

ACHIEVING RIGHTS OF CHILDREN WITH DIVORCED PARENTS TO AN ADEQUATE STANDARD OF LIVING

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The article presents the results of the study "Providing children with alimony with divorced parents". This research revealed that more than a third of debtors do not pay alimony, saying that they are unable to pay, created new families and have the unwillingness to participate in the financial support of the child. The main difficulties identified in determining alimony were the evidence of real incomes of parents and ridiculous amount of subsistence with which operate to establish the maintenance of child. Most of sanctions of debtors (sanction, impossibility to perfect passport, prohibition to go abroad), are not appreciated by experts as effective because of difficult mechanisms implemented.

Keywords: *child, family, alimony, divorce, sociological research.*

Articolul prezintă rezultatele studiului "Asigurarea cu pensie de întreținere a copiilor cu părinți divorțați". Investigația realizată a relevat că mai mult de o treime din debitori nu achită pensie de întreținere, invocându-se drept cauze imposibilitatea de a achita, crearea unei noi familii și lipsa dorinței de a participa la asigurarea financiară a copilului. Demonstrarea veniturilor reale ale părinților și suma derizorie a minimului de existență cu care se operează la stabilirea pensiei de întreținere sunt principalele dificultăți identificate în procesul de stabilire a pensiei de întreținere a copilului. Majoritatea sancțiunilor de penalizare a debitorilor (sancțiune contravențională, imposibilitatea de a perfecta pașaportul, interdicție de a trece hotarele țării) nu sunt apreciate de către experți drept efective din cauza mecanismelor dificile de implementare.

Cuvinte-cheie: *copil, familie, pensie alimentară, divorț, cercetare sociologică.*

В статье представлены результаты социологического исследования "Обеспечение алиментами детей с разведенными родителями". Согласно результатам, более трети опрошенных не платят алименты на детей из-за отсутствия средств, создания новой семьи и нежелания участвовать в финансовой поддержке ребенка из предыдущего брака. Основными трудностями в процессе взыскания алиментов являются определение реальных доходов родителей и низкий уровень прожиточного минимума, на основе которого устанавливается размер выплаты. Большинство санкций (штраф за нарушение закона, запрет на получение паспорта, или на выезд из страны) считаются экспертами неэффективными.

Ключевые слова: *ребенок, семья, алименты, развод, социологическое исследование.*

JEL Classification: *C15, J21, J61, J62, J69, O15.*

Introduction. Current Moldovan family stability is compromised significantly by profound transformations incurred by the institution of the family and society: economic and financial crisis, diminishing moral values and family, lack of adequate training on marriage and fatherhood etc. In accordance with the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Family Code and the Law on the Rights of the Child: every child has the right to an adequate standard of living, and to a standard of living adequate for health and well-being, including food, clothing, housing and medical care and necessary social services. National law compels parents to bear responsibility for the physical, intellectual and spiritual development of their children and to support their minor and adult children unable to work that require support. Achieving these rights is particularly important in cases where one parent (sometimes both parents) live separately from the child/children after divorce/separation of parents.

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Recent studies in this area highlight the need to adjust policy to encourage the population to a higher family quality, for reproduction of generations, who would enhance human potential [2]. In the current conditions of family reorganization and socio-economic context, particular emphasis will be placed on children's welfare, this has implications on health, development and affirmation of young people [4]. Thus, socio-economic security of children should not be affected, in the case of separation/ divorce of parents or other adverse events.

Research methods. In the Republic of Moldova some studies that were intended to research the family life have reached some aspects highlighting the determinants of divorce, the impact of the phenomenon on their spouses and children, but sociological research regarding the research of peculiarities of child support after divorce does not exist. This article is developed, based on sociological studies "Providing children with alimony with divorced parents" realized in 2016. The purpose of this study was to determine the main difficulties in ensuring children after their parents' divorce with alimony. A qualitative research sample was established by 30 legal professionals (judges, lawyers, legal executors, legal experts, mediators) and 15 divorced parents (5 fathers and 10 mothers). The sample quantitative research was established by 300 divorced parents' creditors, who were in the custody of minor children according to the court's decision. The research method applied was based on standardized questionnaire survey, by the procedure face to face.

Results. The current population problem of reproduction is extremely important. Future mothers should be sure that in case of divorce or other unpredictable events (redundancy, illness etc.), they can get material support from the spouse who lives separately. New trends in marriage relationships and family (high divorce rate, living together without marriage registration, husbands' separation because of migration) and difficult socio-economic situation in the country, reduced flexibility of the legal framework on the family and the lack of effective mechanisms to execute it, have significantly affected the practice of paying alimony of child.

Current reality offers us a multitude of situations of neglect of children after divorce of parents, who, beside effective deficiencies, also face a lack of sufficient financial support for a decent living. The parent, who remains the custodian of the child, although undertaking multiple efforts to ensure financial stability, does not always succeed. For this reason, it is necessary that both parents continue to participate in the growth and education of the child after divorce.

Table 1

The attitude of respondents regarding divorce

	Agree	Partially agree	Do not agree	DPOI
There should be no divorce, not in any case, it is necessary to keep marriage at any cost.	22	37	41	-11,97
It is possible to divorce when the family does not exist	49,5	29,5	21	20,09
It is possible to divorce in any case, worse will not be	22,5	41	36,5	-8,26
Regarding divorce of a couple, it all depends on each case	66	24	10	42,56

Source: investigations of author.

Analysis of data on respondents' attitudes towards divorce reveals that this event is accepted both at individual and social levels. After processing the data, in this section were calculated **Dominant Personal Opinion Index (DPOI)**, calculated using the formula: $DPOI = (p-n) \cdot (100-ne) / 100$, where: **p** – the proportion of positive opinions, **n** – share of negative opinions and **ne** – share of neutral opinions. As the index is closer to 100, the opinions/perceptions/attitudes are more positive. The idea that there should be no divorce in any case and it is necessary to keep the marriage at any price has the largest cumulative negative value of DPOI. This reveals that in the minds of respondents the divorce is not regarded as a failure, but as an opportunity to start a better life. As divorce becomes more prevalent, it becomes more visible and accepted. People see from those around them that marital difficulties are solved through legal separation. A significant positive value of a cumulative 20,09 of DPOI is linked with the idea that one can be divorced only when there is no family, which shows that respondents are aware of the negative consequences of divorce on children and the reason of separation must be one thoroughly.

When asked who should remain with child after divorce on the grounds that 98 percent of respondents were female, 46% of respondents said that mothers educate children better than fathers, 3% that fathers educate children better than mothers. 36,5% think it depends on the individuals and only 9% support the idea that neither mother nor father alone cannot educate the child well.

Parental divorce often has negative effects on the minor affecting his mental balance. In the absence of a parent of the minor emotional security is severely affected, which may result in specific behaviors based on hypersensitivity, isolation, poor school performance or deviant acts. Thus, 33,5% of respondents said that divorce negatively affected their child. 15% said that at the child was observed anger, sadness at 43%, to 16,5% – aggression, at 33% – closing itself, at 8% unjustifiable absent from hours, at 13% – decrease in school achievement and 6% – smoking and consumption of alcohol.

When asked how often their ex-husband / ex-wife sees his children, 28% said that they see them once a month or every few months, 26% once a year, 17% have not seen the children for many years and 14,5% had never seen them since the divorce. The same proportion of respondents said that her former husband meets with the child every week. Why so rarely meet with the children? Most mentioned because their ex-husband lives in another city or country (35,4%). In the opinion of 18,3% of respondents their former spouse does not want to see the child. In 15,4% of cases the child does not want to see their parent and in 9,1% the parent who retained the custody of the child does not want the child to see their other parent. In 9,12% of situations the meetings with children are reduced because of the fact that the parent who left the family created another family.

According to the opinion of legal frameworks, the share of cases that suppose the establishment of alimony of the child represents 75% of all cases of dissolution of marriage involving minors. The data in Figure 1 shows that only 18% debtors pay alimony regularly and in only 3,5% of cases the debtor helps and in another way besides alimony. 22,5% sometimes pay alimony and 34,5% never. 21,5% also do not pay alimony but they contribute to raising children.

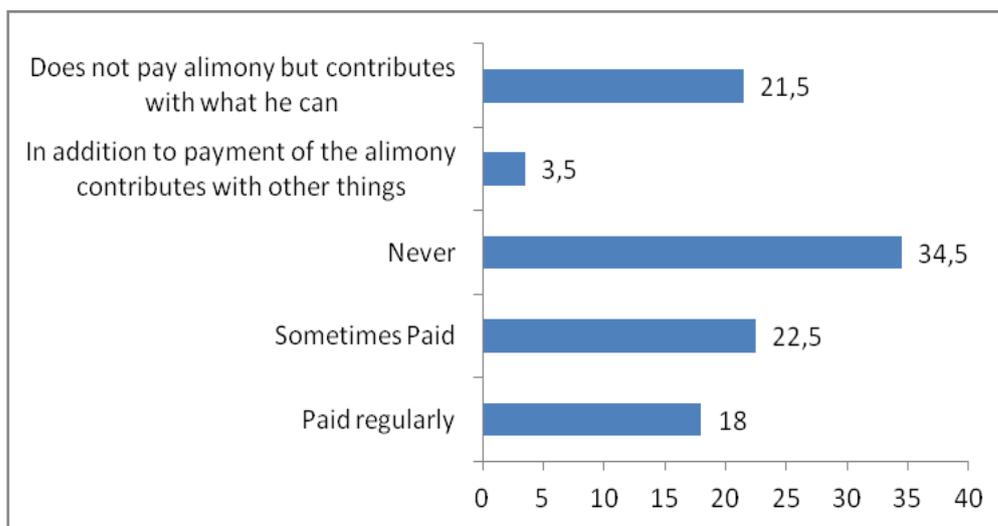


Fig 1. The payment of alimony by debtors

Source: investigations of authors.

The above data are consistent with information obtained from the legal executors in the country. Thus, from the total of 22306 cases on alimony given to execution just only 26% of debtors regularly pay alimony, irregular payment are in 35,8% and 38,2% do not pay alimony at all. The causes of non-payment of alimony from respondents' conception are: 28,4% have no money to pay, 23,2% do not pay due to having another family, 29% do not want to pay and in 16,1% of cases the parent with custody of the child did not request alimony. Similar studies realized on this topic, also revealed that with separation of parents from children, changing their residence, they forget their duties. If there are oral agreements of parents regarding the participation on child support and growth, these are more frequently violated [5].

Table 2

Share of legal executor's folders regarding alimony with regular, irregular and lack of payments

	Total folders with alimony	Nr. of folders with regular payment	Nr. of folders with irregular payments	Nr. of folders with lack of payments
Nr.of folders	22305	5799	7977	8529
%	100	26	35,8	38,2

Source: investigations of authors.

The article 75 of the Family Code of the Republic of Moldova establishes that alimony for the minor child receives from the salary and / or other income in the amount of 1/4 of the parents – for one child, 1/3 – for to 2 children and 1/2- for 3 or more children. According to article 76, in cases where the parent who owes alimony to his child has an irregular or fluctuating salary, or does not have a salary, and payment of alimony as a share of wage is impossible, difficult or adversely affects substantial interests of one party, the court may determine the amount of alimony to a fixed monetary amount.

More than a third (36,7%) of child alimony was determined in the process of judgement of divorce, 16,1% was applied later after divorce through the court, to 9,5% alone reached at a certain amount, 19,1% lived alone reached the understanding that the debtor pay every month as much as possible. In other cases, alimony was not requested. Both studying results qualitatively and quantitatively, highlight that a majority of parents who have assumed the responsibility to maintain the child do not respect that responsibility. In this situation the parent who has the custody, has the right to request alimony, which can be calculated for another three years until the submit of the request.

Lawyers interviewed said that in both cases may arise some difficulties in determining alimony:

- Difficulties in demonstrating the real incomes of parents. *“Very rarely in court, mothers can prove real incomes of spouses”* (Judge, Balti, 6 years of experience). *“There are very frequent situations when wives come and say that he works, it has an income of many thousands lei, but when he brings the certificate from the work he has a miserable amount”* (Lawyer, Orhei, 14 years of experience). *“Frequently they bring certificates of 1,500 lei. It happens because of rivalry, adjustment of accounts between spouses”* (Lawyer, Chisinau, 8 years of experience).

- Derisory amount of subsistence minimum for a child calculated by the National Bureau of Statistics and with which they operate in establishment the alimony of a fixed amount. *“At present, if we run after the National Bureau of Statistics, in the environment for a child is charged up to 1,000 lei. The subsistence minimum is 1,800 lei. Parents have the same obligations towards the child and this sum of money is divided by two. We are entitled to collect only half of this amount from the party from whom it calls”* (Judge, Chisinau, 5 years of experience). *“It is a minimum gap of existence, because to this day, a mother with 1,800 lei does not do too much. It would be better to consider all the child's needs. They must not only take the minimum, because the minimum certainly does not take into account the need of fruit or vitamins that the child needs. Certainly, do not take into account the need of fruit, vitamins that the child needs. The child wants to go to a sport center, dances”*. (Judge, Ialoveni, 12 years of experience).

Receiving alimony amounts of divorced parents with children are very modest in most situations. The smallest alimony was 200 lei and the biggest 4000 lei. The average value of the alimony paid by debtors was 907 lei. In this context, are relevant the statements of respondents: *“in the current conditions the amount is miserable and I do not rely on it”, “it is generally sufficient, but in winter it is a little bit hard even with those 2500 lei that I got from my ex-husband”, “1000 lei is a little, if we analyze the prices of clothes, products and medicines for children”, “with 250 lei can not buy even a shoe, but the child should be wearing two shoes”*.

Lawyers interviewed said that rarely happens when parents' debtors realize that the amount determined is insufficient for raising and educating children and as a result they come with the initiative to pay a higher amount than that fixed by the court. *“If the father agrees to pay more, we do not take into account statistics. Such cases are counted on fingers. On the contrary, we have several instances when fathers after consulting with lawyers come and tell us that we are entitled to ask more than 800 lei and that they are not interested in the costs supported by mothers for their child. Accordingly, we are impartial, and go through the law and establish the legal framework so as it enables us”* (Judge, Ialoveni, 12 years of experience). The same conclusion can be extracted and from interviews with

parents, since only in a situation a single parent debtor contributes additional to alimony child support. *“I pay also dancing lessons, piano, trips to competitions abroad and other necessities of the girl”* (Male, 41 years old, urban).

The legislation provides an opportunity for mothers with children up to 3 years, to benefit also from maintenance. Thus, in accordance with Article 83 of the Family Code, the ex-spouse may claim maintenance from the other spouse if require financial support and is busy with common childcare for three years after birth. Determining the amount of alimony, it is taken into account the material and family situation of spouses (ex-spouses), as well as other important circumstances. Although, one of the interviewed mothers had children under two years at the time of divorce, she has not claimed this right, in the consideration that relations between spouses were extremely strained, and demand of alimony would have contributed further to their degeneration. Experts interviewed confirmed that in their judicial practice they very rarely have cases when the ex-spouses claim their right, because of difficulties in proving the situation and that the applicant does not have sufficient income to maintain themselves.

In some particular cases, husbands are forced to request alimony within marriage. The study results highlighted the main causes that lead to such a situation:

- Strong desire to preserve family *“they consider it a wandering of husband and he would be back in the family”*;
- The influence of stereotypes in society *“no divorce because of people”*;
- Alcohol use *“child money automatically stop as he receives salary, not manage to spend it on drinks”*;
- Intentional payment of alimony in the new marriage in order to pay them the reduced pension from his first marriage.

Parents who do not exercise their obligation to participate in child support can be sanctioned by various methods – sanctions of up to 3,000 lei, inability to renew passport, prohibition to move outside the country etc. According to expert opinion, most measures of influencing the debtors to honor its obligations are not effective, including the application of the prohibition of renewing their passport, considering the validity of these acts. *“The child needs to eat, needs money to go to school and other necessities, but the prohibition to the passport has effects from 10 to 10 years. If the citizen received their passport in the first five years, the second time to renew is in 10 years, so I could not wait for an expired passport. Twenty years and the child is already an adult”*.

The art. 64 of the Enforcement Code provides for the possibility to apply the prohibition on leaving abroad. But even here it records some problems – this prohibition is valid for 6 months. *“Moreover legislature did not indicate when these 6 months flows. It stems from the time the prohibition was imposed by the court or when this effective prohibition reached the border guard service. If it is contested the earliest the conclusion of the application of prohibition will reach the border guard service is three months after the fastest delivery. Therefore, half of a term has already passed”*. *“The issue with leaving the border is a matter of time now. Moreover, it can be applied only three times in the same proceedings. Up until the child is 18 years we apply the prohibition only 3 times more than 1 year and a half. Finally, it is a scarecrow more than an effective method”*. *“Applying the prohibition aims to protect creditor interests, but also a debtor's right to free movement is harmed. These two rules are balancing and even doctrinaires do not find the solution, which right is more fundamental: freedom of movement and property rights of the creditor. The courts in this matter have absolutely, uneven practice. It's a misunderstanding until the chapter point that nobody knows what's important to the person: property right to freedom or to movement”*. Effectiveness is recorded when the debtor has material possessions- house, car. In such case, the executor may constrain him by their sale.

Conclusions. Among the international practices, applied in order to constraint debtors to pay alimony, can include: application of mediation; deprivation of the driving license or other documents (Russian Federation, Czech Republic, UK, etc.); determining the amount of child maintenance to a standard amount and payment of advance payments by the authorities (Denmark), then these payments are collected from the debtor by withholding from wages, bank accounts and other sources; creation of a fund to support children during certain periods of time that parents cannot fulfill the responsibility of maintenance of children after divorce (Portugal, the Russian Federation discusses this subject); pecuniary penalty (Estonia, USA); and imprisonment (Estonia – a year, California – half a year for the first deviation, two years for the next one).

What should be done to protect children's rights in the case of divorce of parents in the Republic of Moldova? We believe that the primary would be necessary to initiate legislative measures to encourage voluntary payment of debtors (tax cuts and other benefits), according to some factors (children's number, occupational status, income and so on). Given that some debtors from objective reasons (insufficient income, lack of jobs etc.) do not honor their obligation to participate in child care, follow to be reviewed modalities for determining alimony according to social-economic situation of debtors. Thought should also be given regarding the establishment of programs to assist parents who are not supported by ex-spouses in the process of growing and educating children. Not least, the ways of sanctioning should be reviewed of debtors who do not honor their obligation to contribute to the maintenance of children (deprivation of permit, license activity, etc.).

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Recommended for publication: 07.09.2016