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CONCEPTUAL FRAMEWORK OF THE RESEARCH

Timeliness and Significance of the Research Topic. The institution of the family serves as the fundamental social structure upon which the development and organization of the rule of law have been built. Family relationships, along with the rights and obligations arising from them, have always been and will always remain a primary focus of all branches of law and development directions. Within the family law domain, the obligation of maintenance between family members plays a crucial role. This obligation is continuously adjusted in accordance with evolving living standards, approaches, and levels of awareness. With the Republic of Moldova's accession to the European Union, the need to harmonize all national regulations with international standards, including those pertaining to family law and the legal obligation of maintenance, has become increasingly evident.

Through this doctoral thesis, we aim to introduce a novel and timely topic: the obligation of maintenance between family members examined from the perspectives of good faith exercise and abuse of right. The topicality of this subject necessitates legislative modifications to address instances of legal norm evasion and to facilitate the ongoing diversification of social-human legal relationships.

Significance of Studying the Good Faith Exercise of the Maintenance Obligation. The study of the good faith exercise of the maintenance obligation holds immense value and importance. It enables the distinction between individuals acting honestly and with due consideration for the other party's interests from those who engage in an abusive exercise of their rights. Stemming from the significance of the good faith principle within civil relationships, adhering to this principle in the fulfillment of obligations ensures the effective realization of the rights and interests of family law subjects within maintenance relationships.

Another central concern addressed in this work is the need to ensure the protection and safeguarding of the maintenance obligation creditor, who is naturally in a less advantageous position compared to the debtor. The emergence of the maintenance relationship is not, in itself, a manifestation of the parties' will conditioned by their decision, but rather a situation in which individuals find themselves due to various factual and legal circumstances arising from different life junctures. The imperative of studying this aspect carries a mandatory character, especially considering that the subjects of the relationship may include: minor children, adult children incapable of work, parents, siblings, grandparents, and grandchildren, etc. These legal subjects, under these conditions, depend on the support and assistance of others, and the importance of the latter exercising the obligation in good faith guarantees the fulfillment of the rights and interests of the former.

Purpose of the Thesis. The primary purpose of this thesis is to address the needs and concerns of individuals who are at a disadvantage within the legal framework of the maintenance obligation and who find themselves in a state of need due to various social and economic factors. These individuals may be experiencing hardship due to young or advanced age, temporary or permanent incapacity for work, precarious health conditions, or other material and psychological circumstances. Furthermore, this thesis aims to provide a well-reasoned and substantiated doctrinal study that responds to the challenges of the 21st century in the area of establishing the maintenance obligation in relation to the level of awareness of the subjects involved.

In this scientific study we will establish the following objectives for detailed research:

a. Analysis of theoretical works and national and foreign normative provisions that reflect on the essence, elements and content of the exercise of the maintenance obligation through the prism of the principle of good faith, as well as the importance of determining situations with an abusive impact on the exercise of subjective rights in bad faith.

b. Examining the evolution of the maintenance obligation from its origins to the present. Examining the progress of the institution of obligation, maintenance, family relations, acceptance of good faith and abuse of law.

c. Presentation of the concept, distinctive signs and forms of good faith, bad faith and the abuse of law by defining the concepts subject to research and their comparative examination.

d. Determining the legal situation of the subjects of the maintenance obligation report who act in good faith and the legal – material liability of those who demonstrate a behavior lacking in good faith – manifested by abusive actions/inactions towards the object of the maintenance report less advantaged.

e. Formulating the respective conclusions and recommendations by examining the factual and legal conditions that favor the abuse of law.

Research hypothesis. Several directions of study are identified based on three distinctive dimensions: 1. defense of the rights and interests of the parties to the mandatory legal relationship of maintenance between the less advantaged family members; 2. the transparency of the evidence presented by the parties in the court process that directly influences the determination of the amount of maintenance pension payment; 3. the different approach to the situation of the subjects of the mandatory legal relationship of maintenance in good faith tangentially to those who act by abuse of right.

Synthesis of research methodology and justification of chosen research methods. The research carried out is based on the study of the specialized doctrine, the national family and civil legislation, the norms of international law, the EU regulations, the jurisprudence of the Supreme Court of Justice of the Republic of Moldova, the practice of the courts of the Republic

of Moldova and Romania. In order to achieve the purpose and relevant objectives above, the logical (rational) method, the historical method, the systemic analysis method and the comparative method were applied. Thus, all three postures – exegetical, dogmatic, critical – in which the study of Title IV of the Republic of Moldova appears, involve the use of the following categories and laws of logic: definition; specification and generalization; division and classification; differentiation and integration; analysis and synthesis; the demonstration; argumentation; reasoning, etc.

Approval of research results. The work on the maintenance obligation exercised through the prism of the elements of good faith and the abuse of law, was developed and discussed within the Doctoral School of Legal Sciences of the State University of Moldova. The results of the research were approved by the guidance committee of the Doctoral School.

The summary of the thesis chapters. The structure of the paper is conditioned by its content, the purpose and objectives of the doctoral thesis investigation, which is subordinated to a research logic grounded and argued on exponential theoretical and doctrinal sources in the institution of the maintenance obligation. The work consists of introduction, three chapters, general conclusions, recommendations and list of bibliographic sources.

Through its content, the three chapters reflect both the current research in the field, the presentation of the practical analysis carried out, as well as the personal opinion of the author. The respective conclusions to our research topic are presented extensively in the content of the thesis, as well as in the final part of the paper. Along with the conclusions, we bring a series of recommendations, revealing at the same time the solved scientific problem and the perspectives related to the research topic.

The general conclusions and recommendations end the scientific investigation carried out, which constitutes a successful crowning of the proposed objectives related to the author's recommendations in the field of the researched theme. As a result, the purpose of the work was fully fulfilled by providing relevant material support not only at the doctrinal level, but especially at the legislative level, which we hope will have a decision-making impact in order to operate the changes to the legislation in force, emerging from the nature of the recommendations provided and the importance them.

1. ANALYSIS OF THE SITUATION IN THE FIELD OF MAINTENANCE OBLIGATION AMONG FAMILY MEMBERS UNDER THE DOCTRINE ASPECT:

1.1. The study of scientific materials in the field

The given study is especially based on the progress made in the field by local authors. We mainly identify the specialist works of authors from the Republic of Moldova, such as: Cebotari Valentina, Arapu Elena, Băieșu Sergiu, Prutean Taisia, Chistruga-Sinchevici Inga, Baltag Dumitru, Mihalache Iurie, Talmaci Roman, Tragone George, Pisarenco Olga, Veaceslav Pînzari and others, as well as works by authors from Romania, such as: Ion P. Filipescu, Adriana Corhan, Ștefan Cocoș, Emeșe Florian, Cristina Codruța Hageanu, Marieta Avram, Nicolae Turla, etc. In the same vein, we will also consult Russian, French and other doctrines comparatively. Regarding Russian doctrine, the works of Russian authors will serve us as food for study: Пчелинцева, Л. М, Бондов С., Нижник Н. S., and others. Subsidiarily, points of reference will also be the French doctrine, an inexhaustible source of scientific works by the author Corinne Renault Brahinsky, Patrick Nicoleau, Gérard Cornu, etc.

Subsidiarily, the given work aims to examine and identify other research niches related to the institution of the maintenance obligation, which are recognized to be no less significant, but less studied by doctrine and regulated by specialized legislation.

Among the most valuable specialized works, which will serve as a ground for discussion and analysis, we identify the author Valentina Cebotari's article on the Notion, legal characters and categories of the maintenance obligation, published in 2014 in two issues, in the Magazine of the National Institute of Justice.

In the first chapter, the maintenance obligation is essentially dealt with, referring mainly to the examination of aspects regarding the notion, legal characters, the appearance of maintenance relationships, as well as the categories of the maintenance obligation. We rightly catalog the work as valuable and a worthy starting point for the study of maintenance duty as a whole. At the same time, the author primarily aims to identify the place of the maintenance obligation in the regulation of the legislation in force starting with the description of the evolution of the maintenance obligation, establishing the factual and legal circumstances that were the basis for the legislation in the Family Code of a whole title ordered to the institution of the obligation to maintenance.

As for the legislation of the Russian Federation, then we recognize that the Russian doctrine is characterized by a multitude of specialized works. This fact is due to several decisive criteria that facilitated and conditioned the need to approach the subject from a theoretical and practical point of view, such as: the net higher number of population and correlative number of specialized authors in the field, the diversity and number of cases examined, the increased

interest of doctrinaires in order to document the given sector, but also by other political, social and demographic factors.

In what follows, we will begin by presenting particularly important works by Russian authors.

The author H. Нечаева with the work Семейное Право Курс лекций, published in 2005. The present work is a course notes manual intended for university study, in the content of which family law is briefly reproduced.

As far as foreign literature is concerned, in France, the maintenance obligation between family members constitutes an important role in the branch of family law. It forms a widely regulated institution due to the fact that the state has its early origins. Regarding the doctrine of Family Law in general and the Maintenance Obligation between family members in particular, we mention the authors Jean Hausser and Daniel Huet Weiller with the monograph Droit civil sous la direction de Jacques Chestin. To families. Dissolution de la Famille, published in 1991.

Of great value and interest were the multitude of works by the author Corinne Renault Brahinsky, being a theoretician in the branch of Family Law who has more than 32 publications in her bibliography, such as: Droit des personnes et de la famille: concubinage, pacs et mariage, divorce, filiation; L'essentiel du droit des obligations: 2019-2020; L'essentiel du droit de la famille etc. All works, more or less, have a direct tangent to family law or even maintenance obligations between family members.

In conclusion, we note that the phenomenon of the maintenance obligation is an extensive field studied both in the national and international specialized literature, but none of the works named above have dealt with the institution of the exercise of maintenance through the prism of the principle of good faith and the abuse of law. As a result, the current work constitutes a thorough study of the maintenance obligation based on the doctrinal resources related to the existential reality that highlights the importance of the exercise of maintenance by the parties of the legal relationship consciously, openly and honestly.

1.2. The historical-legal evolution of the development of maintenance between family members

Throughout history, whether we are talking about a family in which one member exercises discretionary power over the others, or we are talking about a family governed by equality in the exercise of family rights and duties, the family justifies its reason for being in the soul ties, of affection, that take shape between its members, ties that argue and at the same time constitute the reason for mutual material and moral support.

Also, the family, as a social reality, is nothing but the result of the human being's need to be protected, to feel in complete security with other peers with whom they develop kinship or affinity relationships, naturally arising from feelings, respect and affection. Regarding the

foundation of marriage, we note that: "in the beginning, as now, marriage was the exclusive competence of secular authorities. The Church did not deal with this governed institution, otherwise only with the institutions of civil law. Over time, however, In the 10th century, marriage completely left secular rules and came under the control of the church, in the 14th century, when some sovereigns began to provide rules for the conclusion of marriage." [1, page 19]

At the base of this form of social organization, the family, is a legal institution, to which the legislator, over time, has consecrated, through the lens of its importance, numerous regulations, as an additional guarantee of security, protection, well-being and balance that should characterize it. As the author tells us: "spouses must understand their rights and responsibilities within the family". By which it is mentioned that with marriage, we not only have rights as a husband, wife and as a mother, but this legal act also attracts a series of many other obligations, including the maintenance obligation.

The term "obligation" represented the purely material, corporeal bond (vinculum corporis) between two persons, giving the creditor a right over the person of the debtor (ius in personam), similar to the right of ownership, which was a right of the owner over his work (ius in rem). Under this right, the creditor could dispose of the debtor's person at will, like the owner of a thing. If the debtor failed to pay the creditor the amount owed, then he becomes the property of the creditor, we are talking here about the term slavery, in other words.

Or, in another order of ideas, by obligation in Roman law, it meant the act of binding someone for a certain cause, in order to obtain something. Often the attachment action arose in connection with the non-payment of the debtor's debt to the creditor. In this way, the creditor more literally bound (arrested) the debtor in a private prison until he was freed by one of his relatives by paying the debt to the creditor or was sold into slavery, thus the debtor appeared as the object of the property right. [2, page 2] Just as the owner could dispose of his thing, the creditor could dispose, according to his own will, of his debtor. The configuration of the obligation relationship was that of a material link created between the creditor and the debtor. Failure to pay when due attracted the debtor's imprisonment and finally his sale to secure the creditor's interests. The liability was interpreted as pledging, as a guarantee of the performance of the obligation claimed by the creditor. [2, page 3]

In French legal language, the term "obligation" generally represents what the law or even morality commands an individual to do, without having any direct connection with a person determined by the creditor. [3, page 3]

In Romanian law, it is considered that the foundation of the maintenance obligation is the solidarity that unites the family members and the blood relationship between them. The object of

the maintenance consisted in the provision of food, housing, clothing and shoes for those who, according to the law, fell under their charge.

The legal obligation of maintenance was also enshrined in ancient Romanian law. The Calimach Code [3, p. 20] stipulated the duty of parents to care for the upbringing and education of their children. Maintenance expenses were borne by the father of the children, and if he did not have the necessary means, they fell on the mother, except in the case where she herself was in need. In this situation, the father's ascendants and, in their absence, the mother's ascendants became obligated. If the parents separated and could not agree on the maintenance of the children, the full care of the children fell to the mother.

Having said that, it is important to note that the obligation of maintenance has its roots in ancient times, having taken on different forms and interpretations over the years depending on: civilization, intellect, social stratum, need, and other factors. [4, p. 565] However, the essence of the norms has largely been preserved to this day. The obligation of maintenance between family members has been and will always remain, first and foremost, a moral and spiritual duty, and in the event that it is not exercised consciously and benevolently, the coercive force of the state comes into play. This regularity will not disappear as long as the concept and institution of family or marriage exists.

1.3. Conceptual generalities, the notion and characteristics of the legal maintenance obligation.

Starting from the different interpretation of the notion of obligation in common law, several opinions regarding its definition have been formulated in foreign legal literature.

In the monist conception, the obligation is a legal relationship based on which the creditor can claim from the debtor the execution of an obligation or, on the contrary, the obligation not to do something.

According to the German, French and Swiss legal doctrine, through the dualist conception, the notion of "obligation" is reserved for two distinct legal relationships, namely, on the one hand, the one under which the debtor must give, do or not do something for the benefit of the creditor, and, on the other hand, the one under which the creditor is entitled to receive the benefit can compel the debtor.

Likewise, there is the subjective conception and the objective conception. [3, page 20] According to the reflections of the author, Berinda Gabriela, the subjective conception designates the obligation as a legal bond (vinculum iuris) between the person of the creditor and the person of the debtor, and the objective conception focuses on the object of the obligation,

considering it both a legal relationship, as well as a good or a value that is found in the creditor's patrimonial asset and in the debtor's liability.

The legal maintenance obligation, as an element of the mandatory legal maintenance relations, exists only under the conditions provided by law. This is subjectivized only for the benefit of the persons limited by law. The legal maintenance obligation is intended to provide the creditor with the necessities of life, based on the principle of family solidarity. [5, page 207]

In the sense of the definition, offered by the author Filipescu Ion P., by maintenance obligation we understand: *"The duty imposed by law on a person to provide another person with the necessary means of living, including the satisfaction of spiritual needs, as well as in the case of the maintenance obligation of the parents of minor children, the necessary means for their education, training and professional training"* [6, page 443] The same notion for research is offered by the author Cebotari Valentina [7, page 26], according to which the legal obligation of maintenance is based on the affection and friendship that exists between family members, as well as on the rules of social coexistence and aims to help the close person in need. At the same time, we attribute here the parents' obligation to provide support and help to their minor children, which is manifested through their education, training and professional training.

Returning to the notion of the maintenance obligation, we reiterate that the legal maintenance obligation represents the duty imposed by law on a person to provide another person with the necessary means of living, including this manifested by satisfying spiritual needs, as well as in the case of the maintenance obligation of parents towards minor children, the necessary means for their education, training and professional training". [8, page 224] Thus, the legal maintenance obligation appears as an effect of kinship, marriage or other relationships assimilated by law to family relationships. Starting with these, we will explain in turn each of these notions in order to better understand what we call the concept of family relationship.

The name maintenance obligation, which has been imposed in judicial practice and in specialized literature, the only one used in the old Family Code and in the current Civil Code, is preferable, because it highlights its complex character. This duty has as its object everything necessary for living, not only food, but also clothing, housing, medicines, medical treatment, and in the case of the maintenance obligation of parents towards their minor children, the specific means of education, care and school and professional training of children.

Also, the maintenance obligation includes the spiritual living needs of people, which are constantly growing, a fact that also affects the extent of the maintenance obligation. The maintenance obligation of parents towards their minor children has a more complex content than the maintenance obligation of other entitled persons.

To understand in depth the legal maintenance obligation, we will analyze its legal characters one by one: legal, personal, mutual, with successive execution, variable divisible and complex character. By delimiting the legal characteristics of the maintenance obligation, in order to draw clear boundaries between the legal maintenance obligation and the other types of obligations, which, although apparently similar, are significantly different from each other

1.4. Conclusions in chapter 1.

The analysis of the doctrine and legislation regarding the legal maintenance obligation imposed the following conclusions:

1. The doctrine in the Republic of Moldova is modest, the maintenance institution as it has been for many years - it has not undergone changes, it is not adapted to the current conditions, the emphasis was placed on the maintenance of minor children, other family members being forgotten. Given the fact that the state assumes its essential role in the maintenance of citizens by providing jobs and granting old-age and disability pensions, no applications were submitted regarding the granting of maintenance between spouses/ex-spouses and other family members, from this reason even today there are not many files regarding maintenance between spouses or other family members.
2. The legal obligation of maintenance has its origins in ancient times. From the beginning it meant the action of binding someone for a certain purpose, in order to obtain something or achieve a certain thing, but with time the maintenance obligation acquired other connotations. The legal maintenance obligation has its course from the most primitive relationships, which evolved along the development of civilization, acquiring new forms of manifestation correlative to the trends of human progress.
3. The maintenance obligation arises between persons as a result of the kinship relationship between them, that is, between family members or other relationships assimilated to them.
4. The legal maintenance obligation is defined by certain specific characters, it is imposed by law on a certain circle of people. It is an imperative duty dictated by law to certain subjects as a result of their kinship relationships.

The maintenance cannot be transferred to other people, being personal. Moreover, the maintenance obligation cannot be waived as long as it concerns the needs and necessities of minor children. With the death of a party to the maintenance obligation, the relationship itself ends. It is a successive performance that lasts as long as the conditions and circumstances of the grant are met.

2. LEGAL CONDITIONS REGARDING THE OBLIGATION OF MAINTENANCE BETWEEN FAMILY MEMBERS

2.1. The grounds for the occurrence and subjects of the maintenance obligation

The legal maintenance obligation is a mandatory legal relationship that is established between the person who owes maintenance - the debtor of the obligation and the person entitled to maintenance, i.e. the creditor of the obligation. In the opinion of the author Valentina Cebotari, in order for a person to be able to request the payment of the maintenance pension, he must fulfill two essential conditions in cumulative order, namely: to be unable to work and to require material support, therefore to be able to need.

The term "need" means, in legal language, material and/or spiritual need of a natural person. The state of need represents a de facto situation of a natural person who is unable to provide himself with the necessities of life, totally or partially. Therefore, the one who has income, but it does not cover his needs, is also in a state of need. We note that according to their type, the incomes can be different and simultaneous, such as old-age pension, disability pension, unemployment benefit or other social benefits, but their amount being lower than the creditor's needs for maintenance.

Being a state of fact, when establishing the state of need, the social status of the beneficiary, his material and spiritual needs, the general standard of living and the standard of living that the creditor had before the request for maintenance must be taken into account, without to claim mandatory preservation within the same limits. [5, page 215] The purpose of granting the maintenance intended for the creditor is to provide him with his material and spiritual life that he would normally have had if he had not been in a situation to request maintenance referring to the sources of the debtor's income.

Therefore, for a person to be obliged to pay the maintenance pension, he must have sufficient means. According to the type and legal nature of the sufficient means, they can be: monetary means of a permanent nature, expressed in the form of salary and other wage payments, profit from entrepreneurial activity, from the household, etc., financial means in the form of bank deposits, deposits, dividends, income from rent or lease, as well as other goods that can be sold for the purpose of ensuring the provision of maintenance. Based on the legal framework, for certain categories of maintenance, such as the obligation to support parents by adult children, the factor of sufficient means of the person obliged to support is taken into account when establishing maintenance, so that all children can be called to pay maintenance minors who have sufficient resources. It is important to emphasize that the maintenance obligation must be aimed at maintaining the balance between the debtor's and the creditor's standard of living. The amount of maintenance granted to the creditor by the debtor will be

determined according to the material financial situation of the debtor correlated with the financial situation of the creditor. In other words, the creditor cannot require the debtor to pay alimony that far exceeds the latter's financial situation. The amount of the payment will be directly proportional to the debtor's possibilities, without demands. As we mentioned before, the state of need depends on certain criteria, such as the social status of the person, the standard of living in which he is accustomed to live, the intellectual level of development and knowledge, etc.

The legal maintenance obligation is classified as a special relationship because it appears as an effect in the following circumstances: "kinship, marriage, based on relationships assimilated by law to family relationships." [8, page 224] Maintenance, moreover, is due in a certain order between family members. [9, page 445] This assumes that a person is entitled to claim maintenance from one or more family members. This order must be respected, if the person obliged to maintain, first of all, finds himself unable to grant maintenance, then the maintenance can be requested from the obligated person in the next order, the obligation therefore being by its nature - subsidiary.

Maintenance, in other words, arises as an effect of the existing kinship relationships between the person of the debtor and the person of the creditor. If there is no family relationship between the parties or similar to it, the maintenance obligation regulated according to the provisions of the FC does not exist. Subsidiarily, persons up to a certain degree of kinship are entitled to claim maintenance. As the author also tells us, the maintenance obligation occurs between relatives of the first degree in the direct line, i.e. between parents and children, as well as between relatives of the second degree, i.e. between grandparents and grandchildren. Regarding second degree relatives in the collateral line, they include brothers and sisters, who may owe maintenance if for some reason they cannot receive it from their parents.

And the last situation is when the debtor owes maintenance to the creditor with whom he is related, which is the mutual family relationship between one spouse and the relatives of the other spouse. Therefore, people who are in family relationships and do not fall into the categories stated above cannot be attracted to maintenance.

And the third legal fact on the basis of which the maintenance obligation arises, being the court decision or the contract regarding the payment of the maintenance pension. Regarding the court decision, if there is no agreement regarding maintenance, the family members entitled to maintenance can start an action in court regarding the collection of the respective pension, even if it is paid voluntarily.

2.2. Conditions regarding the creditor of the maintenance obligation

Family legislation regulates several types of maintenance: the maintenance obligation between parents and children, between spouses and ex-spouses, brothers and sisters, grandparents and grandchildren, the obligation of children to support their educators, the obligation of stepchildren to support their stepparents.

In the context of examining the string of people who can be subjects of the maintenance report, we mention that the maintenance obligation arises as an effect of the kinship relationship or other relationships assimilated to family relationships. As a result, relatives are the connection between people who are descended from each other or who have a common parent. Kinship can be civil, when it is based on adoption and blood kinship. The number of people who are related to each other is called a line of kinship. Thus, the line of kinship can be direct, when people descend from one another, or collateral line kinship, which is the blood connection between two people without descending from one another, have a common author.

According to the circle of subjects between whom there is a maintenance obligation, the CF has classified into three distinctive groups:

a) Maintenance obligation between parents and children;

b) The obligation to support spouses and ex-spouses;

c) Maintenance obligation between other family members.

The rights of children to receive maintenance from their parents, this is a fundamental obligation according to which parents are obliged to provide maintenance for their children from birth to the age of majority once they have attained full legal capacity. On the other hand, minors are persons who have not yet reached the age of majority or who do not have full exercise capacity granted within the limits of the rules of the Criminal Code of the Republic of Moldova. At the same time, the parents' obligation to maintain their minor children is not extinguished by the dissolution of the marriage, but persists independently of the parents' marriage relationship and regardless of who the children were entrusted to raise, one of the parents, another person or a protective institution, child maintenance, however, will not be able to replace the educational efficiency of a united family, which would provide them with the stability and love they need.

The right of parents to receive child support. For the existence of the obligation to support the parents, the existence of kinship relations as well as the state of need of the creditor of the obligation is essential. The state of need must be an objective one and not a simulated one. Considering that for many years, the creditor, unilaterally, considers that he would have the right to maintenance from the debtor, the latter cannot prove the existence of the factual and legal conditions that would grant him this right. The subjective condition is due on the one hand to the advanced age of the debtor in the case of pensioners.

A pensioner is a person who has reached the standard retirement age of 63 years for men and, from 1 July 2023, the standard retirement age of 60 years and 6 months for women.

The right of spouses and ex-spouses to maintenance. Regarding the person of the creditor, in his capacity as husband/wife, then we identify that the maintenance obligation arises with the freely consented marriage, between a man and a woman, in compliance with all the legal conditions regarding the establishment of a marriage, as well as the mandatory registration it at the Civil Status Body. We therefore note that the maintenance obligation exists between husband and wife.

Regarding the conditions necessary to be fulfilled at the conclusion of the marriage, we identify Title II, art. 11, CF, according to which, for the conclusion of the marriage, the mutual, untainted, personally expressed and unconditional consent of the man and the woman who are getting married is necessary, as well as their reaching the matrimonial age. People who want to get married are obliged to inform each other about the state of their health. By fulfilling the conditions noted above, the man and the woman acquire the right to formalize the marriage. If, for certain reasons, the substantive conditions imposed by the legal norm are not met, the marriage concluded in this way can be declared null and void by the court.

Creditors' right to maintenance from brothers and sisters. To be related, i.e. to be brothers and sisters or adoptive siblings, to require material support. At the same time, the creditor must be unable to work, have no income of his own and be unable to receive maintenance from his parents. Creditors' right to maintenance from brothers and sisters arise in circumstances where parents are unable to provide maintenance for their children due to lack of income. According to the legislation in force, the parents are the first to be called upon to support minor or adult children who are unable to work. If the parents are unable to provide maintenance, brothers and sisters able to work or who have sufficient income to provide maintenance may be required to pay the maintenance pension for minor children. With regard to older brothers and sisters, then maintenance will be established by cumulatively meeting the following conditions: the creditor of the obligation is unable to work and requires material support, it has been established the impossibility of their maintenance by their older children able to work, by their spouses (former spouses) or by parents.

Grandparents' right to maintenance from grandchildren. Creditors as grandparents or grandchildren who require material support. At the same time, the person of the creditor, i.e. the grandparents, must be unable to be supported by their adult children able to work or by their spouses (ex-spouses), to have the right to maintenance from their able-bodied adult grandchildren who have sufficient means. Respectively, they are creditors of the maintenance obligation between grandparents and grandchildren, in the person of minor grandchildren, who

require material support and who are unable to receive their maintenance from their parents, brothers and sisters, to have the right to maintenance from the grandparents who have sufficient means.

The right of stepparents to maintenance from stepchildren, the person of the creditor must meet the following conditions, be stepparents unable to work, who require material support, and are in a state of impossibility of their maintenance by their natural children of age capable of work or by the husband (ex-husband) and have the right to maintenance from the able-bodied adult stepchildren who have sufficient means. Step-parents are granted the right to claim the payment of maintenance pension from their step-children only in the following cases: they do not have the possibility to receive maintenance from their natural children, able-bodied adults or from spouses or ex-spouses. They are unable to work, have a degree of disability or have reached retirement age and require material support.

Educators' right to child support. They are creditors of the legal maintenance obligation, educators - persons incapable of work who require material support, who have supported and educated minor children if the latter have reached the age of majority, are able to work and have sufficient means and if it has been established the impossibility of supporting the educators to their own able-bodied adult children or by their spouse/ex-spouse. Based on the circumstances that this article does not fall under the main conditions that determine the right to the maintenance obligation, namely the existence of the relationship between the debtor and the creditor, we propose that art. 90 CF regarding the Obligation of children to support their educators, to be repealed. At the same time, due to the fact that no case based on the article stated above has been certified in the courts, we come up with the proposal of the Ferenda law regarding the repeal of art. 90 para. 1 and 2 CF as having no practical application. Law 140/2013 on the special protection of children at risk and children separated from their parents provides that children deprived of parental care are placed urgently within the family of relatives or other close persons, or placed within the family or residential service, [10] respectively the guardians and curators according to art. 90 para. (3) CF cannot claim maintenance from the wards.

Reviewing the main conditions to be met by the creditor in order to create the maintenance obligation, we identify the following:

1. the need for material support,
2. the creditor's inability to work,
3. creditors to be related to the debtor by kinship, marriage or other relationships assimilated by law to family relationships.

2.3. Conditions regarding the debtor of the maintenance obligation.

The debtor is the person who, according to the law, owes maintenance to the creditor - family members. To be obliged to grant maintenance, the debtor must meet two essential conditions. The first condition is that the debtor has the necessary means to carry out the maintenance and the second condition is to have the possibility to acquire these means through his own work or from the range of movable and immovable assets at his disposal. It should be noted that when establishing the maintenance obligation, all the obligations that the person has towards other people will be taken into account. Here we refer to the situation in which the debtor also has other less favored creditors for maintenance or who are in a materially precarious economic situation compared to the situation of the creditor requesting maintenance.

At the same time, according to the Romanian doctrine, when determining the maintenance payment pension, it will be examined whether there are no other persons who owe maintenance, according to the degree of kinship with the creditor. Thus, according to the legal norms in force, the following persons owe maintenance according to the order: spouses and ex-spouses owe maintenance before the other persons, the descending person owes maintenance to the ascending ones

When examining the maintenance obligation between family members, we note that in order for a person to be obligated to maintain another person, it is required that they have the necessary means. [11, page 181] The necessary means must satisfy first of all his needs and then the dependent. The legislator did not specify the content of this notion, as a result it remains the responsibility of the doctrine and judicial practice to determine what exactly must be understood by the means of the debtor of the obligation.

In the same context, for the creation of the maintenance obligation for the debtor, the national legislation regulates the following conditions regarding the sources of income of the debtor of the maintenance obligation:

a) the debtor has the necessary means to fulfill the maintenance obligation - all material means of the debtor will be taken into account, such as income from work, salaries, awards, aid for temporary incapacity for work, compensation granted in case of termination of the individual contract of the work.

b) The person's income from all jobs, from the agricultural household, entrepreneurial activity, intellectual activity, etc. will be taken into account. If the maintenance debtor does not have a salary or other income, even if these are insufficient to honor his obligation, the maintenance pension will be collected from the funds deposited by the debtor in financial institutions or transmitted to commercial and non-commercial organizations, except for cases when these means were transferred to them in the property. If the debtor does not have such financial means

or if he has them, but they are insufficient to honor his obligation, the maintenance pension will be collected from the account of all movable and immovable assets of the debtor that can be traced. In the case of peasants, when calculating the maintenance pension, the income in kind and in money earned, in the personal household or from another source, will be taken into account, if they are of continuity.

The maintenance obligation between spouses and ex-spouses, debtors of the maintenance obligation. The duty to provide maintenance to the spouse or ex-spouse, as we examined in the previous sub-chapter, is for persons who are in marriage relationships concluded in the order and manner provided by the legislation in force or persons who have divorced (ex-spouses).

For the existence of the maintenance obligation, it is inherent that the spouse obliged to maintain has sufficient means. It is hereby imposed as a condition that the creditor does not have sufficient own income, and the debtor has the possibility to pay the maintenance pension. As in the case of other categories of maintenance examined above, the payment of the maintenance pension from the debtor is granted in the form of a fixed sum of money paid monthly. This payment can be established by negotiating the conclusion of a contract regarding the payment of maintenance pension or at the request of the spouse unable to work through a court application.

Maintenance obligation between brothers and sisters. According to the legal norms, brothers and sisters are obliged to grant maintenance to minor brothers and sisters and to those of age incapable of work, in the situation that this cannot be granted by the parents.

The necessary conditions to be met by the debtor in the case of granting maintenance to minor brothers and sisters, are the following: they must be of age, they must be able to work, the parents obliged to provide maintenance before them are unable to provide maintenance and they have sufficient means. The same conditions are provided for older brothers and sisters unable to work - creditors of the maintenance obligation. The only difference lies in the impossibility of their maintenance by their adult children able to work, by their spouses (ex-spouses) or by their parents. As previously examined, the need for the obligor to comply with the conditions listed above is inherent and cumulative. On the other hand, in the circumstances in which the debtor, for objective reasons, does not meet at least one of these conditions, then the maintenance obligation is not attributable to him.

Maintenance obligation between grandparents and grandchildren. Grandparents are obliged to grant maintenance to minor grandchildren who require material support, as well as to those of age who are unable to work. Grandparents are called to maintenance for the benefit of grandchildren if they have sufficient means and if there are no other debtors called for maintenance before them, such as: parents for minor grandchildren and spouses (former spouses), adult children able to work or by parents for the adults unfit for work.

At the same time, we identify the following situations as legal grounds for exempting the debtor from paying maintenance to the creditor:

- the inability to work of the husband (ex-husband) unfit for work, which requires material support, is the result of the abuse of alcoholic beverages or narcotic substances or of a premeditated crime. In other words, if in the process of examining the request regarding the maintenance obligation of the ex-spouse unfit for work whose incapacity is caused by the consumption of alcoholic beverages, narcotic substances, or has committed a premeditated crime, then the debtor of the obligation - the ex-spouse, is to be exempt from paying maintenance.

- The husband (ex-husband) who requires material support had immoral behavior in the family. In the category of immoral actions, we can identify that the creditor of the maintenance obligation exercised physical and mental violence on the debtor. He behaved in a degrading and disrespectful manner towards the obligee. Therefore, if the presence of such circumstances is proven, through reasoned and definite evidence, the debtor of the obligation, based on the court's decision, can be exempted. It should be noted that the obligor has the obligation to prove immoral behavior.

- The spouses (former spouses) were married for no more than 5 years, in other words, if the spouses were married for less than 5 years, then the creditor of the obligation will not be entitled to request maintenance from the debtor.

- As I mentioned in the first chapter, the family is based on support and mutual help given to family members when needed. In the absence of such support, no one else will provide support to family members in difficulty, and creditors, more often than not, go about their lives from day to day without the certainty of tomorrow.

- Therefore, based on the circumstances in which the state is not ready to provide self-sufficient livelihood resources to the people left without support, the method and order of income collection from other family members, obliged to support family members in difficulty, should be adapted.

2.4. Conclusions to Chapter II

For the origination of the maintenance obligation, certain conditions must be met by both the creditor and the debtor of the maintenance. These are: between the debtor and the creditor there must be a family connection that manifests itself through kinship, marriage, affinity or a relationship assimilated by law to the family relationship as provided by art. 90 of the Family Code. The maintenance creditor must be a minor or unable to work.

The person to whom the maintenance obligation is imposed must be of age, in some cases able to work and have sufficient means to support himself and the person claiming maintenance from him.

The amount of the maintenance pension is established for minor children in a share of the debtor's income, and for all other family members - in a fixed amount of money paid monthly, resulting from the material and family situation of the parties, which often infringes the rights creditors, and sometimes also the maintenance debtor.

3. GOOD FAITH AND ABUSE OF THE RIGHT TO EXERCISE THE OBLIGATION MAINTENANCE

3.1. Good faith and abuse of rights in the case of voluntary maintenance

The phenomenon of the concept of good faith acquires a significant concern in judicial practice with the modernization of the Civil Code. If until the operation of the respective changes in the content of the CC, the principle of good faith was treated more from a subjective point of view, as being the excusable error admitted in the person's own behavior, starting 01.03.2019, the legislator outlines the objective side by defining the notion of good faith in - a separate article.

The application of good faith has been regulated since the Soviet period in the CC of the RSSM from 1964, which already operated with the terms good faith and bad faith, respectively. Or, in other words, both in the CC from 2002 and following the amendments made in 2019, the notion of good faith was not new for the legislator, given the fact that the legislator regulated the situation of the possessor of good faith differently and that of bad faith in the case of the owner's claim of goods from the illegitimate possession of another.

As a result, according to art. 11 CC, good faith represents the standard of conduct of a person, characterized by fairness, honesty, openness and taking into account the interests of the other party to the legal relationship. [12]

Conduct in good faith implies that a party to the legal relationship does not act in contradiction with the statements it made previously or with the behavior it had previously in the event that the other party, to its detriment, reasonably relied on those statements or that behavior. Thus, good faith, in the author's sense, must be directed in order to prove his previous statements and behavior.

According to the comment made in the content of the Common Reference Framework Project (DCFR), [13, page 471] component parts of the definition of good faith, are:

1. Correctness - a term that comes from the Latin: "correctus" and implies the ability to be correct, honest.
2. Honesty - the term honesty comes from the Latin "honestas" and implies honor, correctness, probity.
3. Openness - this denotes an element of transparency in a person's behavior.

Bad faith - is regulated by the legislator starting with art. 14 CC, where it tells us about the illegal act or committed in bad faith, as well as the illegal behavior or committed in bad faith. The author Elena Arapu also talks about this concept in her article with reference to the lack of good faith. [14, page 283] According to the author's opinion, the lack of good faith does not necessarily imply the presence of bad faith. In support of her idea, the author refers to art. 20,

paragraph 3 of the CC, according to which we are in the absence of good faith, when the person committed an act due to imprudence as a result of which he was either aware of the prejudicial nature of his action or inaction, he foresaw its prejudicial consequences, but considered in easily that they can be avoided, either he did not realize the harmful nature of his action or inaction, he did not foresee the possibility of its harmful consequences, although he should and could foresee them.

Through the abuse of law, the action regarding the exercise of a right disregarding its social and economic purpose. Corresponding art. 13 CC: "No subjective right can be exercised predominantly in order to cause another person a loss or to harm him in another way". Therefore, by abuse of law, we understand the exercise with deception, with petty purposes, contrary to the legal provisions. However, as the author also mentions: "the starting point for approaching the abuse of law is the existence of a subjective civil right, which is exercised in accordance with its principles". [15, page 48] The exercise of a right will be considered abusive when the right is not used in order to achieve its purpose, but with the intention of harming another person or contrary to good faith.

Therefore, it is in good faith that the debtor voluntarily exercises the maintenance obligation under the following conditions:

a) voluntarily grants maintenance to the creditor in the absence of a court decision or a contract regarding the payment of the maintenance pension.

b) during the examination of the court process, ensures the presentation of the confirmatory documents of all his regular and irregular incomes or the assets he owns,

c) once a court decision is issued, it implements its content without the need for coercive action by the state through the executive body, paying the amount of the established maintenance pension monthly. Given the fact that the debtor can submit an application for the payment of alimony without first requesting payment from the debtor, or the application for maintenance is submitted together with the divorce application.

d) once the contract regarding the payment of the maintenance pension is concluded, he voluntarily and consciously exercises his contractual obligations

e) informs the creditor about the change in his material and family situation (change of place of residence, job, salary, increase in assets, etc.)

f) participates in other additional expenses.

3.2 Good faith and abuse of right in the case of forced collection of maintenance

The procedure for forced collection of the legal maintenance obligation is expressly provided for in the content of art. 10 EC of the Republic of Moldova, according to which, all the

measures by which the creditor realizes his rights recognized by an enforceable document, if the debtor refuses to fulfill his obligations voluntarily, constitute forced execution. At the same time, the forced execution procedure is carried out through the bailiff with the help of the competent state bodies.

The characteristic elements of the forced execution procedure are the following: it is a way of realizing the creditor's rights, it is instituted by the bailiff based on an enforceable document and it is applied only when the debtor refuses to fulfill his obligations voluntarily.

Arising from the notion of enforced execution offered by the EC, it certifies that it is based on an enforceable document in the conditions where the debtor does not voluntarily fulfill his obligations.

Enforcement or forced collection, in essence, implies that the debtor does not voluntarily fulfill his pecuniary obligations towards the established creditor based on the law recognized by an enforceable document.

The enforcement procedure is characterized by three distinctive stages: receiving the request, filing the enforcement procedure and actually starting it.

Receiving the request. The creditor will submit a request to any bailiff according to his territorial competence, taking into account the provisions of art. 30 CE. Thus, emerging from the content of the stated norms, the territorial jurisdiction of the bailiff extends to the entire territory of the country in two cases: the first case refers to ensuring the execution of the action or the execution by tracking the means of transport, the money from the debtor's accounts, the values securities or the debtor's participation in the social capital and the second case with reference to the execution of executive documents by tracking the debtor's salary or other income. Both situations are characteristic of the forced collection of maintenance pension payments.

Initiation of enforcement proceedings. The bailiff, within 3 (three) days of receiving the enforcement document, will issue a decision regarding the filing of the enforcement procedure that will be sent to the parties. At the same time, based on the conclusion regarding the forced collection of the maintenance payment obligation, the bailiff will inform the debtor about the possibility of executing the enforceable document within 15 (fifteen) days, without taking any optional actions to implement the enforceable document.

The actual start. This implies the execution by the bailiff of all actions in order to apply the measures to secure the enforceable document. Therefore, we are of the opinion that at the stage of collecting the maintenance pension through the bailiff with the competition of the competent state bodies, the elements of good faith are not compatible with the notion of enforcement. Given the fact that good faith is characterized by correct, honest behavior, taking into account the interests of the other party, in this case - the creditor.

If the debtor had honored his obligations to pay the maintenance pension, he would not have reached the application of the forced insurance measure through the bailiff. However, the procedure for forced collection of the maintenance pension payment is instituted only after the completion of all the legal and legal procedures provided by the legislation in force. Let's admit that the debtor does not agree with the content of the court decision, he has the right to appeal, but the content of the decision is to be fulfilled immediately according to art. 256, para. 1, lit. a) CPC.

Returning to the rules of the CF regarding the maintenance obligation of family members and the legal conditions under which the maintenance obligation arises for the debtor, we certify that the person who is able to work and has the necessary means of living is required to grant maintenance. As a result, the debtor's intentional evasion of the payment of the maintenance pension, based on which there is a court decision that he willfully refuses to execute, having sufficient work capacity and material resources, is classified as an abuse of law.

We reiterate the opinion that good faith in the case of forced execution of the payment of the maintenance pension is not relevant to the enforcement procedure, given the fact that the forced execution is instituted as an insurance measure after the expiration of the term of voluntary fulfillment of the content of the court decision. Moreover, we consider that due to the debtor's lack of good faith conduct, abuse of rights is caused to the creditor of the obligation by the intentional delay of the execution of a court decision. Subsidiarily, in the settlement of disputes, the court is called to assess to what extent the conduct of the person complained of committing an abuse complied with the legal provisions in force, the moral values of good faith, integrating within the limits of the exercise of the subjective right recognized by the law. This involves the analysis of the conformity between the psychological process that precedes and accompanies the abusive act, the goal pursued and the action or inaction committed that had the consequence of prejudicing the victim.

And, respectively, the most limiting measures to ensure the execution of the claim, which entail rigorous consequences, being: the sale or forced administration of the goods, the prohibition to leave the country, the forced introduction, the application of the contraventional fine and the penalty of deprivation of liberty for the intentional non-execution or evasion of upon the execution of the court decision, if it was committed after the application of the contraventional sanction.

3.3. Legal means
to prevent the abuse of rights in the execution of maintenance

Civil legislation provides in the content of art. 13 CC that the person in his capacity as a legal subject cannot exercise any subjective right with the predominant purpose of harming

another person. At the same time, the court will reject the subject's request regarding the defense of his subjective rights exercised abusively towards another person, by forcing the cessation of the exercise and the repair of the damage caused to him. As a result, no one is entitled to exercise his subjective rights predominantly to the detriment of other people. Exceeding the limits as a result of the exercise of which the damage to other persons is attested may be liable to civil liability characterized by the reparation of the damage suffered by the subject whose rights and interests were affected.

In our opinion, there are means or ways of preventing the abuse of rights in the execution of the legal maintenance obligation, the totality of the legal norms aimed at preventing the abuse of rights on the part of the parties to the legal relationship of maintenance. As we have examined in the previous chapters, within the mandatory legal relationship of maintenance between family members, the subjective rights can be exercised abusively by both the debtor and the creditor.

The fundamental issue of this doctoral thesis is determined by the need to implement a legislative legal system capable of responding to the needs of people who require maintenance, not only at a formal level, but through the application of lucrative legal instruments.

Of course, the legislator tried within the limits of the legislative levers to regulate the situation of creditors, i.e. of people unable to work and without the material means necessary for living, but unfortunately, the problems of dependents, in most cases, are solved at a reduced level. Above all, we are referring here to the material situation of the debtor who, using the loopholes of the legislative legal system, evades the legal norm.

Based on the content of the above, we reiterate that the essential conditions to be fulfilled by the debtor of the maintenance obligation are: to be able to work and to have sufficient means.

As a result, the debtor's work capacity presupposes the latter's ability to perform work activities or his own earnings intended for a decent living. Work capacity refers to the debtor's objective level qualification that allows him physically and intellectually to carry out a remunerated activity.

Thus, we determine the following as legal means of preventing and combating abuse of rights on the part of the parties to the maintenance legal relationship:

1. Conclusion of a contract regarding the payment of maintenance pension. The conclusion of an agreement between the parties, in compliance with the legal provisions, can clearly establish the ways of executing the maintenance obligation, preventing possible ambiguities and abusive behavior.

2. Establishing the amount of maintenance pension by court decision. The court procedure provides a formal framework for the detailed examination of the financial situation of both parties, determining a fair amount of maintenance, limiting the risk of abuse.

3. Involvement of the guardianship and guardianship authority, as well as other bodies empowered by law. In the case of minors or incapacitated persons, the guardianship authority has the role of watching over the respect of their rights, including in terms of the execution of the maintenance obligation.

4. Modification of the maintenance pension amount according to the significant change in the circumstances of the parties. At the request of the debtor/creditor, the court may order the reduction, increase or suspension of the maintenance pension, in justified situations, such as a significant change in the financial circumstances of the parties.

5. Contraventional and criminal sanctions. We find that there are legal means to prevent the abuse of rights by the parties to the maintenance legal relationship, but in our opinion we also propose other more restrictive measures to sanction these violations. For example, in cases of misdemeanors, fraud or other criminal acts committed for the purpose of unjustifiably obtaining alimony or concealing income, the parties to the legal relationship of maintenance may be held liable. At the same time, the court can sanction the abuse of rights by the debtor by applying coercive measures, such as increasing the alimony or forcing the payment of court costs.

Combating the abuse of rights in the execution of the maintenance obligation requires a complex approach, which combines preventive means with measures to sanction possible abuses. Effective implementation of these legal instruments will help ensure a fair balance between the rights and obligations of both parties involved. For this, it is necessary to make every effort to strengthen the legislation in force by introducing stricter provisions that combat more effectively the abuse of the right in the matter of maintenance. A system should be applied to intensify information campaigns and legal education of the public regarding maintenance rights and obligations. And respectively, ensuring access to qualified legal assistance for families in difficulty, especially for those who do not have sufficient financial resources.

3.4 Conclusions

The exercise of the legal obligation in good faith The exercise of the maintenance pension in good faith is the prerogative that ensures a harmonious evolution of intra-family and social relations. It constitutes the guarantee of a healthy development and a decent life for the parties of the obligatory legal relationship, both the debtor and the creditor. The nation must be aware of the seriousness of the case and the dire consequences for an improper exercise of the rights and obligations of the parties to the legal maintenance relationship.

The state is obliged to ensure a life and a decent living for its citizens, when it cannot guarantee this through its own resources, it will resort to legal levers to regulate a juridical-legal system capable of responding to crisis and deadlock situations in which it finds itself citizens of

the state. The society we live in must be aware of the importance of providing mutual support and help to the less privileged, especially when the creditors are: single mothers, minor children, the elderly, people unable to work, as well as other subjects which requires material support.

1. The promotion of a unified jurisprudence in the matter of the abuse of rights when exercising the maintenance obligation in order to identify and sanction abusive situations on the part of the maintenance legal relationship;

2. Both parties have the obligation to collaborate in good faith in order to determine the amount of the maintenance pension and to comply with the maintenance obligation by encouraging dialogue and collaboration between the creditor and the debtor in order to establish a fair solution;

3. The need to adjust all national regulations to international standards once the Republic of Moldova joins the EU, including in the matter of family law in the legal maintenance obligation category.

4. Application of contraventional and criminal sanctions to parties who act in bad faith within the legal maintenance relationship.

CONCLUSIONS AND RECOMMENDATIONS

1. The present doctoral thesis manifests itself as a scientific work through which we set as our goal the extensive and detailed study of the good faith exercise of the maintenance obligation between family members in order to recognize and reduce the cases of the exercise of the right through the application of abuse right. Even if, by adopting the Family Code and other normative acts, the legislator sought to insure family members in case of inability to support themselves, all cases of abusive exercise of certain rights by the debtors of the maintenance obligation cannot be avoided, thus causing damage to the maintenance creditor . The key objective of this paper is reiterated in the need to identify a legal and practical mechanism aimed at defending the rights and interests of persons entitled to maintenance.

2. The institution of the maintenance obligation originates from ancient times, thus being researched both by the domestic and the international specialized doctrine. The obligation of maintenance has been the object of research for several domestic and foreign theorists, but none of them have studied the obligation of maintenance from the perspective of the exercise of good faith and the abuse of law. The research directions were mainly aimed at identifying the improvement mechanisms in this field based on a modern and coherent normative framework that promptly responds to the social challenges faced by this institution.

3. The degree of material financial well-being has fundamentally changed the quality of life of citizens and the possibilities, including the elderly. Thus, material enrichment among citizens over 45 years old is quite pronounced compared to the young population - up to 35 years old, as a result we consider it appropriate to apply the maintenance system from Romanian legislation, according to which, when both parents are continuing their studies and cannot provide support for their children, grandparents are called upon to support their grandchildren as much as possible until the parents finish their studies. If both parents are continuing their studies and therefore do not have the necessary means to support their child, the latter can apply for maintenance against both the paternal and maternal grandparents, who, in the alternative, are equally required to provide maintenance for their grandson.

4. Application of the shared maintenance system to all types of maintenance between family members. The share will be adjusted relative to the income and needs of the parties to the legal maintenance relationship. So that a portion of the debtor's total income is earmarked for the maintenance of the family member.

5. Questioning the competent bodies abroad regarding the source of income of the creditor of the maintenance obligation, if he has such means abroad, the amount and frequency of which cannot be determined in the Republic of Moldova. According to art. 109 of the FC regarding the payment of the maintenance pension in case the maintenance debtor establishes his residence

abroad, the interested person can start an action in the court of law regarding the establishment of the amount of the maintenance pension in a fixed amount and its payment through a single payment or regarding the transfer of certain assets to the pension account, without taking into account the income and assets that the debtor has abroad. This measure would omit the cases of abuse of rights committed by the debtor at the expense of the creditor in order to reduce the amount of the maintenance pension payment by hiding/not declaring the income and assets that he owns abroad.

6. In order to comply with and apply the legal norm, we propose the repeal of art. 90 CF regarding the Obligation of children to support their educators, as outdated and inapplicable in judicial practice. The legislation of the family in general and of the institution of maintenance in particular, is to regulate legal relationships that find utility and use in everyday life, and those relationships that are not applicable, to be repealed.

The parties to the legal maintenance relationship are to be held responsible according to the legal and material situation they have, so that both the debtor and the creditor must present real information of the income and assets they own in the patrimony. Accordingly, they will periodically update the data regarding their material social situation to be consistent with the amount of the maintenance pension established by the court before the changes occur. In this sense, we propose the amendment

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ADNOTARE
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"Obligația de întreținere în raporturile de familie – exercitarea cu buna credință și abuzul de drept".

Teză de doctor în drept. Școala doctorală științe Juridice a Universității de Stat din Moldova. Chișinău, 2024.

Structura tezei include: lucrarea științifică a fost elaborată în anii 2018-2024, având următoarea structură: introducere, trei capitole, concluzii generale și recomandări, 146 pagini de text de bază, bibliografie din 203 de titluri și anexe. Rezultatele științifice obținute au fost prezentate în 12 lucrări științifice.

Cuvinte - cheie: Obligație de întreținere, bună-credință, debitor, creditor, rudenie, relații de familie, plata pensiei de întreținere, abuz de drept, reaua-credință, frați și surori, bunici și nepoți, soți (foști soți), contractul privind plata pensiei de întreținere.

Domeniul de studiu: Specialitatea 553.04 - Dreptul familiei.

Scopul și obiectivele cercetării: Lucrarea doctorală efectuată are drept scop cercetarea pluri laterală a instituției obligației legale de întreținere, cu precădere asupra modalității și ordinii de exercitare prin prisma bunei-credințe și a abuzului de drept. Obiectivele trasate și propuse cercetării sunt: examinarea evoluției obligației legale de întreținere de la origini și până în prezent; definitivarea noțiunii obligației legale de întreținere; analiza comparativă a temeiurilor de apariție și stingere a obligației legale de întreținere pentru debitor și creditor; stabilirea modului de calcul și achitare a plății pensiei de întreținere reieșind din cuantumul venitului declarat și nedeclarat al debitorului; analiza asemănărilor și deosebirilor dintre contractul privind plata pensiei de întreținere, a contractului de înstrăinare a bunului cu condiția întreținerii pe viață și contractului de rentă; delimitarea debitorului și creditorului care acționează cu bună-credință opus acelor de rea-credință; identificarea elementelor componente ale abuzului de drept în vederea omisiunii ilegalităților din partea subiecților raportului juridic de întreținere în cadrul exercitării obligației legale de întreținere.

Noutatea științifică a rezultatelor obținute: Prezenta cercetare în domeniul Dreptului familiei constituie o lucrare unică prin noutatea subiectului abordat a exercitării obligației legale de întreținere prin prisma fenomenului de bună-credință și identificarea abuzului de drept. Reieșind faptul că principiul bunei-credințe a căpătat în ultima perioadă un interes major și aplicare multidimensională atât la nivel legislativ cât și judecătoresc, odată cu modificările esențiale operate Codului Civil în anul 2019, dovedim pe bună dreptate importanța studiului realizat pe marginea delimitării exercitării obligației legale de întreținere caracterizată prin intenție sinceră, corectă și deschisă comparativ cu exercitarea abuzivă a obligației din partea subiecților de drept. Totodată, prezenta teză de doctorat cuprinde recomandări ce au drept scop completarea cadrului normativ al instituției obligației legale de întreținere. Subsidiar, cercetarea în cauză înglobează propuneri de *lege ferenda,* care a avut menirea contribuirii, în opinia autoarei la desăvârșirea sistemului legislativ manifestată, în viziunea noastră prin omisiunea cazurilor de eludarea normelor legale caracterizate prin comportament abuziv din partea subiecților de drept.

Problema științifică: Dorim să ilustrăm că problema fundamentală care a fost soluționată în conținutul prezetei lucrări, constă în importanța determinării împrejurărilor exercitării cu bună-credință a obligației legale de întreținere între membrii familiei și ilustrarea pe de altă parte a întinderii răspunderii subiecților ce au acționat abuziv.

Semnificația teoretică a cercetării reprezintă contribuția personală în vederea precizării direcției de dezvoltare a obligației legale de întreținere prin prisma exercitării acesteia cu bună credință contrar abuzului de drept.

Valoarea aplicativă a cercetării. Lucrarea dată va constitui un ghid de aplicabilitate a normelor legale raportându-ne la situația reală a instituției întreținerii în Republica Moldova. Totodată, va reprezenta suport teoretic și doctrinar studenților facultăților de drept cât și practicienilor în domeniu, în același context va servi drept punct de reper examinării subiectelor conexe temei studiate.

АННОТАЦИЯ
СТРЕЛЬЧУК ВИОРИКА
"Содержание алиментной обязанности в семейных отношениях – осуществление добросовестно и злоупотребление правом".

Докторская диссертация по юриспруденции. Докторантура юридических наук Государственного университета Молдовы. Кишинев, 2024.

Структура диссертации: научная работа, разработанная в 2018-2024 годах, имеющая следующую структуру: введение, три главы, общие выводы и рекомендации, 146 страниц основного текста, библиография из 203 наименований и приложений. Полученные научные результаты представлены в 12 научных статьях.

Ключевые слова: Алиментное обязательство, добросовестность, должник, кредитор, родство, семейные отношения, алиментная выплата, злоупотребление правом, недобросовестность, братья и сестры, бабушки, дедушки и внуки, супруги (бывшие супруги), договор об уплате алиментов.

Область обучения: Специальность 553.04 – Семейное право.

Цель и задачи диссертации: Выполненная докторская работа направлена на многостороннее исследование института правовой алиментной обязанности, особенно способов и порядка ее осуществления через призму добросовестности и злоупотребления правом. Целями, намеченными и предложенными для исследования, являются: изучение эволюции юридического обязательства по содержанию от его истоков до настоящего времени; определение понятия юридической обязанности по содержанию; сравнительный анализ оснований возникновения и прекращения юридической обязанности по содержанию у должника и кредитора; установление порядка расчета и выплаты алиментов исходя из суммы задекларированных и недекларированных доходов должника; анализ сходства и различий между договором о выплате алиментов, договором отчуждения имущества с условием пожизненного содержания и договором ренты.

Научная новизна полученных результатов: Настоящее исследование в области семейного права представляет собой единственную работу ввиду новизны рассматриваемой темы при осуществлении юридической обязанности по содержанию через призму феномена добросовестности и выявления злоупотребления правом. Констатируя тот факт, что принцип добросовестности в последнее время приобрел большой интерес и многоаспектное применение как на законодательном, так и на судебном уровне, а также существенные изменения, внесенные в Гражданский кодекс в 2019 году, мы справедливо доказываем важность исследования, проведенного разграничение осуществления обязательства по юридическому обеспечению, характеризующемуся честным, справедливым и открытым намерением, по сравнению со злоупотреблением исполнением обязательства субъектами права.

Научная проблема. Нам хотелось бы проиллюстрировать, что основная проблема, которая была решена в содержании данной статьи, состоит в важности определения обстоятельств добросовестного исполнения юридической обязанности по содержанию между членами семьи и иллюстрирования, с другой стороны, степень ответственности субъектов, совершивших злоупотребления.

Теоретическая значимость диссертации представляет собой личный вклад в определение направления развития юридической обязанности по содержанию через призму ее добросовестного осуществления против злоупотребления законом.

Прикладная ценность исследования. Данная работа будет представлять собой руководство по применению правовых норм, регулирующих алиментные обязательства и их соотношение с реальной ситуацией по выплате алиментов в Республике Молдова. В то же время он будет представлять собой теоретическую и доктринальную поддержку для студентов юридических факультетов, а также практиков в этой области, в том же контексте он будет служить ориентиром для изучения предметов, связанных с изучаемой темой.

ANNOTATION
STRELCIUC VIORICA
"Maintenance obligation in family relations - exercise in good faith and abuse of right".
Doctoral thesis in law. Doctoral School of Legal Sciences of the State University of Moldova.
Chisinau, 2024

Thesis structure: the scientific work was developed in the years 2018-2024, having the following structure: introduction, three chapters, general conclusions and recommendations, 146 pages of basic text, bibliography of 203 titles and appendices. The obtained scientific results were presented in 12 scientific papers.

Key-words: Maintenance obligation, good faith, debtor, creditor, kinship, family relations, maintenance payment, abuse of right, bad faith, brothers and sisters, grandparents and grandchildren, spouses (ex-spouses), contract regarding the payment of the maintenance pension.

Study area: Specialty 553.04 - Family law.

Aim and objectives of the thesis: The doctoral work carried out aims at the plurilateral research of the institution of the legal maintenance obligation, especially on the manner and order of its exercise through the prism of good faith and the abuse of law. The objectives outlined and proposed for the research are: examining the evolution of the legal maintenance obligation from its origins to the present; defining the notion of the legal maintenance obligation; comparative analysis of the grounds for the emergence and termination of the legal maintenance obligation for the debtor and the creditor; establishing the method of calculation and payment of the maintenance pension based on the amount of the debtor's declared and undeclared income; the analysis of the similarities and differences between the contract regarding the payment of the maintenance pension, the contract of alienation of the asset with the condition of lifelong maintenance and the annuity contract; the delimitation of the debtor and the creditor acting in good faith as opposed to those acting in bad faith; identifying the component elements of the abuse of law in view of the omission of illegalities on the part of the subjects of the maintenance legal relationship in the exercise of the legal maintenance obligation.

The scientific novelty of the obtained results: The present research in the field of Family Law constitutes a unique work due to the novelty of the subject addressed, the exercise of the legal maintenance obligation through the prism of the phenomenon of good faith and the identification of the abuse of law. Finding the fact that the principle of good faith has recently acquired a major interest and multidimensional application both at the legislative and judicial level, along with the essential changes made to the Civil Code in 2019, we rightly prove the importance of the study carried out on the delimitation of the exercise of the obligation legal maintenance characterized by honest, fair and open intention compared to the abusive exercise of the obligation by the legal subjects. At the same time, this doctoral thesis includes recommendations aimed at completing the normative framework of the institution of the legal maintenance obligation. **The scientific problem was solved.** We would like to illustrate that the fundamental problem that was solved in the content of this paper, consists in the importance of determining the circumstances of the exercise in good faith of the legal maintenance obligation between family members and illustrating on the other hand the extent of the liability of the subjects who acted abusively.

Theoretical significance of the thesis represents the personal contribution in order to specify the direction of development of the legal maintenance obligation through the lens of exercising it in good faith against the abuse of law.

Applicative value of the thesis. The work given will constitute a guide to the applicability of the legal norms relating them to the real situation of the detention institution in the Republic of Moldova. At the same time, it will represent theoretical and doctrinal support for students of law faculties as well as practitioners in the field, in the same context it will serve as a reference point for the examination of subjects related to the topic studied.

STRELCIUC VIORICA

"MAINTENANCE OBLIGATION IN FAMILY RELATIONS - EXERCISE IN GOOD FAITH AND ABUSE OF RIGHT"

DOCTORAL THESIS IN LAW

SPECIALTY: 553.04 - FAMILY LAW

Summary of the doctoral thesis in Family Law

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