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### Problems of determining child support obligations in Russian and American

*Problemas para determinar las obligaciones de manutención infantil en la legislación rusa y estadounidense*

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#### ABSTRACT

The article analyzed the laws of the United States and the Russian Federation in order to determine the key points of protecting the interests of minor children in the divorce of their parents. The purpose is a comparative examination of theoretical and practical problems of the implementation of child support obligations of parents in Russia and the United States. The authors used a combination of philosophical, general and private, scientific methods of cognition of theoretical and empirical material, considering historical, political, and national characteristics. The study has allowed identifying some significant problems.

**Keywords:** Child Support Obligations, Comparative Examination, Divorce, Scientific Methods

#### RESUMEN

El artículo analizó las leyes de los Estados Unidos y la Federación de Rusia con el fin de determinar los puntos clave para proteger los intereses de los menores en el divorcio de sus padres. El propósito es un examen comparativo de los problemas teóricos y prácticos de la implementación de las obligaciones de manutención infantil de los padres en Rusia y los Estados Unidos. Los autores utilizaron una combinación de métodos filosóficos, científicos generales y científicos privados de cognición de material teórico y empírico, considerando características históricas, políticas y nacionales. El estudio ha permitido identificar algunos problemas importantes.

**Palabras clave:** divorcio, examen comparativo, obligaciones de manutención infantil, métodos científicos

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## 1. INTRODUCTION

Child protection and creation of a positive environment for them to ensure effective intellectual, moral, and physical development should be a priority for their parents. It is necessary to recognize that when the family breaks up, the obligation to provide for the material support of children in practice is more often fulfilled by only one parent with whom the children live. The bleak statistics of various countries lead to the conclusion that evading the obligation to provide material support for children is becoming common throughout the world. In Russia, the strengthening of support enforcement measures for children. For non-payers did not bring the expected result. The Federal Service of Bailiffs forcibly recovered more than 15 billion rubles in 2018. However, the amount of uncollected debt for child support remains significant – over 30 billion rubles (Imbrogno et al.: 1990). The situation with fulfilling child support obligations in the USA is not that simple as well. According to statistics, less than 50% of children receive child support in full (Rosettenstein: 2008), even though the federal and state legislation of the USA imposes quite severe penalties for non-payers of child support.

Following the Constitution, family regulation matters are the responsibility of the states in the USA. However, considering that family protection is a top priority for the government, regulation of these issues is ensured to a certain extent by federal legislation. It is at this level that basic standards to ensure the protection of children and families are established, and subsequently, these standards are reflected in state law. A systemic violation by a parent of the obligation to support a child and all kinds of evasion of payments or the use of various ways to reduce them is considered a federal offense (Khazova: 2005).

Child support payments for many parents raising their children after a divorce are often the only source of income. Ensuring an adequate upbringing, the moral and physical health of a child does not allow the custodial parent to pay more attention to their own career and education; all their free time is dedicated to raising a child. Thereby, the income of such a parent is not significant. In cases like this, the non-fulfillment of the obligation to support a child by the second parent is an act that endangers the child's life and health. It is commonly known that one of the main tasks of family legal regulation is to build family relations based on mutual assistance and responsibility to the family of all its members. A special place in solving this task is occupied by child support obligations, first of all by the obligations of parents to support minor children, seeing as not only the physical, mental, intellectual and moral development of children depend on their proper implementation, but also the spiritual potential of Russian society and the economic development of the country.

Having proclaimed that the state protects family, motherhood, and childhood, the Russian Constitution established that caring for children is an equal right and obligation of the parents. The Family Code repeatedly indicates that not only material responsibilities for child support are assigned to parents, but also responsibilities for the child's upbringing, education, and development. As the Family Code emphasizes, ensuring the interests of children is a matter of primary concern for their parents. The need to consider, above all, the level of well-being of a child when resolving issues of the support of minors was repeatedly emphasized in the documents of the United Nations. That being said, the term "well-being" means not only the level of material well-being but also the matters of intellectual and moral development, care, and communication (Carlson: 2009).

However, when defining the well-being of children as a priority in determining child support obligations, it is necessary to consider the full set of many important factors of creating a harmonious social environment. This means the need to maintain a balance of interests and financial opportunities of ex-spouses, profession, health status, occupation, efforts made by a parent to provide for their children, etc. The Family Code of the Russian Federation, adopted in the era of economic and political transformations in 1995, unfortunately, does not consider these factors and does not reflect the realities of modern society. The mechanism of child support obligations enshrined by the Code boils down only to the transfer of funds by the obligor in statutory interest

rates without taking into account the responsibilities of parents to ensure the moral and physical development of a child and the provision of proper care for them.

Meanwhile, these responsibilities are important for the harmonious upbringing of a child. Even the novelty of the Russian Family Law on the right of parents to conclude a child support agreement does not allow parents to voluntarily regulating the execution of other parental duties other than paying child support. The one-sided perception by the Russian Family Law of the child support obligations of parents after divorce only through the prism of paying money does not meet the interests of the child in the first place since after the divorce the parent with whom the child does not live is excluded from the normal life of the child. The child requires care and attention from both parents, even after divorce (Caswell: 1998). The absence of a legal mechanism for regulating non-material child support obligations is a significant obstacle to ensuring the well-being and harmonious development of minor children after the break-up of the family. In this regard, the approach of the American lawmaker is a topic of great interest, since it considers all the circumstances of the involvement of the non-custodial parent in the child's life when determining the amount of child support. It encourages the participation in the children's life by flexible regulation of the amount of payments, and reducing the amount of child support for parents who pay more attention to development, education and care for their children.

It must be recognized that the current system of child support in Russia needs to be reformed, new tools and mechanisms that contribute to the maximum realization of each child's potential, create conditions for a decent life perspective and self-realization in the future must be introduced (Bradshaw et al.: 1993). In search of effective methods, the US experience is useful, having accumulated significant positive and negative experience in the legal regulation of child support obligations and social support of children in the market economy conditions.

## **2. METHODS**

This study was set up and carried out to systematize and examine the problem that is typical not only for the Russian Federation, but for foreign countries as well, and to search for effective methods of protecting the interests of minor children during the break-up of the family (Gay & Palumbo: 1998). In modern conditions of the development of migratory mobility of the population and increase in the number of intermarriages, it is necessary to develop academic knowledge that allows studying legal problems on the base of positive and negative international experience. Erasing borders between countries in the academic environment allows not only to learn foreign legislation, but also to improve our own, considering national, historical, and economic characteristics, as pointed out by jurists in such works as Del Boca & Flinn (1995).

The present study used general information about existing approaches to determining child support obligations from the works of such authors as Nepomnyaschy (2007) and others.

The study of the works of Russian academic jurists (Parfentiev: 2008) and others made it possible to provide a comprehensive analysis of the existing approaches in Russia to solving the problem of determining the mechanism for ensuring the child support during the break-up of the family.

Studies of judicial practice in Russia and the United States have allowed identifying the real problems of child support provision and the main trends in the judicial interpretation of legal norms.

### 3. RESULTS

#### *The concept of child support obligations:*

The Family Code of the Russian Federation establishes the obligation of parents to support their minor children. In case of divorce, one of the parents is obliged to pay child support for the maintenance of a minor child to the parent with whom the child resides, in line with the concept of "alimentum" dated back to ancient Roman law, which meant "maintenance" or "dependence". At the time, "alimentum" pertained to the obligation of the state to provide a livelihood for orphans and children from underprivileged families. In the Russian context, despite some notable differences in legal approaches, the provision of maintenance is never disputed. For example, Nadezhda, (2005) defines child support as a special kind of public obligation with a complex specific subject composition based on mandatory norms of family law.

On the other hand, Walker (2015) emphasizes that the institution of child support obligations is the basis of the support of family members and the manifestation of "care" as a specific aspect of family relationships. Developing this thought, Nechaeva points out that the monetary aspect of child support is not the primary manifestation of these obligations, as the main aim is to "care" for the development of the child. However, not all academics adhere to this point of view. For example, Savel'ev is of view that child support primarily relates to funds allocated for the maintenance of the child, whereby the amount reflects the degree of participation in the child's life and development (Del Boca & Flinn: 1995). Given these disparate perspectives, a more comprehensive approach is needed to define child support obligations. A distinctive feature of child support obligations concerning minor children is predetermination in the law and the relevance exclusively to family relations. As provided by Art. Forty-seven of the Family Code of the Russian Federation, parental rights and obligations are based on the parentage of the children, which is confirmed in the manner prescribed by law. Therefore, even despite the existence of particular family ties, an agreement on the payment of child support from an uncle to a minor nephew, from a cousin to a minor second cousin, from a man to a child with unknown paternity, etc. cannot be attributed to the child support obligations. These stipulations would imply that the payment of child support is a form of manifestation of parental "care." However, care is defined as a thought or activity aimed at the well-being of the child and thus broader in scope than a mere provision of child support. Following Art. Sixty-three of the Family Code of the Russian Federation, parents are obliged to take care of the health, as well as the physical, mental, spiritual and moral development of their children. The child support payment, in the amounts formally determined by law, is the fulfillment of an obligation, reinforced by the possibility of the coercive measures against the violator applied by the state. While some may argue that the amount of child support is a secondary factor in the child support obligation, under the law, the parent is obliged to ensure the well-being of the child, including his or her material welfare.

Thus, the child support payment contributes to the development of the child, given that failure to provide adequate child support can result in inferior medical care as well as suboptimal living conditions. Therefore, the quantitative aspect of child support is a manifestation of improper fulfillment of the obligation to maintain a minor (Khazova: 2005). Of course, even when the amount of paid child support is small, many factors need to be considered, such as the degree of parent's participation in the life of the child, the child and parent state of health, etc. However, irrespective of the circumstances, the interests of minor children must be a priority, due to which legally capable adult citizens are obliged to balance their actions with the interests of their children above everything else (Parfentiev: 2008).

In the USA, the term "alimony" is mainly used in relation to payments made to spouses or parents, whereas "child support" refers to financial obligations toward children. Uniform Interstate Family Support Act Part 1, Article 5-B of the General Provisions defines "Duty of support" as a legal obligation to support a child, including financial support, medical care, education, and development.

The Family Code of the Russian Federation uses the terms of maintenance and child support quite inconsistently. For example, Art. 80 of the Family Code of the Russian Federation states that parents have

the right to determine the conditions and form of child *maintenance* independently; otherwise, they will be determined by the court (Art. 80 of the Family Code of the Russian Federation). However, the Code further states that if parents do not provide the child with maintenance, then funds (child support) for the maintenance of the child will be collected in court. Thus, it turns out that child support is not maintenance, but funds for maintenance recovered in court. Therefore, as follows from Art. 80 of the Family Code of the Russian Federation, voluntarily determined funds for children are considered maintenance. This is the position taken by several Russian jurists (Caswell: 1998). However, it is refuted by a comprehensive study of the norms of the Family Code. Chapter 16 of the Family Code of the Russian Federation defines the conditions and form of the voluntary maintenance of minors. In this chapter, the legislator establishes a special form of family law agreement – an agreement on the payment of *child support* (Chapter 16 of the Family Code of the Russian Federation).

Art. 60 of the Family Code of the Russian Federation indicates that child support is a source of funds transferred to parents or parties for the maintenance, upbringing, and education of a child. It appears that child support, along with other types of income sources, is related to the maintenance of the child but is not identical to it, and the maintenance of the child does not include upbringing and education of the child. Such inconsistent use of terminology in the Family Code leads to an actual narrowing of the responsibilities of one of the parents after the termination of the marriage. After all, if a parent's obligation, established after the divorce, is only to pay formally defined child support without consideration of the child's needs for physical, moral and intellectual development, then the fundamental postulates of family-parent relations —the equal responsible participation of parents in raising the child — are violated. The approach enshrined in the legislation, in essence, relieves one of the parents from the parental responsibilities in case of the divorce, allowing only to fulfill the obligation to pay part of the income without taking into account the real needs of the child and the obligation to develop the child and care for him or her.

Thus, it can be concluded that the term "maintenance" is broader than it seems, it includes not only funds for the maintenance of the child or other types of assets, but any assets that allow for the harmonious upbringing, development, and life of the child, manifestation of "care." It can be an apartment for living and recreation, equipment for the child's development or hobby, property rights, washing the child's clothes, bringing him/her to a doctor's appointment, to school, taking walks, etc. Child support obligations are narrower and are sole of material nature. These obligations arise based on mandatory norms of family law; they are characterized by a complex subjective composition and by the element of publicity and are clearly defined by the state. Obligations on maintenance are fulfilled exclusively voluntarily and to the extent, determined independently.

*Subjects of child support obligations:*

The responsibility for the maintenance of minor children rests with their parents. This responsibility is unconditional and is not related to any circumstances, such as, for example, the child's place of residence, their citizenship, poverty, or financial well-being of the parent. The basis for child support obligation is the fact of blood relations. The rights and obligations of parents and children arise from the parentage of the children, certified in the manner prescribed by law. The information is presented in paragraph 29 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 of May 16<sup>th</sup> 2017.

The fact of kinship can be refuted in court. However, in special cases in the interests of the child, in the presence of existing moral and emotional ties, long active participation in life and upbringing, the lack of blood relation will not prevent the court from recognizing the fact of kinship between the child and the parent. Then, despite the lack of biological connection, parental responsibilities and rights are preserved, while maintaining the legal status and documentary evidence of paternity. To illustrate, the Kirovsky District Court of Volgograd (case No. 2-2962/2016) deemed the case concerning the suit of citizen H. on the recognition of the agreement relating to the payment of child support invalid.

In the lawsuit, citizen H. indicated that he was misled by the mother of the child regarding his paternity. The child was born in marriage. Before the divorce, considering the boy to be his son, citizen H. has concluded an agreement on child support, in which he assumed the obligation to voluntarily pay funds for the maintenance of the child, his vacation as well as medical treatment. However, later, after a genetic examination, it was established that he was not the father of the child, and the birth record was amended following the court decision. The court, having considered all the circumstances of the case, declared the child support agreement invalid, thus indicating that child support obligations cannot be imposed on a person who has no kinship with the child.

Child support obligations can be assigned to other family members as well as parents. For example, Articles 93 and 94 of the Family Code of the Russian Federation establish that the court may impose the responsibility for the maintenance of minors on relatives of the second degree, i.e., grandparents and siblings. The Supreme Court of the Russian Federation emphasizes that the maintenance obligations of grandparents for the support of grandchildren are similar to those of non-disabled adult siblings for the support of their minor and disabled adult siblings. The payments made under these obligations are exacted when the fact of need is established, or in cases where it is impossible to receive support from parents, but possible to receive support from relatives. These people can be held liable for the performance of obligations as secondary parties if it is impossible for immediate parents to fulfill their obligations. This is attributed to the abstractness of the minor's right to receive child support from secondary obligors, which can be transformed into a specific obligation only based on a judicial act (Bradshaw et al.: 1993). A child support agreement concluded with these parties outside of judicial confirmation becomes a civil transaction and will lack the full power accorded by the Family Code. In other words, the enforcement of such an agreement will be possible only after receiving a judicial execution writ.

Of course, while analyzing the assignment of maintenance obligations to non-parents, the following question arises: what is the basis on which additional obligations are imposed on them? Parents of a capable adult citizen cannot be held responsible for his or her decision to give birth to a child. If the transfer of maintenance obligations to grandparents can be somehow explained by the liability to bear responsibility for the insufficient upbringing of their own child, then the legislator's decision to assign maintenance obligations to the siblings defies any logical explanation. Child family relationships are individualized and relative, built on the personal relationships of specific entities. Relativity of relations means that, with a certain expression of will, one entity gains the right and the other one – obligation. Brothers and sisters are not bound by any obligations; each of them makes their own independent decisions for which he or she must be responsible. The inability of one of the parents to pay child support is more likely the fault of the other parent, who did not make the right choice of a partner, and certainly not the fault of brothers (sisters) of the child.

Therefore, it is impossible to explain the legislator's approach to shifting maintenance obligations to second-degree relatives otherwise than by the state's reluctance to provide materially for children in need. In addition to the irrationality of this position, it is also worth noting the social danger of such a legal philosophy, which actually encourages the unwillingness of citizens to take a responsible approach to the questions of choosing a spouse and having a baby, and allows to avoid the negative consequences arising from it.

Several experts believe that the involvement of second-degree obligors is necessary when the funds paid by the parent are insufficient to protect the interests of a minor child. Thus, the presence of even an indirect kinship is the basis to bear the burden of maintaining a child. It seems that such an approach was justified during the tribal clannish social structure, but today the assignment of responsibility based on "blood" seems to be an atavism. However, the Russian courts also adhere to this position. An example of that is the decision of the Justice of the Peace in the Leninskiy district of Makhachkala, who exacted child support for a disabled child from the grandmother. The lawsuit was filed by the mother, who, as a justification for her claim, had indicated that she had three children from different fathers. The father of the child in question was sentenced to imprisonment and the woman could not help either her or her child. She could not work, since taking care of three children took up a lot of her time. Higher courts have confirmed the legality of placing the child support

obligation on the grandmother, indicating that solving the difficult financial situation of the mother is possible only with the help of an obligor of the second-degree.

The Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation canceled the decision of the Egor'evsk City Court of the Moscow Region of November 21<sup>st</sup>. 2011, which refused to exact child support from the grandfather. The determination indicated that Citizen L. filed a lawsuit against her ex-spouse A. to increase the amount of the collected child support from 1/3 of all types of earnings and other income, but not less than 6,000 rubles monthly, up to 1/2 of earnings, but not less than 15,000 rubles monthly. In support of her claim, the plaintiff pointed out the insufficiency of funds recovered by court order for the maintenance of two children, one of whom is disabled. It was also emphasized that due to childcare, the mother could not work. In case the payer lacks the funds, she asked to transfer the apartment belonging to the defendant to her own to improve the children's quality of life. The Egor'evsky District Court dismissed the plaintiff's claim, indicating that the defendant's earnings were 11,159 rubles per month. At the time of the consideration of the case, citizen A. was registered in the state institution "Egor'evsky Employment Center" of the Moscow region as an unemployed person, and he was provided with a minimum unemployment compensation of 850 rubles. Thus, the defendant paid child support in an amount even exceeding the amount established by law. The court did not establish grounds for transferring responsibility for the payment of child support to grandfather since the father is a non-disabled citizen, capable of work. Besides, the presence of two children does not preclude the mother from working. Parents have equal responsibilities for the maintenance of children, and therefore the mother must also make a material contribution to it. The Supreme Court of the Russian Federation did not agree with this position, limiting itself to the establishment of formal matters without analyzing the causes of mother's unemployment and father's low income. Having established the fact of the need of children and the insufficient income of the father, the court indicated the need for the court of first instance to consider the possibility of collecting child support from the grandfather, who has an income in the form of pension and additional irregular earnings.

The situation seems rather absurd: the obligation to support the children of his adult, able-bodied, capable son is shifted to a citizen of advanced years, while the mother of these children is also able-bodied, but does not take any efforts to earn any income, not only for her children but even for herself. Furthermore, the court does not consider the fact that the amount of pension in the Russian Federation is not enough to satisfy the basic needs of the retiree, and the maintenance of grandchildren means a significant drop in the grandfather's standard of living. This approach encourages the infantilism of parents who do not want to make efforts to provide for their children.

In the USA, as well as in Russia, parents are the main subjects of child support obligations. As the California Family Code points out, a parent's primary obligation is to support their underage children in accordance with the circumstances and life situation of the parent. The Idaho Guidelines emphasize that both parents are responsible for the maintenance of the child, considering their property and marital status. The father and mother must support a minor child.

California Family Code clearly indicates in section 3930 that the parent is not required to support the child of his/her child. However, there are exceptions to this rule, for example, the responsibility for the maintenance of a minor child is transferred from the minor parent to his/her parents, i.e., grandmother and grandfather are required to support a minor grandchild, bearing full responsibility for him/her instead of their child. They will fulfill obligations to ensure the maintenance of the grandson until his father (mother) reaches the age of majority or undergoes the procedure of emancipation. It must be emphasized that they can be assigned only the obligation to provide material support for the child based on established standards of life, and the assignment of the obligation to raise and develop the child (grandchild) is unacceptable. The North Carolina General Statutes emphasize that if a child has a minor parent; second-degree relatives (grandparents) are obliged to pay child support for their grandchild. It is noteworthy that, as a rule, relatives of both the father and

the mother are responsible for the maintenance of the grandchild. In fact, the payment of child support will be from both parties, even if only one parent is a minor.

However, the court can take into account the totality of all factors and, in exceptional cases, assign the responsibility for the maintenance of grandchildren only to the parents of the father or the mother. Upon determination of the amount of child support, the court, in the interests of the child, may oblige grandparents to provide any separate property in favor of the grandchild, usually; it is in reference to real estate or the right to receive an income. It is noteworthy that this provision may not stop after the parent of the grandchild reaches the age of majority. However, if the child's parents are legally capable citizens, the collection of child support from grandparents in favor of the grandchildren is possible only if the relationship "Loco parentis" is established. This fact is determined by the court not only on the basis of cohabitation or temporary guardianship but also on the basis of prevailing relationships, performed duties, moral and emotional connection.

*The amount of child support:*

The Family Code of the Russian Federation in article 81 imperatively establishes the necessary level of child support, to which the payer is obliged. At least one-quarter of the parent's earnings and (or) other income is paid monthly for one child, one third for two children, and half the income for three and more children. Based on the mutual content of the parties, the amount of child support can be increased and even exceed the amount of monthly income. For example, the Supreme Court of the Russian Federation in its Review of Practice points to a court decision, according to which the validity of a child support agreement with a fixed amount of child support for three minor children for 300,000 rubles was recognized when the father earned 200,000 rubles.

Considering the lawsuit of the JSC "The Bank of Moscow" on the recognition of an agreement on the payment of child support for 70% of earnings as invalid, the court indicated that the well-being of children should be a priority for the parties of the agreement. It was difficult to recover funds for a loan obligation because of it. After the divorce due to the mother's unemployment, child support was the only source of income, and therefore, to maintain the level of child's well-being, the parties were entitled to establish such an overestimated amount. In exceptional instances, considering the material or marital status of the parties and other noteworthy circumstances, the maintenance of a child may be established by the court in an amount less than that established by law. The Supreme Court of the Russian Federation clarified that the circumstances that allow reducing the amount of child support are low wages and poor health of the payer.

Alternatively, the high level of income of the payer can also be the reason for reducing the legally determined amount of child support. In this case, considering the discrepancy between the amounts paid and the necessary funds to meet the reasonable needs of the child, payments are made in a fixed amount with consideration of the Federal Law of October 24<sup>th</sup>, 1997 No. 134-FZ "On the Subsistence Level in the Russian Federation." The Supreme Court had indicated that a high level of income of a parent, who pays child support, is not an unconditional basis for reducing the amount of child support, but if there are a number of circumstances that make it possible to conclude that the funds paid are excessive, a reduction in payments is permissible.

It should be noted that the issue of reducing child support in case of a high income is relevant in the United States. Recently, judicial practice on this issue has changed. Previously, the courts (in the states where a Percentage of Income model for calculating child support was established) relied upon the unconditional obligation to pay child support in the amount established by law. For example, the New York State Court of Appeals indicated that by virtue of the New York Child Support Standards Act (CSSA), a parent who earns higher income is required to pay another parent more to ensure that both parents have an equal standard of living. When the parent's standard of living is improved, it, in turn, improves the child's standard of living. A significant amount of child support should help minimize the differences in the children's standard of living, whether they reside with the mother or the father. When determining the amount of child support, the cost of food, clothing, accommodation, medical care, and proper education should be considered. The maintenance

of children is not limited only to things necessary for their life. It extends to other things necessary for their well-being with due regard to the social status of their family, the customs of the social circle in which they were brought up and lived before the family broke up and lived in the present time (or can live), and other conditions.

However, in recent years, the courts' approaches to determining the amount of child support are changing. For example, while considering the case *Diane P. Rich v John W. Rich*, the Superior Court of Pennsylvania pointed out that the Pennsylvania Family Law requires determining the reasonable needs of children separately from the needs of the parents with whom they live. Because the mother has assets of lower cost and does not have any income, the children's standard of living is lower when living with her than when living with the father. However, her financial resources and the reasonable amount of child support established by the court make it possible to provide children with comfortable development and maintenance. Ensuring an adequate standard of living does not mean equal living conditions for divorced parents, but indicates adequate conditions of maintenance.

While considering the case of *Lynne S. Ayres v John D. Ayres*, the Wisconsin Court of Appeals noted that the strict adherence to child support standards would be unfair and unreasonable to one of the parents. A large amount of child support, which exceeds the amount necessary to maintain the standard of living that children had before the divorce, will be harmful to them and will be targeted not at their reasonable maintenance, but rather at the satisfaction of the financial needs of the former spouse. An interesting decision was made by the North Carolina Court of Appeals in the *Brind'Amour v Brind'Amour* case. The ex-wife filed a lawsuit to recover child support in a larger amount than was prescribed by law. As a justification, she pointed out that it is necessary to maintain the children's standard of living on the same level, as before the divorce, which includes the allowance of the nanny, renting a car for the nanny, organizing holidays and vacations for children, expensive housing, private school, buying expensive clothes and accessories. The court had carefully analyzed all the parties' arguments and concluded that there is no need for a nanny, since the mother has a flexible work schedule, and the children are with her only 60% of the time. There is also no need to provide a car for the nanny since the former spouse has a car.

Meanwhile, the father adhered to the sensible position that it is necessary to teach the children frugality and modesty, despite his high income. When the children live with him, their expenses are significantly lower, while the quality of life is still adequate. His children enjoy benefits that are not available to most, i.e., expensive comfortable housing, traveling, extracurricular educational programs, high-quality education, sports, art, theaters, shows, museums. The mother and the father disagree on the lifestyle for their children. In joint custody, parents make decisions regarding important issues that affect the life and health of their children together. Everyday decisions, such as babysitting, cars, entertainment, extracurricular activities, are made by the parent with whom the child resides at the time, therefore, nannies, holidays and traveling must be paid by the parent with whom the child spends the time. A different approach means a discriminatory transfer of obligations from one parent to another and a veiled satisfaction of the financial needs and ambitions of the ex-spouse under a pretext of maintaining a child.

#### **4. CONCLUSION**

The study shows that the problem of ensuring the well-being of minor children after a divorce is an urgent problem in Russia and the USA. The transfer of the larger half of parental obligations to the parent with whom the child remains is characteristic of many countries. The reduction of child support obligations only to the payment of the financial allowance negatively affects the upbringing and development of the child. The lack of criteria that help to consider the contribution of parents to the upbringing, physical, and moral development of the child, is a significant gap in Russian legislation. As the study shows, establishing the obligation of the court to consider the factors of parental participation in the daily life of a minor child, even with the percentage

formula for calculating child support, is an effective legal mechanism to encourage active participation in a child's life and harmonize family relationships, even after a divorce. Such an approach would also correspond with the main point of the Russian family law that indicates equal participation of parents, in the maintenance and development of children. It would allow for comprehensive protection of the interests of the child not only in material, but also in spiritual, social development, fair distribution of responsibilities for raising a child between parents and achievement of tasks of family law. This approach would also eliminate the existing contradiction between the principles declared by the Constitution of the Russian Federation and the Family Code of the Russian Federation and legal acts governing the establishment of child support obligations.

In the context of a market economy and a widening income gap between citizens, the Russian legislator needs to establish reasonable minimum standards for expenses for food, accommodation, clothing, healthcare, school and extracurricular education, development of abilities, and leisure. Guided by these standards, the court will be able to determine a fair amount of child support. The consolidation in the Family Code of the Russian Federation of a general rule on the right of the court to reduce (increase) the legally determined amount of child support creates legal uncertainty, reduces guarantees for the protection of children's rights, and leads to the creation of conflicting judicial practice. In this case, the guidelines for the calculation of child support developed because of long practice and adopted by the USA based on federal standards for providing for children, are very useful for improving Russian law.

Given the specifics of the state, social and economic structure of Russia, it would be reasonable to consider the following factors when determining the amount of child support:

- The parents' income;
- Their needs and responsibilities;
- Their possibilities in generating income and participating in the life of the child;
- Reasonable requirements for childcare, education and upbringing with due regard to child's physical and psychological state, special abilities of the child that were developed and encouraged before the divorce.

It seems that the consideration of the proposed factors while calculating the amount of child support in Russia will best ensure the standard of the well-being of children in case of a divorce.

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