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Challenges in the Enforcement of the Child's Right to Alimony in Legislation and Judicial Practice

The article addresses current issues related to the enforcement of a child's right to alimony within the framework of civil substantive and procedural law, as well as judicial practice. It offers recommendations for strengthening this legal institution and increasing its effectiveness.

Keywords: alimony, alimony allowance, liable person, custodial parent, best interests of the child, subsistence minimum, interim measure.

1. Introduction

The Convention on the Rights of the Child (CRC) recognizes the primary responsibility of parents (and other caregivers) to secure, within their abilities and financial capacities, the living conditions necessary for the child's development. It also reinforces the child's right to a standard of living adequate for their physical, mental, spiritual, moral, and social development, and places an obligation on States Parties to ensure the realization of this right. The Convention underscores the duty of the state to morally and legally support parents in fulfilling their financial obligations to the child, regardless of the parents' marital status or the child's actual place of residence.¹ This provision is grounded in the concept of the best interests of the child, a fundamental principle of international human rights law. This principle stresses that a child's well-being must be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies².

Georgian legislation aligns with the spirit of international instruments, recognizing the protection of children's rights as a constitutional value³. Accordingly, the state is obligated to establish an appropriate legislative and institutional framework to ensure the realization of children's rights, including the right to claim maintenance. One of the key instruments for implementing this right is the alimony obligation, as provided by the Civil Code of Georgia (hereinafter CCG)⁴, which imposes

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¹ UN Convention on the Rights of the Child, adopted on 20 November 1989, Article 27. Legislative Herald of Georgia, Ratified by Georgia in 1994; entered into force on 02/07/1994 (In Georgian).

² Art. 3. Ibid. See also General Comment No. 14 (2013) of the Committee on the Rights of the Child on the right of the child to have their best interests taken into account as a primary consideration <<https://digitallibrary.un.org/record/778523>> [15.03.2025].

³ Article 30.2.: The rights of mothers and children are protected by law. See the Constitution of Georgia, Georgian Legislative Herald, 31-33, 24/08/1995 (In Georgian), <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [15.03.2025].

⁴ It is noteworthy that the duty of parents to raise their children as conscientious citizens and to care for them until adulthood is recognized by the Constitution of the Republic of Lithuania. See Article 38. The

an alimony duty on family members towards a child. The child's right to receive maintenance was further strengthened by the adoption of the Code on the Rights of the Child in 2020 (hereinafter *CRC*)⁵. The term "alimony" originates from Latin and translates to "nourishment" or "food"⁶ In line with this, the Civil Code of Georgia defines alimony as the funds necessary for the care and upbringing of the recipient.⁷

Unlike many other countries, alimony law in Georgia has received relatively little attention, both in terms of legislative regulation and doctrinal research⁸. However, following the publication of the "Buki" (2020) and the resulting legislative amendments, as well as the growing trend of increased public awareness, the groundwork now appears to be in place for improving the legislative framework of alimony law and for advancing academic research in this area.

A pressing issue in this regard is the need to introduce greater objectivity and consistency in determining the amount of alimony, as well as ensuring the enforcement of alimony-related decisions. In several countries, the former is addressed through the use of alimony calculation formulas and official guidelines, while the latter involves the application of various sanctions for voluntary non-payment⁹.

Constitution of the Republic of Lithuania. Adopted by the citizens of the Republic of Lithuania in the Referendum of 25 October 1992. <<https://www.lrs.lt/home/Konstitucija/Constitution.htm>> [15.03.2025].

⁵ Art. 12, 46, 47. The Code also clarified the status of a child and a parent: "Child – a minor under the age of 18", "Parent – the mother and/or father of the child" – Art. 3. (In Georgian).

See the Law of Georgia "Code of the Rights of the Child", Georgian Legislative Gazette, 5004-I, 20/09/2019, (In Georgian), <<https://matsne.gov.ge/ka/document/view/4613854?publication=4>> [15.03.2025].

The 1989 Convention on the Rights of the Child also includes a person under the age of 18 in the concept of a child, although it leaves the choice of changing the age of majority to national legislation – Art. 1 (In Georgian).

See UN Convention on the Rights of the Child of 20 November 1989, Georgian Legislative Herald, <<https://matsne.gov.ge/ka/document/view/1399901?publication=0>> [15.03.2025], ratified by Georgia in 1994, entry into force date 02/07/1994 (In Georgian).

⁶ Alimony comes from the Latin *alere*, "nourishment", the use of the term "alimentum" dates back to the 15th century. Legally, it is a monetary obligation of a family law nature and its origin is related to age or incapacity/material needs. The basis may not always be related to age. See <<https://www.merriam-webster.com/dictionary/aliment>> [15.03.2025]. On the etymological and historical background of the term, see also *Shengelia R., Shengelia E.* Family Law – Theory and Practice, Tbilisi, 2011, 244-245 (In Georgian).

⁷ Art. 1214, Law of Georgia "Civil Code of Georgia", Georgian Legislative Herald, 786, 24/07/1997, <<https://matsne.gov.ge/ka/document/view/31702?publication=117>> [15.03.2025].

⁸ This is also indicated by the fact that no substantial research has been conducted in the doctrine of alimony for decades. It is worth noting the dissertation work completed in 2015 by *Japaridze K.*, Personal and Property Relations of Parents and Children", Doctoral Thesis, TSU, 2015. One of the chapters of which is dedicated to the alimony relationship between parents and children. <https://press.tsu.ge/data/image_db_innova/disertaciebi_samartali/qetevan_jafaridze.pdf> [15.03.2025].

It is worth noting the studies of 2022-2023: *Lomtatisidze E., Mamrikishvili E.*, Comparative Legal Stud – the Granting and Enforcement of Child Support, Tbilisi, 2022 (In Georgian).

Sichinava E., Ilia House of Law, Implementation of Community-Oriented Justice in Divorce and Paternity Determination Cases, Tbilisi. 2023 (In Georgian).

⁹ *Lomtatisidze E., Mamrikishvili E.*, 'Comparative Legal Study – the Granting and Enforcement of Child Support', Tbilisi, 2022. 39-75 (In Georgian). *Herring J.*, Family Law, Eighth Edition. University of Oxford, 2017. <https://aghahlibrary.com/storage/books/1609407553_AghaLibrary.pdf> [15.03.2025].

In 202-2023 Georgian legal scholarship, it is observed that: “Georgian courts determine the amount of alimony based on Article 1214 of the Civil Code, using general standards, and in judicial practice, not only is it difficult to achieve consistency, but the amounts of alimony appear in decisions entirely spontaneously, without any objective calculation.”¹⁰ This situation is largely attributed to the scarcity of doctrinal scholarship and the shortcomings in the legislation.

2. Alimony Obligor

The legal relationship regarding alimony between the alimony obligor and the person entitled to alimony arises on legal basis¹¹, and the *numerus clausus* principle (the Civil Code precisely defines the subjects of the relevant rights and obligations) applies to this type of family obligation. The primary alimony obligor for a child, according to Georgian legislation, is the parent¹². However, it is not specified who is the second-degree alimony obligor is, whether it is a sibling or a grandparent.¹³ However, Georgian legislation does not clearly define which parent is considered the alimony obligor. The parent whose place of residence is not recognized as the child's place of residence, either by court decision or by agreement between the parties, should be regarded as such.

It is also important to consider that in the absence of a court ruling determining the child's residence, the child may spend more or less equal time with both parents. This raises the question of whether we should, in fact, introduce terms such as “non-resident parent” (i.e., a parent whose residence is not considered the child's residence based on a court decision or mutual agreement, or

¹⁰ Ibid, 31-32.

¹¹ Art. 1182, 1212, 1219, 1223-1227, 1229. Law of Georgia “Civil Code of Georgia”, Georgian Legislative Herald, 786, 24/07/1997, <<https://matsne.gov.ge/ka/document/view/31702?publication=117>> [15.03.2025].

¹² Art.1197, 1198, 1212-1214. Ibid.

¹³ See art.1223, 1225. Ibid.

Article 1606 of the German Civil Code indicates the order of rights of persons obligated to pay maintenance and explains: 1. Descendants are obligated to pay maintenance in priority to relatives in the ascending line. 2. Among descendants and relatives in the ascending line, closer relatives are obligated in priority to more distant relatives. 3. Several equally close relatives are obligated in proportion to their income and property. A parent who exercises care for a minor unmarried child fulfills the obligation of co-participation in the maintenance of the child, as a rule, by caring for and raising the child.

Section 1609 – Order of rights of several persons entitled to maintenance – provides for the following rule: (1) If there are several persons entitled to maintenance and the person obliged to maintain cannot pay maintenance to all of them, the following order of rights shall apply: 1. Minor unmarried children and children within the meaning of Section 1603, Section 2, Sentence 2. 2. Parents who are entitled to maintenance due to care for the child or would be entitled to it in the event of divorce, as well as spouses and divorced spouses in the event of a long-term marriage; If it is established that the marriage was of long duration, the negative consequences within the meaning of §1578b, Section 1, Sentences 2 and 3 shall also be taken into account, 3. Spouses and divorced spouses who do not belong to the persons referred to in No. 2, 4. Children who do not belong to the persons referred to in No. 1, 5. Grandchildren and distant descendants, 6. Parents, 7. Distant relatives in the ascending line; among the latter, the closest relatives are obliged to take precedence over the more distant ones. See German Civil Code. in the version promulgated on 2 January 2002 (Federal Law Gazette [Bundesgesetzblatt] I page 42, 2909; 2003 I page 738), last amended by Article 1 of the Act of 10 August 2021 (Federal Law Gazette I, p.3515 <https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p6331> [15.03.2025].

with whom the child spends a defined number of days per year and who is not recognized as the caregiving parent) and “caregiving parent.”

In some countries’ legislation, the obligation to pay alimony lies with the so-called non-resident parent. A non-resident parent is defined as a parent who: a) does not live in the same household as the child; and b) the child lives with a person who, in the relationship with the child, is recognized as the caregiving person. A parent is considered “non-resident” even when they spend 152 days or more per year with the child in practice. If a parent is not recognized as the “caregiving parent” for legal purposes, then they are obligated to pay alimony, provided the child spends approximately half or more of the year living with the caregiving parent. If both parents are recognized as “caregiving parents” and share childcare equally, which is legally permissible, then the issue of alimony does not arise, and no one pays alimony. However, if the parents share childcare, one parent can still be considered the “non-resident parent” if the other parent proves that they spend more time caring for the child (the “caregiving proportion” is demonstrated), which is decisive for alimony purposes and determines the status of either “non-resident parent” or “caregiving parent”¹⁴.

Currently, according to Georgian judicial practice, a person obligated to pay alimony is considered a parent whose place of residence is not considered the place of residence of the child¹⁵ – although this is not explicitly stated in the legislation. And if the parents have not agreed on the place of residence and it is disputed, the court cannot consider imposing alimony until the latter is resolved.

According to the Civil Code, a child’s right to alimony is, first and foremost, realized through the parent, who is also the subject responsible for covering additional expenses. Furthermore, Article 1215 of the Civil Code states that a parent who pays alimony to a minor child may also be required to contribute to additional expenses caused by exceptional circumstances (such as serious illness, disability, etc.).

However, the provision grants the right to claim additional expenses only against the parent, which should be regarded as a legislative gap. The obligation to cover such additional expenses should logically fall on any alimony obligor according to the relevant statutory order. While this gap could potentially be addressed through judicial interpretation, doing so is not, in itself, an optimal solution.

3. Study of the Material Situation of the Parties – A Prerequisite for Determining the Amount of Alimony

In countries where alimony is determined by the court, there is a clear tendency to introduce greater objectivity and consistency in setting the amount of alimony. This is achieved

¹⁴ UK legislation. Child Support Act 1991. Meaning of certain terms used in this Act <<https://www.legislation.gov.uk/ukpga/1991/48/enacted>> [15.03.2025]; The Child Support Maintenance Calculation Regulations 2012, Regulation 50, “Parents treated as non-resident parent in shared care cases”, <<https://www.legislation.gov.uk/uksi/2012/2677/contents/made>> [15.03.2025].

The importance of these concepts is also emphasized by the fact that the number of children born whose parents do not live together has almost tripled in recent decades. *Seltzzer J. A., Meyer D.R.*, Child Support and Children/s Well-Being, 1, 2 <https://evidence2impact.psu.edu/wp-content/uploads/2023/05/s_wifis_06c02.pdf> [15.03.2025].

¹⁵ E.g., the ruling of the Tbilisi Court of Appeal of October 11, 2024 in case No. 2b/5467-24 (In Georgian).

through formulas and guideline recommendations for calculating alimony. These guidelines typically rely on information about both parents' incomes in order to calculate the amount in a way that reflects the child's needs and is fair¹⁶.

Georgian legislation also requires the study of the material situation of the parents as a prerequisite for determining the amount of alimony. According to Article 1214 of the Civil Code, when determining the amount of alimony, the court shall take into account the actual material situation of both the parents and the child. This requirement must be treated as a mandatory procedural step during court proceedings, which implies the court's obligation to establish the relevant facts. The procedural instrument for this is found in Article 354¹ of the Civil Procedure Code¹⁷, which states: "The court may, on its initiative, determine the scope of circumstances to be established and, following the explanations of the parties, obtain evidence that the parties have not identified." This approach is applied in a more active form in certain other jurisdictions. Under the law of England and Wales, the Child Maintenance Service has an investigative branch authorized, where grounds exist, to examine a person's true income, including by entering premises owned by the person in question or by third parties (e.g., employers) and collecting information on site. A similar mechanism exists in some U.S. states, where specially designated investigators from the social services are entitled to conduct inquiries into the financial status of the obligated parent¹⁸.

The fundamental norm determining the amount of alimony – Article 1214 of the Civil Code – establishes: The court determines the amount of alimony based on a reasonable, fair assessment, within the limits of the requirements necessary for the normal maintenance and upbringing of the child.

Sometimes, Georgian judicial practice is criticised: in Georgia, there is a marked heterogeneity of the practice in the calculation of the amount of alimony, and at times, the rule that the court uses is conditional and vague¹⁹. To fill this gap, taking into account the given legislation, courts, together with the above-mentioned Article 1214 of the Civil Code, should be guided by Article 81 of the Civil Code. The latter establishes the standard of justification of a court decision in the context of protecting the principle of giving priority to the best interests.

Article 81 of the Code on the Rights of the Child applies to decisions on all types of civil disputes related to children, as does Article 354 of the Civil Procedure Code of Georgia. However,

¹⁶ *Herring J.*, Family Law, Eighth Edition. University of Oxford, 2017. 202-214. <https://aghalibrary.com/storage/books/1609407553_AghaLibrary.pdf> [15.03.2025]; Family Law Handbook, Canadian Judicial Council, 21-26, <<https://cjc-ccm.ca/sites/default/files/documents/2021/Family%20Handbook%20-%20ENGLISH%20MASTER%20FINAL%202021-03-30.pdf>> [15.03.2025]; *Lomtadidze E.*, Determination and Enforcement of Alimony – Best Practices Study, Tbilisi, 2022, 5 (In Georgian).

¹⁷ Law of Georgia "Civil Procedure Code of Georgia", Georgian Legislative Herald, 1106, 14/11/1997, <<https://matsne.gov.ge/ka/document/view/29962?publication=149>> [15.03.2025].

¹⁸ *Herring J.*, Family Law, Eighth Edition. University of Oxford, 2017, 619-620, <https://aghalibrary.com/storage/books/1609407553_AghaLibrary.pdf> [15.03.2025]; *Lomtadidze E.*, *Mamrikishvili E.*, Comparative Legal Study – the Granting and Enforcement of Child Support, Tbilisi, 2022, 5-7 (In Georgian); *Lomtadidze E.*, Determining and Enforcing Child Support – Study of the Best Practice, Tbilisi, 2022, 4-7 (In Georgian);

¹⁹ *Lomtadidze E.*, Determining and Enforcing Child Support – Study of the Best Practice, Tbilisi, 2022, 31-32 (In Georgian).

there are cases of alimony disputes where a court of first instance has not applied this norm, or has applied it only to determine the income of the defendant. In such cases, the Appellate Chamber, during the consideration of the appeal, on its initiative, requests information from the LEPL Revenue Service about the income of both the plaintiff and the defendant, and at the same time, both for the period after the filing of the lawsuit and before the filing of the lawsuit (reasonable past period), to see a complete picture of the financial potential and average material situation of the parties²⁰.

Therefore, it is advisable to establish a uniform practice where, in alimony cases, immediately after the submission of the statement of claim or upon the expiration of the deadline set for its submission, the court, either on its initiative and as per the requirements of Article 83 of the Civil Procedure Code of Georgia²¹, or either through an oral hearing or without one, issues a ruling to request information on the income of both parties from the Revenue Service, which operates under the Ministry of Finance of Georgia. Depending on the specific circumstances of the case, the court may also request information from other institutions regarding the parties' financial status (for example, information from the banking sector on the amounts in or transaction history of the parties' bank accounts). Such practice is fully grounded in the legislation and would contribute to the efficiency and flexibility of proceedings in this category of disputes.

The court has the authority to request evidence on its own initiative, but this does not mean that the parties are fully released from the burden of proof, nor should such a perception be created. An example from the Court of Appeals illustrates this point: instead of returning the case to the first instance court for reconsideration, the appellate chamber chose to render a final decision itself, based on the principles of procedural economy and expediency.

It should also be noted that relying solely on the mechanism provided by Article 354 of the Civil Procedure Code does not fully resolve the issue of establishing the income of the alimony obligor. Courts, when determining the amount of alimony, rely only on so-called official sources of income. In cases where the respondent is informally employed and this is indicated by the claimant, the court is unable to investigate the actual material circumstances of the respondent. In such cases, the party itself must take the initiative and appeal to the relevant state agencies responsible for investigating financial violations. Under current legislation, civil courts cannot take on investigative functions. Therefore, it is worth considering the introduction of a so-called investigative service, similar to those operating under social services in other countries, specifically for alimony-related disputes.

4. Relationship Between the Amount of Alimony and the Obligor's Financial Status

One of the key factors in determining the amount of alimony is the parent's financial capacity (Articles 1198, 1212, 1214, and 1221 of the Civil Code). This implies that the amount of alimony must be reasonably and fairly aligned with the financial situation of the parents. This financial situation

²⁰ Tbilisi Court of Appeals rulings: January 17, 2025, in case No. 28/2512-24, and January 27, 2022, in case No. 28/4704-21 (In Georgian).

²¹ Request for compliance with the rule of granting the parties prior notice and the right to present their opinions on the matter by the court on its own initiative.

includes considerations such as unemployment and the absence of stable income. “However, even in cases where a parent is unemployed and lacks a stable income, a minimum amount of alimony must still be determined, an amount necessary for the maintenance and upbringing of the minor child.”²² The preamble of the Convention on the Rights of the Child emphasizes that “because of his physical and mental immaturity, the child needs special safeguards and care, including appropriate legal protection, before as well as after birth.”²³ One essential component of such “special protection” is the child’s social right, which is safeguarded under the Convention’s broader principle of the “best interests of the child.” Under this principle, the state is obligated to provide the protection and care necessary to ensure the child’s well-being.²⁴ At the same time, the state must take into account the rights and responsibilities of the child’s parents, guardians, or others legally responsible, and for this purpose, must adopt all appropriate legislative and administrative measures. The implementation of international norms for the protection of minors, including their social protection, is reflected in various national legislative acts, one of which is the Civil Code. The Civil Code is referred to as “one of” such acts, as the state has not accounted for the second aspect of this obligation: to ensure the child’s right to maintenance *ex officio*, in cases where the parent lacks the resources or fails to fulfill this duty.

Article 1212 of the Civil Code reflects the social obligation of parents, and from a legal standpoint, alimony constitutes a minimum level of material support for a person in need of care.

In the context of determining alimony, the Chamber of Cassation clarified that under Article 1214 of the Civil Code, the court must, on the one hand, establish the material needs of the child that are reasonably necessary for their maintenance and upbringing, and on the other hand, ensure that the decision is enforceable, meaning the alimony obligor must realistically be able to pay the ordered amount. Although the law imposes an obligation on parents to support their children, including the duty to pay alimony, the legislator does not define a minimum threshold amount of alimony that must be awarded to a minor.²⁵ Therefore, when determining the amount of alimony, the court must act within its discretion and, based on an assessment of the specific circumstances of each case, must establish a reasonable and fair amount. Crucially, the court must give primary consideration to the needs necessary for the normal maintenance and upbringing of the child. In determining the alimony amount, the court must also assess: the parents’ actual financial capacities, the child’s age, health condition, needs, the number of dependents each parent supports, and other objective circumstances.

²² Ruling of the Supreme Court of Georgia of 09.11.2022. No.1072-2022 <<http://prg.supremecourt.ge/default.aspx>> [15.03.2025].

²³ UN Convention on the Rights of the Child of November 20, 1989, Georgian Legislative Herald, <<https://matsne.gov.ge/ka/document/view/1399901?publication=0>> [29.01.2024], ratified by Georgia in 1994, entry into force date 02/07/1994.

²⁴ Article 26. *Ibid.*

²⁵ The minimum threshold for the amount of alimony was provided for by Lithuanian legislation, according to which it should not be less than half of the annually determined subsistence minimum. See *Lomtatidze E., Mamrikishvili E.*, ‘Comparative Legal Study – the Granting and Enforcement of Child Support’, Tbilisi, 2022, 80-81 (In Georgian);

As the court explained: The imposition of alimony must not be merely a formal measure; it must be an effective and practical mechanism that genuinely ensures the creation of conditions necessary for the child's development.²⁶

5. Informal Nature of Alimony

The imposition of alimony on a party must not be merely formal. It will not be merely formal when the majority of the components necessary for the child's upbringing are reflected. Accordingly, there must be support for the realization of the rights recognized in the CRC (Convention on the Rights of the Child). Specifically, there must be clarity in accounting for those expenses which ensure: nutrition, physical development (the right to participate in sports activities), cognitive development (participation in cultural and educational events), the right to rest, the right to education, and the medical supervision necessary for a child of this age.

It must also be noted that often the claimant, and in some cases even the court, fail to distinguish between alimony claims and claims for additional expenses. According to Article 1215 of the Civil Code, a parent paying alimony to minor children may be required to participate in additional expenses arising from special circumstances (such as the child's serious illness, disability, etc.). This article constitutes an exceptional rule, and additional expenses do not carry the continuous character of alimony. They differ from alimony as an unconditional obligation of the parent, which does not require proof of the child's special needs. In contrast, the obligation to participate in additional expenses arises only in exceptional cases. While participation in additional expenses is not directly related to alimony, the court must still take into account the amount of alimony already imposed. Although, as a general rule, participation in additional expenses is one-off, if necessary, the court may order the parent to participate in covering such expenses periodically, for a certain period. For example, if the child's health condition requires it, monthly additional expenses may be imposed, continuing until the child reaches majority or until the circumstances change.²⁷

In one case, the appellate court upheld the first-instance court's decision to order the respondent to pay a monthly amount of 750 GEL as child support. However, it altered the legal assessment of the claim and the underlying circumstances. Specifically, it differentiated between the minor's monthly needs, clarifying which of those needs fall under child support obligations and which constitute additional expenses. Within the same total amount, the court reclassified 500 GEL as child support and 250 GEL as additional expenses. In its reasoning, the appellate chamber explained that certain special needs stemming from the child's health, despite being continuous and monthly in nature, are, by their essence, not to be regarded as alimony but rather as additional expenses. This is especially true considering that some activities, such as dance, swimming, or gymnastics, although typically

²⁶ Ruling of the Civil Cases Chamber of the Supreme Court of Georgia of June 27, 2011 in case No. sb-58-49-2011, Ruling of October 17, 2017 in case No. sb-1141-1061-2017, Ruling of February 25, 2020 in case No. sb-1355-2019, Ruling of March 13, 2020 in case No. sb-1301-2019.

²⁷ Ruling of the Supreme Court of Georgia of July 11, 2018, in case No. sb-733-733-2018 (In Georgian). Ruling of the Supreme Court of Georgia of October 10, 2023, in case No. sb-907-2023 (In Georgian).

covered by alimony, in this specific case are medically recommended due to the child's health condition, and therefore should be considered as additional expenses. Based on this reasoning, the appellate court concluded that the total monthly amount ordered in favor of the minor under the appealed decision includes both child support and additional expenses²⁸. This legal interpretation was also upheld by the Supreme Court of Georgia.²⁹

6. The Relationship between the Child Support Obligation and the Obligor's other Financial Obligations

The obligation to support one's children is unconditional, and the fact that a parent of working age does not have a stable material income cannot serve as grounds for exempting them from the duty to support their child³⁰. The existence of credit obligations is not considered a mitigating circumstance. This serves to safeguard the non-formalizable nature of child support.

In disputes over alimony claims, respondents often invoke credit obligations and, by appealing to them, request relief from their alimony obligation.

In a civil case where the grandmother, appointed as guardian of two minors due to the mother's death and the father's parental rights being restricted, filed a claim for alimony against the father, the latter appealed to his credit obligations (specifically, a mortgage-backed loan tied to his immovable property). The Court of Cassation upheld the appellate court's finding that, although the respondent had no officially registered income, the fact that immovable property was registered in his name and mortgaged indicated that he had some level of income and thus must pay alimony.

The father's monthly credit payments could not affect the amount of alimony awarded. The respondent's credit obligations should not be given priority over his child support obligations toward the minor. Such credit obligations, being of a temporary nature, cannot influence the amount of alimony, especially since the very existence of bank obligations indicates a degree of solvency³¹.

7. Consideration of the Role of a Custodial Parent when Determining the Amount of Alimony

When determining the amount of alimony, among other relevant circumstances, the role of the cohabiting parent must also be taken into account. This entails a deviation from the principle of equal distribution of the child's financial support needs when imposing the alimony obligation. It must be recognized that the parent, often, in the Georgian context, the mother, with whom the child resides, typically bears a greater share of expenses and responsibilities, which go beyond mere financial

²⁸ Tbilisi Court of Appeal ruling of February 26, 2024, in case N 28/566-23 (In Georgian).

²⁹ Supreme Court of Georgia ruling of July 5, 2024 in case Nsб-449-2024 (In Georgian).

³⁰ See the decision of the Civil Cases Chamber of the Supreme Court of Georgia of June 27, 2011, No. sb-58-49-2011, October 17, 2017 No. sb-1141-1061-2017, February 25, 2020 No. sb-1355-2019 and March 13, 2020 No. sb-1301-2019).

³¹ Ruling of the Supreme Court of Georgia of November 9, 2022 in case Nsб-1072-2022 (In Georgian).

contributions. The cohabiting parents' intellectual, emotional, and time resources must be considered, as these significantly limit their ability to pursue self-development or generate additional income.

8. Maximum Amount of the Subsistence Minimum – Minimum Threshold of Alimony

Georgian legislation and legal literature do not recognize a specific formula for calculating alimony. While such formulas or guidelines exist in many other countries, this gap remains in the Georgian legal system³². To partially address this shortcoming, in recent years, courts have begun using the subsistence minimum as an auxiliary tool in determining the amount of alimony.

The subsistence minimum serves as the baseline threshold, a point from which the court should "begin its consideration" when assessing the appropriate alimony amount. This approach stems from both the concept and purpose of the subsistence minimum as a reflection of the minimum necessary for basic living.

According to Georgian legislation, the method for calculating the subsistence minimum defines it as the basis for developing social protection and social guarantees for Georgian citizens. It is precisely on the basis of the subsistence minimum that targeted social policy is implemented. Its main purposes are: to reflect changes in the population's standard of living; to identify the less well-off part of the population; and to determine the minimum amount of wages, pensions, scholarships, allowances, and other social benefits³³. The subsistence minimum serves as the foundation for the state's targeted social policy. It is used by the executive branch of Georgia as a guideline for planning economic policy aimed at creating social protection and guarantees for citizens. In terms of income, it provides an understanding of the general economic condition of the most vulnerable segments of the population. It is also often the subject of criticism³⁴. In this regard, it is worth noting that until 2021, the National Statistics Office of Georgia published the subsistence minimum for a working-age man, an average consumer, and, subsequently, for households based on the number of members. In the following years, data have only been published for the subsistence minimum of a working-age man and an average consumer³⁵. Including women and children in the "average consumer" concept is inaccurate. Moreover, according to the statistics office, the subsistence minimum for a man is higher than that of the average consumer (as of December 2024, the subsistence minimum for a man amounted to 260.3 GEL, and for the average consumer, 230.5 GEL³⁶). It is important to note that the subsistence minimum is calculated using a specific food basket and therefore reflects only the cost of food. It does not include the cost of utility tariffs, transportation, and many other expenses.

³² See. E.g., Family Law Handbook, Canadian Judicial Council, <<https://cjc-ccm.ca/sites/default/files/documents/2021/Family%20Handbook%20-%20ENGLISH%20MASTER%20FINAL%202021-03-30.pdf>> [15.03.2025].

³³ Law of Georgia on the Rules for Calculating the Minimum Living Wage, adopted 17/04/1997, Georgian Legislative Herald <<https://www.matsne.gov.ge/ka/document/view/29824?publication=7>> [15.03.2025].

³⁴ *Barbakadze Z., Poverty and the Need for Changing the Subsistence Minimum, (In Georgian). <<https://socialjustice.org.ge/ka/products/sigharibe-da-saarsebo-minimumis-tsvlilebis-sachiroeba>>* [15.03.2025].

³⁵ See <www.geostat.ge/ka/modules/categories/791/saarsebo-minimumi> [15.03.2025].

³⁶ See *ibid.*

Alimony is not identical to the subsistence minimum; it is a much broader concept. The purpose of ordering alimony payments is not only to ensure the minimum necessary for a child's survival but also, where possible, to maintain the standard of living the child would have had if the parents had a normal relationship. As far as possible, the child should be provided with the best conditions that will support their physical, mental, and emotional development and help them become a fully integrated member of society.

In the absence of an alimony calculation formula, the establishment of food basket norms and standards necessary for determining a child's subsistence minimum, based on which the Legal Entity of Public Law (LEPL) National Statistics Office could periodically calculate and publish the child's subsistence minimum, would help eliminate inconsistencies and increase predictability in court practice.

9. The Correlation of Alimony with the other Criteria of Child Protection

The primary substantive legal basis for a court decision regarding alimony, alongside Article 1214 of the Civil Code of Georgia, must be Article 81 of the Code on the Rights of the Child (CRC). As previously noted, the latter is directly applicable to cases of this category. It establishes the grounds for judicial reasoning, whereby the matter must be decided in accordance with the principle of giving priority to the best interests of the child, if the decision: a) Ensures the child's physical and psychological protection and safety; b) Guarantees the child's uninterrupted access to education, healthcare, social protection, psychosocial support, and rehabilitation; c) Prevents any form of violence, abuse, or danger toward the child; d) Supports the child's harmonious development and respects their personality, individual abilities, and interests; e) Considers the views of the child; f) Supports the relationship between the child and the parent or other person responsible for their upbringing; g) Maintains or restores the child's relationship with both parents; h) In cases where a decision is made contrary to the child's views, include concrete measures to avoid potential harm to the child during enforcement; i) And any other matters that directly or indirectly affect the child's rights and the resolution of the case in compliance with the principles of a fair trial.

Hence, if the subsistence minimum represents the baseline from which the court should begin its assessment (given that alimony is not merely to cover the minimum necessary for survival, but rather to ensure the child's proper maintenance and upbringing, which exceeds the threshold of mere survival), then alimony must also cover expenses that support the child's education, health, and harmonious development, as well as the respect for their personality, individual abilities, and interests. In practice, this can be realized by factoring into the alimony amount at least the average cost of one necessary or desirable activity for the child (based on prices typical for the region where the child resides). For example, this might include the average monthly cost of a sports activity (e.g., a swimming pool or a football club membership) or an educational/cultural activity (e.g., subscription to an amateur theatre group).

10. Certain Procedural Legal Specificities of Alimony Disputes

The legislator emphasizes the special civil procedural rules for hearing family law disputes. This is reflected both in the structure of the Civil Procedure Code of Georgia (CPC), where a separate

chapter, Chapter XLIII: “Specificities of Family Law Proceedings”, is dedicated to such cases, and in the substantive content of the relevant norms³⁷. A part of this chapter is Article 354 of the CPC, which provides that the court is authorized to establish the circumstances of the case on its own initiative.

10.1. Alimony and Other Types of Family Law Claims

Article 354 of the Civil Procedure Code (CPC) prohibits the joint consideration of family law disputes with other categories of cases. However, in practice, a party may wish to bring a counterclaim in an ongoing alimony case, introducing another family law demand, such as determining the child's place of residence or regulating visitation rights.

In one case, the original claim concerned the imposition of alimony, while the counterclaim sought to determine the children's place of residence and the rules of contact with them. The Chamber found it inappropriate to admit the counterclaim for consideration in that particular case. It explained that while it partially agreed with the appellant's argument regarding subparagraph “b” of Article 189(2) of the Civil Procedure Code (which allows the judge to accept a counterclaim if its satisfaction would fully or partially preclude satisfaction of the original claim), as the determination of a child's place of residence can usually affect the imposition of alimony, it still held the following: At the current stage of the proceedings, admitting the counterclaim would be unreasonable; The claim on alimony was already prepared for hearing, while the preparation of a claim concerning visitation and residence requires a different procedural approach; Importantly, alimony cases are subject to an expedited timeline of one month, and accepting the counterclaim would delay the alimony hearing; Alimony is owed from the date of filing the claim and remains due until a final decision on the child's residence enters into legal force, therefore, the child is entitled to receive alimony in the interim; If the child's residence is later determined to be with the father, that fact will be taken into account during the enforcement stage of the alimony decision. From the moment such a judgment enters into legal force, the father would no longer be obligated to pay alimony. Although a connection exists between the original and counterclaims, the cumulative condition required by law, that their joint consideration would ensure a more accurate and faster resolution of the dispute, was not met in this case. The correctness of determining visitation rights does not depend on whether the claims are heard jointly or separately, as the relevant facts differ. Likewise, when determining the amount of alimony, the court typically takes into account the child's right to maintain a relationship with both parents, but visitation arrangements should not be confused with residence determination. The child's residence being assigned to one parent creates the basis for the other parent's alimony obligation, and any subsequent change in circumstances may serve as grounds for invoking Article 1221 of the Civil Code³⁸, which allows for the modification of alimony obligations.³⁹

³⁷ Law of Georgia “Civil Procedure Code of Georgia”, Georgian Legislative Herald, 1106, 14/11/1997, <<https://matsne.gov.ge/ka/document/view/29962?publication=149>> [15.03.2025].

³⁸ Article 1221 of the Civil Code: 1. A parent who pays alimony for the benefit of a minor child has the right to file a lawsuit to reduce the amount of alimony established by the court; 2. In the event of a change in the material and family situation of those parents who pay alimony in the form of a fixed amount, the court has the right, at the request of the interested person, to reduce or increase the amount of alimony.

³⁹ Tbilisi Court of Appeal's ruling of October 11, 2024, on the refusal to satisfy the private complaint. Case №28/5467-24 (№330210024008595273).

10.2. Securing an Alimony Claim

Articles 191-198 of the Civil Procedure Code regulate the issues of securing a claim and, naturally, apply to family disputes as well. To secure an alimony claim, the claimant often requests the imposition of a seizure (lien) on the respondent's property or the application of other restrictive measures on their rights. In some cases, such requests are fully granted by the court, somewhat in violation of the fair balance and proportionality between the parties' interests. In one case, where the first instance court restricted the alienation and encumbrance of immovable property owned by the respondent to secure the alimony claim, the Chamber explained: to avoid future complications or impossibility in the enforcement of the decision, it is advisable to apply a measure of claim security on immovable property registered in the name of the respondent. However, interference with property rights must correspond to the intended purpose and should restrict the property owner's rights only to the extent necessary to achieve that purpose. In the present case, the claimant's demand concerns not a one-time payment, but the imposition of a periodic (monthly, ongoing) payment obligation on the respondent, which is expected to continue until the alimony recipient reaches adulthood. It is unclear what specific period and which specific demand the applied measure of claim security is intended to secure. Even if the claimant refers to the entire period during which the alimony obligation will exist, the Chamber considers that, in this very case, the measure applied through the contested ruling cannot be justified under the principle of equality of the parties. As a rule, the alimony obligation must be fulfilled monthly, and payment can be enforced through garnishment of the respondent's salary or other current income. In the event of non-fulfillment of the alimony obligation, arrears will accrue, and to cover this debt, the enforcement bureau may seize the respondent's immovable property and subsequently use it to forcibly recover the owed amount. Imposing an indefinite restriction on property rights to secure a debt whose due date has not yet arrived results, on the one hand, in unjustified restriction of the respondent's property rights, and on the other hand, in an obligation for the claimant to compensate for any damage that the measure of claim security may cause the respondent. Although the procedural institution of securing a claim is indeed designed to protect the claim, the applied measure is a temporary court action, the purpose of which is to prevent possible obstacles to the enforcement of the court's decision. However, it must not be used as an unconditionally restrictive measure against the respondent's rights. Concerning the demand for imposing alimony, the applied measure of securing the claim should be limited in time and/or scope (in terms of the claim's extent) so as not to cause disproportionate harm to the property owner's rights. The ruling on securing the alimony claim should indicate which part of the alimony obligation the procedural measure secures. For example, until the decision enters into legal force, the security measure should apply only to the amount of alimony accrued up to that point, if applicable. Without such specification, a measure of claim security that remains in place until the respondent's minor children reach adulthood could disproportionately restrict the respondent. Moreover, it should be taken into account that the respondent may voluntarily fulfill the alimony obligation as determined by a final decision, including for the period following the decision's entry into force. Since the Civil Procedure Code is based on the principle of equality of the parties, the court is obliged to maintain a balance between the creditor's

lawful claim and the debtor's lawful interest and must not impose restrictions beyond what is necessary to satisfy the creditor's demand⁴⁰.

This interpretation was established in the practice of the Tbilisi City Court as early as 2019, when, in a specific case, the court refused the claimant's request to apply a measure prohibiting the alienation, gifting, or other legal encumbrance of the respondent's property to secure alimony arrears accrued after the court's decision entered into legal force. Instead, the court applied the measure solely to secure the amount of alimony accrued up to the date the decision entered into legal force⁴¹.

10.3. Interim Order

The institution of interim orders also reflects the procedural legal peculiarities of family disputes, regulated under Article 355 of the Civil Procedure Code (CPC) of Georgia. According to Article 355 of the CPC, the court may, based on a party's motion, issue a temporary order to regulate the following matters: a) parental care responsibilities toward the child; b) contact between one of the parents and the child; c) temporary custody of the child by one of the parents; d) the obligation to support a young child; e) provision of financial support by one spouse to the other; f) use and management of the family household and dwelling; g) advance payment of costs related to proceedings arising from family-law relationships. The court's ruling on these issues may be issued without an oral hearing. The court that issued the order may, based on a party's request, modify or revoke its order in full.

An interim order, like securing a claim, is an interim measure issued by a court ruling based on a motion from a party and remains in force during the proceedings, unless it is amended or revoked by the same court. However, a temporary order is not the same as a measure for securing a claim, its function and regulation (Articles 191-198 of the CPC) are different. A motion for securing a claim must be resolved by the court within one day of submission, without notifying the respondent (CPC Article 193). In contrast, a motion for a temporary order is considered under CPC Article 83, which establishes the right of all participants in the proceedings to present opinions on all issues raised during the trial, and to object to the opposing party's motions, conclusions, and views. The CPC does not set a specific deadline for reviewing a temporary order motion, its resolution is at the discretion of the court, provided it is done within a reasonable timeframe. Securing a claim requires the payment of a state duty, and a specific appeals procedure is provided (CPC Articles 39 and 197). These do not apply to temporary orders. A temporary order may be appealed along with the final judgment (CPC Article 377) or may be challenged before the same court by filing a request for revocation or modification (CPC Article 355.3).

Article 355 of the Civil Procedure Code (CPC) does not expressly stipulate the possibility of awarding interim alimony by way of a temporary (interim) order, but this does not constitute an obstacle to its application for the temporary regulation of alimony⁴². In practice, courts may determine

⁴⁰ Ruling of Tbilisi Court of Appeals of October 7, 2024, N28/5074-24.

⁴¹ Ruling of Tbilisi City Court of March 28, 2019, №2/6428-19.

⁴² For example, Article 355 of the CPC does not directly provide for the regulation of the restriction of parental rights by the procedure for adopting a temporary decree, but this does not constitute an obstacle to

interim alimony based on subparagraphs (a) and (d) of Article 355 of the CPC, i.e., parental care responsibilities and the obligation to support a young child, in conjunction with Articles 1198–1199 of the Civil Code, which regulate the substantive right to alimony. Very often, the amount of interim alimony is set within the limits of the subsistence minimum as defined and published by Geostat, the National Statistics Office of Georgia⁴³.

11. Enforcement of the Court Decisions

In Georgia, the enforcement of court decisions in alimony cases remains a challenge in the modern context. As noted in the legal literature, the current system for enforcing alimony judgments fails to meet the standard of effectiveness⁴⁴.

Georgian legislation provides the possibility of initiating criminal prosecution for evasion of alimony payments, and as a form of liability, it establishes a fine, community service for a period of 120 to 240 hours, or corrective labor for up to one year.⁴⁵ However, such measures are rarely applied in practice.

More effective would be a system of liability, as seen in other countries, which entails greater restrictions on the rights of the person obliged to pay alimony. For example, under Estonian enforcement legislation, if during the enforcement proceedings (over a three-month period), the liable person still does not fulfill their obligations and the enforcement officer's measures prove unsuccessful, it becomes possible to restrict or suspend certain rights such as the right to drive a vehicle; the right to possess or acquire firearms, the right to use recreational and personal watercraft, or fishing licenses. In addition to the above enforcement measures, Estonian law also provides for the suspension or revocation of specific documents or the denial of issuance for a defined period by court order. These may include: an Estonian citizen passport; a foreign national's passport; a refugee travel document; a temporary travel document; a seaman's book; a certificate of service on an Estonian vessel; or a diplomatic passport.

The court is authorized to simultaneously restrict or suspend multiple rights under Estonian law if the individual is deliberately evading payment of alimony ordered by the court. In such cases, criminal liability applies, and the person is subject to a fine or imprisonment for up to one year⁴⁶.

⁴³ the regulation of this issue by a temporary decree. See the Decision of the Constitutional Court of Georgia of December 7, 2018, No. 2/10/2012, Citizen of Georgia and Canada Giorgi Spartak Nikoladze v. Parliament of Georgia. <<https://www.matsne.gov.ge/ka/document/view/4390502?publication=0>> [15.03.2025].

⁴⁴ Tbilisi Court of Appeal 01.03.2024 Ruling No. 28/6723-23 on Temporary Decree.

⁴⁵ In 2020, the National Bureau of Enforcement received 513 cases of the alimony category, and 117 were enforced; in 2021, 517 cases were received and 138 were enforced; in 2022, 572 cases were received and 159 were enforced; according to the data available at the end of January 2023, 8,949 cases of the alimony category were pending. See *Urukchishvili G.*, Non-payment of Alimony – Cultural and Legislative Challenges in Georgia, Sapari, Tbilisi, 2022. (In Georgian).

⁴⁶ Law of Georgia “Criminal Code of Georgia”, Georgian Legislative Herald, 2287 22/07/1999, Art.176, <<https://matsne.gov.ge/ka/document/view/16426%23%21?publication=11#!>> [15.03.2025].

⁴⁶ Code of Enforcement Procedure, passed 20.04.2005, entry into force 01.01.2006, <<https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ee/ee141en.html>> [15.03.2025].

Lithuanian legislation, in turn, provides for imprisonment of up to two years for failure to pay alimony⁴⁷.

It would yield significant results in Georgia if the Financial Police were automatically involved, provided certain preconditions are met, in cases of unenforced alimony obligations, and if persistent non-payment of alimony were treated as a form of economic violence⁴⁸. Persistently evading alimony responsibilities bears clear characteristics of economic violence, and legislation should reflect this more appropriately, especially given that the overwhelming majority of alimony debtors are men.

The European Court of Human Rights views the enforcement of civil and administrative judgments as falling within the scope of the right to a fair trial under Article 6 of the ECHR. According to the Court, enforcement of a judgment is an integral part of the right to a fair hearing. This right would be illusory if a final and binding court decision remained unenforced. Accordingly, the state must establish an adequate enforcement system, and execution must be full and comprehensive, not partial⁴⁹.

12. Conclusion

The Convention on the Rights of the Child and the Universal Declaration of Human Rights regard a child's social right as an essential component of the child's need for special protection. As noted, this right is recognized under the umbrella of the child's "best interests", a guiding principle in both instruments. The state has a duty to ensure a child receives the protection and care necessary for their well-being⁵⁰. This responsibility is not limited to the rights and obligations of parents, guardians, or other legally responsible persons. The state is also required to fulfill the second aspect of its obligations under these conventions, to directly guarantee a child's right to subsistence where the parent either lacks the means or fails to meet this obligation.

It is worth noting that some countries have introduced special social support mechanisms for children, such as guaranteed alimony, alimony assistance schemes, and others, to ensure children's well-being in cases where parents are unable or unwilling to pay alimony. In some states, after providing such support, the state reserves the right to seek reimbursement from the parents, if a court later determines that the non-payment of alimony occurred without legitimate justification⁵¹.

⁴⁷ Penal code, passed 06.06.2011, entry into force: 01.09.2002 <<https://www.riigiteataja.ee/en/eli/522012015002/consolidate>> [15.03.2025].

⁴⁸ See *Urukchishvili G.*, Non-payment of Alimony – Cultural and Legislative Challenges in Georgia, Sapari, Tbilisi, 2022, 27 (In Georgian).

⁴⁹ See the decision of the European Court of Human Rights, Case of Micallef v. Malta, Application no. 17056/06, 15 October 2009 <[The decision of the European Court of Human Rights, Case of Amat-G LTD and Mebaghishvili v Georgia, Application no. 2507/03, <\[⁵⁰ The UN Convention on the Rights of the Child of November 20, 1989, Georgian Legislative Herald, was ratified by Georgia in 1994, Art.26, 27, 3 <<https://matsne.gov.ge/ka/document/view/1399901?publication=0>> \\[15.03.2025\\].\]\(https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-70293%22\]}> \[15.03.2025\].</p></div><div data-bbox=\)](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22002-1270%22]}> [15.03.2025].</p></div><div data-bbox=)

⁵¹ For example, Estonia's Social Insurance Council provides two types of alimony allowance: one during the court proceedings and another during the enforcement stage. See [relevant source] for details. Family

Georgian legislation, both in terms of determining the amount of alimony and ensuring its enforcement, is characterized by an abstract nature and a lack of practical standards and mechanisms. If the state devotes more time and attention to the issue of child alimony, through the establishment of alimony funds and the development of calculation criteria (even based on the subsistence minimum method), and if the relevant institutions act more effectively to develop a uniform practice, the child's right to social protection will become more tangible and effectively realized.

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According to Finnish legislation, in cases where child support (alimony) is not paid at all (full non-payment) or is paid in an insufficient amount (reduced alimony), a so-called guaranteed alimony or alimony allowance is provided. If the obligated parent is unable to pay alimony and therefore has a zero-child support obligation, the child receives the full amount of the alimony allowance from the state. In Finland, for example, a child is eligible for the guaranteed alimony allowance under the following conditions: the child has not received at least one month of alimony from the obligated parent; If the amount of alimony determined by a court or social welfare authority is lower than the guaranteed allowance amount; etc. See: <<https://www.kela.fi/families>> [15.03.2025]. Benefits for families with children Family benefits and assistance for families with sick children, <https://www.expat-finland.com/pdf/kela/home_and_family.pdf> [15.03.2025].

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