

III. CIVIL AND FAMILY LAW

Information for citation:

Levushkin A. N., Kosenko E. V. Teoriya pravovoy formy v semeynom prave [Theory of the Legal Form in Family Law]. *Vestnik Permskogo Universiteta. Juridicheskie Nauki* – Perm University Herald. Juridical Sciences. 2017. Issue 35. Pp. 73–83. (In Russ.). DOI: 10.17072/1995-4190-2017-35-73-83.

UDC 347.6

DOI: 10.17072/1995-4190-2017-35-73-83

THEORY OF THE LEGAL FORM IN FAMILY LAW

A. N. Levushkin

Ulyanovsk State University
40/9, Goncharova st., Ulyanovsk, 432970, Russia

ORCID: 0000-0002-5646-888X

ResearcherID: F-8088-2016

e-mail: lewuskin@mail.ru

E. V. Kosenko

Balakovo branch of the Saratov State Academy of Law
1, Volskaya st., Saratov, 410600, Russia

ORCID: 0000-0002-0569-3825

ResearcherID: H-2382-2016

Articles in DB “Scopus” / “Web of Science”:

DOI: 10.18384/2310-6794-2015-3-89-96

e-mail: E_Kosenko1978@mail.ru

Introduction: the article provides theoretical justification of the concept “legal form” in family law. It is noted that the legal form has already been defined by rule of law and the developed family relations in society, but so far the legal form as an element of scientific cognition of family law has not attracted attention of scientists. **Purpose:** to consider the legal form in family law applying scientific developments in civil law. To present the author’s definition of the legal form as a general concept and of the legal form of a subject’s activity as a special concept. **Methods:** some methods of formal logic – analysis and synthesis, induction and deduction, in their connection with extrapolation, argumentation, generalization, analogy have been used. **Results:** with the help of these methods, the legal form is defined and identified in family law. The authors have managed to unite the doctrines which are already available in civil law concerning the legal form and to make independent conclusions within the branch of family law. Thus, the authors focus, first of all, on types of the legal form, their features, and distinguish between the legal form in civil and family law. **Conclusions:** the data received as a result of the research can be taken as a basis for the theory of the legal form in family law.

Keywords: legal form; civil law; family law; legal subject; rule of law; legal state; activity of the subject

Information in Russian

ТЕОРИЯ ПРАВОВОЙ ФОРМЫ В СЕМЕЙНОМ ПРАВЕ

А. Н. Левушкин

Доктор юридических наук, профессор, профессор кафедры гражданского права и процесса
Ульяновский государственный университет
432970, Россия, г. Ульяновск, ул. Гончарова, 40/9
ORCID: 0000-0002-5646-888X
ResearcherID: F-8088-2016
e-mail: lewuskin@mail.ru

Е. В. Косенко

Кандидат юридических наук, доцент, зав. кафедрой гражданско-правовых дисциплин
Балаковский филиал Саратовской государственной юридической академии
410600, Россия, г. Саратов, ул. Вольская, 1
ORCID: 0000-0002-0569-3825
ResearcherID: H-2382-2016
Статьи авторов в БД «Scopus» / «Web of Science»:
DOI: 10.18384/2310-6794-2015-3-89-96
e-mail: E_Kosenko1978@mail.ru

Введение: статья представляет собой теоретическое обоснование понятия «правовая форма» в семейном праве. Отмечено, что сама правовая форма уже определена нормой права и сложившимися семейными отношениями в обществе, но до настоящего времени правовая форма как элемент научного познания семейного права не привлекала внимание ученых. **Цель:** рассмотреть правовую форму в семейном праве применив научные разработки в гражданском праве. Предложить авторское определение правовой формы как общего понятия и правовой формы деятельности субъекта как частного. **Методы:** отдельные методы формальной логики – анализ и синтез, индукция и дедукция в связи их с экстраполяции, аргументация, обобщение, аналогия. **Результаты:** определена и выявлена правовая форма в семейном праве. Исходя из положений, существующих в цивилистике учений о правовой форме, авторами сделаны самостоятельные выводы в рамках отрасли семейного права. Так, внимание концентрируется, прежде всего, на видах правовой формы, особенностях каждой из них, проводится градация между правовой формой в гражданском и семейном праве. **Выводы:** данные, полученные в результате исследования, могут быть положены в основу теории правовой формы в семейном праве.

Ключевые слова: правовая форма; гражданское право; семейное право; субъект права; норма права; правовое состояние; деятельность субъекта

Introduction

Legal forms of family law subjects' activity are studied little by scientists specializing in family law, and for today, it is an insufficiently developed area of expertise. At the same time, it is the legal form of subjects' activity that determines the direction of their will, behavior, and, ultimately, the legal result. In practice, thousands of legal actions, clothed in an appropriate legal form, are daily committed by subjects of law. However, this subject matter has not been given enough attention in legal studies so far. There are no relevant research studies in this field. Thus, there is no definition of the legal form and legal form of activity of the family law subject, no list and classification of these forms, and most importantly, no principles of their realization (implementation) in practice. It is a situation in which there is a phenomenon, it is legal,

legally significant by nature, but its scientific basis has not been developed.

On the Legal Form in Family Law

Both theory of law and that of civil law contain the concept of “legal form” based on philosophical concepts of “form” in general. “Form” in philosophy is related to such concepts as content and substance. With regard to content, “form” is the order, its internal order, as for the substance – “form” is its essence. Marxist-Leninist philosophy defines the concept of “form” as a means of outward expression, a way of being, a relatively stable certainty of relationship of content elements and their interactions [20, p. 149]. V. V. Vetyutnev writes correctly, regarding the integrating interaction between “form” and “law”, that the legal phenomena, in principle, are not to be separated from

the external way of their materialization, that is from the form [8, pp. 5–13]. It should be noted that the term “form” is very widely used in jurisprudence, probably due to the universality of its meaning for different legal categories of science.

Thus, taking the philosophical concepts as a basis, law theory has developed its concept of “form”. For example, the theory of state and law distinguishes between legal and organizational forms of the state functions realization. I. S. Samoschenko has significantly contributed to the development of this issue. He defined the legal forms of the state functions realization as homogeneous in its external characteristics (nature and legal consequences) activity of the state bodies on the management of society through the publication of legal acts in contrast to the organizational forms, not entailing consequences [23, pp. 151–156]. M. M. Baytin wrote: “Under the legal forms of the state functions there are understood homogeneous in their external characteristics (nature and legal consequences) activities of public authorities related to the publication of legal acts” [4, pp. 264–265]. Under the legal forms of the state functions, S. A. Golunsky and M. S. Strogovich understood the activity of the basic units of the state mechanism and specific types of state activity as opposed to the activities of non-governmental organizations [9, p. 54].

In addition to the “legal forms of state functions implementation”, in the theory of state and law there are also distinguished “legal forms of the state activity” – organizational and managerial form of activity of authorized entities which is always connected with the performance of legal acts (consideration of legal affairs) in the manner specified by the law [24].

In general, jurisprudence is replete with the use of the word “form” in very different contexts. Thus, there are such uses as legal forms of state provision of national security [26, pp. 165–168], the public contract as a legal form of relations pertaining to the satisfaction of public needs [7, pp. 12–15], a legal person as a personative legal form [25, pp. 175–182], a bank guarantee as a legal form of a liability risk-sharing [21, pp. 144–147], etc.

In the apt words of O. A. Krasavchikov: “...in jurisprudence we have no concepts used more of-

ten than, and not disclosed (being at the level of intuitive, “magical” formula) to the same extent as the category of legal form” [13, pp. 15–16]. He points out that the first attempt to reveal the essence of civil forms in the field of civil law was the study of R. O. Khalfina, who suggested understanding the term of legal form of economic relations as a set of rules or legal institutions that mediate a certain kind of economic relations. Considering that the concept of “legal form” is broader than the concept of “legal institution”, R. O. Khalfina writes that the legal form may include legal norms and institutions, not only of civil but also of other branches of law, from which we conclude that the regulation of the economic relationship is of a complex, interdisciplinary nature [11, pp. 48–49]. O. A. Krasavchikov, looking at the question of the legal form in its wide format – with reference to the branch of civil law in general, partly criticized the position of R. O. Khalfina; however, we will not delve into the economic legal relationship, which has become a subject of scientific debate, and will turn to the findings of O. A. Krasavchikov which have become fundamental for the legal form theory in civil law.

In particular, the scientist suggested understanding the category of “civil-legal form” as the system of statutory measures that define the boundaries of legally possible and legally required behavior of the subjects, their legal status or, in relation to the social formations, “organization” and core activities [13, p. 25]. The essence of the “civil and legal form” concept is as follows. Objective law serves as an indispensable basis for the emergence of the legal form, that is outside the law a phenomenon of social reality cannot independently acquire a legal form and, as the legal form is also a measure of individual behavior, measure possible or proper, in its general form the legal form represents legal personality and the legal relationship into which this person enters, the sanctions and responsibility, and itself this legal relationship is a legal form. O. A. Krasavchikov calls contract an independent legal form.

Legal forms are differentiated by scientists into two main categories and three types. The first category forms the relationship between the individual or the social formation and the state

(citizenship, legal personality, special personality, etc.), and the second – the relations between individuals, between them and social formations, and among the latter (legal relationship, subjective rights and duties, etc.).

The types of legal form are respectively:

Firstly, normative legal forms which are a set of regulations that establish legal standards (actually, the forms of law);

Secondly, the personable legal forms that cover the entire set of legal forms legally expressing and defining the boundaries of the legal status of individuals or legal “organization” of social formations. We are talking about the legal capacity and capability, and in relation to the social formation – a system of legal measures that determine the possible and necessary boundaries of the organization (structure), legal personality (competencies) and major activities of this social formation;

Thirdly, the individual legal forms, which are in turn divided into: the legal forms of individual acts of the subjects of law (treaties, acts of planning, etc.) and a variety of legal forms of social relations of the subjects of law (all kinds of civil relations).

O. A. Krasavchikov, noting the diversity of legal forms, indicates that they are at the same time significantly different from each other in structure, legal nature, level and characteristics of operation. For example, he wrote, a simple civil matter is made up of a subjective right and a corresponding subjective duty. “Most of the civil legal relationships do not have such an elementary structure, and each of the participants in the relevant civil law connection is equally a holder of subjective rights and a bearer of subjective duties. A typical example of such legal forms can be the legal relations arising from the contract for capital construction, delivery, lease, cargo transportation, etc.” [13, p. 24].

Civil law forms were subjected to deep scientific analysis in the works of V. A. Belov.

V. A. Belov calls a civil legal form the result of scientific analysis of cases of evaluation of public relations and their elements with the norms of civil law. The result may be expressed in the approval or

denial of possibility and (or) the need for a certain behavior of the participants of these relations [5, p. 397].

The scientist includes into the types of civil forms: civil legal relationship, civil capacity, secondary rights, public restrictions and private encumbrances, creditor responsibilities, civil regime, civil legal significance, interests protected by law, interconnections of legal phenomena, adverse legal forms (state of absence), collective legal forms, and civil legal relations with the third party participation [5, pp. 398–399].

We believe the legal form cannot be the result of scientific analysis as scientific analysis is a logical reasoning process of a particular scientist, i. e. subjective analysis characterizing the scientific vision of the individual. If scientific analysis is not carried out, the legal form will still continue to exist, because it depends not on scientific analysis but on the assessment of the emerged relationship by legal norms, as V. A. Belov correctly points further. That is why Krasavchikov’s classification selected (and put first in relation to other forms) the normative legal form, since the absence of a proper regulatory assessment “of behavior of these relations participants” indicates that the legal form of such behavior has not been created.

As for the types of civil-legal form selected by V. A. Belov, we believe that they can be organized in the framework of the classification put forward by O. A. Krasavchikov. It should be noted that the latter can be simplified as a triad: the law – possibility – action, where the law is, respectively, the legal normative form, possibility is the legal personality form (which characterizes the legal status), and action is the individual legal form, where the possibility is transformed into reality.

Thus, the legal normative form may include public restrictions, interests protected by law, civil law regime, the relationship of legal phenomena, and civil relations with participation of the third parties. All of these forms are of a regulatory nature, i. e. are directly rules of law. Another form – legal personality – should include: civil capacity,

secondary rights, civil-legal value, negative legal forms (the state of absence) and collective legal forms. Finally, the individual legal form includes: civil matter, private encumbrance and creditor obligations.

It should also be noted that in the second form – legal personality, we noted a number of legal forms related not to the subject and its state, but to the object, but they describe exactly the state, and not the action. Therefore, O. A. Krasavchikov's classification of legal forms can be refined, and as the second form, there should be regarded not the legal personality as it is, but the state in the law of the subject or the object in general.

In family law, legal forms have not been studied so far. Supporting in general the scientific conclusions of O. A. Krasavchikov and V. A. Belov, we shall define the family legal forms and elucidate the distinction between “family-legal form” and “legal form of activity”, which will be discussed in this paper.

Thus, it should be assumed that the family legal form as a category of law in family law is a whole wide range of phenomena of reality regulated by norms of family law. However, these norms themselves are nothing more than a family-legal form.

According to the gradation proposed by O. A. Krasavchikov, in family law there should be distinguished:

1) **normative legal forms** – that is the norms of family law per se;

2) **legal personality legal forms** – which are the legal status of legal entity, its legal state. In family law, every person is endowed with family legal personality which consists of a family legal capacity and family legal ability. The object of regulation in family law is always closely linked with the legal person having the object of law. In this regard, there is no need to determine the status of the object. Therefore, in contrast to civil law, the family law form, the content of which will be exclusively the legal personality, has the right to keep the appropriate name – the legal personality legal form.

3) **individual legal forms** – that is the subject's activity within the field of family law. It is not only family relations, where the activity will be

manifested most clearly, but also the behavior of the person outside the relationship where family law as a regulator of reality obliges everyone to adhere to certain rules. It concerns respect for the law, in which legal behavior is obligatory for everybody.

The family legal form therefore is not only an outward manifestation of the law expressed in its normative form, but it is also the internal structure of the law – the subject and its activity, the legal relationships in which the subject enters for its implementation. Undoubtedly, to know the scientific component of the family-legal form it is necessary to study its constituent elements: legal capacity and capability (in order to determine the subject of law and legal relationship), the relationship itself as a universal way to implement the individual legal forms, and, finally, to identify and classify individual legal forms.

We believe that individual legal forms are nothing more than a legal form of activity of the subject of law as they manifest themselves as an activity in the form of various constructive actions, entering into family law agreements, adoption of administrative acts and others. Each of them is provided for and regulated by the normative legal form of family law.

Depending on the spheres of the life of society for which the enactment is developed and on the objectives pursued by society and the state, various methods of social and legal impact and various legal means are used. However, both methods and tools are imbued with a unified content, they are interconsistent as they are to provide a stable, constant activity of the subjects of law in repeated legal relations. Juridical norms are designed for that, they affect the subject of law, obliging it to implement the rule of law – that is, to carry out activities that represent a controlled and organized process. The rule of law must be universal, applicable to the subject as an abstract unit in the process of society management, irrespective of its individual characteristics. If the purpose of the legal standards is fulfilled, there is a predictable legal result – the achievement of the rule of law and its social functions. M. I. Baitin pointed out in relation to the socialist society, which does not detract from the value of the conclusion, that the rule of law is the order in the settled by law social relations (legal relations),

which strictly guarantees the use of subjective rights as well as performance of legal obligations [3, pp. 47–50].

Branches of law focus on it regardless of the scope of legal regulation of each. Family law as an independent branch of law is also intended to fulfill social functions that can be represented as the rule of law in the legal relations arising from matrimonial, parental, or alimony relations between subjects and relations concerning placing a child left without parental care. Being a means of legal influence on the behavior of a subject of law, the legal norm forms a model of desirable and undesirable behavior for the subject, the model of his/her activity in the legal relationship. In other words, to achieve a legal result, that is, the rule of law, an action of a subject of law is necessary. Therefore, we believe the following statement is fair: “Besides my actions I do not exist outside the law at all, I am not its object at all. My actions are the only area where I encounter the law, because the action is the only thing for which I demand the right of existence, right of reality, and whereby I therefore fall under the authority of existing law” [16, pp. 14–15].

The statutory model of the subject’s action suggests the legal freedom of the subject of law, which should be considered in the sphere of family law as involving rights of the subject and being a constituent unit of the legal status of such person. That is the legal freedom of the subjects of law implies establishing the type and measure of possible behavior of the subject, whereas the subject itself chooses a type of behavior, exercising its rights in a specific legal relationship established by law. N. I. Matuzov determined legal freedom as an integral component of the legal status of the subject [18, p. 262]. But is it possible to characterize legal freedom in family law by the proposed by V. M. Gorshenev opportunity to determine only one’s own behavior, without any claims, and by the principle: on one’s own dependence and at one’s own risk? [10, pp. 51–58].

We believe that in family law a number of persons specified in the family legislation determine not their own behavior, but the behavior of another person, laying on him/her the obligation to act in a certain way. For example, this is the purpose and role of the court in family law. Thus, the Family Code, Article 148.1 establishes that if the trustee is

contumacious to the decision of the body of guardianship, the interested parties can go to court with the claim for protection of the rights and legitimate interests of the child and/or their rights and legitimate interests. The tribunal shall resolve the dispute based on the child’s interests and taking into account his/her opinion. In this case, the failure to fulfil the judgment is a ground for removal of the guardian or trustee from execution of their duties. Another example is par. 1, cl. 2, Art. 22: in the proceedings for dissolution of marriage in the absence of consent of one of the spouses to divorce, the court is entitled to take measures to reconciliation of the spouses and has the right to postpone the trial, having appointed the term for spouses’ reconciliation within three months. We are witnessing a situation where the subject of law is proposed to act in a certain way.

Therefore, the legal freedom of action of the subject of family law can be defined as the establishment by law, or other legal entity under the law, the types and measure of possible behavior of the subject, whereas the subject chooses one of the options for action, implementing their rights in a specific legal relationship in the manner established by law.

The rule of law in family relations, given the fact that the main and chief subjects of such legal relations are individuals, is unthinkable without the proper attitude of the individual to family law. “For an individual to begin actions, all motivational forces causing these actions must inevitably pass through his/her head, should turn into the impulse of the will” [17, p. 310]. In the daily life, a person is faced with legal prescriptions every day, some he takes and internally supports, others – perceives as necessity, and still others – considers unnecessary and even harmful for his life. This assessment reflects the selective attitude to the external influence of the law, and the factor itself – the personal attitude of the physical person as the subject of family law to the legal norm – is of great importance for the implementation of legal regulations, and, thus, maintenance of law and order. Therefore, the subject’s actions in the law indirectly express his attitude to legal regulation of his life. The higher is the consciousness of the subject, the more significant is for him the respect to the legal act and the higher is his assessment of the effectiveness of specific regulation, the more

correctly the subject acts in the legal relationship, remaining within the prescribed kinds and measures of possible behavior. M. T. Baimahanov correctly points out that before the legal requirement materializes in specific acts of human behavior, it necessarily passes through the prism of consciousness of an individual, comprehended one way or another, is subjected to appropriate evaluation, compared to the interests and needs of the person and serves as one of the initial factors for making his decisions on the choice of one or another variant of behavior [2, pp. 37–47].

Therefore, the transparency of legal norms, their correct interpretation and knowledge by the subject of law, are the key to the success of domestic policy of the state not only in the field of family relationships, but also in other areas.

Thus, it can be noted that the law affects the behavior of subjects, shapes their idea of proper legal behavior, fosters respect for the law in general and the activities of each entity in particular, but also the behavior of an entity, expressed in a particular activity, affects the further improvement of the law, and the elaboration of the most succinct and clear legal regulations.

Therefore, the behavior of an entity, its activities in a specific relationship must be regulated and considered in terms of the state policy. V. N. Kudryavtsev considers that the subject's behavior is characterized by his direction (motive, purpose and plan of action), as well as normativity, that is, attitude to different social and technical standards [14, p. 7]. From the psychological perspective, the subject is led by the "set", which is not only a certain predisposition of the body to certain activities, but it is the capability of an organism for the current regulation of the dynamics of action and reflection [6, p. 6, 10]. Thus, the "set" is a kind of "engine" for behavioral acts of the body. In turn, the "behavior" is proposed to be understood as the transformation of the inner state of a person into acts in relation to the socially significant objects [28, p. 15].

Speaking about the importance of the subject activities in family law and legal relationship, we inevitably use such terms as "activities", "behavior", and "act". It is necessary to differentiate between these concepts in order to identify their characteristic family-legal features.

In terms of jurisprudence, these concepts got their explanation and wording in a study conducted by V. L. Kulapov and A. D. Prusakov. Thus, correlating these concepts, the authors deduced three approaches to defining them [15, pp. 4–15]. The first approach is based on the position of B. G. Ananiev and V. N. Kudryavtsev, who believe that the concept of "activity" can encompass the whole spectrum of human behavior, including not only willful, but also the unconscious, affective, and impulsive [1, p. 315].

The second approach, which is presented in the works of V. A. Rybakov, T. V. Tolkachev and A. G. Khabibulin, suggests that "behavior" and "activities" are identical in content [22, p. 30].

The third approach is based on the belief that behavior is part of human activities and it should be considered as the general and the particular. Thus, activity is a general category including also behavior, and the latter refers to the sphere of human life, which finds its expression in directly observed and recorded social and communicative actions [19, p. 69]. This approach is reflected in the work of N. I. Uzdemayeva, who writes: "behavior is an act of human activity, which is expressed in the action, or inaction of the individual (the act) and characterizes the attitude of the individual to the surrounding society" [27, p. 15]. This theoretical position is supported by V. L. Kulapov and A. D. Prusakov. We also follow this approach.

In family relationships, conduct of the person explicitly reflects his/her attitude to the current legal relations established within such a relationship. For example, a person who is a parent of a child regularly pays alimony payments. This action is lawful, meets the requirements of the law and actual relations; besides, it will be systematic, and the act will be repeated after a certain time interval, representing the behavior of the person. Inside the family legal relationship, the person's behavior presented in the example, as a whole, should be seen as an activity of the subject.

However, at the same time, we have to differentiate the concept of "act" from that of "legal act". In the first case, the person can realize or not realize the legal significance of what he/she is doing, in the second – the person has the intent to achieve a legal result. In the example, we see

certain recurring legal acts which shall be regarded as legally significant behavior, and a set of legal acts of the subject is his activity.

But is the activity of the subject always a set of actions or legal acts? Can we consider one act as the activity of the subject? We believe that yes. For example, Article 122 of the Family Code provides for the obligation for officials and citizens to inform the competent authorities of evidence of acts or negligence that pose a threat to the life or health of children or interfere with their normal education and development. Thus, Article 122 encourages the person to commit the act, and one does not act in this direction further and does not commit acts. What do we observe? A legally important act has been performed and it has a direct impact on other subjects of family law, but it is one link and not a chain of uniform links. Therefore, we can conclude that one act also constitutes an activity of the subject of family law. Thus, the behavior of an entity can be expressed as one or more actions. Why do we call this duty of officials and citizens an act in this case? Because these actors (especially citizens) can also realize the importance of their acts and not seek a legal result at all.

An act and a legal act of the subject can represent both action and inaction. In family law, there are plenty of examples where inactivity of the subject is seen as an act and a legal act, and it is assumed as such. This is most clearly seen in par. 2 cl. 1 of Article 66, which requires the parent with whom the child lives not to prevent contact between the child and the other parent, unless such communication cause harm to the physical or mental health of the child and his/her moral development. In this example, the inaction as a form of proper, lawful behavior of the person is established by the law directly. In another example, the inactivity is assumed. We are talking about Chapter 13 of Section V of the RF Family Code, which established rules for the payment of alimony between parents and children. The obligation of the parent to pay alimony is unconditional. In practice, there are situations in which the second parent, with whom the child lives, prevents the performance of this duty for some personal reasons. That is, the parent

wants to fulfill the duty, and the other one prevents it, for example, refuses to take the money, things, etc., We believe that Chapter 13 suggests inaction as a necessary and legitimate form of behavior of the other parent; preventing, on the contrary, is an action, and an illegal one.

Also, the inaction of a spouse is assumed to be an appropriate legal act in the implementation by the second spouse of the rights granted in Article 32. Thus, when choosing the surname by one of the spouses or changing it after the marriage, the other spouse shall be inactive, i. e. not interfere in the exercise of this right by the first.

In the case when omission of the subject is prescribed by law as the norm of behavior, it cannot lead to any negative consequences. On the contrary, the omission of the subject is desirable in this relationship and the result is lawful. Another example is a marital relationship in exercising of a spouse's right to choice of occupation, profession, and place of residence. Clause 1, Article 31 of the Family Code, providing the opportunity of appropriate choice for each of the spouses, presupposes the inaction of one of them while the other is implementing the right. The article wording does not state it directly, but omission as a legitimate form of behavior is seen clearly, otherwise, how would a spouse exercise his/her right if the other creates obstacles? And at the same time, clause 1, Article 31 of the Family Code does not imply "action" of the other spouse – does not require the authorization, consent, explicit expression of the attitude to the realization of the right by the other spouse. Therefore, "inaction" in the example means refraining from action, which is, undoubtedly, required by law.

We agree with the point of view expressed by I. A. Yesipova: "the psychophysical nature of inaction is that it represents the state of the subject, due, primarily, to external factors constraining the activity of the person. Passive behavioral act is characterized by a deliberate and volitional delay of movement, which indicates one's mental activity. But important is the fact that the activity of the mind and will of the person does not lead to action, to external activity..." [12, p. 109]. In other words, inaction is a form of behavior in which there

is still the inner activity of the subject, his conscious behavior, which is externally manifested in the form of passive behavior [5, p. 112]. “Omission is a passive method of the law implementation. It is a variety of usage, execution, and compliance”.

Omission should be considered as the form of lawful and unlawful behavior of the subject of family law. The examples above are a lawful omission which is laid down in the legal norm. Another thing is wrongful omission, that is, a situation in which the subject is supposed to act, but does not, contrary to the provisions of the law. Based on Art. 122, already considered by us, let us assume that the competent authority, which had become aware of the violation of the rights of minors, did not conduct examination of the child’s living conditions, or did it in an improper time, or the inspection was carried out carelessly. All of these actions of the competent authority should be regarded as wrongful inaction, and the latter two cases – as a wrongful act. Both lead to the improper result. In this regard, the wrongful inaction and unlawful action do not require a special graduation on the legal result.

Conclusions

The legitimacy of the subject’s behavior, the legitimacy of one’s activities is determined not only by the rule of law. Family law is characterized by the direct establishment of the prescribed action of the subject – the parent is required to support, nurture and protect the child, children are required to support aged parents, adopters are to treat the child the same as biological parents. However, variants of omission are not established definitely enough in the case where it is assumed to be the appropriate behavior.

References

1. Anan’ev B. G. *Chelovek kak predmet poznaniya* [Man as an Object of Cognition]. Leningrad, 1968. 315 p. (In Russ.).
2. Baymakhanov M. T. *Konstitutsiya SSSR kak faktor formirovaniya aktivnoy zhiznennoy pozitsii lichnosti* [The Constitution of the USSR as a Factor of Formation of a Person’s Active Life Position]. *Pravoporyadok i pravovoy status lichnosti v razvitom sotsialisticheskom obshchestve v svete Konstitutsii SSSR 1977 goda (Voprosy teorii gosudarstva i prava, gosudarstvennogo i administrativnogo prava)* [The Rule of Law and the Legal Status of a Person in a Developed Socialist Society in the Light of the 1977 Constitution of the USSR (Questions of the Theory of State and Law, Public and Administrative Law)]. Saratov, 1980. Pp. 37–47. (In Russ.).
3. Baytin M. I. *O sootnoshenii demokratii, zakonnosti i pravoporyadka v sotsialisticheskom obshchestve* [On the Relation between Democracy, Legality and Rule of Law in a Socialist Society]. *Pravoporyadok i pravovoy status lichnosti v razvitom sotsialisticheskom obshchestve v svete Konstitutsii SSSR 1977 goda (Voprosy teorii gosudarstva i prava, gosudarstvennogo i administrativnogo prava)* [The Rule of Law and the Legal Status of a Person in a Developed Socialist Society in the Light of the 1977 Constitution of the USSR (Questions of the Theory of State and Law, Public and Administrative Law)]. Saratov, 1980. Pp. 47–50. (In Russ.).
4. Baytin M. I. *O formakh osushchestvleniya funktsiy sotsialisticheskogo gosudarstva* [On the Forms of Implementation of the Socialist State Functions]. *Uchenye zapiski SJul – Bulletin of Saratov Law Institute*. 1969. Issue 18. Pp. 264–265. (In Russ.).
5. Belov V. A. *Grazhdanskoe pravo. T. 1. Obshchaya chast’. Vvedenie v grazhdanskoe pravo: uchebnyk dlya bakalavriata i magistratury* [Civil law. Vol. 1. General. Introduction to Civil Law: a Textbook for Bachelor and Master Students]. Moscow, 2015. 622 p. (In Russ.).
6. Bzhalava I. T. *Ustanovka i povedenie* [Attitude and Behavior]. Moscow, 1968. 48 p. (In Russ.).
7. Vanin V. V. *Gosudarstvennyy kontrakt kak pravovaya forma otnosheniy po udovletvoreniiyu publichnykh nuzhd* [The State Contract as the Legal Form of the Relations on Satisfaction of Public Needs]. *Biznes v zakone – Business in Law*. 2012. No. 6. Pp. 12–15. (In Russ.).
8. Vetyutnev Yu. Yu. *Pravovaya forma kak integriruyushchee nachalo* [Legal Form as an Integrative Factor]. *Vestnik VolGU. Seriya 5: Yurisprudentsiya – Science Journal of Volgograd State University. Jurisprudence*. 2010. No. 1. Pp. 5–13. (In Russ.).
9. Golunskiy S. A., Strogovich M. S. *Teoriya gosudarstva i prava* [Theory of State and Law]. Moscow, 1940. 304 p. (In Russ.).
10. Gorshenev V. M. *Struktura pravovogo statusa grazhdanina v svete Konstitutsii SSSR 1977 goda* [The Structure of the Legal Status of the Citizen in the Light of the 1977 Constitution of the USSR]. *Pravoporyadok i pravovoy status lichnosti v razvitom sotsialisticheskom obshchestve v*

- svete Konstitutsii SSSR 1977 goda (Voprosy teorii gosudarstva i prava, gosudarstvennogo i administrativnogo prava)* [The Rule of Law and the Legal Status of a Person in a Developed Socialist Society in the Light of the Constitution of the USSR of 1977 (Questions of the Theory of State and Law, Public and Administrative Law)]. Saratov, 1980. Pp. 51–58. (In Russ.).
11. *Gosudarstvo. Pravo. Ekonomika* [State. Law. Economy]. Moscow, 1970. 488 p. (In Russ.).
 12. *Esipova I. A. Pravovoe bezdeystvie: diss. ... kand. jurid. nauk* [Legal inaction. Cand. jurid. sci. diss.]. Volgograd, 1998. 402 p. (In Russ.).
 13. *Krasavchikov O. A. Kategorii nauki grazhdanskogo prava. Izbrannye trudy. V 2 t.* [Categories of the Civil Law Science. Selected Works: in 2 vols.]. Moscow, 2005. Vol. 2. 494 p. (In Russ.).
 14. *Kudryavtsev V. N. Pravovoe povedenie: norma i patologiya* [Legal Behavior: Norm and Pathology]. Moscow, 1982. 287 p. (In Russ.).
 15. *Kulapov V. L., Prusakov A. D. Deystvie i bezdeystvie kak formy yuridicheski znachimogo povedeniya: monografiya* [Action and Inaction as a Form of Legally Significant Behavior: Monography]. Moscow, 2015. 168 p. (In Russ.).
 16. *Marx K., Engels F. Polnoe sobranie sochineniy* [Collected Works]. Moscow, 1955. Vol. 1. 723 p. (In Russ.).
 17. *Marx K., Engels F. Polnoe sobranie sochineniy* [Collected Works]. Moscow, 1961. Vol. 21. 745 p. (In Russ.).
 18. *Matuzov N. I. Lichnost'. Prava. Demokratiya. Teoreticheskie problemy sub"ektivnogo prava* [Personality. Rights. Democracy. Theoretical Problems of Subjective Right]. Saratov, 1972. 290 p. (In Russ.).
 19. *Metodologicheskie i teoreticheskie problemy psikhologii* [Methodological and Theoretical Problems of Psychology]. Moscow, 1969. 376 p. (In Russ.).
 20. *Osnovy marksistko-leninskoy filosofii: uchebnik* [Fundamentals of Marxist-Leninist Philosophy: Textbook]. Moscow, 1974. 544 p. (In Russ.).
 21. *Pometikhina S. I. Bankovskaya garantiya kak pravovaya forma raspredeleniya obyazatel'stvennogo riska* [Bank Guarantee as the Legal Form of Distribution of Obligations Risk]. *Biznes v zakone – Business in Law*. 2009. No. 4. Pp. 144–147. (In Russ.).
 22. *Rybakov V. A., Tolkachev K. V., Khabibulin K. V. Formirovanie pravomernogo povedeniya lits, osuzhdennykh k lisheniyu svobody (voprosy teorii i praktiki)* [Forming the Good Behavior of Persons Condemned to the Imprisonment (Questions of the Theory and Practice)]. Ufa, 1992. 102 p. (In Russ.).
 23. *Samoshchenko I. S. O pravovykh formakh osushchestvleniya funktsiy Sovetskogo gosudarstva* [On the Legal Forms of Implementation of the Soviet State Functions]. *Sovetskoe gosudarstvo i pravo – Soviet State and Law*. 1956. No. 3. Pp. 85–87.
 24. *Skakun O. F. Teoriya gosudarstva i prava: uchebnik* [Theory of State and Law: Textbook]. Kharkov, 2001. 656 p. (In Russ.).
 25. *Tarasov O. V. Pravovoe litso kak personativnaya pravovaya forma: teoretiko-metodologicheskii i mezhdunarodno-pravovoy aspekt* [The Legal Person as a Personative Legal Form: Theoretical and Methodological and International Law Aspects]. *Problemy zakonnosti – Problems of Legality*. 2011. No. 113. Pp. 175–182. (In Russ.).
 26. *Udychak F. N. Pravovye formy gosudarstvennogo obespecheniya natsional'noy bezopasnosti* [Legal Forms of the State National Security]. *Vestnik Adygeyskogo gosudarstvennogo universiteta. Seriya 1: Regionovedenie: filosofiya, istoriya, sotsiologiya, yurisprudentsiya, politologiya, kul'turologiya – The Bulletin of the Adyge State University. Series “Region Studies: Philosophy, History, Sociology, Jurisprudence, Political Sciences and Culturology”*. 2014. No. 1(135). Pp. 188–192. (In Russ.).
 27. *Uzdimaeva N. I. Pravomernoe povedenie: ponyatie, klassifikatsiya, motivy* [Good Behavior: the Concept, Classification, Motives]. Ed. by N. I. Matuzov. Saratov, 2006. 200 p. (In Russ.).
 28. *Shibutani T. Sotsial'naya psikhologiya* [Social Psychology]. Moscow, 1969. 447 p. (In Russ.).

References in Russian

1. *Ананьев Б. Г. Человек как предмет познания*. Л.: Изд-во Ленингр. ун-та, 1968. 315 с.
2. *Баймаханов М. Т. Конституция СССР как фактор формирования активной жизненной позиции личности // Правопорядок и правовой статус личности в развитом социалистическом обществе в свете Конституции СССР 1977 года. (Вопросы теории государства и права, государственного и административного права)*. Саратов: Изд-во Саратов-та, 1980. С. 37–47.
3. *Байтин М. И. О соотношении демократии, законности и правопорядка в социалистиче-*

- ском обществе // Правопорядок и правовой статус личности в развитом социалистическом обществе в свете Конституции СССР 1977 года. (Вопросы теории государства и права, государственного и административного права). Саратов: Изд-во Сарат. Университета, 1980. С. 47–50.
4. *Байтин М. И.* О формах осуществления функций социалистического государства // Ученые записки СЮИ. 1969. Вып. 18. С. 264–265.
 5. *Белов В. А.* Гражданское право. Т. 1: Общая часть. Введение в гражданское право: учебник для бакалавриата и магистратуры. М.: Изд-во «Юрайт», 2015. 622 с.
 6. *Бжсалава И. Т.* Установка и поведение. М.: Знание, 1968. 48 с.
 7. *Ванин В. В.* Государственный контракт как правовая форма отношений по удовлетворению публичных нужд // Бизнес в законе. 2012. № 6. С. 12–15.
 8. *Ветютнев Ю. Ю.* Правовая форма как интегрирующее начало // Вестник ВолГУ. Сер. 5: Юриспруденция. 2010. № 1. С. 5–13.
 9. *Голунский С. А., Строгович М. С.* Теория государства и права. М.: Юрид. изд-во НКЮ СССР, 1940. 304 с.
 10. *Горшенев В. М.* Структура правового статуса гражданина в свете Конституции СССР 1977 года // Правопорядок и правовой статус личности в развитом социалистическом обществе в свете Конституции СССР 1977 года (Вопросы теории государства и права, государственного и административного права). Саратов.: Изд-во Сарат. ун-та, 1980. С. 51–58.
 11. *Государство.* Право. Экономика. М.: Юрид. лит., 1970. 488 с.
 12. *Есипова И. А.* Правовое бездействие: дис. ... канд. юрид. наук. Волгоград, 1998. 402 с.
 13. *Красавчиков О. А.* Категории науки гражданского права // Избранные труды: в 2 т. М.: Статут, 2005. Т. 2. 494 с.
 14. *Кудрявцев В. Н.* Правовое поведение: норма и патология. М.: Наука, 1982. 287 с.
 15. *Кулапов В. Л., Прусаков А. Д.* Действие и бездействие как формы юридически значимого поведения: монография. М.: Изд-во «Русайнс», 2015. 168 с.
 16. *Маркс К., Энгельс Ф.* Полное собрание сочинений. М.: Гос. изд-во полит. лит., 1955. Т. 1. 723 с.
 17. *Маркс К., Энгельс Ф.* Полное собрание сочинений. М.: Гос. изд-во полит. литературы, 1961. Т. 21. 745 с.
 18. *Матузов Н. И.* Личность. Права. Демократия. Теоретические проблемы субъективного права. Саратов: Изд-во Сарат. ун-та, 1972. 290 с.
 19. *Методологические* и теоретические проблемы психологии. М.: Наука, 1969. 376 с.
 20. *Основы марксистско-ленинской философии:* учебник. М.: Политиздат, 1974. 544 с.
 21. *Пометихина С. И.* Банковская гарантия как правовая форма распределения обязательственного риска // Бизнес в законе. 2009. № 4. С. 144–147.
 22. *Рыбаков В. А., Толкачев К. В., Хабибуллин К. В.* Формирование правомерного поведения лиц, осужденных к лишению свободы (вопросы теории и практики). Уфа: Изд-во Уфимской ВШ МВД СССР, 1992. 102 с.
 23. *Самощенко И. С.* О правовых формах осуществления функций Советского государства // Советское государство и право. 1956. № 3. С. 85–87.
 24. *Скакун О. Ф.* Теория государства и права: учебник. Харьков: Консум, 2001. 656 с.
 25. *Тарасов О. В.* Правовое лицо как персональная правовая форма: теоретико-методологический и международно-правовой аспекты // Проблеми законності. 2011. № 113. С. 175–182.
 26. *Удычак Ф. Н.* Правовые формы государственного обеспечения национальной безопасности // Вестник Адыгейского государственного университета. Сер. 1: Регионоведение: философия, история, социология, юриспруденция, политология, культурология. 2014. № 1(135). С. 188–192.
 27. *Уздимаева Н. И.* Правомерное поведение: понятие, классификация, мотивы / под ред. Н. И. Матузова. Саратов: Изд-во Сарат. гос. акад. права, 2006. 200 с.
 28. *Шибутани Т.* Социальная психология. М.: Прогресс, 1969. 447 с.