

# ESSENTIAL CONDITIONS OF THE ALIMONY PAYMENT AGREEMENT: ANALYSIS OF THE EXISTING LEGAL REGULATION

**Zhukavin Vitaly Vladimirovich**

*Far Eastern Law Institute of the Ministry of Internal Affairs of Russia*

**Zhelonkin Sergei Sergeevich**

*Candidate of Juridical Sciences, Associate Professor*

*Saint Petersburg State University of Economics*

**Shuvaev Andrey Valerievich**

*Candidate of Juridical Sciences, Associate Professor*

*Saint Petersburg State University of Architecture and Civil Engineering*

***Annotation.** The article analyses essential terms of the alimony payment agreement. It is concluded that the low enforcement practice on the subject is controversial, uniform conditions recognized as essential for this type of the agreement are missing. The concrete definition of the subject and clarification of other essential terms of the alimony payment agreement is required, which in turn should make legal regulations more predictable and, consequently, lead to legal certainty.*

***Keywords:** alimony payment agreement, essential terms, subject matter, alimony indexation, family law, legal certainty.*

In family law the alimony payment agreements is are a variety of civil-legal agreements and are regulated by both family and civil law [1, p. 98].

In the absence of legislative consolidation of the definition of "alimony agreement", there is a sufficient number of difficulties associated with the ambiguous definition of its essential conditions.

The analysis of family-legal doctrine allows us roughly distinguish two approaches to addressing this issue.

According to the first approach, the essential condition of the alimony agreement is its subject, i.e. alimony, such a vague concept not specified by absolute criterion. It can be distinguished as an essential condition based on an analysis of the provisions of Art. 99 of the Family Code of the Russian Federation (hereinafter - RF IC). In this case, there is a strict division of the subject of the agreement on the payment of alimony into alimony and other conditions, such as

the amount, procedure and method of payment. The parties independently determine the last of the conditions in accordance with the family law and, therefore, the conditions are not included in the subject of the alimony payment agreement [2].

The second approach considers alimony itself as essential term of payment agreement. In turn, alimony includes the amount, method and procedure of their payment [3].

In addition to the terms of the amount, procedure and manner of alimony payment, the term of the period of alimony payment (child support) can be assigned as essential.

The remaining conditions are accidental. Those, for example, include conditions on alimony indexation, if the parties did not include them in their agreement, the provisions of Article 105 FC RF shall apply.

In our opinion, we should come from a detailed analysis of the provisions of family and civil law when highlighting the essential conditions of the alimony payment agreement. Primarily, it should be decided which conditions fall under criteria of essential ones, namely, required and sufficient, otherwise the agreement cannot reach a conclusion.

All the essential conditions of the agreement in the civil law are divided into an objectively and subjectively essential. Objectively essential conditions are those that apply to any type of an agreement. Subjectively essential conditions are named as such for particular type of an agreement structure.

Family law does not contain defined provisions on the required and sufficient conditions for family law agreements. In this case, it is possible to apply and consider the civil law regulations on the issue. So, according to Civil Code of the Russian Federation (hereinafter CC RF) the agreement scope condition (objectively essential), conditions named as such by the legislations of the Russian Federation, and conditions the agreement on which should be reached at the request by one of the parties (subjectively essential) represent the essential conditions.

Analysis of the agreement structures embodied in the civil law allows us to conclude that accidental conditions may be those for which law provides alternative parties' conduct, in case the parties do not reach an agreement. See Paragraph 3 Article 424 CC RF.

Based on the current approach applicable to agreements in civil-law relations, essential conditions are provisions on the amount, method and procedure for alimony payment under the agreement. That is, the family law regulations in this case do not establish possible ways of resolving these issues if the parties do not agree with them, in contrast, for example, to alimony indexing conditions given earlier.

In support of this conclusion, we should provide an example from the judicial practice, in particular, ruling on the appeal of the Khabarovsk territory court. In this case, a nonprofit agency

Notary Chamber of Khabarovsk Territory (claimant) filed a claim against the Mr. Y.O (defendant), a notary, to deprive him of the right for notary practice.

According to the case records, the president of the Notary Chamber announced 49 violations revealed in the examination of the plaintiff's professional activity at the general meeting of the notary agency. Most of violations were classified as gross and grave. The general meeting of notaries also referred violations of CC RF regulations as gross and grave with regard to conclusion and notarial certification of the alimony payment agreement.

During the proceedings, the court also established violations of the norms of family law made by the defendant. Regarding the issue of notarial certification of an alimony payment agreement, the court points out that the parties indicated the deadline for its execution in the notarized agreement, but there were no provisions on the method and procedure for their payment, which referred to gross violations [4]. From this provision, it can be concluded that such conditions are essential when concluding an agreement on the alimony payment.

A special provision regarding the maintenance payment agreement on minor children is also important. Family Code of the Russian Federation has established a minimum amount of payments under such an agreement, which amounts to a maintenance payment not lower than that would have been established in this case when this issue was considered in court. Thus, we can conclude that if the above condition is not met, this type of agreement on the alimony payment will be invalid.

In addition, some authors cite as a condition on the specifying a deadline for the maintenance payment before the child's attainment of majority as the essential one. The absence of such a condition may be a ground for recognizing such an agreement as invalid, since it violates the interest of a minor [5]. That is, an agreement on the maintenance payment cannot be concluded for a period until the child reaches twelve, fourteen or sixteen years of age.

It seems that the conclusion about the invalidity of the agreement on the maintenance payment, from the point of view of establishing the terms of its validity, equated to the age of a child under eighteen years old, is not based on the law. Based on the fundamental principle of private law, the principle of freedom of an agreement (Article 421 of the Civil Code of the Russian Federation), the parties independently specify the period of its validity, which can be established both after and before the child's attainment of majority. Art. 120 FC RF also provides that maintenance obligations under this agreement shall terminate upon the expiration of its term or on the grounds established by them, as well as with the death of one of the parties. Moreover, parties can terminate the alimony agreement or change it by mutual agreement at any time under family law.

To sum up, we can conclude that current provisions of the Russian family law concerning an alimony payment agreement require specification for a more precise definition of its subject matter and clarification of other essential conditions of such family law agreements.

Therefore, at the beginning of the 20th century, the classic of pre-revolutionary jurisprudence I.A. Pokrovsky wrote, “If every single person must obey the law, if he should adapt his behavior to its requirements, it is clear that the first condition of orderly social life is the certainty of these requirements. Any ambiguity in this respect contradicts the very concept of the legal order and puts a person in a very awkward position, i.e. it is not known what to perform and what to adapt to.” [6, p. 91].

Predictability of legislative policy and the accuracy and specificity of legal norms are necessary for the participants of the relevant alimony legal relationships in order to reasonably anticipate the consequences of their behavior and be confident in the invariability of their officially recognized status, acquired rights, the effectiveness of state protection.

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