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On Court Application of Legislation in Consideration of Cases regarding Recovery of Alimony

Alimony obligations are stipulated in the Family Code of the Russian Federation for the purpose of ensuring the living conditions necessary for the development, upbringing and education of underage children, as well as for providing maintenance for other indigent family members.

In order to ensure the uniform court application of legislation in resolution of disputes regarding the recovery of alimony, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

General Provisions

1. The grounds on which alimony obligations arise and are terminated, as well as the list of persons entitled to alimony and of persons obliged to pay them, the manner of payment and recovery of alimony, as well as other relations pertaining to the establishment and performance of alimony obligations are regulated by the Family Code of the Russian Federation (Section V).

In accordance with the provisions of the Family Code of the Russian Federation (hereinafter referred to as the FC RF), alimony is paid based on an agreement of the parties (Chapter 16 of the FC RF); in the absence of an alimony agreement, family members indicated in Articles 80–99 of the FC RF may apply to court with claims for recovery of alimony (Article 106 of the FC RF).

In order to decide, the court of which level has the jurisdiction to resolve a dispute on alimony recovery, the general rules stipulated in Articles 23 and 24 of the Civil Procedure Code of the Russian Federation (hereinafter – the CPC RF) should be used as guidance.

By virtue of Items 1 and 4 of Part 1 of Article 23 of the CPC RF, alimony recovery cases, as well as other cases on disputes regarding the recovery of alimony (e.g. regarding the change of amount of alimony, exemption from payment of alimony, recovery of a forfeit due to failure to timely pay alimony) are considered by a justice of the peace as a court of first instance.

If an alimony recovery claim subject to consideration by a justice of the peace is stated simultaneously with a claim subject to consideration by a district court (e.g. regarding the establishment of paternity or maternity, limitation or deprivation of parental rights), such a case is subject to consideration by a district court in accordance with Part 3 of Article 23 of the CPC RF. District courts also consider cases regarding the amendment, termination or invalidation of alimony agreements as courts of first instance.

2. Proceeding from the meaning of Item 3 of Part 3 of Article 29 of the CPC RF, the rule on alternative jurisdiction over claims for recovery of alimony and establishment of paternity (stipulating that it is possible to file such claims at the place of residence of the defendant or at the place of residence of the plaintiff) applies both when the aforementioned claims are stated simultaneously and when an independent claim for recovery of alimony is stated by any of the persons entitled to alimony by virtue of law or is filed in the interests of such a person (e.g. if a claim for recovery of alimony for an underage child is filed by its parent) (Articles 80–99 of the FC RF).

Based on analogy of statute (Part 4 of Article 1 of the CPC RF), the rule on alternative jurisdiction also applies to claims for recovery of alimony and establishment of maternity.

In accordance with Article 28 of the CPC RF, claims of persons, from whom alimony is recovered for the benefit of underage children or other family members (e.g. for the change of the amount of alimony stipulated by the court or for exemption from payment of alimony, exemption from payment of alimony in arrears), are subject to consideration by the court at the place of residence of the defendant (recoveror).

3. Alimony recovery claims subject to consideration by a justice of the peace are resolved by the justice of the peace in court order proceedings (Chapter 11 of the CPC RF) or in action proceedings (Chapter 12 of the CPC RF).

In accordance with the fifth paragraph of Article 122 of the CPC RF, a judge may issue a court order, if a claim is filed for recovery of alimony for underage children, and it does not involve the establishment of paternity, dispute of paternity (maternity) or the need to draw other interested persons to participation in the proceedings. Alimony in fixed amount may not be recovered on the basis of a court order, as the resolution of this issue involves the need to verify whether there are circumstances, stipulated in law for the possibility of such recovery (Article 83, Item 4 of Article 143 of the FC RF).

If an application for the issue of a court order regarding alimony claims is filed, which is not subject to resolution in court order proceedings (e.g. the debtor is paying alimony for the benefit of other persons by virtue of a court decision; a claim is stated for recovery of alimony in fixed amount or simultaneously in shares and in fixed amount; a claim for recovery of alimony in the form of a share of earnings and (or) other income of the parents is accompanied by a claim for recovery of alimony for the time preceding the filing of such an application by virtue of the second paragraph of Item 2 of Article 107 of the FC RF), the judge refuses to accept that application for a court order in accordance with Item 3 of Part 3 of Article 125 of the CPC RF.

If after a court order is issued regarding an alimony claim the debtor submits objections against its execution within the stipulated time, the judge adopts a decree to cancel that court order in accordance with Part 1 of Article 129 of the CPC RF and clarifies it to the recoveror that the stated claim may be filed by him/her in action proceedings.

If a statement of claim is filed regarding alimony claims that are subject to resolution in court order proceedings, the judge returns the statement of claim in accordance with Item 1¹ of Part 1 of Article 135 of the CPC RF.

4. If there is a written alimony agreement, certified by a notary, between the person obliged to pay alimony and its recipient (or between their statutory representatives, if the person obliged to pay alimony and (or) its recipient are legally incapable) (Articles 99, 100 and 106 of the FC RF), the alimony recovery claim may be considered by the court, if simultaneously with that claim a claim to terminate the alimony agreement is filed, and the plaintiff presents evidence that he/she took measures to settle this issue with the defendant out of court (Item 4 of Article 101 of the FC RF, Item 2 of Article 452 of the Civil Code of the Russian Federation, hereinafter – the CC RF), or if a claim for invalidation of that alimony agreement is stated.

5. In accordance with Sub-item 2 of Item 1 of Article 333³⁶ of the Tax Code of the Russian Federation (hereinafter – the TC RF), plaintiffs filing claims for alimony recovery are exempt from paying the state fee, stipulated in Sub-item 14 of Item 1 of Article 333¹⁹ of the of the TC RF.

If a person obliged to pay alimony files a claim for the change of the amount of alimony stipulated by the court or for exemption from payment of alimony, rules for the payment of a state fee, stipulated in Sub-item 1 of Item 1 of Article 333¹⁹ of the TC RF for a statement of claim regarding property subject to assessment are applied to such a claim. Herewith, in accordance with Sub-item 2 of Item 1 of Article 333²⁰ of the TC RF, where there is a claim for decrease of alimony, the amount of claim is determined under the rules of Item 6 of Part 1 of Article 91 of the CPC RF, and if the plaintiff claims for exemption from payment of alimony – under the rules of Item 7 of Part 1 of Article 91 of the CPC RF.

When a statement of claim is filed for recovery of a forfeit for failure to timely pay alimony for underage children, the plaintiff is exempt from the state fee by virtue of Sub-item 15 of Item 1 of Article 333³⁶ of the TC RF, because the aforementioned claim is filed for the protection of rights and lawful interests of a child. The state fee, subject to recovery from the defendant if the claim is satisfied, is calculated in accordance with Sub-item 1 of Item 1 of Article 333¹⁹ of the TC RF as for a statement of claim regarding property and subject to assessment.

6. If during preparation of a case regarding an alimony recovery claim for trial it is established that the defendant is paying alimony by virtue of a court decision, court order or another enforcement document, the alimony recoverors are drawn to participation in the case as third persons without independent claims regarding the subject matter of the dispute.

7. Handicapped adult persons entitled to alimony (Articles 85, 89, 90, 93–97 of the FC RF) are to be understood as persons recognised in the stipulated manner as disabled persons of groups I, II or III, as well as persons who have reached the general pension age.

8. When resolving the issues of establishing the amount of alimony subject to recovery in the form of a fixed sum (Articles 83, 85, 87, 91, 98 of the FC RF), the amount of additional expenses on children or parents (Articles 86, 88 of the FC RF), regarding the decrease or increase of the amount of alimony recovered for the benefit of underage children in the form of a share of the parents' earnings and (or) other income (Item 2 of Article 81 of the FC RF), regarding the change of amount of alimony stipulated by the court or exemption from payment of alimony (Article 119 of the FC RF), exemption from payment of arrears in alimony (Article 114 of the FC RF), as well as other issues subject to consideration by the court with due regard to the material and family status of the parties, as well as to other notable circumstances or interests of the parties (in accordance with the norms of Chapter V of the FC RF), the courts should proceed from the following:

- when determining the material status of the parties, all forms of their income (salary, income from entrepreneurship, from the use of results of intellectual activities, pensions, benefits, payments due to health injuries and other payments) and any property belonging to them (including securities, participation units, deposits in credit organisations, shares in the charter capital of limited liability companies) should be taken into account;
- when establishing the family status of an alimony payer, the court should clarify, in particular, whether he/she has other underage or handicapped adult children or other persons that he/she is obliged to maintain by law;
- other notable circumstances include, for example, the fact that the alimony payer becomes handicapped or ceases to be handicapped.

9. When resolving whether the person claiming alimony is indigent (where, by virtue of law, the possibility of recovery of alimony depends on this fact) (Articles 85 and 87, second and fourth paragraphs of Item 2 of Article 89, third to fifth paragraphs of Item 1 of Article 90, Articles 93–97 of the FC RF), the court

should ascertain whether the material status of this person is sufficient to satisfy its subsistence needs, taking into account its age, health and other circumstances (procurement of necessary food products, clothes, medicine, payment for residential premises and communal services, etc.) (hereinafter – subsistence needs).

10. If during consideration of a case regarding recovery of maintenance for an adult legally capable person it is established that the plaintiff committed a premeditated crime against the defendant, or that there is evidence of misconduct of the plaintiff in the family (former family), the court may refuse to recover the alimony in accordance with Item 2 of Article 119 of the FC RF.

A crime that may serve as grounds for refusal to satisfy the claim may be any premeditated crime against the life, health, freedom, honour and dignity, sexual inviolability of the defendant or another violation of the defendant's rights, which must be confirmed by an effective convicting court sentence or a court ruling (decree), or a decree of a preliminary investigation body regarding the termination of a criminal case on non-rehabilitating grounds.

Misconduct that may serve as grounds for refusal to recover alimony may in particular be understood as abuse of alcoholic and (or) alcohol-containing products, use of narcotic drugs or other psychotropic substances without a doctor's prescription, use of potentially hazardous psychoactive substances or of intoxicating substances, gambling or other conduct that contradicts the interests of the family.

When considering cases of this category, the courts need to take into account, when the premeditated crime was committed or when the misconduct in the family took place, the nature, gravity and consequences of those actions, as well as the plaintiff's further conduct.

Circumstances listed in Item 2 of Article 119 of the FC RF may also serve as grounds for satisfaction of a claim for exemption from further payment of alimony recovered by the court for the benefit of non-handicapped adult persons.

11. By general rule, stipulated in Item 2 of Article 107 of the FC RF, alimony is awarded from the moment of application to court.

The court may satisfy a claim for recovery of alimony for the preceding period (within a three-year term from the moment of application to court), if it is established during the trial that the plaintiff took measures to receive alimony before applying to court, but alimony was not received, as the person obliged to pay alimony evaded that duty (second paragraph of Item 2 of Article 107 of the FC RF).

The following may serve as evidence that the plaintiff took measures to receive alimony: the plaintiff addressed the defendant (e.g. by sending telegrams, via registered mail with return receipt or e-mail) with claims to pay alimony or with an offer to conclude an alimony agreement, applied to a justice of the peace for a court order regarding recovery of alimony for an underage child (if the court order was later cancelled).

12. The amount of alimony for handicapped adult indigent children and for other adult persons, subject to recovery in the form of a fixed sum, is determined by the court based on the material and family status of the payer and recipient of alimony and on other notable interests of the parties (Articles 85, 87, 89, 90, 93–97 of the FC RF). Herewith, the courts should proceed from the need to ensure the balance of interests of both parties of the legal relationships regarding alimony.

13. With due regard to provisions of Item 2 of Article 117 of the FC RF, when establishing the amount of alimony subject to recovery in the form of a fixed sum, the courts should proceed from the amount of the minimum living wage for the corresponding socio-demographic group, acting on the day the court decision is adopted and stipulated for the constituent entity of the Russian Federation in which the alimony recipient resides; if no such normative is stipulated, the courts should proceed from the amount of the minimum living wage for the corresponding socio-demographic group in the Russian Federation in general (hereinafter referred to as the corresponding amount of the minimum living wage).

The amount of alimony, stipulated by the court in the form of a fixed sum, is subject to indexation under the rules stipulated in Item 1 of Article 117 of the FC RF; this must be indicated in the operative part of the court decision.

Alimony indexation is performed by a bailiff, organisation or another person that pays the salary, pension, education allowance or other periodic payments to the debtor (Item 1 of Article 117 of the FC RF, Part 1 of Article 9, Part 1 of

Article 102 of Federal Law No. 229 of 2 October 2007 “On Enforcement Proceedings” (hereinafter referred to as Federal Law No. 229 of 2 October 2007).

***Recovery of Alimony for Underage Children from Parents
(Former Adoptive Parents)***

14. In accordance with Item 1 of Article 80 of the FC RF, parents are obliged to maintain their underage children; herewith, the parents themselves determine the manner and form of this maintenance. If the parents do not maintain their underage children, the funds for the maintenance of underage children (alimony) are recovered from the parents in the judicial manner (Item 2 of Article 80 of the FC RF).

If a parent voluntarily provides child maintenance in the absence of an alimony agreement certified by a notary, this does not preclude the court from considering a claim for recovery of alimony.

15. The following persons may apply to court with an application for recovery of alimony for an underage child: one of the child’s parents; the child’s custodian (guardian); foster parents; an adoptive parent, if the adoption was made by a single person with preservation of personal non-property and property rights and duties between the child and the other parent (Item 3 of Article 137 of the FC RF); an organisation for orphans and children left without parental care, performing the duties of a custodian or guardian (Item 1 of Article 155¹ and Item 2 of Article 155² of the FC RF, Item 4 of Article 35 of the CC RF, Part 5 of Article 11 of Federal Law No. 48 of 24 April 2008 “On Custodianship and Guardianship”); a custodianship and guardianship body (Item 3 of Article 80 of the FC RF).

Taking into account that by virtue of Article 47 of the FC RF, the parents’ duty to pay alimony for children is based on the fact of parentage, certified in the manner stipulated in law, when the applicant applies to court with a claim for recovery of alimony for an underage child, it presents evidence confirming that the person, from whom alimony is to be recovered, is the child’s parent.

16. The claim to recover allowance for an underage child may be filed to court before the child reaches the age of eighteen or acquires full legal capacity through emancipation or marriage (Item 2 of Article 21, Item 1 of Article 27 of the CC RF).

If at the moment when the application is filed to court the child has reached the age of eighteen or acquired full legal capacity before reaching that age through emancipation or marriage, the judge refuses to accept the application (first paragraph of Part 3 of Article 125, Item 1 of Part 1 of Article 134 of the CPC RF), and if action proceedings have been initiated in the case, the court terminates the proceedings in accordance with the second paragraph of Article 220 of the CPC RF.

17. When an adoption is cancelled, Item 4 of Article 143 of the FC RF vests the court with the right, based on the interests of the child, to oblige the former adoptive parent to pay child maintenance in the amount stipulated in Articles 81 and 83 of the FC RF.

Issues pertaining to calculation of the amount of child maintenance subject to recovery from former adoptive parents (hereinafter also referred to as alimony), the change of that amount or exemption from payment thereof, as well as other issues, arising during performance of duty to pay the child's allowance by the former adoptive parents, are resolved by the court under the same rules which apply in case of recovery of alimony for underage children from their parents.

18. A claim for recovery of alimony for an underage child is subject to satisfaction by the court independent of whether its parents are handicapped or whether the child needs alimony.

Alimony for underage children is recovered in the form of a share of the parents' earnings and (or) other income (Article 81 of the FC RF) or may be recovered as a fixed sum or simultaneously as a share and as a fixed sum, where Article 83 of the FC RF applies.

19. When determining the amount of alimony as a share of the parents' earnings and (or) other income, the court should proceed from the provisions of Item 1 of Article 81 of the FC RF, in accordance with which alimony is subject to monthly recovery from the child's parents in the following amount: a quarter of the parents' earnings and (or) other income for one child, a third for two children, a half for three or more children.

If during consideration of a case regarding recovery of alimony for an underage child in the form of a share of a parent's earnings and (or) other income it is established that the parent-debtor pays alimony for the benefit of other underage

children and of another recoveror by virtue of a court order or court decision, the amount of recoverable alimony for the aforementioned child is determined by the court based on the amount of alimony, stipulated in the law, due to all children of the parent-debtor.

20. The amount of shares stipulated in Item 1 of Article 81 of the FC RF may be decreased or increased by the court with due regard to the material or family status of the parties and to other notable circumstances (Item 2 of Article 81 of the FC RF).

In particular, the following circumstances may be regarded as notable: the alimony payer has other underage and (or) handicapped adult children, as well as other persons he/she is obliged to maintain by law; the alimony payer has a low income; the health conditions of the alimony payer (e.g. the payer is handicapped due to age or health) and of the child, for whose maintenance the alimony is recovered (e.g. the child has a grave illness requiring long-term treatment).

21. If the claim for recovery of alimony is filed against both parents of the child, the court determines the amount of alimony subject to recovery from each of the parents.

The amount of alimony recovered from each of the parents in the form of a share of earnings and (or) other income is determined by the court under the rules stipulated in Article 81 of the FC RF, i.e. depending on the number of children, funds for whose maintenance are recovered from that parent.

If there are circumstances stipulated in Item 1 of Article 83 of the FC RF, alimony may be recovered from both parents or from one of the parents in the form of a fixed sum or simultaneously as a share and as a fixed sum.

22. The court may determine the amount of monthly recovered alimony as a fixed sum or simultaneously as a share (in accordance with Article 81 of the FC RF) and as a fixed sum, if the parent obliged to pay alimony has irregular, changing earnings and (or) other income, or if that parent fully or partially receives earnings and (or) other income in kind or in a foreign currency, or if he/she does not have earnings and (or) other income, as well as in other situations, when the recovery of alimony as a share of earnings and (or) other income of the parent is impossible, complicated or significantly violates the interests of one of the parties (Item 1 of Article 83 of the FC RF).

If each of the parents continues to reside with children, the court determines the amount of alimony as a fixed sum subject to monthly payment and recovers it from one parent for the benefit of the other parent, whose financial situation is less favourable (Item 3 of Article 83 of the FC RF).

23. A high level of income of the parent obliged to pay alimony is not by itself on the list of grounds stipulated in Article 83 of the FC RF, based on which it is possible to recover alimony as a fixed sum, and not as a share of earnings. Herewith, if the court finds that recovery of alimony as a share of a parent's earnings and (or) other income significantly violates the interests of one of the parties, alimony may be recovered as a fixed sum.

By virtue of Article 56 of the CPC RF, the burden of proof of the facts pertaining to the possibility of recovery of alimony for an underage child in the form of a fixed sum due to violation of interests of the alimony payer lies on the person obliged to pay alimony.

24. The fact that a parent has a permanent job and regular earnings cannot serve as an absolute ground for refusal to recover alimony for an underage child from such a person as a fixed sum or simultaneously as a share and as a fixed sum, if the court finds that recovery of alimony as a share of the parent's earnings and (or) other income does not allow to preserve the child's former maintenance level, and that recovery of alimony as a fixed sum or simultaneously as a share and as a fixed sum will best serve the interests of the child and will not violate the rights of that parent (e.g. when a parent conceals her/his actual income and has other income, from which alimony could be withheld by virtue of Article 82 of the FC RF).

25. If the debtor pays alimony for children as a fixed sum by virtue of a court decision, the court may satisfy a claim for recovery of alimony for another child of the debtor in the form of a share of her/his earnings and (or) other income, unless there are grounds to determine the amount of alimony for this child as a fixed sum. Herewith, the amount of alimony for this child is determined by the court under the rules stipulated in Item 1 of Article 81 of the FC RF, in particular with due regard to the children, for whom alimony is recovered as a fixed sum.

26. If a claim is filed for recovery of alimony as a fixed sum, but the court finds that there are no grounds stipulated in law (Item 1 of Article 83 of the FC RF), on which it is possible to recover alimony as a fixed sum or simultaneously as a share and as a fixed sum, the court suggests it to the parties to discuss the issue of

recovery of alimony in the form of a share of the parents' earnings and (or) other income and, based on the priority of protection of rights and interests of the child (Article 3 of the Convention on the Rights of the Child, Item 3 of Article 1 of the FC RF), adopts a decision on recovery of alimony in the amount stipulated in Item 1 of Article 81 of the FC RF.

27. By virtue of Item 2 of Article 83 of the FC RF, the amount of alimony recovered from parents for underage children (and also from former adoptive parents in case of cancellation of adoption (Item 4 of Article 143 of the FC RF) as a fixed sum is determined by the court proceeding from the maximum possible preservation of the former level of maintenance of the child, taking into account the material and family status of the parties and other notable circumstances.

Herewith it should be noted that with regard to the provisions of Articles 1–3 of Federal Law No. 134 of 24 October 1997 “On Minimum Living Wage in the Russian Federation”, as well as to the equal duty of the parents to support their underage children, the court may stipulate for alimony to be recovered from one of the child's parents in the amount less than half of the corresponding minimum living wage for children, if the material and (or) family status of the alimony payer or other notable circumstances do not objectively allow to recover alimony in the amount of a half of the corresponding minimum living wage for children.

Recovery of Alimony for Children Left without Parental Care and in Case of Deprivation of One of the Parents of Parental Rights

28. By implication of Item 2 of Article 84 of the FC RF, maintenance costs of underage children left without parental care and staying at educational, medical, social security organisations or in similar organisations are recovered only from the children's parents and are not subject to recovery from other family members, who have alimony obligations regarding the children.

29. If one of the parents is deprived of parental rights, and the child is transferred for upbringing to the other parent, a custodian or guardian, or to foster parents, alimony is recovered for the benefit of said persons in accordance with Articles 81–83, Item 1 of Article 84 of the FC RF. If the children were placed to educational, medical, social security or similar organisations before the issue of deprivation of parental rights was resolved, the alimony recovered from parents deprived of parental rights is deposited to the accounts of these organisations,

where it is accounted for every child separately (Item 2 of Article 84 of the FC RF).

If both parents are deprived of parental rights, or if one parent is deprived of parental rights, but it is impossible to transfer the child to the other parent, alimony is recovered not for the benefit of the custodianship and guardianship body, to which the child is transferred in such cases (Item 5 of Article 71 of the FC RF), but is deposited to a banking account opened in the child's name.

If a child is placed into an organisation for orphans and children left without parental care (Item 1 of Article 155¹ of the FC RF) or is transferred for custody (guardianship) or for upbringing in a foster family, the issue of transfer of recovered alimony to the aforementioned organisation or persons, to whom the child is transferred, may be resolved upon their application in the manner stipulated in Article 203 of the CPC RF.

***Issues Pertaining to Adoption and Execution of Decisions regarding Alimony
for Underage Children. Operative Part of the Court Decision***

30. In accordance with Article 80 of the FC RF, underage child maintenance, recovered from parents in the judicial manner, is awarded until the children reach adulthood. However, if an underage, for whose benefit alimony is recovered by virtue of a court order or court decision, acquires full legal capacity before reaching the age of eighteen (Item 2 of Article 21, Item 1 of Article 27 of the CC RF), the payment of maintenance is terminated in accordance with Item 2 of Article 120 of the FC RF.

31. If an alimony recovery claim is filed simultaneously with a claim for establishment of paternity or maternity, and the latter claim is satisfied, the alimony is awarded from the day of filing the claim. Herewith, it should be noted that enforced recovery of the child maintenance for the preceding time, stipulated in the second paragraph of Item 2 of Article 107 of the FC RF, is not possible in this case, because the defendant was not recognised as the father (mother) of the child in the stipulated manner before the claim was satisfied.

If the claims for establishment of paternity (maternity) and recovery of alimony are considered simultaneously and satisfied, the courts should note that the decision in

the part of recovery of alimony is subject to immediate execution by virtue of the second paragraph of Article 211 of the CPC RF.

32. In accordance with Item 1 of Article 108 of the FC RF, when alimony is recovered for underage children, the court may adopt a ruling to recover alimony before a decision on alimony recovery is adopted.

By implication of the aforementioned norm, it is possible to recover alimony for underage children prior to the adoption of a decision in the case at any moment after the application for alimony recovery is accepted for proceedings, if there are reasons to believe that the defendant is not performing the duty of child maintenance.

Such a ruling may be issued by a judge or the court outside of the court session, within the framework of a court procedure of securing the claim (Articles 140, 141 of the CPC RF), prior to the adoption of a decision on recovery of alimony by the court, i.e. before the consideration of the dispute on its merits.

33. In accordance with Item 2 of Article 60 of the FC RF the court may, proceeding from the interests of the children and upon request of the parent obliged to pay alimony for underage children, adopt a decision for up to 50 % of the payable sum of alimony to be deposited to the bank accounts opened in the names of the underage children.

If such a claim is stated by the parent, from whom alimony is recovered by virtue of a court order or court decision, it is resolved by the court in the manner stipulated in Article 203 of the CPC RF.

In particular, the court may decide to satisfy the aforementioned claim, if the parent receiving alimony is not duly performing the duty to spend the corresponding payments on maintenance, upbringing and education of the child, and if the execution of the court decision in this manner will preserve the level of the child's material support necessary for its full development (nourishment, education, upbringing, etc.).

34. If by virtue of Item 1 of Article 81 of the FC RF alimony is recovered as a share of the parents' earnings and (or) other income for two or more children, the court should indicate in the operative part of the decision (in the court order) the amount of the recoverable share, as well as the future change of that share and the

periods of recovery of alimony in different amounts, depending on when each of the children becomes an adult.

35. Taking into account the provisions of Article 117 of the FC RF, the operative part of a court decision satisfying the claim for recovery of alimony for underage children in the form of a fixed sum, must among other information contain the following: the amount of the fixed sum of alimony, expressed as a number, as well as the equivalent of that sum (ratio, share), accurate to kopeks, with regard to the minimum living wage for children, stipulated in accordance with the rules of Item 1 of Article 117 of the FC RF.

The operative part of the decision must also indicate that indexation of alimony is necessary under the rules stipulated in Item 1 of Article 117 of the FC RF.

36. If during execution of a court order or court decision on recovery of alimony the child for whom they were awarded is transferred for upbringing and maintenance to the parent paying the alimony, and the alimony recipient does not refuse to receive it, exemption from alimony as well as from arrears in alimony is performed not in the manner of execution of a decision, but through filing of the corresponding claim by the aforementioned parent, since by virtue of law in case of disputes the issues of recovery and exemption from alimony are resolved by a court in action proceedings.

If in such a situation the recoveror surrenders the further recovery of alimony or arrears in alimony, enforcement proceedings are subject to termination by the court (Article 439 of the CPC RF, Item 2 of Part 2 of Article 43 of Federal Law No. 229 of 2 October 2007).

37. In accordance with the third paragraph of Item 2 of Article 120 of the FC RF, the payment of alimony recovered through court is terminated in case of adoption of the child, for whose maintenance the alimony was recovered.

If at the moment, when the court decision regarding adoption becomes effective, the parent of an adopted child, obliged to pay alimony, is in arrears in alimony, the issue of exemption from payment or decrease of those arrears is resolved by the court on the basis of a claim of the aforementioned parent, with due regard to the provisions of Item 2 of Article 114 of the FC RF.

The courts should note that a court decision regarding adoption does not exempt the parent of the adopted child, from whom alimony was recovered for this child through court, from their further payment, if during adoption this parent preserved personal non-property and property rights and duties in accordance with Item 3 of Article 137 of the FC RF. In this case, all issues pertaining to the change of amount of recoverable alimony, exemption from its payment and from payment or arrears in alimony are to be considered by the court in action proceedings upon the application of interested persons.

***Recovery of Alimony for Handicapped Indigent Adult Children.
Alimony Duties of Adult Children towards Parents***

38. Claims on recovery of alimony for handicapped indigent adult children (Item 1 of Article 85 of the FC RF) may be filed by the adults themselves, and if they are recognised legally incapable in the manner stipulated in law – by the persons appointed as their custodians.

It should be noted that non-handicapped children over the age of eighteen, who study within the framework of intramural general education programs at organisations engaged in education activities, do not belong to persons entitled to alimony by virtue of the aforementioned norm.

The amount of recoverable alimony is stipulated by the court in accordance with Item 2 of Article 85 of the FC RF. Herewith, taking into account the concrete facts of the case, the court may recover alimony, stipulating a period during which it is subject to recovery (e.g. for the time for which the person is regarded as disabled, if a medical-social expert institution stipulates a term for re-examination). In this case the court should indicate the concrete date, up to which the alimony is subject to recovery from the defendant on a monthly basis.

39. In accordance with Item 1 of Article 87 of the FC RF, handicapped indigent parents may claim maintenance from their non-handicapped adult children.

When considering the aforementioned claim, the court ascertains whether these parents have other non-handicapped adult children; who of them, in what form and amount renders support to the parents. Based on Item 4 of Article 87 of the FC RF and depending on this information, the court may determine the amount of

alimony, in particular taking said facts into account, independent whether the parents file a claim against all children, against one or several of them.

If the court finds that the plaintiffs were deprived of parental rights in regard of the defendant, it refuses to satisfy the alimony recovery claim (second paragraph of Item 5 of Article 87 of the FC RF). If facts are established, indicating that the plaintiffs evaded their parental duties (regarding the upbringing, maintenance of children, etc.), the court may refuse to satisfy the alimony recovery claim (Item 5 of Article 87 of the FC RF).

Additional Expenses on Children

40. Pursuant to Article 86 of the FC RF, the court may oblige the parents, from whom alimony is recovered for underage children or for handicapped indigent adult children, to participate in additional expenses on those children, caused by exceptional circumstances.

Such exceptional circumstances may include, for example, grave illness, mutilating injury of an underage or handicapped indigent adult child, which in particular requires payment for nursing care, other expenses necessary for curing the child or supporting her/his health, as well as for her/his social adaptation and integration (prosthetic expenses, expenses on medication, special means of care, transportation, education, etc.).

41. When resolving the issue of recovery of additional expenses (being a form of alimony payments), the court should in particular take into account, what evidence was presented by the plaintiff in substantiation of the need to bear those expenses (e.g. a doctor's prescription, a rehabilitation programme), as well as whether those expenses are caused by exceptional circumstances.

The amount of additional expenses, which is to be determined as a fixed sum, is by general rule recovered on a monthly basis (second paragraph of Item 1 of Article 86 of the FC RF). Herewith, pursuant to Article 86 of the FC RF and with regard to the concrete facts of the case, additional expenses may be recovered from the defendant on a single occasion (e.g. when the plaintiff states a claim for recovery of actually incurred expenses).

Alimony Obligations of Spouses and Former Spouses

42. When resolving an alimony recovery claim, filed by one of the spouses against the other, the court should take into account that the rights and duties of spouses, including the duty to materially support each other, appear from the day of state registration of marriage (Item 2 of Article 10 and Item 1 of Article 89 of the FC RF, Chapter III of Federal Law No. 143 of 15 November 1997 “On Acts of Civil Status”).

The list of persons entitled to claim alimony from the other spouse (former spouse), who has the necessary funds, through court, is stipulated in law (Item 2 of Article 89, Item 1 of Article 90 of the FC RF).

If a marriage is invalidated, the spouse that acted in good faith may also apply to court with an alimony recovery claim against the former spouse (Item 4 of Article 30 of the FC RF).

43. Since in accordance with the first paragraph of Item 1 of Article 89 and the first paragraph of Item 1 of Article 90 of the FC RF a spouse is only entitled to claim alimony from a spouse (former spouse) that has the necessary funds, the court may satisfy an alimony recovery claim against a spouse (former spouse), only if recovery of alimony from the defendant will not make it impossible for him/her to satisfy his/her own subsistence needs and those of the defendant’s family members, that the defendant is obliged to maintain in accordance with the law, using the funds remaining after the payment of alimony.

44. In accordance with the third paragraph of Item 2 of Article 89 and the second paragraph of Item 1 of Article 90 of the FC RF, a wife (former wife) may claim maintenance from her spouse (former spouse) during the period of pregnancy and within three years from the day of birth of their common child.

When determining the amount of alimony subject to recovery from the defendant, the court may take into account whether the plaintiff has earnings or other income during the aforementioned periods.

If during the time before the common child reaches the age of three the upbringing is performed by the father, and the mother distances herself from upbringing and maintenance, then, based on analogy of statute (Article 5 of the FC RF), the husband (former husband) may apply to court with a claim against the spouse

(former spouse) for provision of maintenance for the time until the child reaches the age of three.

45. In accordance with the fourth paragraph of Item 1 of Article 90 of the FC RF, a handicapped indigent former spouse, who became handicapped before the dissolution of marriage or within one year after the dissolution of marriage, may claim alimony through court from the former spouse who has the necessary funds.

Proceeding from the meaning of the fourth paragraph of Item 1 of Article 90 of the FC RF, the fact that the former spouse became handicapped before entering marriage with the defendant cannot by itself serve as grounds for refusal to satisfy her/his alimony recovery claim.

46. When resolving an alimony recovery claim of an indigent former spouse, who reached the pension age, against the former spouse, who has the necessary funds, filed by virtue of the fifth paragraph of Item 1 of Article 90 of the FC RF, the pension age referred to in that norm should be understood as the general pension age.

Legally significant facts that must be ascertained by the court in order to resolve the issue whether the parties were married for a long time, include, in particular, the period (periods) during which the parties were married and the grounds on which the marriage was dissolved.

47. When applying the provisions of Article 92 of the FC RF (stipulating the grounds on which the court may exempt a spouse from the duty to maintain the other handicapped indigent spouse or limit this duty by a stipulated time both during marriage and after its dissolution), the courts need to take into account that the fact that a spouse became handicapped due to abuse of alcohol or narcotics must be confirmed by the corresponding medical documents, and the fact that a spouse committed a premeditated crime resulting in her/his handicapped condition – by an effective convicting court sentence or a ruling (decree) of a court or a decree of a preliminary investigation body regarding the termination of the criminal case on non-rehabilitating grounds.

A court may refuse to satisfy the claims of a spouse for exemption from the duty to maintain the other spouse on the grounds that their marriage was short-lived and may satisfy the alimony recovery claim, if the wife claiming the recovery of alimony became disabled during the period of marriage due to difficult delivery.

Based on analogy of statute (Article 5 of the FC RF), the court may also apply the rules stipulated in Article 92 of the FC RF, if the claim for recovery of alimony is stated by a handicapped indigent former spouse.

Alimony Obligations of Other Family Members

48. Other family members entitled to alimony are: underage and handicapped adult brothers and sisters, underage and handicapped adult grandchildren, handicapped grandparents, handicapped actual carers, handicapped stepparents (Articles 93–97 of the FC RF).

When considering alimony recovery claims of the aforementioned persons, the courts need to take into account that the right to receive alimony from the family members referred to in Articles 93–97 of the FC RF appears if it is impossible for the plaintiffs to receive maintenance, accordingly, from their parents, non-handicapped adult children or spouses (former spouses). When resolving whether it is possible to receive maintenance from these family members, the court must in particular inspect whether these family members are handicapped, as well as the reasons for which it is impossible to receive alimony from them.

49. The duty of adult brothers and sisters to maintain their underage and handicapped indigent adult brothers and sisters, stipulated in Article 93 of the FC RF, applies to brothers and sisters of both full and half blood.

50. The actual carers, whom the receivers of care are obliged to maintain (Article 96 of the FC RF) should be understood to include both the relatives of the child and the persons unrelated to the child, who engaged in its upbringing and maintenance, while not being its adoptive parents, custodians (guardians), foster parents or foster carers.

Taking into account that in accordance with Item 2 of Article 96 of the FC RF the court may exempt the receiver of care from the duty to maintain the actual carer, if the latter engaged in maintenance and upbringing for less than five years and also performed those actions unduly, the legally significant facts, which must be ascertained by the court in resolving the alimony recovery claims of actual carers, include, in particular: the term during which the carer engaged in actual upbringing and maintenance of the children, the reasons for which the carer ceased the upbringing and maintenance (e.g. due to illness of the actual carer, returning of the

children to their parents, the children reaching the age of eighteen), as well as whether the actual carer engaged in the upbringing and maintenance in good faith.

51. By virtue of provisions of Article 97 of the FC RF, the court may recover alimony from the stepchildren for their handicapped indigent stepparents, who engaged in their upbringing and maintenance for at least five years (if they duly performed those duties), in particular even if a parent residing separately from the child participated in the upbringing and maintenance of that child during that period.

If the marriage between the aforementioned stepparent and a parent of the stepchild was terminated due to the death or declaration as deceased of the child's parent, this fact cannot serve as grounds for refusal to satisfy the claim of the stepparent for recovery of alimony from the stepchild.

52. Proceeding from the provisions of Item 3 of Article 98 of the FC RF, if a claim for recovery of alimony for one of the family members indicated in Articles 93–97 of the FC RF is filed against all persons simultaneously obliged to maintain her/him, the court determines the amount of alimony subject to payment by each of the obliged persons, taking into account their material and family status, as well as other notable circumstances. If a claim is filed against one or several of the obliged persons, the court may take into account all the persons obliged to maintain the plaintiff and determine the amount of recoverable alimony, taking these persons into account.

Court Consideration of Cases regarding Amendment, Dissolution and Invalidation of an Alimony Agreement

53. In accordance with Articles 99 and 100 of the FC RF, an alimony agreement is a written agreement between a person obliged to pay alimony and the alimony recipient regarding the amount, conditions and manner of payment of alimony, certified by a notary; if the person obliged to pay alimony and (or) the alimony recipient are legally incapable, the agreement is made between their statutory representatives. Partially legally capable persons enter alimony agreements with consent of their statutory representatives.

The aforementioned agreement has the legal force of a writ of execution and is enforced under the rules of enforcement proceedings stipulated in Federal Law

No. 229 of 2 October 2007 (Item 2 of Article 100 of the FC RF, Item 3 of Part 1 of Article 12 of Federal Law No. 229 of 2 October 2007).

An alimony agreement should be distinguished from civil law contracts regarding maintenance, made between other persons, who are not the aforementioned persons (e.g. a contract regarding the maintenance of a non-handicapped adult child for the period of her/his studies); rules regarding the alimony agreement, stipulated in the Family Code of the Russian Federation, do not apply to such contracts (e.g. the rule regarding the indexation of monetary sums in accordance with Article 117 of the FC RF).

54. When resolving disputes regarding the amendment, dissolution or invalidation of an alimony agreement, the courts should take into account that norms of the Civil Code of the Russian Federation, regulating the making, execution, dissolution and invalidation of civil law transactions apply to the making, execution, dissolution and invalidation of alimony agreements (Item 1 of Article 101 of the FC RF).

Taking into account the provisions of the aforementioned norm and of Item 4 of Article 101 of the FC RF, the court may consider a dispute on amendment or dissolution of an alimony agreement on its merits, only if the plaintiff presents evidence that he/she took measures to settle the dispute with the defendant, as stipulated in Item 2 of Article 452 of the CC RF.

If the plaintiff fails to present such evidence, the judge returns the statement of claim by virtue of Item 1 of Part 1 of Article 135 of the CPC RF; if a case has been initiated, the judge leaves the statement of claim without consideration by virtue of the second paragraph of Article 222 of the CPC RF and clarifies to the plaintiff her/his right to address the other party of the alimony agreement in regard of this issue.

55. The change of material or family status may be found significant by the court and may serve as grounds for satisfaction of the claim for amendment or dissolution of the alimony agreement, if the material or family status of the parties has changed to such an extent, that if it had existed as such at the moment of conclusion of the agreement, the agreement would not have been concluded due to violation of interests of any of the parties, or the parties would have concluded it on significantly different terms.

56. By virtue of Item 1 of Article 101 of the FC RF, an alimony agreement may be invalidated by the court in full or in part on the grounds stipulated in the Civil Code of the Russian Federation; these include, in particular: conclusion of an agreement with a person recognised as legally incapable (Article 171 of the CC RF), conclusion of an agreement under the influence of deceit, violence, threat or unfavourable circumstances (Article 179 of the CC RF), simulated or sham agreements (Article 170 of the CC RF).

In accordance with Article 102 of the FC RF, the court may, upon request of the statutory representative of an underage child or of a handicapped adult family member, of a custodianship and guardianship body or of a prosecutor, invalidate an alimony agreement certified by a notary, if the conditions on which maintenance is provided for the underage child or the handicapped adult family member significantly violate the interests of those persons, e.g. if the amount of alimony for an underage person stipulated in the agreement is lower than the amount of alimony that he/she could receive in case of recovery of alimony in the judicial manner.

Disputes on Change of Amount of Alimony, Stipulated by the Court, and on Exemption from Payment of Alimony. Arrears in Alimony

57. The claim for change of amount of alimony or exemption from payment thereof (Item 1 of Article 119 of the FC RF) may be filed both by a person obliged to pay alimony and by the alimony recipient in case of change of material or family status of either of the parties.

When resolving a claim for decrease of the amount of alimony, filed by a parent paying alimony for an underage child, the court should take into account that the change of material or family status of this parent does not constitute absolute grounds for satisfaction of her/his claim, as the court needs to ascertain that these changes do not allow the parent to keep paying the alimony in the previous amount.

58. If alimony for an underage child is recovered by virtue of a court decision (court order) in the form of a share of earnings and (or) other income of the alimony payer, this does not preclude the alimony recipient from claiming the recovery of alimony in the form of a fixed sum or simultaneously as a share and as

a fixed sum, if there are corresponding grounds stipulated in law (Article 83 of the FC RF).

The aforementioned claim is considered by the court in action proceedings and not under the rules of Article 203 of the CPC RF, since in this case the court resolves the issue of changing the amount of alimony, not the form and manner of execution of the court decision.

59. If stationary social services are rendered free of charge at social security organisations to adult persons receiving alimony (e.g. when they reside in residential care facilities for the elderly and disabled, for veterans of war and labour, at other organisations rendering stationary social services), or if such persons are transferred for maintenance (care) to public or other organisations or to citizens (in particular, if a life estate contract is concluded with such an adult person), such circumstances may constitute grounds for exemption of the alimony payer from payment of alimony, unless there are exceptional circumstances that make additional expenses necessary (special care, treatment, nourishment, etc.), since by virtue of the fourth paragraph of Item 2 of Article 120 of the FC RF the right to receive maintenance is lost if the alimony recipient ceases to be indigent.

In accordance with Item 1 of Article 119 of the FC RF, the court may also decrease the amount of alimony paid by virtue of an earlier adopted decision, taking into account the nature of additional expenses.

60. If the amount of alimony for children and other family members, earlier stipulated by the court, is changed, the alimony is recovered in the new amount from the day on which the corresponding court decision becomes effective.

The court that changes the amount of recoverable alimony payments must send a copy of the decision to the court that initially considered the case regarding the payment of alimony.

When an enforcement document regarding recovery of alimony in the previously determined amount is renounced, the court should indicate that if there are arrears in regard of that document, the bailiff must inform the court about this and continue to enforce the document until the debts are settled. After the arrears are recovered in full amount, the enforcement document is returned to the court that renounced it.

61. Proceeding from the provisions of Item 2 of Article 114 of the FC RF, if there is evidence that the material status of the plaintiff has deteriorated (e.g. her/his earnings or other income have decreased) and (or) that the plaintiff's family status has changed (e.g. the number of persons that he/she is obliged to maintain by law has increased), the court may decide to satisfy the claim for full or partial exemption from payment of arrears in alimony (Item 2 of Article 114 of the FC RF), if it is established that the plaintiff failed to pay alimony for good reasons (e.g. due to illness, temporary military service, force majeure), and that the change in the material and (or) family status of the plaintiff made it impossible to settle the accumulated arrears in alimony.

If the alimony payer is fully or partially exempt from payment of arrears in alimony by virtue of Item 2 of Article 114 of the FC RF, this does not entail the recognition of the bailiff's decree on recovery of arrears in alimony as unlawful.

62. The amount of arrears in alimony is determined in a bailiff's decree, based on the amount of alimony stipulated in a judicial act or in an alimony agreement (Item 3 of Article 113 of the FC RF, Part 2 of Article 102 of Federal Law No. 229 of 2 October 2007).

If one of the parties disagrees with the determined amount of arrears, then, based on provisions of Item 5 of Article 113 of the FC RF, Part 4 of Article 102 of Federal Law No. 229 of 2 October 2007, the aforementioned issue is subject to resolution by a court in action proceedings under the rules stipulated in civil procedure legislation.

Persons obliged to pay alimony for an underage child or recipients of that alimony, who think that the calculation of arrears performed by the bailiff on the basis of the average salary in the Russian Federation by virtue of Item 4 of Article 113 of the FC RF significantly violates their interests, may apply to court with a claim to determine the arrears in alimony in the form of a fixed sum, taking into account their material and family status and other notable circumstances.

Liability for Failure to Timely Pay Alimony

63. The liability of a person obliged to pay alimony by virtue of a court decision, stipulated in Item 2 of Article 115 of the FC RF for failure to timely pay alimony

(payment of a forfeit, restitution of damages), is entailed if arrears are accumulated due to the fault of the alimony payer.

64. Taking into account that the duty to pay alimony has a monthly nature, the forfeit for failure to pay alimony, stipulated in Item 2 of Article 115 of the FC RF, should be determined in regard of every missed monthly payment, based on the sum of the payment and the number of days in arrears, calculated on the day of adoption of the decision regarding the forfeit.

If there was no indexation of alimony recovered by virtue of a court decision, the court should proceed from the amount of alimony, in which the debtor was obliged to pay it, taking into account the indexation stipulated in Article 117 of the FC RF.

65. Proceeding from provisions of Article 4 of the FC RF and Article 208 of the CC RF, the court may, upon request of a party to the dispute, apply the statute of limitations and refuse to satisfy the claim (in full or in part) for recovery of a forfeit, based on the fact that the statute of limitations, calculated separately in regard of every missed monthly payment, has expired (Articles 196 and 199 of the CC RF).

66. In view of adoption of this Ruling, the following are abrogated:

- Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 9 of 25 October 1996 “On Court Application of the Family Code of the Russian Federation in Consideration of Cases regarding Establishment of Paternity and Recovery of Alimony” (as amended by Rulings of the Plenary Session No. 6 of 6 February 2007 and No. 16 of 16 May 2017);
- paragraphs second to fourth of Item 17 of the Ruling of the Plenary Session of the Supreme Court of the Russian Federation No. 10 of 27 May 1998 “On Court Application of Legislation in Resolution of Disputes pertaining to Upbringing of Children” (as amended by Rulings of the Plenary Session No. 6 of 6 February 2007 and No. 44 of 14 November 2017).

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov