

# CHILD MAINTENANCE IN TURKISH LAW

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## **Abstract**

*The concept of alimony; the dictionary defines as, the whole of what is needed to make a living; as the legal sense is defined as connected with one month to one court decision that obliged to provide for. Family members of a moral rule, first of all to help each other. This moral without often any coercion parties in the framework adapts to this rule, but in this case the legislator for the processing always smoothly, has made it a statutory duty by going to road regulations to help each other for certain family members. Assistance in the form of alimony and child support maintenance can be divided into two main groups. Support resulting from family law, commonly referred to as maintenance support. Maintenance alimony; temporary alimony, child maintenance and poverty alimony. The care and upbringing of children in the marital union is entitled to custody of the mother and father in the framework. Mother and father use custody together. Custody of minors and adult children must sometimes restricted to persons, about paying attention to both the goods and to represent them as a whole of the rights and obligations of the law have been installed on the parents. Common life of the spouses or by court order issued at the end of separation has occurred judge may give custody to one of the spouses. side with custody of children have been left to him is obliged to look after and educate them. However, not given custody of his side, must participate in their child's care and education expenses amount to be determined by the judge according to financial strength. Associates alimony, separation or nullity or divorce, child custody as a result of which he had left his wife, child care and the financial strength to participate in the rate training expenses. Associates alimony, not a liability connected to custody, is a natural consequence of being parents. Because spouses are obliged to take care of children's care and upbringing. Child maintenance is required and even necessary foundation for child protection. In our study, it brought to mind the child's interests and the concept of an institution concerning child maintenance of public order, in case of dissolution of the family and protection of children should be judged within the framework of legal regulations concerning.*

**Keywords:** maintenance alimony; temporary alimony, child maintenance, poverty alimony

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## **1. Introduction**

At the basis of the alimony concept lies moral, religious and social considerations. It literally means the whole of what is necessary to live on; in legal terms, it is the monthly payment decided by a court verdict to be paid for obligatory support for living.

Above all, it is a moral rule for family members to help each other. In the framework of this moral rule, the parties often adhere to this rule without any constraint, but since this does not always work smoothly, the legislator has regulated it and has made it a legal duty for certain family members to help one another. It is possible to distinguish alimony into two: maintenance and support alimonies. The alimonies in the family law are generally called as maintenance alimony. The maintenance alimony can be separated into three as temporary alimony, child maintenance and spousal support.

The care and upbringing of the children within the marriage association belongs to the mother and father in the frame of custody right. Parents use custody together. The custody is all the rights and obligations of the parents with respect to the care of the personality and assets of the small children and, sometimes, the adult children with legal disability, and to the representation of them. If the joint life of the spouses is ended by a court verdict or divorce is realized, judge can give the custody to any of the spouses.

The party to whom the custody of the children is left is obliged to look after and raise them. However, the party that is not given custody must also participate in the child's care and education expenses according to his financial power and in the amount that the judge determines. The child maintenance is the participation of a partner who is not given to custody after nullity, judicial separation or divorce, to the expenses of the child's care and education in proportion with their financial power. The child maintenance is not an obligation of custody, but a natural consequence

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of being a parent. Because the spouses are obliged to take care of and raise their children. The child maintenance is a necessary and even compulsory institution for the protection of the child.

In our work, the concept of child maintenance, an institution developed for the child's interests and related to public order, will be evaluated in the context of the necessity to protect the children in the event of the dissolution of their families and the related legal arrangements.

## 2. The concept of alimony in Turkish law

Within the Turkish legal system, alimony liabilities are examined under two main headings: maintenance alimony and support alimony<sup>2</sup>. The spousal support arises from the mutual obligation of the kin restrictedly counted in the law. The spousal support is an alimony for those, who would fall into poverty in case not supported, to get from the close kin indicated in the law and required for living on<sup>3</sup>. Helping people in need is a social and moral duty, which is a legal obligation by law. Accordingly, "Everyone is obliged to give alimony to his brothers and sisters and grandchildren who will fall into poverty if they do not help (TCC, 364). Maintenance alimony is the general name of family law alimonies arising from the events such as marriage and birth. The maintenance alimony is examined in three main headings: temporary alimony, child maintenance and spousal support.

The temporary alimony is the monetary contribution of the spouses one another by a judge verdict during the divorce or separation cases by taking into account social and economic condition of the family, needs of the spouses and children and the general living, education and life standards around<sup>4</sup>. The spousal support is the one that is taken by the spouse who fall into poverty due to divorce.

In the case of divorce, the obligation of the spousal partnership to make contribution to their expenses and to look after the spouse in need end. After a divorce, the spouse should earn their livings by themselves. But the lawmaker, with social and moral considerations, envisaged that the spouse who would fall into poverty as a result of divorce can take indefinite alimony in proportion with their financial power on the condition of not having heavier fault while the alimony obligator is not required to be in fault (TCC 175). The child maintenance, which is the subject of our study, is the participation of the spouse who was not given the custody right after nullity, judicial separation or divorce, to the care and education expenses of the child in proportion with their financial power. (TCC.182).

## 3. The definition and aim of the child maintenance

The child maintenance is one of the consequences of divorce on children. It is the contribution of the spouse who is not given the custody right to the spouse having the custody right for the care and education expenses of the child in proportion with their financial power.

The alimony given to children until the date of the finalization of the divorce decision is not child maintenance but a temporal alimony<sup>5</sup>. Divorce removes the conjugal union but does not end the father and mother's obligation to pay the child's care and education expenses. Because, this obligation is not a result of being a parent, but a result of being a parent. While the parents have to

<sup>2</sup> Akıntürk, Turgut /Ateş Karaman, Derya, *Aile Hukuku*, İstanbul 2014, 444; Öztan, Bilge, *Aile Hukuku*, Ankara 2004, 706; Dural, Mustafa/Öğüz, Tufan /Gümüş, Mustafa Alper, *Türk Özel Hukuku Aile Hukuku V.III.*, İstanbul 2008, 336.

<sup>3</sup> Ergenekon, Yılmaz, *Türk Medeni Hukukunda Yardım Nafakaları*, Ankara 1966, 25; Helvacı, Serap/Erlüle, Fulya, *Medeni Hukuk*, İstanbul 2016, 285; Ruhi, Ahmet Cemal, *Nafaka Hukuku*, Ankara 2005 (Nafaka), 143; Zevkliler, Aydın /Havutçu, Ayşe /Gürpınar, Damla, *Medeni Hukuk (Temel Bilgiler)*, Ankara 2015, 396; Öztan, 703.

<sup>4</sup> Zevkliler/ Havutçu/ Gürpınar, 351; Demirel, Şeren "Yoksulluk Nafakası", Yayınlanmamış Yüksek Lisans Tezi, İstanbul 2007, 13; Köseoğlu, Bilal, *Aile Mahkemelerinin İşleyişi*, Ankara 2005, 132; Akıntürk, Turgut, *Aile Hukuku*, İstanbul, 2008, 285; Oğuzman, Kemal/Dural, Mustafa, *Aile Hukuku*, İstanbul 2001; Dural/Öğüz/Gümüş, 127; Serozan, Rona, *Çocuk Hukuku*, İstanbul 2005, 247.

<sup>5</sup> Gençcan, Ömer Uğur, *Boşanma Tazminat ve Nafaka Hukuku*, Ankara 2008, 1301; Özüğür, Ali İhsan, *Nafaka Hukuku*, İstanbul 2015, 292; Birsen, 328; Ceylan, Ebru, *Türk ve İsviçre Hukukunda Boşanmanın Hukuki Sonuçları*, İstanbul 2006, 176; Öztan, 456; Oğuzman/Dural, 141-142; Dural/Öğüz/Gümüş, 132; Köprülü, Bülent/Kaneti, Selim, *Aile Hukuku*, İstanbul 1989, 199; Tekinay, Selâhattin Sulhi, *Türk Aile Hukuku*, İstanbul 1990, 280; Feyzioğlu, Feyzi Necmeddin, *Aile Hukuku*, İstanbul 1986, 389; Serozan, 113; Akıntürk, 316; Zevkliler/Havutçu/Gürpınar, 351.

fulfill these obligations together before the divorce, this joint fulfilment becomes impossible as the custody is given to either to the mother or father after the divorce. The expenses for the care and upbringing of the child are first and foremost belongs to the spouse to whom the custody is given. The other spouse will participate in these expenses in proportion with the financial power decided by the judge. According to Article 182 of the Turkish Civil Code, the spouse who are not given the custody is obliged to participate in the child care and education expenses in proportion to its financial power<sup>6</sup>.

Child Maintenance is a necessary and even an obligatory institution for the protection of the child. Because the spouses are obliged to take care of and raise their children. Spouses have to fulfill these obligations together before the divorce and fulfil separately after divorce as the children is left to one of the spouses.

While in some European and Anglo- Saxon law systems, the divorced or separated spouses can conjointly keep their custody right on the joint child or children, in our legal system it is a mandatory rule that the custody right is given to one of the spouses in cases of divorce or separation<sup>7</sup>.

In the event of divorce, the spouse to whom the custody of the child or the children is given is required to pay for the care and education expenses of the child or children. Here the other spouse must participate in the expenses of the child or the children in proportion to their financial power. This obligation is a financial obligation linked to being a parent, not a custody<sup>8</sup>. Considering the interests of the child, the judge can decide on child maintenance both for mother and father in case child's custody is taken from mother and father and placed under guardianship, as their obligation to meet the care and education expenses would not disappear<sup>9</sup>.

The main victim of separation or divorce has always been children. The child maintenance is a very important institution so that the child who is dealing with the split of the family and the resulting trauma does not suffer from financial problems along with them. Thanks to this, the child will not deal with the financial problems led by the divorce. The child maintenance is a maintenance alimony in terms of its legal nature<sup>10</sup>.

#### **4. The comparison of child maintenance with other alimony categories**

##### **4.1. Comparison with the spousal support**

The child maintenance is not an obligation of custody, but a natural consequence of being a parent. The spousal support is the one demanded by a spouse who would fall into poverty due to divorce.

While both the maintenance alimony and the spousal support can be demanded during the divorce case, they can be demanded after divorce as well. However, while the child maintenance can be demanded until the child becomes an adult, the spousal support alimony can be demanded within one-year period of limitation after the finalization of the divorce verdict. The defendant can make period of limitation plea in the support alimony cases filed after this period. If the child maintenance is demanded with the divorce case it starts with the finalization of the divorce verdict; but if it was demanded after the divorce case, it starts with the case date. The spousal support alimony, on the other hand, becomes effective with the finalization of the verdict<sup>11</sup>.

<sup>6</sup> Bozovalı, Halûk, *Medeni Hukukunda Bakım Nafakaları*, Kazancı Hukuk Yayınları, 1990, 54; Feyzioğlu, 389.

<sup>7</sup> Gürsoy, 326.

<sup>8</sup> Ceylan, 176; Ergün, Zafer, *Boşanma Davaları*, 2004, 713.

<sup>9</sup> Belgesay, Mustafa Reşit, *Aile Hayatı ve Boşanma*, Ankara 1957, 55; Oğuzman/Dural, 141; Gürsoy, Serhan/Bulut, Harun, *Aile Mahkemeleri Uygulaması*, İstanbul 2004, 326; Dural/Öğüz/Gümüş, 132; Birsen, Kemaleddin, *Medeni Hukuk Dersleri*, İstanbul 1958, 338; Göktürk, Hüseyin Avni, *Aile Hukuku*, Ankara 1954, 320; Ergenekon, Yılmaz, *Türk Medeni Hukukunda Yardım Nafakaları*, Ankara 1966, 14; İnal, Nihat, *Aile Mahkemeleri Davaları*, Ankara 2004, 971.

<sup>10</sup> Bozovalı, 6; Gençcan, 1302; Ceylan, 176.

<sup>11</sup> Demirel, 43,44; Gençcan, 1124; Akıntürk/Karaman, 305.

While the child maintenance continues until the child becomes adult, and in exceptional cases until the child's education is completed; the spousal support is indefinite. The indefinite nature of the spousal support may lead to unfair consequences in some cases. There are some works to make amendment in the Turkish Civil Code regarding the support alimony.

The judge can *ex officio* decide on child maintenance even if there is no such demand; but they can't give spousal support verdict if there is no such demand. In the spousal support, the spouse demanding the spousal support should not have fault heavier than the other side. But no investigation is made in the child maintenance. Because the child maintenance is an obligation to be a parent.

In both alimonies, if the spouse from whom the alimony is demanded does not have the financial power to give alimony, neither the child maintenance nor the spousal support is adjudged. Because both in the cases of child maintenance and the spousal support the alimony obligator is adjudged to pay in proportion to their expenses.

#### **4.2. Comparison with the temporary alimony**

Both alimony categories are within the maintenance alimony. While the temporary alimony can be adjudged before and during the divorce or separation cases, the child maintenance can be adjudged after the finalization of the divorce verdict.

The alimony adjudged before the divorce verdict to the child during the case is also a temporary alimony. The faults of the spouses are not important in both temporary alimony and child maintenance. Since the temporary alimony is a result of the care obligations of the spouses it is not necessary to investigate the faults of the spouses. In the case of child maintenance, there is also no need to make investigation as it is an obligation of being a parent. Both alimonies can be *ex officio* adjudged by the judge.

The temporary alimony is adjudged from the date of the trial, and this alimony ends with the verdict of divorce. The child maintenance is adjudged as of the date of the finalization of divorce verdict and lasts until the child becomes an adult<sup>12</sup>.

#### **4.3. Comparison with the support alimony**

While the child maintenance is a type of maintenance alimony, the support alimony is an alimony for support, as the name says. While the child maintenance can *ex officio* be adjudged by the judge during the divorce case, the decision of support alimony is subject to demand. If the child maintenance is demanded with the divorce case it starts with the finalization of the divorce verdict; but if it was demanded after the divorce case, it starts with the case date. The support alimony, on the other hand, becomes effective with the date of demand.

The principle of reciprocity applies in the support alimony, but the child maintenance is unidirectional as it is a type of maintenance alimony<sup>13</sup>. For this reason, a father is obliged to pay alimony to his child, and he may also ask for support alimony from them when necessary. While the child maintenance can only be demanded from a parent to whom the custody was not left; the support alimony can be demanded from lineal kin as well as siblings on the condition of being prosperous<sup>14</sup>.

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<sup>12</sup> Gençcan, 1315; Akıntürk/Karaman, 317; Özüğür, 294.

<sup>13</sup> Demirel, 45.

<sup>14</sup> Akıntürk/Karaman, 446.

## 5. The provisions of child maintenance

### 5.1. General

The alimony given to the child until the finalization of the divorce verdict is called as temporary alimony while the alimony given to the child after the finalization of the divorce verdict is called as child maintenance. The obligation to pay child maintenance starts with the finalization of the divorce verdict. It is also possible that the child maintenance does not start at this date despite the divorce is realized and the custody is given to one of the spouses. If the child does not stay with the spouse to whom custody is given but stays with the other spouse, the spouse having the custody right cannot as for child maintenance during the time child stays with the other spouse. If the child come to the spouse having the custody right, the spouse can ask for child maintenance and in such case the obligation to pay child maintenance starts at that date. Because if a spouse to whom the joint child's custody is given does not use it virtually, the spouse should not ask for child maintenance from the other spouse as they don't assume child's care expenses. It is possible to ask for child maintenance with separate case after the divorce case. In this case, the start date of the child maintenance is date the case is opened<sup>15</sup>. Another case of the child maintenance is the fixation of the paternity and paternity suit. If the paternity is fixed in a case which is opened to fix the paternity with the father and the child, the judge can adjudge the defendant to store appropriate amount of alimony and pay a temporary child maintenance (TCC.332 / 2).

### 5.2. Demand right of the child maintenance and the duration

In child maintenance cases, the claimant is the mother or father who virtually looks after the child, mother or father to whom the custody is given, the guardian or administrator in case the custody is taken from the parents and mother or father who virtually looks after an illegitimate child (TCC. 329). The defendant is the mother or father who does not look after the child, the mother or father who is not given the custody right, and in cases opened by the child having mental capacity, the guardian or the administrator is the mother or father of the child. According to Article 182 / 2 of the TCC, the spouse who is not given the custody right must participate in the child's care and education expenses in proportion to their financial power. Because of this mandatory provision, the judge must ex officio adjudge the child maintenance even if the claimant does not have such demand. However, the Supreme Court of Appeals has jurisprudences that if the claimant spouse clearly states not to demand child maintenance for the joint child, the court can no longer ex officio decide on child maintenance<sup>16</sup>. In the divorce cases, the agreement among the spouses that child maintenance is not paid for the joint child has consequences only for this case and does not prevent the spouse having the custody right or the children themselves to demand child maintenance from the other spouse in proportion with their financial power later. Because the waiver from a right before its birth does not have legal consequences. If there is a consensual divorce, the statement of the spouse to whom the custody is given that child maintenance is not demanded does not prevent the custodian spouse or the children themselves to demand alimony later. The reasons of this are that the original owner of the child maintenance is the children themselves, the right of the child maintenance is a continuous right and the interest of the child is important for the public order. The agreement among the spouses regarding the care of the child does not bind the child. In addition, a waiver on behalf of a child with respect to the child maintenance is contrary to the child's personal rights and is invalid. since the economic situation of the parties and the age and needs of the child will change over the time after the divorce, it is always possible to demand child maintenance.

<sup>15</sup> Ruhi, Ahmet Cemal, *Türk Hukukunda Nafaka ve Nafaka Alacaklarının Yabancı Ülkelerde Tahsili*, Ankara 2003 (Nafaka Alacakları), 556; Gençcan, 1314; Özüğür, 297,298.

<sup>16</sup> Tutumlu, Mehmet Akif, *Boşanma Yargılaması Hukuku V.II*, Ankara 2005, 1298; Gençcan, 1309; Grassinger, Elçin, Gülçin, *Türk Medeni Kanununda Yer Alan Velayet Hükümleri Kapsamında Küçüğün Kişi Varlığının Korunması İçin Alınacak Tedbirler*, İstanbul 2009, 32.

It is a rule that the child maintenance should be given together with the divorce verdict. However, even if the child maintenance is not demanded with the divorce case, it is possible for opening another case to demand child maintenance as the child becomes an adult and continue the education<sup>17</sup>. In the Article 178 of the TCC, it is stated that the rights of the lawsuits arising from the termination of the marriage lapses after a one-year period of limitation. As the child maintenance is an alimony demanded from the spouse to whom the custody is not given for the care and education of the joint child and this is relevant to the public order, it can be demanded until the child becomes adult without period of limitation. This is also supported by the provision in the Article 328 of the TCC that the care obligation of the parent continues until the child becomes adult. Finally, the right to child maintenance can arise anytime during the care of the children. Therefore, a file can be opened one year after the finalization of the divorce and child maintenance can be demanded. In such case the defended can make a period of limitation plea. There is no period of limitation for opening cases to increase or decrease the child maintenance due to changes in the condition<sup>18</sup>.

### 5.3. Determination of the amount of child maintenance

The amount of child maintenance is determined by considering the needs of the child, the parents' living conditions and their ability to pay; the child's income is taken into consideration when the child maintenance amount is determined. The child maintenance paid every month in advance. The judge may decide on the amount of the alimony as an income to be paid in proportion with the socio-economic status of the parties in future years (TCC, 330). In accordance with the Article 182/2 of the TCC, the spouse who is not given the custody participates in the care and education expenses of the joint child in proportion with the financial power<sup>19</sup>.

Within the framework of these provisions, the criteria to be considered by the judge in determining the amount of the child maintenance are the needs of the child, the living conditions of the parents, the parents' ability to pay and the child's income. Accordingly, in determining the child maintenance, the judge consider one by one the child's age, gender, educational status, care and livelihood requirements and income, health and illnesses, in short the child's needs, the economic and social conditions of parents, their living conditions and payment capacities, the number of the children they obligated to look after and, if necessary, get an help from an expert social worker, pedagogue and psychologist in accordance with Article 5 of Law No. 4787<sup>20</sup>. But in practice, however, rather than such an investigation due to the workloads of the courts, they are confined to investigations of social and financial situation made by police or gendarmerie officers regarding the places where the parties reside, make decisions according to the information obtained in the course of such investigation.

The decision by the judge on the child's personal and financial status is not final. The child maintenance can be increased or decreased. Depending on the changes in the criteria considered in the determination of the alimony, the judge can re-determine the amount or lift the alimony on demand (TCC 331). Probably the most important criterion in the determination of the child maintenance is the child's needs. The child's needs in the child maintenance covers the food, clothing, housing, health, resting, education, spending money and transportation expenses<sup>21</sup>. The second issue to be taken into consideration in the determination of the child maintenance is the

<sup>17</sup> Şahin, Emin, *Aile Hukuku Davaları Tatbikatı*, Ankara, 2004, 695, Dural /Öğüz /Gümüş, 141; Akıntürk /Karaman , 317; Serozan, 245; Usta, Sevgi, *Çocuk Hakları ve Velayet*, İstanbul 2012, 73.

<sup>18</sup> The Supreme Court of Appeals 2. Civil Chamber, 26.04.2004, 2004-4671/5292; The Supreme Court of Appeals 2. Civil Chamber, 30.09.2004, 2004-10451/10191.

<sup>19</sup> Öztan, 456; Dural/Öğüz/Gümüş, 142; Saymen S, Ferit H: / Elbir, Halid K., *Türk Medeni Hukuku Aile Hukuku*, V.III, İstanbul 1960, 272; Velidedeoğlu, Hıfzı Veldet, *Türk Medeni Hukuku Aile Hukuku V.II*, İstanbul 1965, 272; Feyzioğlu, 389; Tekinay, 280; Akıntürk, Turgut, *Boşanmanın Hukuki Sonuçları*, "Ankara Hukuk Fakültesi Ellinci Yıl Armağanı V.II", Ankara, 1977, 175-204 (Boşanma); Zevkliler/Havutçu/Gürpınar, 385; Ceylan, 179; Gençcan, 1322; Baktır, Selma, *Aile Mahkemeleri*, Ankara 2003, 138.

<sup>20</sup> Özüğür, 190; Ceylan, 179; Ruhi, (Alacak), 125.

<sup>21</sup> Gençcan, 1302-1305; Egger, Andreas, *İsviçre Medeni Kanunu Şerhi Aile Hukuku*, Ankara 1949, Art 272, N.3, 68.

financial and social status of spouses<sup>22</sup>. The amount of the child maintenance is determined by considering the needs of the child, the parents' living conditions and their ability to pay. In determining the child maintenance, first of all, the financial and social status of the alimony obligator and whether the obligator has any other child to look after should be investigated and an alimony amount which suffices to meet the expenses of the child and does not financially distress the alimony obligator should be adjudged<sup>23</sup>.

In determination of the child maintenance amount, the judge will also consider the financial and social situation of the spouse to whom the custody is given. The determination will be made by considering the spousal support given due to divorce, pecuniary and non-pecuniary compensation and right ownership amount obtained after the division of matrimonial property. Even if the spouse to whom the custody is given is affluent enough to not to need such maintenance, the other party is still responsible for payment of the child maintenance<sup>24</sup>.

In determining the amount of alimony, care must be taken to remain within factual, reasonable and realistic boundaries without going to extremes in meeting the needs, the general living conditions of the society and around should be considered, and finally the party to whom the custody is not given should not be left under heavy obligations for the extreme wishes and needs which are deemed as luxury and fantasy by the society. The amount of child maintenance should not lead to the enrichment of child maintenance creditor<sup>25</sup>.

Another issue to be considered in the determination of the child maintenance is the income of the joint child. The judge assesses and adjudges the amount of child maintenance by investigating whether the child to whom the child maintenance will be given for the care and education expenses has any assets or income. The provision of spending the children's income for their own living expenses is unique to the situation in which the mother and father cannot afford child maintenance. If the alimony given by the mother or father can't meet the needs of the child, then only the child's income should be spent.

The judge freely determines the amount of child maintenance by taking into account the needs of the child, the parents' living conditions and their ability to pay. The spouses may freely determine the amount of the child maintenance, the rate of increase and the kind of money to be paid with an agreement between them. However, in order for this agreement to be valid, the judge should deem suitable and approve it<sup>26</sup>.

The judge, even if it is not demanded, can adjudge the child maintenance. For this reason, if deems necessary for the child's interest, the judge can decide on a child maintenance in an amount more than the custodian spouse demands. In case child maintenance is decided for more than one child, the judge will clearly decide a child maintenance one by one for each of the children by taking account their needs, ages, educations and health conditions in a way not to lead confusion in the execution<sup>27</sup>.

#### 5.4. Payment date and type of the child maintenance

The child maintenance is paid monthly in advance (TCC 330/2). The judge decides how the child maintenance is paid by taking into consideration the situation of the alimony obligator and the interest of the child. The interest of the child will be ensured if the child maintenance is paid regularly, in advance and through a simple process. The child maintenance is paid as an income

<sup>22</sup> Ruhi, (Nafaka Alacakları), 127; Hodgkin, Rachel/ Newell, Peter, *Implementation Handbook for the Convention on the Rights of the Child*, Fully Revised Edition, United Nations Children's Fund, 2002, 397.

<sup>23</sup> The Supreme Court of Appeals 2. Civil Chamber, 14.03.2002 ,2002-2607 /3516; The Supreme Court of Appeals 2. Civil Chamber, 27.11.1998, 1998-11134 /12840; The Supreme Court of Appeals 2. Civil Chamber, 25.09.2006, 2006-5632 /12368; The Supreme Court of Appeals 3. Civil Chamber, 27.09.2004, 2004-8005 /9837.

<sup>24</sup> Tekinay, 280; Akıntürk, 316; Velidedeoğlu, 274; Bulut, Harun, *Aile Hukukunda Velayet ve Nafaka Davaları*, İstanbul 2007, 87; Feyzioğlu, 391

<sup>25</sup> Bulut,87; Gençcan,1325; Ruhi, (Alacak),127.

<sup>26</sup> Akıntürk, 316; Belgesay, 56; Berki, Şakir, *Boşanma ve Ayrılık*, "AÜHFĐ", Y.1975 V.32, IS.1-4, 153; Özüğür, 190.

<sup>27</sup> Ertürk, Erkan, *Nafaka Davaları*, İstanbul 2005, 223; Tekinay, 289; Özüğür, 191; Oğuzman/Dural, 357.

because single payment as a capital does not fit in the aim of the child maintenance and the interests of the child. The payment is made in Turkish Liras, as a rule. But if the parties agree on it and this is approved by the judge, it can also be paid as a foreign currency. The payment date of the child maintenance is determined in accordance with the income earning dates of the alimony obligator and the dates when the child's expenses intensifies. If there is an agreement among spouses in this matter, the payment date can be adjudged accordingly. In case there is a demand, an interest would be applied when the alimony is due and debtor is in default <sup>28</sup>.

### 5.5. Measures to be taken against the child maintenance

When the alimony case is opened, the judge takes the necessary precautions during the case on the demand of the claimant (TCC 332/1). Accordingly, to ensure the alimony payment in the future, the judge, who rules the child maintenance case can take a cautionary judgement on the immovable property of the alimony defendant or decide on an amount to be paid to the claimant temporarily or be stored at the court's pay-office during the case <sup>29</sup>. Again, the judge can take precautions to ensure the payment of the child maintenance (TCC 334). If it is accepted that the alimony obligator mother or father continuously and insistently violates the alimony obligation, tend to escape or mispend or waste their assets, the judge may decide on an appropriate insurance regarding the future alimony obligations or take other measures if necessary <sup>30</sup>.

### 6. Expiration of payment obligation of child maintenance

The obligation to pay the child maintenance, which allows the spouse not holding the right of custody to participate in the child's care and education expenses in the financial power, starts with the finalization of the divorce verdict, if requested together with the divorce case; but if it is requested in a separate case after the divorce case, it starts as of the date of filing of the case <sup>31</sup>. It is not possible to expect the child maintenance which begin this way to last indefinitely. The obligation to pay the child maintenance is lifted automatically when the child becomes an adult (TCC 328/1). However, if the child is continuing his/her education, his/her parents are obliged to take care of the child until the end of the education, to the extent that parents' conditions and circumstances justifies (TCC 328/2). Another termination of child maintenance is the death of the child benefiting from the child maintenance or the death of the alimony obligator. In this case, as of the date of death, the obligation to pay child maintenance ends. If the spouse, who is a child maintenance obligator, gains the custody of the child with a case to be filed later, the obligation to pay child maintenance ends. In this case, the child maintenance will expire at the date of the case filed for custody <sup>32</sup>. In the event that the child benefiting from the child maintenance begins to earn his/her living by starting to work before becoming an adult, the alimony obligator may apply to the court and demand the termination of the child maintenance <sup>33</sup>. Again, if the alimony obligatory spouse and the alimony creditor spouse are married again before the joint child becomes an adult, the child maintenance shall be terminated from the date of the second marriage. In the event that the alimony obligator loses its assets without any personal fault and becomes unable to pay child maintenance in an economically deprived situation, the obligator may demand the termination of the child maintenance by applying to the court and the alimony obligation ceases with the

<sup>28</sup> Gençcan, 1350; Acabey, M.Beşir /Gökyayla, K.Emre, *Medeni Hukuk*, Ankara 1997, 1004.

<sup>29</sup> Öztan, 624; Zevkliler/Havutçu/Gürpınar, 385; Özüğür, 912.

<sup>30</sup> Öztan, 625; Aras, Bahattin, *Boşanma Davalarında Yargılama Usulü ve Aile Mahkemeleri*, Ankara 2007, 316; Kiper, Osman, *Tüm Yönleriyle Boşanma Davaları*, Ankara, 1997, 593; Dalamanlı, Lütfi, *Medeni Hukuk Davaları*, Ankara 1968, 152.

<sup>31</sup> Oğuzman/Dural,358; Göktürk, 321; Ergenekon, 23; Saymen/Elbir, 272; Dural/Öğüz/Gümüş, 142; Akıntürk, 316; Velidedeoğlu, 273; Feyzioğlu, 390; Bozova, 59; Öztan, 618; Ceylan, 185

<sup>32</sup> Yavuz, Nihat, *Nafaka Nişan ve Eşlerin Katkı Payı ile İlgili Davalar*, Ankara 2008, 364; Akyüz, Emine, *Medeni Kanun'a Göre Müşterek Hayatın Tatili, Ayrılık ve Boşanmada Çocuğun Korunması*, Ankara, Ankara Üniversitesi Eğitim Bilimleri Fakültesi Yayınları, 1983, 140.

<sup>33</sup> Velidedeoğlu, 273; Göktürk, 321; Hegnauer, Cyril, *Berner Kommentar zum ZGB, Bd.II, Familienrecht, 2. Abteilung, Die Verwandtschaft, das eheliche Kindesverhältnis, Art 252-302*, Bern 1964, 20-24.

finalization of the court decision. The party having the right of custody may agree not to collect alimony by making an agreement with the party obliged to pay the child maintenance. What we mean here is that the alimony obligator might be saved from the obligation to pay the debt owed so far, otherwise there is no waiver of the alimony itself. Such an agreement to be made between spouses must be approved by the judge to be valid. The obligation to pay child maintenance will cease on the date of approval of the agreement between the spouses by the judge.

### 7. Authorized and competent court for child maintenance lawsuit

The court authorized for lawsuits on child maintenance, increment, decrement and revoke of the maintenance is family courts. In the places where the family court is not found, it is the civil court of first instance appointed by The Supreme Board of Judges and Prosecutors as a family court.

In the event that the child maintenance case is opened together with the divorce case, the court authorized for the divorce case is also the competent court for the child maintenance<sup>34</sup>. Accordingly, the competent court in this case is the court of the place where one of the spouses are living or they have lived together for the last six months before the lawsuit. In addition to this, according to the general authorization rule, the settlement court of the defendant is also the competent court. In the event that the child maintenance is requested after the divorce case, the competent court is the settlement court of the alimony creditor (TCC. 177).

With this arrangement, it is desired to avoid expenses and suffering for alimony creditors, who are often weak in economic terms, by not going to the place where the alimony obligator resides.

### 8. Conclusion

Every child is entitled to a level of life sufficient to provide physical, mental, spiritual, moral and social development (AY. 41; ÇHS. 27). The right of the child to receive the expenses of care and education and to establish personal relationships and mutual obligations between child and parent to show respect and understanding, and to take care of family honor are legal consequences linked to the paternity, that is to say, depending on being a parent, regardless of right of custody (TCC 321). Parents continue to pay for care until the child is an adult, but if the child is still in education, the parents are obliged to look after the child until the end of their education, to the extent that parents' conditions and circumstances justifies (TCC 328/1-2). As the marriage ends with the divorce, the custody that the father and the mother used together until that date is left to one of the spouses, taking into account the child's interest in the wide discretionary authority granted to the judge. The care and upbringing of the child now belongs to the spouse who has become the custodian of the child. However, the Civil Code obliged the other side to participate in the expenditure related to the child's care and education (TCC 182).

Child maintenance is one of the consequences of divorce about children. This is the contribution that the spouse who is not entitled to custody, will pay within possibility for the care and education expenses of the child to the spouse with the right of custody. Child maintenance is also a kind of maintenance alimony. Child maintenance is an institution brought in with the child's interests in mind and is related to the public order. The judge must decide on the child maintenance even if no such demand is made during the divorce or separation cases. Even if The Supreme court of Appeal has contrary jurisprudence in this respect, the judge should be able to judge in favor of child maintenance for the interests of the child and the public order, and if necessary, should be able to determine ex officio the appropriate amount of child maintenance if he finds that the amount of the child maintenance requested is not sufficient. This is because the obligation of child

<sup>34</sup> Karagülmez, Ali / Ural, Sami Sezai, *Aile Mahkemelerinin Kuruluş Görev ve Yargılama Usulleri*, Ankara 2003, 164; Özkan, Hasan, *Aile Hukuku Davaları ve Tatbikati*, İstanbul 2005, 1324; Ruhi, Ahmet Cemal, *Türk Hukukunda Boşanma, Boşanmanın Sonuçları, Yabancı Mahkeme Kararlarının Tanınması ve Tenfizi*, Ankara 2004 (Tenfiz), 568; Yetik, Nurten, *Nüfus-Velayet-Vesayet-Nafaka*, Ankara 2007, 448-478.

maintenance is a responsibility arises from being a parent, and these obligations of the parties do not end with divorce. Child maintenance is a necessary and even compulsory institution for the protection of the child. The Civil Law, by recognizing a wide margin of appreciation to the judge, aims to ensure that the amount of child maintenance is freely determined in a fair and reasonable manner, by considering the needs of the child and the parents' living conditions and their ability to pay. In addition, the judge may decide on the provision of appropriate insurance for alimony obligations and, where necessary, to take precautions. The sanction of not complying with court decisions on alimony is up to three months of sentences of the debtor who violates the court verdict on the complaint of the creditor. As it is seen, the proper and efficient functioning of the child maintenance which has a very important social role depends on the sensitivity of the judge. In determining the child maintenance, the judge should consider one by one the child's age, gender, educational status, care and livelihood requirements and income, health and illnesses, in short, the child's needs, the economic and social conditions of parents, their living conditions and payment capacities, the number of the children they obligated to look after and, if necessary, get an help from an expert social worker, pedagogue and psychologist.

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