



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 6

Moscow

27 April 2021

On Certain Issues Arising in Judicial Practice during Consideration of Cases on Administrative Offences pertaining to Non-Payment of Maintenance for Children or Handicapped Parents

Due to issues arising in judicial practice during consideration of cases on administrative offences pertaining to non-payment of maintenance for children or handicapped parents, 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”, rules to provide the following explanations:

1. Article 5.35.1 of the Code of the Russian Federation on Administrative Offences (hereinafter – the CAO RF) stipulates administrative liability for non-payment, without a good reason, of funds for the maintenance (hereinafter also referred to as alimony) of underage children or handicapped children over the age of eighteen (hereinafter also referred to as children), or of handicapped parents in violation of: a court act, in particular of a court decision, court order, ruling on recovery of alimony prior to entry of a court decision on recovery of alimony into force; of an agreement on payment of alimony, certified by a notary (hereinafter also referred to as alimony agreement) – for two and more months after the initiation of enforcement proceedings and in the absence of elements of the crime stipulated in Article 157 of the Criminal Code of the Russian Federation (hereinafter – the CrC RF) [Failure to Pay Maintenance for Children or Handicapped Parents].

2. Violation of a court act or of an alimony agreement should be understood as failure to pay alimony in the amount, within the time and in the manner stipulated in that decision or agreement.

3. The period of non-payment of alimony should comprise no less than two months in a row within the framework of initiated enforcement proceedings (hereinafter – the period of non-payment of alimony). The aforementioned two-month term begins to run on the day following the end of the term for the performance of a single or monthly payment stipulated by a court act or alimony agreement. The event of the administrative offence stipulated in Part 1 or 2 of Article 5.35.1 of the CAO RF may take place from the day following the end of the aforementioned two-month term. The administrative offence will be finalized due to discovery of the fact of non-payment of alimony within two months in a row or due to voluntary termination of non-payment of alimony after the expiration of said two-month term (Part 2 of Article 4.5, Article 4.8 of the CAO RF).

For example, in case of non-fulfilment of the obligation to perform the monthly alimony payment in January (failure to deposit monetary funds during the month of January), the two-month term will be calculated from 1 February, and the event of the administrative offence may take place starting from 2 April (Part 2 of Article 4.8 of the CAO RF).

4. Discovery of this administrative offence should be understood as a situation in which the authorized official establishes and describes in a report about an administrative offence (a decree on initiation of a case on an administrative offence) sufficient data indicating the existence of the event of an administrative offence (for example, data about the fact of non-payment of alimony for two and more months in a row within the framework of initiated enforcement proceedings and about the amount of alimony in arrears determined by a bailiff; explanations provided by the person in whose regard the issue of initiating a case on an administrative offence is being resolved; as well as information about the absence of good reasons for the non-payment of alimony) (Item 1 of Part 1, Item 3 of Part 4 of Article 28.1 of the CAO RF).

The attention of judges is drawn to the fact that if the authorised official fails to act with regard to the legally imposed obligations to discover and suppress administrative offences stipulated in Article 5.35.1 of the CAO RF, this can be challenged in accordance with the rules of Chapter 22 of the Code of Administrative Judicial

Procedure of the Russian Federation. Herewith, a decree on refusal to initiate a case on the aforementioned administrative offence is subject to challenge in accordance with the rules stipulated in Chapter 30 of the CAO RF (Part 4 of Article 30.1 of the CAO RF).

5. The court may recognise circumstances in which the non-payment occurred independently of the will of the person obliged to pay maintenance for children or handicapped parents as good reasons for non-payment of alimony (e.g. due to that person's illness (handicap); due to the fault of other persons, in particular due to the employer's failure to pay salary, the bank's delay or incorrect transfer of alimony sums; due to *force majeure*; due to the person undergoing military service by conscription, etc.). When assessing the corresponding circumstances, the judge should take into account whether the person had other opportunities (in particular monetary funds, property, other sources of income) for the payment of maintenance for children or handicapped parents.

If the person obliged to pay alimony does not agree with the amount of sums subject to payment for the maintenance of children or handicapped parents as stipulated in a court act or alimony agreement, this cannot be regarded as a good reason for non-payment of alimony. In this case, the person may resolve the issue of changing the amount of alimony in the manner stipulated in the law (Articles 101, 102, 119 of the Family Code of the Russian Federation, hereinafter referred to as the FC RF).

The mere fact that the person obliged to pay alimony resides together with the alimony recipient cannot be regarded as grounds to recognise the reason for non-payment of alimony as a good reason.

If the person obliged to pay alimony is serving a punishment in confinement, non-payment of alimony during that period also does not constitute absolute grounds for exemption from administrative liability. In the aforementioned situation, the court should study other circumstances, such as: whether that person was drawn to remunerated labour while serving the punishment; whether he/she refused to work without a good reason.

The reasons for non-payment of alimony, the list of which is not exclusive, are in all cases subject to assessment. In the ruling in the case on the administrative offence, the judge indicates the motives for which he/she, taking into account the established facts of the case, including the material and family status of the person obliged to pay

alimony, concluded why the concrete facts of the case amount or do not amount to good reasons for non-payment of alimony.

6. When resolving the issue of holding a person administratively liable under Article 5.35.1 of the CAO RF, the judge should verify whether enforcement proceedings have been initiated against the person obliged to pay alimony. The corresponding evidence should be attached to the materials of the case on the administrative offence.

7. If several court acts on recovery of alimony are adopted in regard of a person, or several alimony agreements exist (e.g. due to a parent's obligation to provide maintenance for several children), enforcement proceedings have been initiated due to non-performance of each of them, and there is data about the facts of non-payment of alimony for two and more months in a row, such facts are subject to independent qualification under Part 1 of Article 5.35.1 of the CAO RF. The facts of non-payment of maintenance for handicapped parents are to be qualified similarly under Part 2 of Article 5.35.1 of the CAO RF.

8. If during the consideration of a case on an administrative offence it is established that the court has decreased the amount of alimony or alimony in arrears, or that a person has been exempted from payment of alimony (alimony in arrears) for the period indicated in the administrative offence report, and that taking these facts, as well as the previously paid sums, into account, the judge concludes that there has been no failure to pay during the aforementioned period, the proceedings in the case are subject to termination due to absence of the event of the administrative offence based on Item 1 of Part 1 of Article 24.5 of the CAO RF.

The issue of holding a person administratively liable is resolved in a similar manner where the amount of alimony stipulated in the alimony agreement is changed, such an agreement is dissolved, recognised as invalid, if the aforementioned circumstances influence the amount of arrears for the period indicated in the administrative offence protocol.

If a bailiff's decree regarding the calculation and recovery of alimony in arrears is found illegal, this does not exempt the bailiff from establishing the amount of such debt in order to resolve the issue of holding a person administratively liable, in particular within the framework of an already initiated case on an administrative offence.

9. If a person obliged to pay alimony does not pay the forfeit for failure to timely pay alimony, as determined by virtue of Article 115 of the FC RF, this is not subject to qualification under Part 1 or 2 of Article 5.35.1 of the CAO RF.

10. It should be taken into account that if a child comes of age, obtains full legal capacity before coming of age due to marriage, is declared fully legally capable (emancipation), if a child for whose maintenance the alimony was recovered is adopted or dies, this cannot be recognised as grounds that exclude proceedings in the case on the administrative offence stipulated by Part 1 of Article 5.35.1 of the CAO RF, provided that the alimony in arrears was incurred during the period preceding the aforementioned events (actions).

11. When discerning the elements of administrative offences stipulated in Article 5.35.1 of the CAO RF and the elements of crimes stipulated in Article 157 of the CrC RF, the court should proceed from the fact that by implication of Article 4.6 of the CAO RF a person is regarded as subjected to an administrative punishment until one year passes from the day: on which a ruling on appointment of administrative punishment has been executed in full (Part 1 of Article 31.10 of the CAO RF); on which the statute of limitations for execution of a ruling on appointment of administrative punishment expires (Item 3 of Part 2 of Article 31.10, Article 31.9 of the CAO RF); on which, where so stipulated in the CAO RF, a ruling is adopted to terminate the execution of a ruling on appointment of administrative punishment (Item 6 of Article 31.7, Part 7 of Article 32.13 of the CAO RF).

12. A mother and (or) father of the child, as well as persons that adopted the child in the stipulated manner are the subjects of administrative offence stipulated in Part 1 of Article 5.35.1 of the CAO RF; a child (in particular an adopted child) who has reached the age of 18 and is not handicapped (i.e. was not recognised as a disabled person of groups I, II or III and has not reached the general pension age) is the subject of the administrative offence stipulated in Part 2 of said Article.

If, at the moment of consideration of a case on an administrative offence stipulated in Part 1 of Article 5.35.1 of the CAO RF or of an appeal against a ruling in regard of a case on such an offence, an effective court decision satisfies the claims on challenge of parenthood or reversal of adoption, then the proceedings in the case on the administrative offence in regard of the person earlier indicated as the father (mother) in the corresponding entry in the book of birth records or in regard of the person that adopted the child are subject to termination by virtue of Item 2 of Part 1 of

Article 24.5 of the CAO RF due to absence of the event of an administrative offence (Item 1 of Part 1.1 of Article 29.9, Item 3 of Part 1 of Article 30.7 of the CAO RF). The judge should act similarly when resolving whether to hold a person administratively liable under Part 2 of Article 5.35.1 of the CAO RF.

13. The mental element (*mens rea*) of the administrative offence stipulated in Part 1 or 2 of Article 5.35.1 of the CAO RF is characterized by intentional form of guilt.

The person obliged to pay alimony is also subject to administrative liability if it is established that he/she intentionally did not pay the maintenance for children or handicapped parents in full, i.e. paid the alimony in the amount smaller than stipulated in a court act or alimony agreement, since this fact constitutes their violation.

14. By virtue of Article 29.5 of the CAO RF, a case on an administrative offence is considered at the place of perpetration. Taking into account that the objective elements (*actus reus*) of administrative offences stipulated in Article 5.35.1 of the aforementioned Code takes the form of failure to act (non-performance of the duty to pay alimony), the place of their perpetration is the place of residence of the person obliged to pay alimony, i.e. the place where a citizen constantly or predominantly resides (Article 20 of the Civil Code of the Russian Federation).

If a person resides outside of the Russian Federation or does not have a determined place of residence, the case on the administrative offence is subject to consideration at the place where the offence was discovered (where the administrative offence report (decree on initiation of a case on an administrative offence) was drawn up).

15. Due to the fact that the sanctions of Parts 1, 2 of Article 5.35.1 of the CAO RF stipulate the possible appointment of administrative punishment in the form of obligatory works or administrative arrest, the case on the administrative offence is subject to consideration exclusively with the participation of the person in whose regard it was initiated, on the day of receipt of the administrative offence report (decree on initiation of a case on an administrative offence) and of other case materials, and in regard of a person held in administrative detention – no later than within 48 hours from the moment of detention (Part 3 of Article 25.1, Part 4 of Article 29.6 of the CAO RF).

Taking into account the aforementioned circumstances, if a person in whose regard the case on the administrative offence was initiated does not appear in court or is not

escorted into court, the judge should return the administrative offence report (decree on initiation of a case on an administrative offence) and other case materials to the body, official that drew up the protocol (decree).

Taking into account the limited time for the consideration of cases on administrative offences of this category, the materials received by the court should contain complete and consistent information pertaining to the event of the administrative offence, in particular allowing to discern it from an act containing the elements of a crime, as well as information regarding the initiation of enforcement proceedings and the absence of good reasons for the non-payment of alimony; data about the person in whose regard the case was initiated, in particular characterizing her/his personality and necessary for the appointment of a particular type of administrative punishment with due regard to the requirements of the law (Articles 3.5, 3.9, 3.13, 4.1–4.3 of the CAO RF); information about the victim and about the fact that the rights and duties of participants of proceedings in a case on an administrative offence were clarified to them (Parts 2, 3 of Article 28.2 of the CAO RF).

Where the aforementioned information is absent, the administrative offence report (decree on initiation of a case on an administrative offence) and other case materials may be returned to the body, official that drew up the report (decree) at the stage of preparations for consideration of the case (Item 4 of Part 1 of Article 29.4 of the CAO RF).

16. The victim in this category of cases is the person on whose maintenance the alimony is to be spent in accordance with a court act or alimony agreement.

During proceedings in a case on an administrative offence, the rights and lawful interests of a victim who is an underage person or cannot independently realize her/his rights due to physical or mental state are protected by a statutory representative (Article 25.3 of the CAO RF).

If a victim or her/his statutory representative, duly notified about the time and place of consideration of the case, does not appear in the court session, this cannot serve as absolute grounds for postponement of case consideration. Herewith, in order to ensure the comprehensible, full, objective clarification of the facts of each case, to make sure it is resolved in accordance with the law, that the adopted ruling is executed, and in order to discover the reasons and circumstances conducive to perpetration of the administrative offence, the judge may recognise it necessary for

the victim or her/his statutory representative to appear before the court (Articles 24.1, 26.1, Item 4 of Part 1 of Article 29.7 of the CAO RF).

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

ANNEX
Translation of applicable articles of the Code of the Russian Federation on Administrative
Offences (CAO RF) and of the Criminal Code of the Russian Federation (CrC RF)
(as of June 2022)

CAO RF

Article 5.35.1. Failure to Pay Maintenance for Children or Handicapped Parents

1. Non-payment by a parent, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds in the amount stipulated in accordance with the court decision or agreement certified by a notary, for the maintenance of underage children or handicapped children over the age of eighteen, for two and more months from the day of initiation of enforcement proceedings, provided that these actions do not contain a criminally punishable act - entails obligatory works for a term up to 150 hours or administrative arrest for a term of 10 to 15 days, or the imposition of an administrative fine in the amount of 20 000 rubles for persons, in whose regard obligatory works or administrative arrest cannot be applied in accordance with this Code.

2. Non-payment by adult non-handicapped children, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds in the amount stipulated in accordance with the court decision or agreement certified by a notary, for the maintenance of handicapped parents, for two and more months from the day of initiation of enforcement proceedings, provided that these actions do not contain a criminally punishable act - entails obligatory works for a term up to 150 hours or administrative arrest for a term of 10 to 15 days, or the imposition of an administrative fine in the amount of 20 000 rubles for persons, in whose regard obligatory works or administrative arrest cannot be applied in accordance with this Code.

CrC RF

Article 157. Failure to Pay Maintenance for Children or Handicapped Parents

1. Non-payment by a parent, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds for the maintenance of underage children and likewise of handicapped children over the age of eighteen, if this act was perpetrated repeatedly, - is punished by corrective works for a term up to 1 year, or by compulsory labour for the same term, or by arrest for a term up to 3 months, or by deprivation of liberty for a term up to 1 year.

2. Non-payment by adult non-handicapped children, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds for the maintenance of handicapped parents, if this act was perpetrated repeatedly, - is punished by corrective works for a term up to 1 year, or by compulsory labour for the same term, or by arrest for a term up to 3 months, or by deprivation of liberty for a term up to 1 year.

Note 1. Non-payment by a parent, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds for the maintenance of underage children and likewise of handicapped children over the age of eighteen, if this act was perpetrated repeatedly, is understood as non-payment by a parent, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds in the amount stipulated in accordance with the court decision or

agreement certified by a notary, for the maintenance of underage children and likewise of handicapped children over the age of eighteen, where such a parent has been subjected to an administrative punishment for a similar act during the time when a person is regarded as subjected to an administrative punishment.

2. Non-payment by adult non-handicapped children, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds for the maintenance of handicapped parents, if this act was perpetrated repeatedly, is understood as non-payment by adult non-handicapped children, without a good reason, in violation of a court decision or an agreement certified by a notary, of funds in the amount stipulated in accordance with the court decision or agreement certified by a notary, for the maintenance of handicapped parents, where such children have been subjected to an administrative punishment for a similar act during the time when a person is regarded as subjected to an administrative punishment.

3. The person that committed the crime stipulated in this Article is exempted from criminal liability, if he/she has fully paid, in the amount stipulated in the legislation of the Russian Federation, the maintenance in arrears for the underage children and likewise of handicapped children over the age of eighteen, or of handicapped parents.

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