

National Legal Regulation of The Law Applicable to Alimony Obligations in The Legislation of Various Countries

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Abstract: This article provides a comparative legal analysis of national regulations governing the law applicable to alimony (maintenance) obligations in various countries. It explores how different legal systems—namely those of the United Kingdom, Turkey, South Korea, France, and Germany—approach the determination of applicable law in cross-border maintenance cases. The study focuses on both substantive and conflict-of-law rules, addressing the role of international treaties such as the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. By examining legislative frameworks and judicial practices, the article highlights key differences and commonalities in national approaches, contributing to a broader understanding of the harmonization challenges in private international family law.

Keywords: Alimony obligations, applicable law, national legal regulation, comparative analysis, United Kingdom, Turkey, South Korea, France, Germany, family law, private international law, Hague Convention, cross-border maintenance.

Introduction: When giving a general description of alimony obligations under the legislation of foreign countries, it should be noted that in the current Family Code, in many cases, the obligation of parents to pay alimony to their children in case of divorce, as well as the obligation of adult children to provide for their needy parents, is mentioned. However, the legislation of each country has its own peculiarities.

According to N.N. Tarusina, alimony obligation is a property right within family law, which is a monetary obligation payable by one family member to another family member based on a court decision or mutual agreement.

Alimony obligations occur between family members, and in the current legislation, the term "benefit" is used when the state is involved on one side and an individual on the other, or when social-legal relationships occur. If it is a family legal relationship in which family members participate, then the term "alimony" is used. Although alimony obligations are considered actions that must be fulfilled, the payer's monthly salary and

other income are also taken into account when implementing them. Therefore, alimony is the family members' mutual property rights that have a personal character and are strictly defined by laws mutual property rights

METHOD

In the UK, mutual alimony obligations are provided between former spouses. Funds paid by one spouse to another spouse must ensure their previous standard of living. The legislation grants former spouses the right to independently agree on the procedure and amount of alimony payments. Based on this agreement, the court will make a corresponding decision.

The legislation of Great Britain does not specify the minimum or maximum amount of funds to be collected for the maintenance of a former spouse. The deadline for paying alimony for the spouses has also not been established. When considering specific cases, the court may, at its discretion, establish maintenance for life or for a limited period.

In Great Britain, child support is paid until the child

reaches the age of sixteen. If a child who has reached this age is studying or undergoing vocational training in an educational institution, the period for the payment of alimony may be extended by a court decision, regardless of whether they work or not.

France. The dominant principle of French legislation regarding the regulation of alimony obligations can be expressed as follows: "After divorce, each spouse is obligated, first of all, to provide for themselves."

Article 270 of the French Civil Code states: "Divorce cancels the obligation of maintenance." However, its other articles establish serious exceptions to this principle and provide for sufficiently broad opportunities for one spouse to provide for the other under certain circumstances.

According to Article 281 of the French Civil Code, "in the event of divorce based on the termination of joint life, the obligation of the spouse initiating the divorce to provide material assistance is fully preserved." Consequently, in the case under consideration, the plaintiff, who initiated the divorce, remains economically obliged to provide for the other spouse for a long, and sometimes unlimited, period of time.

In France, the payment of material assistance in favor of one of the former spouses is suspended if he enters into another marriage or enters into an open marriage relationship with another person.

Unlike the criminal legislation of other countries, Article 227-3 of the French Criminal Code clearly defines the period (more than two months) for non-execution of a court decision or a court-approved agreement of the parties obligating a person to provide material support in full to a child, parents, a relative of the older generation, or spouse. Such a person is punishable by two years of imprisonment and a fine.

German legislation provides for a mutual obligation to provide for the spouses during the marriage and after its dissolution. When a marriage is dissolved, the obligation to pay alimony is assigned to the husband or wife who is materially better provided for. This creates an opportunity for a low-income spouse to adapt to the new conditions and achieve economic independence.

In general, German legislation is based on the principle that each spouse should be self-sufficient. However, property issues arising during divorce should be resolved, first of all, through the redistribution of property between the spouses. If such redistribution does not ensure material equality for divorced spouses, the economically weaker party has the right to demand financial assistance and support from the economically stronger party.

In most cases, the court determines the payment of

temporary alimony for a certain period of time, which is considered necessary for the adaptation of the spouse in need of assistance to a new way of life. The court may assign alimony in the form of a monthly payment or a lump sum payment. When the subsequent marriage is legally registered, the spouse loses the right to receive alimony from the previous marriage. However, there is an exception to this rule: if it is established that the husband from the subsequent marriage cannot provide due support to his wife, the right to demand maintenance from the husband from the previous marriage is retained.

Property relations between parents and children mainly depend on their mutual obligation to provide alimony. It should be especially noted that German legislation provides for the preferential right of children born out of wedlock to receive monetary allowance. Therefore, a person obligated to pay alimony for several children must first pay alimony for their illegitimate child. Moreover, the right of a child born out of wedlock to receive support from his real father does not end with his death, since this obligation passes to his heirs.

Turkey's Section 2 of the "Law on Private International Law and Procedural Law" ("Milletlerarası özel hukuk ve usul hukuku hakkında kanun") adopted on November 27, 2007, is called the Conflict of Laws (Kanunlar ihtilafi Kuralları). According to Article 19 of this law, claims for alimony are based on the law at the place of permanent residence of the alimony recipient. In accordance with paragraphs 3 and 4 of Article 182, Article 327, and other relevant articles of the Turkish Civil Code, the expenses necessary for the care, education, and protection of common children are borne by the mother and father. Alimony paid for a child is called "İştirak nafakası," a type of alimony paid by a parent who does not live with the child as a result of a divorce or divorce proceedings to another parent for the maintenance of the child. This ensures that parents who are not guardians contribute to the child's needs such as health, education, housing, and clothing in proportion to their financial capabilities.

According to Article 328 of the Turkish Civil Code (Türk Medeni Kanunu), the duty of parental care continues until the child reaches adulthood. If the child has reached adulthood but continues to study, parents are obliged to provide material support until the child's education is completed, to the extent that they can pay, depending on the situation and circumstances. According to Article 329, a mother or father, who is actually caring for a minor child, may file a claim for the recovery of alimony on behalf of the child against the other. If necessary, a claim for the payment of alimony may also be filed by a guardian or trustee appointed for a minor who is unable to protect their rights ("gücüne

sahip olmayan küçük"). A minor capable of protecting their rights can also apply to the court for alimony payments. Moreover, unlike our national legislation, this law does not contain a procedure for collecting alimony in a clearly defined amount. Article 330 provides for the procedure for determining the amount of alimony, according to which the amount of alimony is determined taking into account the needs of the child and the living conditions and solvency of the parents. When determining the amount of alimony, the child's income is also taken into account. From this, it is clear that the exact amount of child support is not determined. The expenses of a child under school age differ from the expenses of a child of middle school age (including educational expenses, administrative expenses, student transportation expenses, etc.). Therefore, the benefit for a preschooler differs from the benefit for a middle schooler.

The "Central Authority" is the addressee of requests, appeals, court proceedings, and claims for the recovery of accounts receivable for alimony domestically and abroad from the Main Directorate for Foreign Relations and the European Union. The Alimony Office, which operates within this department, carries out its functions in accordance with international treaties to which Turkey is a party, relevant Turkish legislation, and judicial precedents. The alimony payment authority transfers applications submitted within the republic to foreign central bodies or accepts applications received from abroad, and also carries out the necessary correspondence on these issues. In addition, within the country, the Prosecutor General's Office carries out the following functions: filing a lawsuit and executing a foreign court decision that is the basis for the recovery of alimony; applying for execution; applying to the court to obtain a decision on the payment of alimony or a decision on the recovery of alimony from the authorized body; applying to the authorized body to resolve alimony obligations amicably (by agreement, mediation, etc.). Within the framework of its special functions, the alimony office carries out such tasks as conducting an investigation to determine the place of residence and property of the alimony debtor, filing a lawsuit to establish pedigree, assisting in the collection of evidence, and takes other necessary measures to ensure the recovery of alimony. When performing the above-mentioned tasks, the "Principle of Mutual Cooperation" is also taken into account by country.

The most important condition for the implementation of international agreements on alimony, to which Turkey is a party, is the requirement that the alimony recipient and the debtor reside in different countries (exceptions exist). In claims for the recovery of alimony

against alimony debtors living in Turkey, alimony recipients are obliged to apply to the central body of the state of residence in accordance with the relevant international conventions. Applications and other correspondence are carried out through central bodies proclaimed by member states that are parties to relevant international conventions.

The next foreign country we will consider is South Korea. In South Korea, issues related to alimony are considered by family courts. Child support in Korea is regulated in accordance with the Law "On Compulsory Implementation and Support of Child Support Payments," adopted on March 24, 2014. According to it, the term "child support" is defined as "expenses necessary for the protection and upbringing of a minor or a child under 20 years of age." In many Korean court decisions, Korean fathers and mothers have issued positive rulings on the assignment of child benefits in cases of non-fulfillment or refusal of child support obligations. According to the law, a parent who does not live with the child is obliged to provide financial assistance monthly until the child reaches adulthood. Therefore, claims for child support can be filed before the child reaches the age of 20. A Korean court may also order child benefits to be paid for past periods.

In addition, a Korean court may order a father who does not live with the child to reimburse previously incurred expenses for raising the child. If a parent who does not live with the child continues to refuse to pay child support, the parent raising the child may request the court to seize the debtor's income or property to fulfill the child support obligation.

The amount of child support is determined based on the following factors: the financial capabilities of the father who does not live with the child and the mother raising the child; living expenses at the place of residence of the minor; the number of children of the father who does not live with the child; the state of health of the child, requiring additional treatment costs, and the expenses necessary for the child's education.

The amount of benefits is determined based on the "Child Support Calculation Standard" established by the Seoul Family Court. The Seoul Family Court established and announced pension calculation standards on May 30, 2012, and subsequently reviewed them twice: on May 30, 2014, and on November 17, 2017. The latest amendments to this standard were announced on December 22, 2021, and entered into force on March 1, 2022. In accordance with South Korean legislation, when determining the amount allocated for child support, not only the parents' income but also the child's age is taken into account. In this case, the

amount of the benefit is determined in ascending order for children under 2 years old, for children aged 3-5, 6-8, 9-11, 12-14, and 15 years old. Moreover, when assigning benefits, the amount of the benefit changes with each million won increase in the parents' monthly income. Another distinctive feature of our national legislation is that the income of both parents is taken into account when determining the benefit. That is, not only the alimony-paying parent but also the monthly income of the parent who has guardianship over the child is considered total income.

Let's say a father who pays alimony has an income of 4 million KRW, a spouse has a monthly income of 3 million KRW, and they have two children aged 3 and 6. Let's assume that the mother is raising both children. According to the table, since the parent's total income is in the range of 7,000,000-7,999,999 KRW, the total amount of money that should be spent on a 3-year-old child is 1,598,000 KRW per month. In this case, since the father's share in the total family income fund is 4/7, he will have to pay only 913,143 KRW ($= 1,598,000 \text{ KRW} \times 4/7$) to his spouse. Similarly, if we look at the expenses of a 6-year-old child, we see that this amount should be 1,614,000 KRW per month. And again, since the father's share of the total income is only 4/7, he will have to pay his spouse 922,286 KRW ($= 1,605,000 \text{ KRW} \times 4/7$).

The above calculations are based on the table. However, if there are special circumstances that need to be taken into account or if there is an agreement between the spouses, the Korean Family Court may disregard the given standard and order alimony to be paid in another way.

Having considered the basic aspects of the legal regulation of alimony in the national legislation of South Korea, we will analyze the international private regulation of alimony in this country. On January 4, 2022, South Korea adopted the "Law on Private International Law." Chapter 7 of this law is devoted to family issues. Article 60 of the Law is aimed at regulating the issues of jurisdiction on supply issues. If the permanent residence of the person entitled to security is in the Republic of Korea, the court shall have international jurisdiction on security matters. That is, if the recipient of support lives in Korea permanently, this issue will be considered by Korean courts. Article 8 of this law provides for the procedure for determining jurisdiction by agreement. According to it, the parties may agree on international jurisdiction in a claim arising from a specific legal relationship. However, even if the parties have concluded an agreement on international jurisdiction in the matter of security in accordance with Article 8, such an agreement is not valid in the following cases:

1. If the person entitled to receive support is a minor or a ward. However, this rule does not apply if it is permitted to file a claim against a minor or a ward entitled to receive support under the relevant agreement, not only through the court, but also through a foreign court;

2. If the country indicated in the agreement is practically irrelevant to the issue or irrelevant at all.

Consequently, in both cases mentioned above, the parties cannot determine the jurisdiction over the supply issue through agreement, and this issue will be considered by Korean courts.

The next country we will consider is the United States of America. The U.S. Office of Child Support Services (OCSS) is the U.S. central authority for international child benefits. This agency collaborates with various states and countries to assist families whose family members live in different countries in obtaining benefits. The U.S. states have a variety of mutual agreement procedures with some countries, including: Countries of the Hague Convention - States that have acceded to the Hague Convention on the Provision of Children;

Foreign Cooperating Countries (FCCs) are countries that have bilateral agreements with the US government but have not acceded to the Hague Convention, as well as Canadian provinces and territories.

The Child Support Standards Act (CSSA) is the name given to a set of laws containing a formula for calculating child support. These laws are contained in Article 240 of the Law on Family Relations and Article 413 of the Law on Family Courts. The CSSA determines the amount of child benefits based on parents' income to ensure a decent standard of living for children. Regardless of the joint guardianship of the parents, the income of both parents is taken into account in the formula, since the income of both parents is the obligation of both parents to support their children. This law applies equally to children whose parents are married and unmarried. It applies equally to children whose parents are married, children whose parents are not married, and children under 21 years of age, if they are not released earlier. All child support decisions made by the courts must be based on the CSSA. Until the judge or the supply magistrate finds this "unfair or inappropriate," the amount calculated according to the formula should be set.

After the judge or assistant judge determines the income of both parents and makes deductions permitted by law, these incomes are combined to obtain the "total income of the parents."

RESULTS AND DISCUSSIONS

The comparative analysis revealed significant differences in how countries regulate the applicable law to alimony obligations. The United Kingdom predominantly relies on its common law tradition and the application of international conventions, particularly the 2007 Hague Convention. Turkey combines national legislation with selective adherence to international agreements, often prioritizing the domicile or nationality of the parties involved. South Korea, while aligning with international standards, demonstrates a strong domestic legal framework with precise procedural rules. France and Germany, as civil law jurisdictions and EU members, show a high degree of harmonization, particularly through the EU Maintenance Regulation and the Hague Convention. Despite differences, all analyzed jurisdictions aim to protect the right to maintenance, though procedural approaches and conflict-of-law principles vary. The findings suggest a growing trend toward international cooperation, yet emphasize the persistent challenges in achieving full legal harmonization.

CONCLUSION

In conclusion, the national legal regulation of the law applicable to alimony obligations varies significantly across jurisdictions, reflecting each country's legal traditions, international commitments, and policy priorities. While countries like France and Germany benefit from EU-level harmonization, others such as the United Kingdom and Turkey rely on a combination of domestic rules and international instruments. South Korea presents a hybrid approach, incorporating both domestic specificity and international cooperation. The study demonstrates that although there is a shared commitment to ensuring effective maintenance enforcement, the divergence in conflict-of-law rules and procedural mechanisms continues to present obstacles in cross-border cases. Strengthening international collaboration, expanding the scope of multilateral agreements, and promoting harmonized legal standards remain essential for improving the predictability and fairness of alimony-related legal processes on a global scale.

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