

Araştırma Makalesi / Research Article

Legal Alimony Liabilities Against Poverty, Implementation Problems, and the Solution Proposals Under Turkish Law

Türk Hukukunda Yoksulluğa Karşı Nafaka Yükümlülükleri, Uygulama Sorunları ve Çözüm Önerileri

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ABSTRACT

The Constitution of the Republic of Turkey adopted the principle of protecting the family in article 41, titled "Protection of the Family and the Rights of the Child". According to this provision: A family is the foundation of Turkish society and is based on equality between spouses. The state takes the necessary measures and establishes the organization to ensure the peace and welfare of the family, especially the protection of the mother and children and the teaching and implementation of family planning. Unless it is contrary to their best interests, every child has the right to benefit from protection and care and establish and maintain a personal and direct relationship with his/her parents. The legislator has introduced various regulations to reflect this principle in special laws. The first of such legal outlines is the alimony obligation, regulated in the Turkish Civil Code and brought to protect the spouse and children against poverty. In Turkish law, there are four categories of alimony. These are poverty alimony, attendance alimony (child support), temporary alimony, and assistance alimony. While poverty and participation alimony arises due to the dissolution of the marriage, temporary alimony is a type of alimony applied as a precautionary measure to eliminate the victimization of the spouse and children during the litigation process. Aid alimony, on the other hand, is based on the principle of assistance and solidarity within the family to protect the people who are in a certain relationship against poverty. In practice, problems such as low determination of alimony within the framework of the discretion of the courts in terms of poverty and alimony, difficulties in the collection, and late award of alimony in measure alimony are encountered. Since aid alimony is not a well-known type of alimony by society, it can be said that this type of alimony is not used much compared to others. The current literature about alimony, focuses on the legal regulation of types of alimony. This paper, on the other hand, deals with the problems encountered in practice related to all types of alimony. In particular, the issue of the family courts' indefinite ruling on alimony has been addressed. In addition, collection problems in terms of temporary alimony and the problem of late awarding of alimony are examined. This paper, which was written by analyzing the literature and judicial precedents, tries to present the difficulties encountered in practice regarding alimony in Turkish Law. In the paper, solution proposals were presented in a way to shed light on these problems, especially

the socio-economic problem created by the indefinitely ruled poverty alimony, and the legal regulations to be made in this regard.

Keywords: Assistance and solidarity, alimony obligation, alimony types, poverty, participation, temporary alimony

ÖZ

Türkiye Cumhuriyeti Anayasası "Ailenin Korunması ve Çocuk Hakları" başlıklı 41. maddesi ile ailenin korunması ilkesini benimsemiştir. Bu hükümdede, "Aile, Türk toplumunun temelidir ve eşler arasında eşitliğe dayanır. Devlet, ailenin huzur ve refahı ile özellikle ananın ve çocukların korunması ve aile planlamasının öğretimi ile uygulanmasını sağlamak için gerekli tedbirleri alır, teşkilatı kurar. Her çocuk, korunma ve bakımdan yararlanma, yüksek yararına açıkça aykırı olmadıkça, ana ve babasıyla kişisel ve doğrudan ilişki kurma ve sürdürme hakkına sahiptir..." ifadelerine yer verilmiştir. Kanunkoyucu bu ilkeyi özel kanunlara da yansıtmak için çeşitli düzenlemeler getirmiştir. Bunlardan ilk aklı gelen ise Türk Medeni Kanununda düzenlemiş olan, eşi ve çocukları yoksulluğa karşı korumak için getirilen nafaka yükümlülüğüdür. Nafaka yükümlülüğü, belirli yakınlıktaki kişiler, özellikle aile bireyleri arasında yardım ve dayanışma esasına dayanır. Türk hukukunda nafaka türleri olarak dört nafakadan bahsedilebilir. Bunlar, yoksulluk nafakası, iştirak nafakası, tedbir nafakası ve yardım nafakasıdır. Yoksulluk ve iştirak nafakası evliliğin sona ermesi sebebi ile ortaya çıkarken tedbir nafakası dava sürecinde eş ve çocukların mağduriyetini gidermek için tedbiren başvurulmuş bir nafaka türüdür. Yardım nafakası ise belirli hısımlık ilişkisi içinde olan kişilerin yoksulluğa karşı korunması için aile içinde yardımlaşma ve dayanışma esasına dayanır. Uygulamada, yoksulluk ve iştirak nafakası açısından mahkemelerin takdir hakkı çerçevesinde nafakayı düşük belirlenmeleri, tahsil zorlukları, tedbir nafakasından nafakaya geç hükmedilme gibi sorunlarla karşılaşmaktadır. Yardım nafakası ise toplum tarafından çok bilinen bir nafaka türü olmadığından bu nafaka türüne diğerlerine nazaran pek başvurulmadığı söylenebilir. Nafaka konusundaki mevcut literatür, nafaka türlerine ilişkin yasal düzenlemeye odaklanmaktadır. Bu çalışma ise, tüm nafaka türleri ile ilgili uygulamada karşılaşılan sorunları ele almaktadır. Özellikle, aile mahkemelerinin yoksulluk nafakasına süresiz hükmetmesi sorunu ele alınmıştır. Ayrıca, tedbir nafakası açısından tahsilat sorunları ve nafakaya geç hükmedilmesi sorunu incelenmiştir. Literatürün ve Yargısal içtihatları analiz ederek yazılan bu makale, Türk Hukukunda nafaka konusunda uygulamada karşılaşılan zorlukları somut olarak ortaya koymaya çalışmaktadır. Çalışmada, bu sorunlara, bilhassa süresiz hükmedilen yoksulluk nafakasının yarattığı sosyo-ekonomik soruna ve bu hususta yapılacak yasal düzenlemelere ışık tutacak şekilde çözüm önerileri sunulmuştur.

Anahtar Kelimeler: Yardımlaşma ve dayanışma, nafaka yükümlülüğü, nafaka türleri, yardım, iştirak, tedbir ve yoksulluk nafakası

1. Introduction

In a country with a rule of law, the legal order brings various regulations to protect the personal rights of individuals. One of these protective regulations is protection against poverty. Based on the rule of law, the Universal Declaration of Human Rights also mentions protection against poverty in its preamble¹. Likewise, the Constitution of the Republic of Turkey has introduced some regulations to protect individuals against poverty². In Turkish law, other protective regulations are included in special laws. One of them is the Turkish Civil Code, which includes the regulations regarding alimony, which is the subject of this study³.

1 See, Universal Declaration of Human Rights, Preamble, paragraph 2: “*Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...*”. Retrieved from, https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf, 21 August, 2022.

2 See, Turkish Republic Constitution, Article, 49/2 and 61. Article 49/2: “The State shall take the necessary measures to raise the standard of living of workers, and to protect workers and the unemployed in order to improve the general conditions of labour, to promote labour, to create suitable economic conditions for prevention of unemployment and to secure labour peace.” Article 61: “...The State shall protect the widows and orphans of martyrs of war and duty, together with invalid and war veterans, and ensure that they enjoy a decent standard of living. The State shall take measures to protect the disabled and secure their integration into community life. The aged shall be protected by the State. State assistance to, and other rights and benefits of the aged shall be regulated by law. The State shall take all kinds of measures for social resettlement of children in need of protection. To achieve these aims the State shall establish the necessary organizations or facilities, or arrange for their establishment”. Retrieved from, https://global.tbmm.gov.tr/docs/constitution_en, 21 August, 2022.

3 See, <https://mevzuat.gov.tr/mevzuatmetin/1.5.4721.pdf>.

This study will discuss these legal regulations in terms of alimony obligations. By the way, only natural persons are meant the person protected by the legal order against poverty. Legal entities cannot be protected against poverty. There is no need for it. According to Article 48 of the CC, “Legal persons are entitled to all rights and obligations except those dependent on human-specific qualities by nature, such as gender, age, kinship”. From the interpretation of the provision through counter-proof, it is impossible to protect natural persons against human poverty. In the constitutional sense, in terms of economic and social rights, the basis of protection against poverty is the principle of the social state. In the Turkish Civil Code, family relations are the basis of protection against poverty. Three of the four types of alimony that will be mentioned below are due to marriage. The other is due to kinship.

The provisions regarding the alimony obligation, which protects against poverty, were regulated for the first time in Turkish law with Civil Code No. 743 in 1926. Civil Law No. 4721, which entered into force on January 1, 2002, has preserved these provisions. The issue that poses a problem in terms of implementation regarding the alimony of divorced spouses is the discussion about the indefiniteness of alimony for poverty. The necessity of such an obligation in today’s world of alimony is debatable. This study suggests that alimony, ruled indefinitely in favor of divorced spouses, should be a limited period. It is suggested that this arrangement be continued in discussing whether or not the aid alimony will be abolished.

It is a study by which analyses are made based on relevant literature and court judgment related to the matter. With that, the article aims to signify the practical challenge of alimony application in Turkish law and proposes a solution to this challenge. When we see the existing literature regarding alimony in Turkey, it rather focuses on the legal framework and legal analyses than the application challenges in terms of time and amount of alimony (Aşık, 2021; Demirbaş, 2018; Hamzaçebi, 2002; İpek, 2013; Kulaklı, 2018; Medar, 2018; Özdemir, 2014; Perктаş, 2008; Topkaya, 2017; Yıldırım, 2020). To reach a conclusion about this problem, the paper starts with the general legal definition of alimony followed by types of alimony mentioned as poverty alimony, child alimony, support alimony, and temporary alimony. The final part of the paper tries to shed light on the application challenge regarding the indefinite nature of poverty alimony and the problem that courts are facing in determining the amount of alimony necessary.

2. Legal definition of alimony (maintenance)

Alimony (maintenance) is defined in the dictionary as everything necessary to eat, drink and live. As a legal term, it can be defined as a regular monthly monetary payment that a person has to give due to a court decision to the person or persons they are obliged to support or look after⁴ (Kılıçoğlu, 2015, 168; Çitak, 2016, 242; Demir, 2018, 18; Reyhani Yüksel, 2021, 491). This definition is very general and partially covers the following types of alimony. Alimony is sometimes based on the

principle that the obligation to cooperate, which arises due to marriage, continues even if the marriage ends. Sometimes it is based on the principle of cooperation and solidarity between relatives due to kinship. Regardless, the alimony obligation is based on the principle of equity.

The regulation on alimony was introduced to protect human dignity. These provisions were enacted under the effect of moral and social considerations (Öztan, 2015, 832-833; Reyhani Yüksel, 2021, 491; Yıldırım, 2019, 105). In other words, spouses who have to cooperate while married will continue to cooperate even if the marriage ends. One of the spouses has to help the other spouse who has custody of the child for the joint child. This obligation of cooperation continues during the divorce case. During the divorce case, the obligation to pay alimony continues as a precaution to prevent the spouse and joint child, if any, from falling into poverty. Relatives, for example, parents to their child who fell into poverty; the child has to give alimony to help his parents who are in poverty. Even siblings who live in good financial standing may need to provide alimony to each other within the framework of the rule of cooperation and solidarity. All of these obligations are called alimony obligations (Kılıçoğlu, 2015, 169).

3. Types of Alimony

In this section, the specific alimony legal frameworks will be addressed to frame the application challenges related to the alimony regime in Turkish law. There are four types of alimony regimes in Turkish law (Aşık, 202, 3-5; Turan, 2019, 487-489). Some of the alimonies are based on marriage relationships and others occur through blood relationships. The source of poverty alimony also called alimony of divorced spouses, is marriage. The spouse

⁴ See, <https://dictionary.cambridge.org/tr/s%C3%B6zl%C3%BCk/ingilizce/alimony>; <https://en.wikipedia.org/wiki/Alimony>, 31 August, 2022.

who would face financial hardship could ask for poverty alimony from the other spouse. Participation alimony is a universally accepted moral and legal obligation of parents to contribute to the well-being and upbringing of their child and could be extended beyond the legally defined minority age if the child is in full-time education and other specific factors (Ceylan, 2017, 302). Assistance and temporary alimonies are also adopted to address specific social security challenges.

3.1. Alimony of divorced spouse (poverty alimony)

Article 175 of the Turkish Civil Code (CC) regulates the alimony to be paid to the spouse who will fall into poverty due to divorce. That is why it is called poverty alimony, as expressed in the article's title. According to this provision, "The party who will fall into poverty due to the divorce may request the other spouse alimony indefinitely in proportion to his/her financial strength; provided that his fault is not more severe". According to the second paragraph of the article, "The fault of the alimony payer is not sought".

Article 186 of the CC says spouses participate in the expenses of the marriage with their labor and assets in proportion to their financial strength. Based on this provision, even if the marriage ends, the spouse will receive financial support from the other under certain conditions. The basis of this provision is the principle that previously married spouses remain in social and economic solidarity (Sciarrino and Duke, 2003, 1; Öztan, 2015, 833; Dural et al., 2022, 157; Arkan, 2007, 285; Baş and Özcan, 2022, 331; Demir, 2018, 40-41; Demir, 2020, 227; Reyhani Yüksel, 2021, 492; Şipka, 2018, 15). It is based on the idea that the spouse who has no fault or less fault in the termination of the

marriage must not fall into a challenging situation or poverty after divorce (Kılıçoğlu, 2015, 171; Dural et al., 2022, 158; Arkan, 2007, 289). A spouse who is not poor while married and not at fault for the divorce should not fall into poverty. Even if it is not their fault, the other spouse must prevent or minimize poverty's danger. The criterion here is to ensure the previous standard of living of the spouse as much as possible.

There is a legal gap in the provision of CC Art.175. The gap is left for the judge to offer a more equitable solution depending on the circumstance. In other words, the judge's measurement and adaptation duty are to find a suitable solution according to the concrete case. According to the concrete case, the judge will decide an appropriate amount for poverty alimony. This amount varies according to each concrete event. However, alimony must be compatible with the parties' financial situation, income, and social life. In addition, the amount of alimony must be in an amount suitable for a decent living (Dural et al., 2022, 158-159; Öztan, 2015, 835; Kılıçoğlu, 2015, 170; Arkan, 2007, 292-293; Demir, 2018, 76; Demir, 2020, 226). According to the Supreme Court (SC), alimony should be in the amount to meet basic needs such as food, drink, shelter, health, transportation, and cultural needs⁵. Accordingly, the first criterion is that the alimony creditor does not fall below the subsistence level. The second criterion is that the alimony debtor should not fall below the minimum standard of living (Öztan, 2015, 835; Kılıçoğlu, 2015, 170; Çitak, 2016, 245). In light of these criteria, the judge should determine the amount of alimony.

5 Turkish Supreme Court, Civil Law General Assembly, 30 September, 1992, E. 1992/468, K. 1992/536; 3rd Civil Law Unit, 28 January, 2014, E. 2014/143, K. 2014/1023

Since alimony is one of the receivables that the parties can freely dispose of, the amount and duration of alimony can be freely decided by the parties. For example, the parties may choose to reduce the alimony when the care of the children ends. They can agree to start paying alimony or increase the amount when the financial situation of the spouse who stands liable for alimony improves. However, for this agreement to be valid, it must be approved by the family judge (Dural et al., 2022, 159; Öztan, 2015, 836; Arkan, 2007, 295; Ceylan, 2007, 309; Demir, 2018, 80; Reyhani Yüksel, 2021, 499).

The judge decides on alimony if one of the spouses demands it (Kılıçoğlu, 2015, 171; Dural et al., 2022, 157; Arkan, 2007, 288; Demir, 2018, 64; Yıldırım, 2019, 106). It cannot decide on this matter *ex officio*. The provision of alimony becomes effective with the finalization of the court decision. Alimony can be requested together with the divorce case or after the divorce within the legal period of limitation. The right to demand is granted to both spouses. What is sought here is to have fallen into poverty due to divorce (Öztan, 2015, 836; Baş and Özcan, 2022, 338; Demir, 2018, 113-114).

3.2. Alimony of child (participation alimony)

This type of alimony is regulated in the 2nd sentence of Art.182/3 of CC, under the title of the *rights of the mother and father in terms of children*. This provision encompasses the arrangement of the personal relationship of the spouse, who is not given the right to use custody, the child, and the child's benefits, especially in terms of health, education, and morality, are taken as a basis. This spouse has to participate in the child's care and education expenses in proportion to their financial capacity. This

alimony is called participation alimony in the sense of participating in the care of the joint child (Kılıçoğlu, 2015, 195; Akyüz, 2013, 186). As a rule, child support is only provided for minor children (Öztan, 2015, 794). These children under eighteen years are intended to be described with the expression "young children". However, it is regulated in the law that the continuation of alimony can be enacted for children who have completed the age of eighteen but whose education continues (CC Art. 328/2).

The child's alimony will essentially be a claim that belongs to the child. In other words, this debt does not belong to the spouse who has custody. However, since the child cannot sue, the spouse with the right to custody will make this request (Dural et al., 2022, 150; Öztan, 2015, 794; Akyüz, 2013, 188).

The judge has discretion in determining the amount of alimony. In other words, there is a gap in the rule in this regard, just like in poverty alimony. While determining the amount of alimony, the provisions of CC Art. 337, 330-333 are taken as a basis. In determining the amount of alimony, the child's age, the education he receives, the parent's financial situation, and the current and possible needs of the child are taken into account. In addition, the judge will investigate this matter spontaneously and decide *ex officio*. In the framework of this discretion, the share of the spouse who takes custody of the child will be deducted. Because, like the other spouse, the spouse who has custody should participate in the child's care (Öztan, 2015, 795). In the meantime, the marriage of the parent who took custody and their new spouse's financial situation does not end this parent's alimony payment debt. However, if the child's income is sufficient for the child's livelihood and education, the child

does not have the right to demand alimony (Öztaş, 2015, 796; Ceylan, 2007, 323).

The demand does not bind the judge as in the case of poverty alimony (Öztaş, 2015, 795). Because the provision regarding child support is a rule of public order regarding the protection of the child (Öztaş, 2015, 796; Dural et al., 2022, 150; Ceylan, 2007, 307), on the other hand, per the provision of CC Art. 328/2, if the child's education continues even if they turn 18, parents are obliged to look after the child until the end of his education. In this regard, the judge determines the amount of alimony to the extent that the parents can afford and what they expect, depending on the situation and conditions. If the child is over 18 years old, the alimony request is based on the provision of CC Art.328/2, and it gives the right to sue separately against the mother and father. A child with legal capacity can file this lawsuit alone (Öztaş, 2015, 795; Birinci Uzun, 2018, 98).

If a child over 18 cannot work and needs care, alimony of assistance will now be paid instead of participation alimony. The CC Art.328/2 is a provision like the continuation of the alimony (Dural et al., 2022, 151). Because of this, it is necessary to make a request not according to the 328/2 provision in such a case. The application must be made within the framework of Art. 364 (Öztaş, 2015, 795).

The title of the CC Art. 183 is the change of the situation. In this provision, it is stipulated that the judge will take the necessary measures, ex officio or upon the request of one of the parents, in cases such as the mother or father marrying someone else, moving to another place, or dying. According to the provision, the judge may increase or decrease the alimony upon request. For example, a parent who remarries and has other children or has lost a

previous job may request a reduction in child support. Likewise, if the financial situation of the alimony payer has improved and the needs of the child have increased, the amount of alimony can be increased upon request.

3.3. Temporary alimony

Suppose the divorce case is still ongoing or even the divorce case has not been filed. In that case, if the situation of living together is practically impossible, the obligation of solidarity and cooperation of the spouses continues. For this reason, spouses might be required to pay alimony until the divorce case is finalized (Dural et al., 2022, 137; İş Akpınar, 2021, 117; Pekmez, 2021, 146-147). The court may award alimony until the separation or divorce case is finalized upon the request of one of the spouses. Here, this alimony is called provisional alimony (Öztaş, 2015, 747; Dural et al., 2022, 136; Bayram, 2019, 220; İş Akpınar, 2021, 116). Because, in this process, the court gives an injunction to protect the weak party and joint child who fell into poverty. In addition, even if there is no demand, the judge may order temporary alimony as per the provision of article 169 based on the principle of public order (Dural et al., 2022, 135; Öztaş, 2015, 748; İş Akpınar, 2021, 117; Pekmez, 2021,145).

The Civil Code of Art.169 regulates temporary alimony under the title of *temporary measures*. The provision says, "When a divorce or separation lawsuit is filed, the judge ex officio takes the temporary measures necessary during the continuation of the case, especially regarding the accommodation of the spouses, their livelihood, the management of the spouses' property and the care and protection of the children". Temporary alimony is a broader term that includes requests for poverty

and participation alimony. These alimony requests are called temporary alimony at this stage. When the divorce decision is finalized, the temporary alimony turns into participation and poverty alimony if the conditions exist.

The spouses' fault is not essential to rule on the alimony. The judge does not need to investigate the fault situation (Öztañ, 2015, 749; Bayram, 2019, 233; Pekmez, 2021, 145). The right to demand alimony applies to both spouses, regardless of gender. The receiver of the alimony can waive this right. However, the receiver cannot waive an unborn alimony right because alimony is the use of a right closely tied to the person (Öztañ, 2015, 752; Hamzaçebi, 2002, 44).

The discretion of the judge, which is said for poverty alimony and participation alimony, is valid for the amount of the temporary alimony (Kılıçođlu, 2015, 152; Bayram, 2019, 222, 235). When married, it is necessary to decide on alimony in an amount that will protect the living standard of the joint child and alimony receiver spouse.

If the income of the spouse who will pay the measure alimony is not adequate, for example, if their income is enough to support only one person, will the temporary alimony still be ruled? The doctrine's answer to this question is controversial (Öztañ, 2015, 753). However, I think the more favorable spouse should still pay some alimony. In practice, the Supreme Court also supports this view⁶.

Like other types of alimony, temporary alimony is paid in an appropriate amount

of money. An in-kind (real) payment offer does not replace alimony, such as the spouse living in his own house instead of alimony (Öztañ, 2015, 753-754; Demir, 2018, 82; Hamzaçebi, 2002, 36). The alimony must be paid in Turkish currency. Living expenses, such as rent, food, and fuel, borne by the alimony payer, can be deducted from the amount of alimony debt.

The date of awarding alimony is left to the discretion of the judge. According to the conditions of the concrete case, this alimony can be requested from the moment the need arises. For example, the receiver may request this direction as soon as they leave the house, when the divorce case is filed or when they are dismissed, and the judge may order alimony immediately as a precautionary measure (Öztañ, 2015, 754; Bayram, 2019, 241; Hamzaçebi, 2002, 28). Payment is made, as a rule, in the form of monthly payments. However, there is no obstacle to paying cash in advance (Öztañ, 2015, 754; Demir, 2018, 83; Yađcı, 2018, 324).

The death of one of the spouses, or the declaration of the absence of one of the spouses, ends temporary alimony. Temporary alimony ends when the case for annulment of marriage is finalized. If alimony is foreseen for a certain period, it ends when it expires. The alimony will also end when no longer need the necessary measures for the subsistence of the receiver spouse. For example, when the spouse begins to live with someone financially well off. In case of abandoning the divorce case, the alimony ends (Öztañ, 2015, 754; Bayram, 2019, 242; İş Akpınar, 2021, 119). With the finalization of the divorce, it turns into poverty or participation maintenance. After the payer's death, the heirs may also request alimony receivables (Öztañ, 2015, 754-755).

⁶ Turkish Supreme Court, Civil Law General Assembly, 26 December, 2001, E. 2001/21158, K.1185. Also see, Constitutional Court, 7 November, 2019, E. 2016/3140, 30981 S. 17 December, 2019 Turkish Official Gazette.

3.4. Alimony of assistance

Alimony is based on the principle of family assistance and solidarity. The legislator found it immoral that some of his family members lived in prosperity while others fell into poverty, and alimony provisions were referred to in this regard (Öztan, 2015, 1201; Dural et al., 2022, 382; Çilenti Konuralp, 2020, 1024; Özdemir, 2014, 65). As with all types of alimony, there is a monetary payment.

This type of alimony is regulated in the provisions of CC Art.364-366. According to the CC Art.364/1, “Everyone is obliged to give alimony to their ancestors, descendants, and siblings who will fall into poverty if they do not get help”. In the law, ancestors, descendants, and siblings are counted as alimony payers and receivers. This counting is limited. In other words, there are no alimony receivers and payers other than those listed in the law (Dural et al., 2022, 383; Öztan, 2015, 1201; Özdemir, 2014, 70). There is another limitation for siblings. The alimony obligations of siblings depend on their welfare (CC Art.364/2).

This debt regarding alimony is based on objective morality. It can be demanded even from people who have no discernment. It is bilateral, and anyone with a certain degree of kinship can ask each other (Dural et al., 2022, 383; Birinci Uzun, 2018, 101; Çilenti Konuralp, 2020, 1025; Özdemir, 2014, 66). Here, too, the judge has discretion. For example, parents who did not care for their children and did not meet their material and moral needs may be denied alimony in the future (Öztan, 2015, 1203).

Alimony of assistance comes after other alimony types (Öztan, 2015, 1204; Özdemir, 2014, 71). In other words, if

there is a possibility of poverty or participation in alimony in the concrete case, this type of alimony cannot be requested. However, if it is impossible to claim them, alimony of assistance can be requested.

For the request for alimony, the degree of blood kinship specified in the law is required (Dural et al., 2022, 383). Adoption is also considered as a blood relative. The request for alimony is personal. If the payer or receiver dies, the rights and debts do not descend to their heirs. The alimony request cannot be assigned to a third party. The right to alimony that has not been formed cannot be waived (Dural et al., 2022, 393-394; Öztan, 2015, 1204; Arkan, 2007, 291; Ceylan, 2017, 301; Birinci Uzun, 2018, 114; Demir, 2018, 29-30).

The law did not limit the alimony obligation between the lineal relatives. There is a maintenance obligation between parents, children, grandparents, and grandchildren without any degree limit. However, there is no alimony obligation as there is no kinship between the adopter's parent and the adopted child. There is an alimony obligation between the adopter and the descendant of the adopted child (Dural et al., 2022, 383; Birinci Uzun, 2018, 101-102; Çilenti Konuralp, 2020, 1026; Özdemir, 2014, 72). Since the provision of CC Art. 328/2 will be applied with priority, CC Art.364 shall not be applied (Öztan, 2015, 1205)

Regarding siblings' demand for alimony, it is stipulated that the receiver must be in poverty, and the payer must be in financial well-being. What is meant by the term well-being is that a person is in a position to meet all the needs of society, including luxuries, without worrying about the future (Öztan, 2015, 1207; Kılıçoğlu, 2015, 665; Dural et al., 2022, 387; Birinci Uzun, 2018,106; Özdemir, 2014, 71).

The rank relation in the alimony obligation is regulated in CC Art.365/1. According to the provision, “The alimony case is opened by considering the order in inheritance”. Accordingly, in the event of the payer’s death, the alimony receiver can file a lawsuit according to the order of the heirs. For example, a person cannot ask for alimony from their parents if their child is alive because his child will inherit before his parents. If more than one person is liable to pay alimony, a lawsuit can be filed against all of them. In a fair decision, the judge divides the alimony debts of these responsible persons among them according to their ability to pay (Dural et al., 2022, 389; Öztan, 2015, 1208-1209; Özdemir, 2014, 72).

The judge has discretion in determining the amount of alimony. In other words, there is a gap in the rule in this regard, just like in other alimonies. Alimony is paid in cash in monthly payments. Alimony should not enrich the receiver. In this regard, the judge will rule as much as the receiver needs. The lower limit for alimony is the solvency of the alimony payer. The upper limit is the amount that will eliminate the poverty of the receiver (Öztan, 2015, 1218; Dural et al., 2022, 391).

According to CC Art.365/2, the lawsuit consists of a request for assistance necessary for the payer’s subsistence and appropriate to the financial strength of the other party. If it is unfair to demand alimony from one or more of the obliged parties, the judge may reduce or remove their alimony obligation (CC Art.365/3). The lawsuit can also be filed by official or publicly beneficial institutions that take care of the alimony receiver (Dural et al., 2022, 386; Öztan, 2015, 1219; Akyüz, 2013, 187; Birinci Uzun, 2018, 113; Özdemir, 2014, 67). The judge may decide how much the alimony will be paid in the coming years according to the social and economic con-

ditions of the parties (CC Art.365/4). The competent court is the settlement court of one of the parties (CC Art.365/5).

4. Implementation problems about alimony and the solution proposals

There are three main issues this section tries to address. The first one is that alimony obligation between spouses has not been limited in time in Turkish law. The exceptions that end the obligation do not include an upper time limit. The indefinite nature of poverty alimony was found to be not sound and should be reconsidered as mentioned in detail in the next subsection. The delay in ruling in some alimony types and unnecessary extension of assistance alimony are the issues addressed in the next sections.

4.1. Uncertain duration of poverty alimony and the suggestion proposal

The regulation in Turkish law is the payment of alimony without time limitation. According to Article 176 of the Civil Code, the monetary compensation or alimony that is decided to be paid in the form of an annuity is automatically abolished in the event of the remarriage of the receiver or the death of one of the parties. If the receiver lives as if she is married without getting married, her poverty disappears, or she leads a dishonorable life, a court decision abolishes the benefit. In other cases, alimony continues indefinitely until the death of the receiver or payer. This situation leads to unfair results (Sciarrino and Duke, 2003, 2-3; Von Hauzen, 2009, 21-22; Baş and Özcan, 2022, 356; Bulut, 2020, 46; Çitak, 2016, 253; Demir, 2020, 242; Demirbaş, 2018, 230). Suppose a man who is not working and has no financial income marries a woman in a solid fi-

nancial situation; indefinite alimony may be decided in favor of the male spouse as a result (gift) of the divorce (Sciarrino and Duke, 2003, 12; Von Hauzen, 2009, 21-22; Demir, 2020, 242).

As a solution to this problem, different options have been introduced in different legal systems (Kocabaş, 2013, 373 ff.; Baş and Özcan, 2022, 351 ff.). For example, in some jurisdictions, alimony is recommended to be limited to an upper period. As a result, alimony can be awarded for a maximum of ten years at the judge's discretion. Another suggestion is that alimony should continue for a certain period in proportion to the duration of the marriage (Dural et al., 2022, 160; Kocabaş, 2013, 382). For example, a one-year alimony obligation can be decided for a marriage that lasts five years, two years for a marriage that lasts ten years, and five years for a marriage that lasts over ten years.

A lawsuit has been filed before a Constitutional Court regarding indefinite alimony, and the annulment of the 'indefinite' expression in Article 175 is claimed to be unconstitutional. The Constitutional Court decided to reject this request⁷.

Despite the decision of the Constitutional Court, the regulation on indefinite alimony payment, which has been abandoned in many modern legal systems, needs to be revised (Dural et al., 2022, 160; Demirbaş, 2018, 233). Some authors argue that the provisions on poverty alimony are a regulation that should be abolished (Akıncı, 2016, 37; Burcuoğlu, 2018, 10). One view in the doctrine suggests divorce compensation instead of alimony on a one-time basis (Baş and Özcan, 2022, 376). Another declares that the provision

regarding indefinite alimony is an alternative and that the judge can limit the duration of alimony by using discretion authority (Şıpka, 2018, 17; Yağcı, 2018, 340; Hamzaçebi, 2002, 35; Kocabaş, 2013, 367). In this regard, I suggest putting an upper limit on the payment period of alimony. The period to be determined by the judge for alimony should be as long as the spouse who has fallen into poverty needs to re-establish his life, bring economic income, and enter the working life (Yağcı, 2018, 347). This arrangement will push the spouse to work and participate in the economy rather than avoiding work (Sciarrino and Duke, 2003, 12).

4.2. Removal and revision of the rule on alimony of assistance due to changing socio-cultural relations and the solution proposal

Family maintenance allowance is presumed to be private social security in most countries. People with blood relationships tend to help each other without acknowledging legal frameworks (Duff, 1988, 545). It is more of a moral duty that society customarily assumed of supporting someone in need in the family (Armstrong, 1965, 124). The legal outline for family maintenance allowance has a narrow application than what has been understood in the norms of society (Glendon, 1983, 1570). Most nations introduce mandatory maintenance allowance between ascendants and descendants. Alimony obligation between relatives has not been regulated or intentionally excluded in a number of countries.

The exclusion of alimony obligation between relatives/siblings has a lot more to do with social and cultural change in society than mere legal change. The industrial revolution in the 19th century calls for a more capitalist society with limited family engagement with a nuclear family but broad commercial relationships with

⁷ Turkish Constitutional Court, 17 May, 2012, E. 2011/136 K. 2012/72, <https://www.resmigazete.gov.tr/eskiler/2012/06/20120626-25.htm>, 09.03.2022.

strangers (Glendon, 1983, 1555). The impact and the need for family-based support and cooperation were replaced by capital transactions with outsiders. This is one of the reasons why alimony obligation between siblings is eliminated in most western countries.

When we see the Turkish law regarding alimony, it was stated that lineal relatives had to look at each other without a degree limit (Batur, 2020, 29). For siblings, this obligation is dependent on their well-being. It should be stated that this arrangement is not compatible with the changing socio-cultural and new family relations in modern life. The suggestion here is that although there should be an obligation of cooperation and solidarity for the lineal relatives within the framework of family cooperation, this obligation should be abolished for siblings. Because there is no such regulation about siblings in the Swiss Civil Code, which is the reference code of Turkish law, it would be appropriate for lineal relatives to this obligation on the condition that they are financially sufficient.

4.3. Low determination of alimony amounts and the solution proposal

The rationale behind maintenance allowance is to economically help a family member with the financial problem (Demirbaş, 2018, 222). The amount needed to compensate for the level of maintaining the person's basic needs differs from country to country and from time to time. Even in the same country, the living cost in one large city is considerably different from suburbs or small towns. Though the final say lies on the judge, the living cost in Istanbul is much more expensive than in other cities in Turkey. The living cost encompasses the cost of basic groceries, rent, transportation, and monthly bills including health insurance premiums. The other important element that a judge should

take into consideration is the current economic dynamic in terms of inflation. Inflation has a huge impact on individuals' purchasing power at a given time. The aftermath of the global pandemic and the political crisis in some parts of the world brings an unprecedented amount of inflation globally. As a result, currently, the cost of living fluctuates every month and becomes unpredictable. A good judgment on alimony considers a lot of variables including the place where the party is living, the current inflation factor, and the overall important needs of the person.

One of the most common problems in practice is that judges underestimate the amount of alimony in determining the amount. As explained above, the judge has a wide margin of appreciation regarding the amount of alimony. The judge should decide this discretion by equity to the extent that it will prevent the alimony creditor from falling into poverty. Due to the current inflation in our country, it is evident that the amount of alimony ordered by the judges is insufficient to eliminate poverty.

4.4. Late ruling on temporary alimony and the solution proposal

Delayed court action often time does not satisfy the party who disparately needs speedy justice (Reda, 2011, 1087-1088). As the saying goes, justice delayed is justice denied as after some time even positive judgment lacks its merit (Shah, Khan, & Farid, 2014, 48). A maintenance allowance is supposed to cover the cost of basic needs for people who are in financial trouble. It is generally presumed that people could fall into a difficult situation unless financial support from a legally identified close relative with a better income. The legal procedure and load of potential legal disputes before the court normally cause delays. This as a result affects the living

condition of the petitioner asking for alimony support.

Lack of Speedy judgment is one of the main practical problems in any legal system all over the world (Hirvonen, 1994, 253; Shah, Khan, & Farid, 2014, 47). People are usually advised to use alternative dispute resolution mechanisms among other things it provides speedy remedies among the parties (Barnette, 1984). Some of the alimony disagreements can be decided by using alternative dispute resolution mechanisms although, alimony on child support has to be determined with the involvement of the formal court. For that, it is recommended that the parties shall resort to mediation and negotiation with the legally permitted area of alimony disputes instead of waiting for a court verdict which takes a long time and cost more.

Another implementation problem is the late payment of alimony for the spouse and children during separation and divorce proceedings. The court must decide on alimony as soon as possible in case of a divorce petition. In practice, it is seen that this period is prolonged due to various reasons and reaches months later. This is contrary to the purpose of the provision. In addition, the long duration of the correspondence (6-9 months) for foreign information by the court disrupts the process. For this, it may be suggested to increase the international facilitating agreements.

5. Conclusion

Alimony obligation is a solution proposal brought by the legal order against poverty. Alimony is based on human dignity and equity. Every human being has the right to live with human dignity. In Turkish law, alimony is a legal obligation on a person to

provide financial support by a court decision. These supported people are spouses, joint children, or some close relatives. In Turkish law, four different types of alimony are regulated. The first is foreseen for the spouse, which is called poverty alimony in Turkish law. The second one is foreseen for the joint child and is called participation alimony. The third one is foreseen for the lineal relatives and siblings and is called aid alimony. Alimony can also be ruled in the event of a separation or during a divorce case. This alimony is called temporary alimony. The most common problems encountered in practice regarding these types of alimony have been discussed in this study, and reasonable solutions have been proposed. These problems and solutions can be listed as follows:

- *The fact that the period of poverty alimony in case of divorce is not limited is an implementation problem. According to the clean break principle, while the spouses are married, the debt of mutual assistance and solidarity is limited by divorce, and then it disappears (Family Justice Council, 2016, 31 ff; Kocabaş, 2013, 363,387; Baş and Özcan, 2022, 344; Bulut, 2020, 45). Therefore, it is recommended that this regulation be revised and that, it is also recommended here to put an upper limit on the alimony period, and the judge should decide on the alimony obligation for a reasonably limited period, provided that this period is not exceeded the reasonable time required according to the circumstances of the concrete case. This period can be up to ten years.*
- *The second implementation issue concerns assistance (aid) alimony. According to Turkish law, everyone has to help and give alimony to their lineal relatives and siblings, who will fall into poverty if they do not help. This is based on the principle of cooperation and solidarity within the family based on kinship. In this regard, this provision shall*

be revised so that it is tied to the welfare of the alimony payer in terms of lineal relatives. In addition, it seems that the obligation regarding siblings to look after each other is not appropriate to be enforced by law. This provision must be removed. This obligation should be left to the consent of interests as a moral value.

- *The third implementation problem is that the judges set amount of alimony is sometimes not enough to fulfill basic needs. In this regard, it may be suggested to establish a standard for determining alimony based on specific rules at the court's discretion. In setting this standard, adequate nutrition, clothing, shelter, and cultural needs should be considered. Thus, the judge will not be able to award alimony below the amount of alimony in a manner befitting human dignity.*

- *The last application problem is the late judgment of alimony. Although several official correspondences and a high workload are shown as the reason for this, this is not a sufficient reason. If there are necessary conditions for alimony, the judge must rule on alimony for the spouse as soon as possible, if requested. It may decide ex officio on alimony for the child. In this regard, it can be suggested that correspondence between domestic and foreign institutions should be made in an electronic environment and cooperation agreements between countries.*

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