maintenance from parents, in methods for calculating the amount of alimony payments.*

Keywords--- *Russian Law, German Law, Alimony.*

I. INTRODUCTION

The right to receive support from parents is one of the inalienable rights of the child. Article 27 of the Convention on the Rights of the Child [Akhmetyanova, Makarov and Nizamiyeva, 2018] establishes the obligation of parents to maintain the child within their financial capabilities. Despite the fact that the Russian legislation regulates relations in providing maintenance in sufficient detail, this does not exclude the existence of problems in this area. The Family Code of the Russian Federation stipulates the obligation of parents to maintain only disabled, full age children in need of help. However, it is possible that able full age children need maintenance from their parents. For example, they continue their studies at a secondary specialized or higher educational institution, they do not work and do not have a stable income. There are ambiguous opinions about the responsibilities of parents in the maintenance of such children among Russian scientists. Some authors propose to extend the alimony obligation of parents towards their full age children until they complete their studies. Others believe that the absence of such a provision in the Family Code of the Russian Federation is not a gap in domestic family law, but it requires the introduction of sufficient material support for the full age university students through public services [Antokolska, 2002].

In the context of the growing importance of private international law, it seems appropriate to study foreign experience in obtaining maintenance by full age children, as well as identifying the most effective provisions that could become a guide for Russian law in regulating this issue. Russian and German law are most closely interrelated.

The literature notes that the latter had a great influence on the formation of Russian law [Antokolska, 2002]. In this regard, it seems necessary to study the provisions of German law, its peculiarities in the regulation of the rights of full age children to receive maintenance, and a comparative analysis of German and Russian law.

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II. METHODS

In the process of research, a comparative legal method, a method of analysis and synthesis, a method of legal modeling and a method of legal forecasting were used.

III. RESULTS AND DISCUSSION

First of all, it is necessary to consider the grounds for the rights of adult children to receive maintenance, stipulated by Russian and German law. In Russia, the basis for the emergence of such a right is a complex legal composition, which includes: existence of a kinship (or adoption relations) between parents and children, coming of age, disability and need of full age children. In Germany, the grounds for the emergence of the rights of full age children to receive maintenance from parents are differentiated depending on the age category of such full age children. According to § 1603 of the Civil Code of Germany [Rustamova, 2002], unmarried full age children under the age of 21, living with their parents or one of them and receiving school education, as well as children who have reached 21 years old and received general school education, have the right to receive maintenance even if they do not live with their parents (one of them), but if they are not able to support themselves. It is important to note that unmarried full age children have a special position in the right to alimony, since they are equal to unmarried minor children [Arslanov, 2012].

The first age category of full age children (from 18 years old to 21 years old) is entitled to receive maintenance from their parents, if there are the following reasons: blood relationship (adoption relationship) with parents, receiving general school education, living with parents or one of them, lack of registered marriage of full age children.

We can single out the following grounds for the right to receive maintenance for children who have reached the age of 21 years old: 1) the need for material assistance; 2) the ability of parents to carry out the duty of maintenance without prejudice to their financial position.

It is worth noting that German and Russian law stipulate not only a different list of grounds for the rights of full age children to receive maintenance, but also unequally determine some similar grounds. As an example, we can specify such a legal fact as need. Thus, in German law, neediness is considered as the basis for the emergence of the right to maintenance for children who have reached the age of 21 years old. In contrast to German law, Russian considers the neediness as a condition for the emergence of the right to maintenance from their parents to disabled full age children.

In Russia, at the legislative level, it has not been established what should be understood as the neediness of a person, but there are various approaches to the definition of this basis in the literature. On the one hand, emphasis was placed on material needs, which is why need is understood as the totality of vital needs related to the provision of food, necessary clothing, and housing that meets sanitary and technical requirements. On the other hand, in determining the needs, it is necessary to take into account spiritual, aesthetic ones. There is also an understanding of neediness as a person's provision with the funds in an amount below the subsistence minimum [Trestsova, 1991].

§ 1602 of the German Civil Code determines that a person is recognized as needy, if there are three conditions: 1) absence of own property; 2) lack of own income; 3) inability to carry out activities that generate income, for example, due to disability. Thus, in German law, the incapacity for work is absorbed by the need category. In Russian law, need is one of the conditions for the emergence of the right of a full aged disabled child to receive maintenance.

In Germany, there are two methods for calculating the amount of maintenance payments, which determine the degree of need of the maintenance recipient. The first is the method of summation, where the degree of need of the maintenance recipient is determined by adding the income of the obligated and eligible persons and dividing this amount in half, after which the income of the eligible person is subtracted from the result. The differential method assumes that the degree of need is defined as the difference between the income of the obligated and eligible person, which is multiplied by the indicator fixed in the Dusseldorf table [Burdo, 2014]. The Dusseldorf table is structured as follows: the incomes of parents are divided into 10 groups according to their size, and the age of children - into 4 groups. In accordance with the child's age and the size of the income of parents, the minimum amount of child support is determined.

In Russia, there is no such guideline for establishing the minimum amount of alimony and determining the degree of need of a full age child. A living wage serves as an approximate criterion for determining the degree of need of a person entitled to maintenance. However, the need of the disabled full age child is determined by the court in each particular case, taking into account all the circumstances of the case. In particular, the court takes into account the marital status (for example, the presence of other relatives in need of maintenance), the cost of maintaining the child (treatment, purchase of medicines, care) and the need for material assistance. The amount of alimony for disabled full age children is determined in a fixed sum of money to be paid monthly. It is advisable to agree with the scientists who believe that if there is an analogue of the Dusseldorf table in Russian law, alimony would be paid monthly based on a fixed minimum, and the parent would not be able to avoid his/her obligation [Muscheler, 2013].

The issue related to the period of the parents' obligation to maintain their children is differently resolved in Russian and German law. In Germany, a child does not lose the right to receive maintenance from his/her parents upon reaching 18 years old, while he/she continues his/her studies. The right is terminated when the child, having completed the training, is able to earn a living. In Russia, only disabled full age children in need of assistance have this right. The current Russian law does not stipulate the obligation of parents to maintain able full age children, including full-time students studying in the organizations engaged in the educational activities. The scientists in the field of family law propose extending the maintenance obligation of parents for full age children, if the latter continue their education at an average specialized or higher educational institution up to 23 years old regardless of the receipt of scholarship, and make the appropriate changes to the legislation. This proposal is argued that the coming of age does not imply the economic independence of children. Support for the above position can be found in Russian legislation: in accordance with clause 2 of Part 1 of Article 219 of the Tax Code of the Russian Federation, the taxpayers-parents, taxpayers-guardians have the right to receive tax deductions provided they pay for their children until they reach 24 years old.

According to clause 2 of Article 9 of the Federal Law “On Labor Pensions in the Russian Federation”, the right of children to receive a labor pension on the occasion of the loss of breadwinner in the case of their full-time education in the basic educational programs in the organizations conducting educational activities before they graduate, but not longer than until the age of 23 years old.

During 2014-2015, two bills were proposed in Russia to extend the right of a full age child to receive maintenance for up to 23 years old and up to 24 years old. The author of the first bill was Oleg Mikheyev, who offered to provide the opportunity to receive maintenance for those full age children who study full-time in the higher educational institutions. This right would be reserved only for children who were able to enter a place financed from the federal budget. In 2015, the initiative to extend the maintenance of full age children to 24 years old was again launched by M.M. Abasov. In this version of the amendments, it was not necessary for the students to study on-site, funded from the federal budget, but the form of study had to be full-time [Ksenofontova, 2014]. Both bills were not adopted, as a result of which the problem of providing maintenance to able full age children studying full-time in the higher educational institutions still remains unresolved today.

IV. CONCLUSIONS

A comparative analysis of full age children to receive maintenance shows that the obligation to maintain full age children equally applies to both parents, arises on the basis of a set of legally relevant facts in both Russian and German law. These include: blood relation between parents and children, disability, need. German law distinguishes such an additional basis as the possibility of fulfilling the obligation to maintain full age children without prejudice to their own financial situation. Despite the existing similarity in the regulation of the rights of full age children to receive maintenance, there are certain differences. In particular, the presence of two age categories of full age children in need of maintenance from their parents, as well as the possibility of maintaining the right to maintenance of able full age children, is peculiar exclusively to German law. There are no such provisions in Russian law.

V. SUMMARY

Foreign experience may be useful for Russian law in part of termination of the duty of parents to maintain their children, if the latter achieves economic independence. The point of view, according to which post-industrial countries need to increase adolescence to 24 years, deserves attention, because in modern society, children live longer with their parents, devote more time to education at the higher educational institutions, and start earning and creating their families later [Kostyuchenko and Muratova, 2013]. Experts are confident that the changes should occur at the state level: if adolescents mean people between the 10 years old and 24 years old, this means that until they reach the age of 24 years old, they are entitled to receive the social benefits they need. In connection with the social changes that have taken place for Russian law, the issue of borrowing foreign experience and developing standards aimed at raising the age of maintenance of full age children, receive higher professional education, until they complete their studies, that is, upon reaching 23 years old, becomes relevant. This is explained by the fact that, firstly, not all full-time students can combine work with study. Secondly, learning itself is costly. The students enrolled on a fee basis shall pay for the educational services in accordance with the contract concluded; there are inevitable transportation costs, food costs, and payment for living by non-resident students.

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