



# **PROPUESTAS PARA REFORMAR EL PROCESO DE ALIMENTOS Y SU INCIDENCIA EN EL DERECHO CONSTITUCIONAL**

**CENTRO DE ESTUDIOS DE REFORMA DEL  
CODIGO PROCESAL CIVIL**

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**PROPOSALS TO REFORM THE FOOD PROCESS AND ITS IMPACT ON  
CONSTITUTIONAL LAW**

Index of contents

I.Summary.

II.INTRODUCTION

III.No justification or constitutional to simplify the process of feed

3.1 Constitutional law, a fundamental right and a human right

3.2 Constitutional supremacy

3.3 The dimensions of due process.

3.4 Jurisdiction, right to effective judicial protection, jurisdiction.

3.5 The process

3.5.1 The Process as a set of acts

3.5.2 The Process as a set of rules

3.5.3 The Process as a set of actions before courts

3.5.4 Purpose of the process

3.6 The constitutional concept of family

3.6.1 The constitutional model of family.

3.6.2 Marriage and family in the 1993 Constitution.

3.6.3 Best interest of the child.

3.7 General aspects of food

3.7.1 Nature has the right to feed

3.7.2 Nature has the right to feed

3.7.2.1 Food.

3.7.3 Nature has the right to feed

3.7.3.1 Alimony

3.7.4 What conditions must be met for payment of maintenance

3.7.5 Which special principle is the one that should govern at  
the time of fixing the alimony

3.7.6 Legal ways to fix the amount of alimony.

3.7.7 Extrajudicial settlement as a way of determining the  
amount of maintenance

3.7.8 It is necessary to go to a conciliation to seek a solution  
before filing a claim for the alimony.

3.7.9 Court proceedings fixing the maintenance of the child  
for the first time

3.7.10 Competent Judge.

3.7.11 The interposed claim is admitted.

3.7.12 Points to be taken by the judge at the time of alimony

3.8 Proposals for change.

3.8.1 Proof of income against defending defendant in the food  
process

3.8.2 Form and manner of enforcing compliance with the  
maintenance obligation.

3.8.3 Speed in the food process

3.8.4 In which cases, the judge is obliged to issue judgment in  
the same act of the hearing

3.8.5 Ways to make food allowance

IV. References.

## **I. SUMMARY.**

In the case of food in favor of a child and teenager, states in Article 93 1, that while parents have both the duty to provide food for their children, this obligation, in case of absence or ignorance of the whereabouts of the parents , Could be assumed by older siblings, grandparents, collateral relatives up to the third degree or other responsible of the child and adolescent, in that sense the strictly stated articles indicate that the members of the family understood this as those people united by emerging legal links a intersex relationship, procreation and kinship according to the statement by Dr. Alex Placido 2 , - are to be owed each other, but in the Peruvian reality, food processing is not meeting Its aims that the rule has established since in practice we find many problems to be effective collection among these we have the bureaucracy, speed, form and way of enforcing compliance with food obligation, in that sense in the present work are some proposal of change in the food process with the sole aim of being fulfilled by what is established by the constitutional norm and supranational standards.

## **II. INTRODUCTION**

The family is the natural and fundamental element of society and must be protected by the State, which must ensure the improvement of its moral and material situation.

Everyone has the right to establish a family, which he shall exercise in accordance with the provisions of the corresponding domestic legislation.

The States Parties to this Protocol undertake to provide adequate protection to the family group, and in particular to:

Article 4 of the Constitution The community and the State especially protect the child, the adolescent, the mother and the elderly in a situation of abandonment. They also protect the family and promote marriage. They recognize the latter as natural and fundamental institutes of society. The form of marriage and the causes of separation and dissolution are regulated by law.

Article 5 The stable union of a man and a woman, free from marital impediment, forming a de facto home, gives rise to a community of property subject to the regime of the society of estates as soon as it is applicable.

Article 6: "National population policy aims to disseminate and promote responsible parenthood. It recognizes the right of families and individuals to decide. In this sense, the State ensures educational programs and adequate information and access to the media, which do not affect life or health.

It is the duty and right of parents to nurture, educate and provide security for their children. Children have a duty to respect and assist their parents.

All children have equal rights and duties. Any mention of the civil status of the parents and the nature of the filiation in the civil registries and in any other identity document is prohibited.

In that sense, there is a consensus in considering as food all that serves for the sustenance, room, dress and medical care of the human person, which is covered by an obligator predetermined by law according to their inbred relationship with the

needy, and according to their Economic possibilities. It is also defined as the benefit in money or in kind that a person, under certain circumstances, such as indigence or disability, can claim another to survive.

This institute is included in article 472 of our Civil Code and article 92 of the Code of Children and Adolescents.

In this paper, the importance of this figure will be highlighted for the case of children with growing needs to be satisfied, and what should be the position of the justice of the peace in the event of a lack of evidence that hinders their full conviction to issue a statement.

### **III. No justification or constitutional to simplify the process of food**

#### **3.1 Constitutional law, a fundamental right and a human right**

It should not be forgotten that a fundamental right is the combination of moral values and natural rights with a legal instrument that gives them the legal relevance they need for their effectiveness. In other words, according to the Constitution, we have fundamental rights in articles 1, 2 and 3. The first is based on human dignity, which is the essence of every fundamental right, the second describes a dome of rights that are recognized in Our state with the category of "fundamental" and the third refers to the "numerus apertus" which is an instrument in my opinion that allows the recognition of fundamental rights that are recognized over time and are not specifically in the Constitution. For it is remembered that it is a fundamental right as long as it is related to the dignity of man, to which must be added the legal basis that protects this last article. To which is given as an example the right to the truth.

#### **3.2 Constitutional supremacy**

The Constitution is formal because it is a law that, unlike others, bases and orders the validity of a whole legal system, establishing a difficult procedure for its reform, as well as the criteria for the creation of other norms. And in another sense it is material, since the Constitution concentrates the fundamental values and principles that govern a social political organization, which meet the vital needs of justice of its members. These values and principles give support and rationale for the constitutional system, they express not only the most entrenched social or transcendental yearnings for a particular political community, but also those that are universal and inherent to the person in March .

As a consequence of the pyramidal vision of the legal system of Kelsen, in which the Constitution is the source of the whole normative structure, the hierarchical vision of the Law appeared. That is, that any legal norm is immersed in a hierarchical relationship in which each rule keeps a priority order, both in ascending and descending order. Under this parameter, the Constitution leads the normative hierarchy of the legal system, following in order those legal norms that, according to the value that they have been granted, have a gradually lower rank.

The principle of Constitutional Supremacy is linked to the rule of law, which allows me to call the Social and Democratic State of Law for developing political societies, where the social question is a matter of inescapable and urgent resolution because it

compromises human rights. Constitutional Supremacy is valid only in a political regime whose Constitution enshrines the fundamental rights of the person, the legal instruments of its protection and defense, a system of constitutional control of laws, separation and autonomy of powers and mechanisms of citizen participation . Only under these conditions is it possible for the Constitution to take the cusp of the legal order, to review the character of the supreme law, the law of laws.

### **3.3 The dimensions of due process.**

The substantive dimension of due process has as one of its objectives the avoidance of arbitrary behavior on the part of those who are in power or authority. It becomes, therefore, "a standard or model or modulus of justice to determine, within the discretion left by the Constitution to the legislator and the law to the executive and judicial executive body, the axiologically valid of the acting of those organs.

The most common dimension of the right to due process is procedural law and in it we find the right to a judge predetermined by law - which implies the right of any person to go to a prior, competent and impartial authority to resolve their conflict Of interests or clarify a situation of uncertainty with legal relevance, within the greatest possible conditions of equality and justice for the parties involved, and framed within a reasonable time.

The mention of "due process" appears for the first time in the 1993 Constitution, but in an ambiguous and unsystematic location. Article 139 sets out what is erroneously called principles and rights of the judicial function, and within them, in its third paragraph, names corresponding to the "observance of due process and judicial protection in April .

In this sense, the jurisprudence of the Peruvian Constitutional Court, from the beginning of its institutional work, in keeping with the characteristics of expansiveness and progressiveness of fundamental rights in its international aspect, has always been concerned with gradually extending the scope of application of the two Dimensions of the right to due process. Thanks to the work of the body responsible for oversight of the Constitution, the mistaken idea that the right to due process was of a purely judicial nature has been banished in order to deploy it, as is the case, to any scenario where Authority is exercised without distinction or excuse of exclusion.



### **3.4 Jurisdiction, right to effective judicial protection, jurisdiction.**

It describes the jurisdiction from what the current constitution expresses and, of course, what the lower laws ratify. National jurisdictional studies, then, commonly suffer from chronic normative consequences. Taking as reference the definition of jurisdiction that we have assumed and whose elements have been described, let us comment on the treatment contained in the Constitution in force since December 31, 1993, since this explains, to a considerable extent, the concept of jurisdiction that is assumed in the country.

In principle, article 138 refers to the jurisdictional function, calling it power to administer justice. In this sense Felix-Zamudio, it seems to us that the concept of the administration of justice is not only anachronistic, but also perverts and conceals the true importance of the service of justice for a society.

In such a way that jurisdiction is a power, but also a duty. The latter is so because the State can not evade compliance. It suffices that a subject of rights so requests or demands, so that the State is obliged to grant him legal protection.

That is why it is said, it seems to us, with certainty, that the jurisdiction has as counterpart the right to judicial protection. It is considered that this is the one that has every subject of rights only for the fact that it is the title that requires the State to enforce its jurisdictional function.

On the other hand Fenech (1962) "Jurisdiction is a function of the State that has the purpose of acting on the concrete will of the law by replacing, by the activity of public bodies, the activity of individuals or other public bodies , Either by affirming the existence of the will of the law or by making it practically effective. It is often said that jurisdiction is the specific power that some state bodies have to resolve conflicts of interest that they propose to them. Although jurisdiction, as a faculty of administration Justice, it is incumbent on all magistrates, it is indispensable to regulate its exercise to distribute it, in each jurisdictional branch, jurisdiction is gender and competition is the species, since by this it is given to each judge the power to know a certain portion matters while the jurisdiction applies to all judges of the respective branch 5 "(p.50)

### 3.5 The process

PEYRANO 6 , defines the process as:

[...] The set of acts related to each other and of a technological nature, that allow to develop the jurisdictional activity: it is a set of acts, that is to say of voluntary human acts directed towards an end, that can be none other than the birth, development or Extinction of a procedural relationship. "It is therefore that human activity in which the Judge, together with the parties, intervenes, from birth to the end of the process.

As for the term judgment, it is used very often in procedural legislation, and this is due to the historical tradition, since in medieval law judgment was equivalent to sentence. Today, judgment and process allude to the same phenomenon, but while judgment refers to the action of judging, the process refers to the means employed for it.

Within the process there is a trial, that is to say, when the action of judging is developed by bodies vested with jurisdictional power.

There are also acts of voluntary jurisdiction (acts of conciliation, declaration of heirs ab intestato, etc.), which encompasses different procedures in which the court does not issue a ruling on the merits of a case or exercise jurisdictional power.

The process is the set of related legal and procedural acts developed in an organic and progressive manner by mandate of the law made by the parties involved in order to obtain a judicial decision against the conflicting interests raised before the corresponding judicial body, Which is responsible for compliance with its decision.

At the jurisprudential level, it has been established in this respect that: "The civil process has a concrete (or immediate) purpose that consists in resolving a conflict of interest or legal uncertainty, both with legal relevance, these two legal categories being phenomena of social reality And in turn material budgets of civil jurisdiction.

In this regard, PEYRANO maintains that:

[...] Legal uncertainty is understood as certain intersubjective legal rights or relationships that require judicial pronouncement as long as the certainty of its effects in the world of intersubjective relationship is questioned; this way, it can be noted that within the end of the process there is the possibility of exercising through a declaratory action is the factual claim that because of the procedural relationship on which the respective decision will be issued in July .

### **3.5.1 The Process as a set of acts**

The subjects perform acts regulated by the procedural law. These acts may be: legal (those performed by the parties) or jurisdictional (those performed by the organ or judge in fulfillment of their obligations and duties).

### **3.5.2 The Process as a set of rules:**

They determine rights and obligations of the procedural subjects and are established in their normative bodies.

### **3.5.3 The Process as a body of actions before courts**

It is the application of the legal norm to the concrete case. That is to say that the process is all those acts that are carried out before the jurisdictional organs, which is in line with the principle of jurisdictional function where only the jurisdictional organs will be able to exercise jurisdictional function and therefore the only ones authorized to apply law and to know the Judicial proceedings, except for the exceptions contemplated in the constitution with respect to jurisdictions recognized by the state.

### **3.5.4 Purpose of the process**

The purpose of the process is the realization of the law, which is not a private interest of the parties, but a public interest of the State. The importance of studying the procedural principles is that it constitutes the interpretation tool of the Code of Civil Procedure (hereinafter CPC). For the Peruvian case, the CPC aligns itself to a publicist conception of the process, which considers that the transcendent in it is the public function that the State fulfills through its judicial body.

The process, as well as the procedure, is governed, in general, by different principles. The principles of constitutional order are foreseen by article 139 of the Constitution. The procedural principles proper to the civil process are provided for in the Preliminary Title of the CPC.

The second paragraph of article III of the Preliminary Title of the CPC is the most important norm of the entire legislative body, having chosen to grant the judge the possibility of filling gaps or defects in the procedural rule, ie, gaps, on the basis of certain methodological resources and to an established order of these, consisting in initially resorting to the general principles of procedural law and then to doctrine and

jurisprudence, respectively. In strict terms, what the judge interprets is not the norm but procedural law.

Notes Professor Juan Monroy Gálvez:

[...] That it is indispensable for the judge to notice that the principles are guiding guidelines for his decision, insofar as he subjects them to the comparison with the needs and social interests at the time of their use.

As pre-issue issues, the difference between normative statement, rule and principles must be borne in mind. The normative statement is the expression in a well-configured language, apt to be interpreted in a normative sense. The normative statement defines the behavior and the consequence. The norm is the content of normative meaning that, according to some interpretation, can be gathered from a statement. The principles are interpretative rules, methodological orientation and teleological basis (fin). Principles have as their functions: to inspire the legislator, to integrate existing gaps, to interpret the norm

Chiovenda defines the purpose of the process as: The action of the concrete will of the law. Carnelutti, for his part notes that: The purpose of the process is the fair composition of the Litis.

Devis Echandia pronounces that the purpose of the process is:

[.] It is to guarantee the protection of the legal order and therefore the social harmony and peace, through the peaceful, impartial and just realization of the abstract objective right in the concrete cases, thanks to the exercise of the jurisdictional function of the State through Specialized public officials.

### **3.6 The constitutional concept of family**

No one escapes that the concept of family can be defined or approached from different points of view fruit of the diverse disciplines that are occupied and have occupied historically of its study. Thus, it is possible to provide one or more anthropological, biological, psychological, psychoanalytic and juridical meanings of the term family. In an anthropological sense, the family is conformed by all the people connected by marriage or filiation, so from a sociological perspective, the family is the set of related people who live under the same roof and who participate in common activities linked to daily breadwinners in August .

In other words, according to Wainerman and Geldstein, while in the first sense the notion of kinship is referred to, in effect the family, in the first sense, of persons related by kinship ties, forms part of and sometimes coincides totally with The domestic unit, but not all members of the unit are relatives, not all family members reside in the same household or household unit, although they may share maintenance tasks such as the care of the grandchildren, care the health of elderly parents ,. 9

For these authors a broad sense of family is defined, according to Malinowski, in reference to a specific social group that exists as such in the representation of its members and is organized to develop biological and social tasks ) reproduction through the formal principles of partnership, descent and consanguinity, on the one hand, and substantive practices of the sexual division of labor, the other 10 , traditionally in the field of the legal, family Broadly considered includes all persons between whom there is a legal relationship derived from kinship or marriage.

More specifically within the framework of the constitutional law referred to in this section, it is interesting to note that, at its origin, the ideology of human rights was totally alien to the rights of the family. Indeed, in the Declaration of the Rights of Man and Citizen product of the French Revolution there is no reference to concerns or problems of a family order, the key words are freedom, equality, property and security; The domicile is not the place where the family resides but the place where the man lives; and the woman is completely ignored in the text of the declaration. 11

This deliberate omission has been corrected over time through successive and complementary international instruments that enhance the fundamental role of the family in society and in the formation of children, and recognize and guarantee adequate protection in its various aspects and Manifestations. From this perspective, international conventions speak today of what has been called the right to family life. Thus, it is emphasized that the family is the natural and fundamental element of society and that, therefore, every person has the right to found a family and every child to grow in the family, in an atmosphere of happiness, Love and understanding for the full and harmonious development of his personality.

Hence, the state must assure the family the oldest possible protection and assistance, especially for its constitution and as long as it is responsible for the care and education of the children in its charge.

However, one of the main features of normative statements that recognize fundamental rights is their linguistic indeterminacy. Thus, formulas as the right to have a family, necessarily imply that at some point someone must establish or determine what the family consists of.

That is why, after this brief and generic reference to the constitutional rules that recognize and guarantee the right of every human being to constitute a family protected by the legal system, we will try to define what we mean when we talk about family or, more precisely, What is the constitutional concept of family within the framework of our rule of constitutional recognition and in the context of the paradigm of social and democratic status

This context forces us to try to outline a constitutional concept of family that allows to hear, from pluralism and tolerance, several fundamental aspects. Under the rule of constitutional recognition, from the right of human rights, emerges the preferential option for the source that most protects the person also known as pro homine principle from which it is clear that when two or more sources converge, it should be applied That the greater the coverage offered to the person, or, as we understand it, the principle according to which the greatest sociological validity of human rights should be sought.

The human rights instruments explicitly recognize marriage between a man and a woman as one of the forms not the only manifestation of the family. A harmonious interpretation of the rights recognized in these normative tools allows to conclude in the implicit recognition of diverse forms of living with family.

It is clear from the cited rules that de facto unions, single-parent families and assembled families receive some degree of constitutional protection, whose breadth and scope will obviously vary.

In short, and according to the established jurisprudence, any form of coexistence in which affective and material bonds of mutual dependence are created, regardless of their degree of formalization or even the sex of their components, can be considered a family life protected by the Convention By distance that results from the parameters of the traditional family based on marriage.

On the basis of the foregoing and in the light of the human rights recognized internally and in the international context, we are convinced that a family is worthy of protection

and promotion by the state when it is possible to verify the existence of a lasting bond of affection Designs a joint biographical project in the material and affective aspects.

In this sense, and in a merely illustrative way, there is a family between: a) two persons of different sex united in marriage by civil law with or without children; B) two persons of different sex united in religious marriage with or without children; E) two persons of different sex who live with or without children; D) two persons of the same sex who live with or without children; E) two or more related blood relatives or relatives, live or not; F) a person who lives alone with his children after having separated or divorced; G) the parent and his children with whom he does not live together after having separated or divorced;

H) a mother who raises and educates her unrecognized son alone; I) two divorced persons who live with the children of the previous marriage of one or both.

This does not mean that all forms of family life will necessarily enjoy the same degree of legal coverage. Moreover, the greater or lesser degree of coverage can be - and indeed is today more than ever - subject of doctrinal discussion and jurisprudence. But it must be translated into the existence of a minimum floor of protection signified by the recognition of the human rights enunciated in our rule of constitutional recognition, floor that can not be unknown by any legal order infra constitucional.

Thus, the right to equality, the principle of non-discrimination, effective and equitable access to family housing and protection against the actions of family members and third-party interference, recognition of an adequate standard of living - which is projected in food, clothing, health, welfare, education and entertainment -, freedom of privacy, the right to family privacy, etc., are fundamental rights that must be guaranteed to every individual for itself and as a member of a family, in any of its possible manifestations.

It is that the fact that a family exists as such is due to the confluence of different people, the family is not an autonomous exponential entity. Constitutional rules apply and must be guaranteed to family members for the simple reason that all its components are persons and holders of human rights from birth. In other words, family rights are the property of the human being as a spouse, child, brother, parent, co-worker, etc. ; That the family is a community with no personality of its own strengthens the integration of solidarity with each of its members who feels the title of all the rights that relate to their family status and to that of others.

However, although the right to form a family and its consequent protection is built from the ownership of its members, we can say that in order to define the scope, for example, of freedom of privacy - as we will see in the next chapter - There is an insurmountable limit for the state and the third that emanates from the conjugation of the autobiographical behaviors of the components of the familiar group. And these behaviors likely to be interfered with - except in the case of direct and immediate harm to third parties - are achieved when the wills of the incumbents converge on a common point.

In the light of all the above, to conclude this section we want to express that the constitutional concept of family should not be interpreted in a selfish or restricted way. Bonding and life projects do not respond to a single model but, on the contrary, are based on tolerance and pluralism. Since this policy platform, it is expected that operators of family law insuflen life to a sociological dimension to place the man, the woman and children protection center and development generating legal solutions that do not close their eyes to reality Social.

### **3.6.1 The constitutional model family.**

The transit of Legal rule of law to constitutional rule of law involved, inter alia, to abandon the thesis that the Constitution was nothing more than a mere political norm, that is, a rule devoid of binding legal content and composed solely of a series of guiding provisions of the work of public authorities to consolidate the doctrine according to which the Constitution is also a legal rule, ie a rule with device content capable of linking to all (public or private) power and society as a whole".

The Constitution is therefore legal standard and, as such links. Hence, rightly, it may be referred to it referring to the "law of the Constitution", that is, the set of values, rights and principles that belong to it, limited and legally define acts of public authorities.

### **3.6.2 Marriage and family in the 1993 Constitution.**

The family is the natural and fundamental group unit of society and must be protected by the State, which should ensure the improvement of its spiritual and material conditions.

Everyone has the right to establish a family, which shall be exercised in accordance with the provisions of the relevant domestic legislation.



States parties by this Protocol undertake to provide adequate protection to the family unit and in particular to:

Article 4 of the Constitution community and state special protection to children, adolescents, mothers and the elderly have been abandoned. They also protect the family and promote marriage. Recognize the latter as natural and fundamental institutions of society. The form of marriage and the grounds for separation and dissolution are regulated by law.

Article 5 The stable union of a man and a woman, free of matrimonial impediment, forming a de facto household results in a community property subject to the regime of conjugal partnership as applicable.

Article 6: "The national population policy aims to disseminate and promote responsible parenthood. It recognizes the right of families and individuals to decide. In this regard, the State guarantees education programs and adequate information and access to the media, which do not affect life or health.

It is the duty and right of parents to feed, educate and provide security for their children. The children have the duty to respect and assist their parents.

All children have equal rights and duties. It prohibited any mention of the marital status of parents and the nature of filiation in civil registers and any other identity document.

### **3.6.3 Best interests of the child.**

The special protection that the Constitution guarantees children raises a number of requirements to all public authorities, especially whenever they have to decide on issues which may affect them directly or indirectly. These charges are materialized in the obligation to keep special zeal that such measures are adopted taking into account the interests of the child, the principle of the best interests of the child is characterized by irradiating transversely effects. Thus, the duty to consider its scope, whenever decisions that are addressed are adopted, it includes any private or public institution, that is, the Congress, public administration bodies and courts. And requires a guaranteeing any such action, according to which any decision involving a child would be taken considering the child as a subject of law which is necessary to ensure the full satisfaction of their rights.

In that sense it is necessary that under the Constitution is clear in any judicial process which must verify the involvement of the fundamental rights of children or minors, the courts must seek a special and priority attention in processing . Indeed, horn one of the constitutionally protected content of Article 4 of the Constitution which states that the community and the state special protection to children, adolescents (...), is the preservation of the interests of the child and adolescent as an inescapable obligation to the community and mainly the state.Developed such content, the Code of Children and Adolescents has specified in Article IX that "Any action concerning the children and adolescents taken by the State through the Executive, Legislative and Judicial Branches of the Public Ministry, Regional Governments, Local governments and other institutions, as well as the action of society, is considered the Principle of Best Interest of the Child and Adolescent and respect for their rights.

### **3.7 General information on food**

#### **3.7.1 Nature has the right to food**

Dr. Cecilia Gabriela Gonzales Fuentes <sup>12</sup> , notes that there are two theses on the nature of the maintenance obligation:

- a) patrimonial thesis, according to which states that the right to food has a genuine patrimonial nature, since the provision is satisfied with the economic contribution or property without the debtor worry about the care of the person receiving the foods;
- b) Extra patrimonial thesis by which it noted that although the obligation to pay maintenance is personal and while finally express in an economic benefit this will not affect its real nature.

*Meanwhile, Gustavo Bosser and Eduardo Zanonni point out that the right to receive food and the correlative obligation to provide them derive from a legal food related financial content, but whose purpose is essentially extra-patrimonial as the satisfaction of personal needs for conservation of life, for the subsistence of whom required.*

Hence, although the purpose of the maintenance claim is heritage money or in kind the legal relationship determines that credit serves the preservation of the person fed and is not of an economic nature to the extent that does not satisfy an interest of a patrimonial nature <sup>13</sup> .

Finally Dr. Patricia Janet Beltran Pacheco <sup>14</sup> states that food is an individual right extra patrimonial nature, as it is intended to cover a set of immediate needs of the obligee and not as many believe to increase the assets of food creditor.

*We share the thinking that follows extra patrimonial thesis of food law, because if it is true that exercise is needed materialize through various acts of patrimonial nature such as the payment of a sum of money or the delivery of certain goods the rise this right is prior to the way it is externalized, emerging this food law by the mere fact of having a son or father to be part of a family.*

### **3.7.2 Nature has the right to food**

#### **3.7.2.1 Food.**

First you must consider what is considered food our system, for this, we refer to Article 472 of the Civil Code <sup>15</sup>, it points out that food is meant to the extent necessary for the sustenance of the obligee, being this depending on the situation and possibilities of the family.

For its part, the Code <sup>16</sup> of Children and Adolescents, in Article 92, to discuss food refers to what is necessary, leaving aside the essential term used by the Civil Code.

Dr. Manuel Maria Bell <sup>17</sup> Valderrama about food notes that there is a special classification, a) Necessary, also known as restricted. As its name implies, it is not difficult to assume that this type of food refers to what is necessary to live, so, who should only be assigned to the obligee creditor, the necessities for subsistence, b) congruous, is the portion in cash or kind is delivered to whom you just measure due to the possibilities of the debtor or obligor and therefore their standard of living.

*If we analyze designated by the same author with the provisions of our laws, we can say that the Civil Code treats food as congruous, while meanwhile, the Code of Children and Adolescents, treats them as necessary.*

Given this difference, we ask, There is a difference in the practical sense between the two regulatory provisions not believe that because both deal regarding what is necessary to ensure the survival and development of the obligee is this child or adult. Now, how will you know it is really necessary or indispensable Depending on which shall be determined, answering this question, an interesting decision issued by the Court of Peace Counsel Puente Piedra said that the needs of obligees are not only basic needs, but which requires the social context in which the child develops.

What must be interpreted reality is that the indispensability of food will have to be evaluated from a subjective point of view, since it depends on the situation and possibilities of the family, really determine, what is the quality of essential for the life of the obligee and no. Thus, if it seeks to assert its food law is part of a wealthy family,

require foods that allow you to continue the same quality of life, so it does not suffer any alteration to its development .

*Recently No. 30292 Law published last December 28, 2014, may be perhaps the best attempt by the legislature to establish literally in our legal aspects of food that were often evident, even for those who have not developed studies right, what must be understood by food or put it in a more practical sense, what special needs should consider the judge in the obligee to order a certain amount of maintenance that can cover and speed should be the same for trying a right of urgency.*

Providing answers to these questions, may have been the primary motivation of legislators to make these clarifications by Law No. 30292 Law and achieve, provide a more accurate criterion judges to particular orders the parts of a process, who requested alimony taking into account the special conditions of its obligees children, such as it is, the need constant psychological therapy, a need that is from the issuance of Law No. 30292 Law literally designated as part of what is you must understand how foods.

On the other hand, beyond the questions raised that could find an answer by this law, it should be noted that looking for some consistency between what is indicated by concept or scope of what is meant by food in the Civil Code and noted in the Code of Children and Adolescents, this is particularly evident in the amendment made in Article 472 of the Civil Code, which previously governed by Article 92 of the Code of Children and referred Adolescents end is added to food also it includes the costs of pregnancy, made from conception to postpartum stage, precision not previously mentioned or referred to in Article 472 of the Civil Code.

### **3.7.3 Nature has the right to food**

#### **3.7.3.1 Alimony**

To analyze this question, we begin by pointing out that as noted by the Civil Code Article 474 thereof, foods should reciprocate, Spouses, ascendants and descendants and siblings finally <sup>18</sup> .

For its part, the Code of Children and Adolescents, which for reasons of specialty regulates what must be considered in the case of food in favor of a child and teenager, states in its Article 93 <sup>19</sup> , that although parents both have the duty to provide food for their children, this obligation, in case of absence or ignorance of the whereabouts of the parents, it could be assumed by the age older siblings, grandparents, collateral relatives within the third degree or others responsible for the child and adolescents, in that sense items specified strictly indicate that family members understood as those

linked by emerging legal links a intersex relationship, procreation and kinship according to the statement by Dr. Alex Placido <sup>20</sup> - it is to be owed each other.

However, there is a specific item that gives food to the person who not fall within the concept of shared family, the law recognizes the right to receive food, we refer to Article 415 of the Civil Code, which is the legal concept the obligee son, through which our legal system recognizes the possibility of alimony in favor of that child born as a result of possible sexual relations between his mother and forced to grant them be given <sup>21</sup> .

The difference between the figure of an obligee Son and Son extramarital affair or marriage lies in the fact that in the first case, the relationship between the obligee and the obligation to provide the fixed alimony is not united by the bond of affiliation, which if happens in cases of marital or extramarital children. However, despite the absence of affiliation, the law recognizes the right to food for this child.

#### **3.7.4 What conditions should happen to be required to pay alimony**

Absolving this question, the Cassation No. 1371-1996 - Huanuco, he said that there are three conditions for the enforcement of food need of the applicant State, the economic possibility obliged to supply and the existence of legal regulation stipulating the obligation

Analyzing what is stated in that appeal, first we must point out that that state of need of the applicant and the economic feasibility of the obliged to supply are elements that our Civil Code, Article 481 thereof, considered as elements of evaluation to determine the amount of maintenance for fixed <sup>22</sup> .

#### **3.7.5 What is the special principle that should govern when setting alimony**

In accordance with the provisions of Article IX of the Preliminary Title of the Code of Children and Adolescents<sup>23</sup> , the Best Interest of the Child and Adolescent to be observed in any decision is taken about the life of a child or a teenager.

Therefore, in conflicts that may arise and involving minors, it should be noted that interest when solving it, however, it should be noted that this interest while important, can not be taken as argument to undermine the right to due process and the right of defense of the parents.

In this regard, Dr. Manuel Bermudez Tapia said that the judicial operator can only use the principle of the best interests of the child if the implementation of this principle and not the rights of parents are violated arbitrarily. Thus , for example, a Court of Appeal Family Room may raise the quantum of food in favor of the plaintiffs, if he can verify that there are conditions in the respondent to such an extent otherwise, if this increase occurs without any comment or level argumentation of the resolution

is insufficient, because the intention of the Board to be more tuitiva, the injured party may appeal such decision to be a blatant case of malfeasance 24 .

### **3.7.6 Legal avenues for fixing the amount of maintenance.**

Family conflicts are resolved as commonly the various conflicts that may occur in the life of a person in their dealings with others are solved and family conflicts are as individuals who have a very special feature, often can not be solved so our legal system has pointed out, but a better solution can be found in the agreements that adopt family members.

*In similar thought, Dr. César Landa Arroyo said that conflicts over family law have a very particular nature. So, trying on them said that the problem of the family to not be an exclusive or fundamentally legal and constitutional phenomenon was never solved just by enacting laws or concretize executive or jurisprudencialmente social rights mandated by the Constitution well inspired they are, if such an effort is not integrated into a much broader and deeper context, which includes not only demand but also a model change the current ethical, cultural and socioeconomic patterns <sup>25</sup> .*

Therefore, that anyone seeking to confront a family conflict, should take into account not only the existing rules at the time of the conflict but the whole social context where family conflict in order to achieve a real solution is developed to what is present

What legal avenues exist to enable interested parties to determine the amount of alimony

There are two legal mechanisms to proceed to determine the limenticia board:

- court settlement.
- Judicial process.

We always recommend trying to solve their family conflicts by going to the through conciliation, thus avoiding spending time, effort, money and, above all, avoiding family conflict increases as a result of legal proceedings.

### **3.7.7 extrajudicial conciliation as a way to determine the amount of alimony**

Regarding conciliation, Dr. Jose Alberto Estela Huaman said that is the legal act and instrument by which the warring parties before a process or during it, are subject to a conciliation procedure to reach an agreement everything that is susceptible transaction and permitted by law, with the intermediate objective and impartial, the authority of the judge, or other duly authorized, who prior knowledge of the event official or private, should aim for just formulas under expressed by the parties or

, failing that propose them and develop them , in order to reach an agreement, containing rights constituted and recognized with res judicata <sup>26</sup> .

This was highlighted Dr. Marianella Ledesma Narvaéz noting that in family conflicts, agreements are not always the goals looking at conciliation, This perhaps can be accepted in business or economic conflicts, but in conflicts where it is in questioning the emotional relationship between relatives no longer looked under the same glass, not important agreements is changing the relationship between the parties, no matter if they reach an agreement. What to look for is the relational transformation rather than the resolution of a conflict <sup>27</sup> .

### **3.7.8 It is necessary to go to conciliation to search for a solution before bringing a claim for alimony is fixed**

While it is true, the usual rule is that prior to filing a lawsuit, you need to go to a mediation center in order to attempt a peaceful solution between the parties; demands concerning food, are excluded from this requirement for prior conciliation.

*As established in paragraph of Article 9 of Law No. 26872, Law to note that for purposes of qualifying for the lawsuit, is not enforceable extrajudicial conciliation in the following cases, in judicial proceedings relating apensiones food, so it is therefore not necessary to attempt a reconciliation before filing lawsuit alimony;however, stress that we believe that the best way to get a solution to family conflicts is through the conciliatory route.*

### **3.7.9 Legal proceedings first fixed alimony**

Specific characteristics have legal proceedings where first fixes alimony unlike other judicial proceedings

For an understanding of the peculiarity of this process, we place for observation a short list of these special features that differentiate it from other legal proceedings:

It is not necessary that the demand is signed by an attorney, but only require the signature of the interested party, so you need not hiring a lawyer for the exercise of the counseling process is performed. In response to this particularity, in some courts or state institutions, there are forms that can be used as food demands by interested parties to proceed to demand alimony fixing their minor children need.

The party making the demand for securing food supply, is exempt from paying tariffs or certificates of notification normally apply in all legal proceedings. This exemption shall apply on condition that the amount of child support does not exceed twenty units

of Reference Procedure, because if exceeded, as established in the table of legal fees for this year, will have to pay fifty percent of the tariffs are indicated.

#### **3.7.10 competent judge**

The judge to observe the processing of claims where the amount of alimony is fixed, is the Court Peace Counsel whose territorial jurisdiction is the place where the child requires alimony resides, this according to what indicated the article 21 of the Code of Civil <sup>28</sup> .

Regarding the procedural way to bring these claims in accordance with the provisions of Article 161 of the Code of Children and Adolescents <sup>29</sup> , the procedural route will be the only process.

As an added we should point out that the rules applicable to the way of summary procedure regulated by the Civil Procedure Code shall apply supplementally provided these do not harm the interests of children and adolescents.

On the subject, Dr. Benjamin Aguilar Llanos, trying concerning the procedural way of food processing, said that the food processing relating to children and adolescents is processed as the only contemplated in the Code of Children and Adolescents process. This implies, always taking as reference the principle of the Best Interests of the Child and Adolescent, that the rules of summary procedure provided for in the Civil Procedure Code covering sanctions as we discussed regarding if not present at the hearing, record shall be filed not apply supplementally <sup>30</sup>

#### **3.7.11 Admitted the lawsuit.**

The deadline for the defendant in a judicial setting process food benefit is five working days, which are counted from the date on which it was duly notified demand. This is stipulated in Article 168 of the Code of Children and Adolescents <sup>31</sup> .

The defendant may lodge a counterclaim also commonly known as counterclaim

Given the nature of that procedural route to the one which process as we indicated is the governing where fixing Alimentaria provision, the counterclaim is not supported, also commonly known as counterclaim, so the defendant alone may proceedings for defense it deems appropriate.

The legal source of the above, is located in Article 171 of the Code of Children and Adolescents, which expressly states that in these processes, the counterclaim is not supported.

#### **3.7.12 Points to the judge when fixed alimony**

Regarding alimony, Dr. Javier Rolando Peralta Andia says that "in a broad sense, alimony, is a sum of money by conventional, probate, legal or justice, a person in



favor of another for their livelihood. strictly speaking, it is said to be the allocation under voluntarily or judicially for the subsistence of a person who has been in a state of necessity "

When issuing sentence, before making a major decision on the merits, the judge must determine whether there is between the minor obligee and the defendant a relationship of parent and child or in any case has been established that in the period of the conception, the defendant had sexual intercourse with the mother 32 .

After you have determined the existence of a food duty by the defendant, you must realize this duty either in a specific dollar amount or a percentage of the income of the respondent to the obligee has a specific reference and aware as it is what may require the defendant as food.

All obligee has the desire to be granted the greatest possible economic amount in his favor while the defendant will fight for the opposite. Given this, the first thing to be analyzed.

First about what needs to evaluate the judge when deciding and fixing the amount of food, we say that about a lot of confusion as to the criteria presented in reality arises. Some believe that should only take into account the economic capacity of one who has the role of defendant in the judicial process food, leaving aside the one who has the legal representative of the obligee and filing the suit on their behalf. This being thought that the legal representative actually fulfills its obligations to the obligee without a court ruling while the defendant needs for his part of a court order to comply with its obligations.

Others believe that the capacity of both the legal representative and the defendant should be assessed in fact, given that actually the duty to provide both food rests not only on the defendant.

We share this latter view because we believe that the food duty, it is up to both the mother and father of the obligee. This follows the provisions of Article 418 of the Civil Code, by stating that parental authority parents have the right and duty to care for the person and property of their minor children; being also the responsible maintenance obligation continues despite them look suspended from custody or have lost it for some reason.

The law allows us to infer that no matter who act as legal representative of the obligee in the judicial process food, both parents have the duty to contribute financially to support the obligee.

Judge when setting alimony should take into account not only the economic capacity of the defendant in the process, but also the parent who acts as legal representative of

the obligee, this should be considered to prevent such representative abuses such quality to require that only the defendant meets the needs of the obligee, without meeting the representative with their obligations to it.

Although Article 486 ° of the aforementioned Civil Code, not expressly considered the assessment to the person who acts as legal representative of the obligee, it can not be forgotten that must analyze the regulatory provisions of a joint manner and not in isolation.

In this regard, Dr. Alex Placido Vilcachagua notes that parents imposed a duty to feed the minor children, duty corresponding to both parents about their common children and should be treated according to the roles they take home and according to their abilities and incomes. So, it raised the issue of food and contribution of either parent, all contributions in cash, kind as the driving duties of domestic life, food preparation, multiple decisions related to the provision of home , the driving of various aspects of everyday life of the child, must be taken into account by the judge, and also contribute to food the child <sup>33</sup> .

### **3.8 Proposals for change .**

**first:**

#### **3.8.1 The proof of income against the default of appearance in food processing**

A mother stands increased food demand in favor of his younger daughter of two years and nine months old. Basically, request a new amount as alimony, based its request on the following arguments According to the rules of the Code of children and adolescents in the lawsuit filed via unique process is declared admissible. However, the defendant, despite being duly notified, did not answer the demand within law, declaring rebel.

The reasons why the judge dismissed the claim was that he had not credited the increased economic capacity of the father, since the applicant does not even claim for which activity would be devoted to the date the defendant, that is it is unknown whether develops an economic activity that generates enough revenue to increase the alimony of his youngest daughter. This generated that can not be determined conclusively that the obligor has increased their income in that sense could a judge to dismiss a demand for increased food if it finds that the child's needs have increased therefore the analysis of a claim involving essential rights for the life of the child, the judge must optimize certain principles and follow certain procedural techniques appropriate to give the most sensitive issues affecting the basic needs of a child or adolescent responses.

## **Second**

### **3.8.2 Form and manner of enforcing compliance with the maintenance obligation.**

With regard to how to make effective compliance with the maintenance obligation exists in practice serious difficulties, despite our positive legislation states that the pension can be secured by cash, a pension, the same it can be fixed in determined amount or percentage, and payment in different species pension delivery, having taken into account the possibilities bound form.

With these criteria, should not exist in the practical difficulties in fixing the pension food, as to take into account the possibilities of forced, it must start from the principle that it must assume that obligation a priori, since the responsibility of parents is shared.

Furthermore, the principle of rebuttable presumption should be noted that the obligor can itself assume such an obligation, plus additional information such as your personal status professional, or reference provided by the claimant of the claimed on an activity party is performing artist, dealer, or engaged in any other profession.

Finally, it is not necessary to thoroughly investigate the income to be provided food. With the items you have and taking into account the real needs of the obligee and elementary age, health, level of education etc. It must be fixed pension.

## **Third.**

### **3.8.3 The speed in food processing**

Reality has shown that in family law indistinct problems are among families that are regulated by this, so it is necessary to find those situations that make judicial protection is affected in the process that must solve these problems food processing is so then those problems are dealing with an improvement narrated also solutions that are reflected in proposals to improve the food processing arise.

Food processing has as main problem the speed in which it is performed, even a great truth that there is a high load procedure, this is not a valid reason to continue postponing the protection of a right as fundamental as that of the food, in other case law already established the importance of food as they are in intimate correlation with human dignity.

We refer in this respect that food may not be feasible for the excuse of the procedural burden for the lack of their enforcement, because here is vulneraria the right to be tried within a reasonable time. Although overlooked in the case of minors is excessively required prompt failed.

Before it the first proposal based on the speed that should be granted to process foods, it intends to present new projects to implement new courts of peace, sanctions for those responsible for delays redistribution of records arises in case of deactivation of magistrates' courts. A clear example of this need is what has happened with the implementation of the new law on domestic violence, as a result of the reorganization of the courts by this law has caused the conversion of many justices of the peace to family courts, which left in the air many records had to be reorganized among existing peace courts or in this case wait for the opening of new peace courts.

The delay distribution may become excessive which affects those seeking effective protection, which is why the sanctions that we mention must be implemented, it is clear implementation should be in the regulations of violations of the judiciary as does not fulfill its primary function of protecting justice.

Then we see how important it is to reduce the procedural burden on food processing, continuing improvement proposals have the implementation of simplification for food processing where there is the link from child to parent regular process but other processes look where food is also requested.

First let's understand that they are food for family life is that "food" are met in kind, for the obliged to supply fulfills its duty to provide everything necessary for the sustenance of the obligee. Nevertheless, the main feature of this process is related to its obligation, since it is common that the obligee resort to the judiciary to be he who set alimony to his favor.

The maintenance obligation includes not only the duty of parents to the children, ie that food not only understand give children an amount for their survival but also in some cases such as the duty of care between the spouses, this includes the ancestors and siblings, eye foods are of mutual connotation. That is it can be reversed.

Even foods extensively enables the former spouse who is living in extreme poverty, as one spouse to his own fault divorce, are liable for providing maintenance to the other spouse.

This figure should give a little more development, it is said that food for these cases must continue, however, is utopian thinking as only should be given in certain cases, a clear example is believed incorrectly that destitution is specified to the lack of having a job that allows labor and adequate housing, however, not all those who are in this case should be feasible maintenance payments, while the person is under the conditions to perform a job, then the origin of this type of food must be determined, even more so to prevent damage to the assets of the individual food to the spouse who is in optimal health to work will be cut foods the admission of the petition for divorce.

Thus the exemption or rather the extinction of the food is done more quickly because it influences the life of the obligee to have an economic burden that has no justification.

Is completely different discuss compensation or alimony divorce for cause, there should be left to specialized judge dictate food according to these assumptions, however, must be to acknowledge that these assumptions where these foods would be set completely other than the above requested by being a spouse and being at the time the divorce is declared the event becomes obsolete, causing increased caseload and longer affected because these foods in principle brought in another court which makes it necessary to refer to the court that imposed these foods to suspend as it is not for the judge who hears divorce, this results in demand for extinguishing food is delayed all the time you have to leave divorce which is a fairly broad period, which violates the right of the obligee, this occurs in the case.

In this case the proposal to continue not violate the rights of the obligee and lower the case load of food in these cases is to provide competition to the specialized judge in family so you can revoke food by causal being spouse in the same divorce, to which only enough certified copy of the final judgment of process foods that set and the resolution declaring that judgment enforceable consent or so extinction processes would be shortened in such cases.

#### **Fourth.**

##### **3.8.4 In which case, the judge is obliged to deliver verdict in the very act of hearing**

The judge as stated in article 50 of the Civil Procedure Code, has the power to direct the judicial process, but there are in the legal provisions limiting this power, requiring him to perform certain actions at certain times.

Precisely this happens when the defendant fails to attend the only hearing scheduled in the process, because this fact forces the judge to issue verdict in the same single hearing, acting and evaluating the evidence that were submitted by the applicant as expressly set Article 171 of the Code of Children and Adolescents, however this action is limits on the right of defense has every citizen, so that we are facing the classic figure of a conflict of principles on the one hand the right food and on the other the right to defend every citizen counts.

#### **Thursday.**

##### **3.8.5 Modes enforce alimony**

In our view, this is the central aspect of the problem on compliance with the maintenance obligation in Peru. In the procedural area are very new provisions containing the Code of Children and Adolescents in which a single short process is

established. Art. 106 ° points, the food processing shall be processed in accordance with the provisions contained in the unique process of this Code.

Moreover, in the new Civil Procedure Code was been included in the so-called summary trials, for the brevity of the proceedings, Nevertheless, in a field investigation conducted in the Family Courts, on the handling and execution of processes food, has been able to verify that:

Most actions concluded by conciliation as the fixing of the pension. However, 90% of these processes are not able to execute this commitment. For these cases, it is said that the application of the law · conciliation will be considered as enforcement thereof. That is, one

Retrial.

2. In many other cases, admitted after the demand can not be reported to the address bound deficiency, causing the stoppage of the process.

3. In a normal food processing process can be concluded with judgment or conciliation within 5 or 8 months however the delay is caused in the execution of the obligation

4. Of the processes found with judgment, an average of 0% can not be run due to insolvency of the obligor.

5. It has been found that delay in finding revenue obliged; either because it has no dependent work or failing workplaces do not meet the required evacuates the requested report. In other cases, they distort, thus committing criminal acts.

6. 90% of those claiming food show their disagreement with the way the process takes. There is no effective, litigants s do not understand the forms that have to meet immediate cash to make your claim.

While it is true that the procedural rules to claim alimony is short, it has not been taken into account that the execution of that obligation is governed by the rules established in the Civil Procedure Code, as if it were any obligation, taking to resort to precautionary measures such as seizure of the movable and immovable property of the obligor if the tuviera- and then proceed to the auction if necessary. This implies that the ways to implement the maintenance obligation must become more viable, taking into account the best interests of the child and adolescent.

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<sup>1</sup> Article 93 of the Code of Children and Adolescents.- is the duty of parents give their children food. In the absence of parents or ignorance of their whereabouts, they provide food in the following order of priority: 1. Older siblings of age. 2. grandparents. 3. The collateral relatives within the third degree. 4. Other responsible for the child or adolescent. The highlighting is ours.

<sup>2</sup> PLÁCIDO VILCACHAGUA, Alex. Family Law Manual. Lima: Law Gazette, 2002 , p . 17.

<sup>3</sup> CFR. GUSTAVO Zagrebelsky, *Ductile right* , 4th ed., Madrid, Trotta, 2002, p. 114- 116.

<sup>4</sup> ESPINOSA-SALDAÑA BARRERA Eloy. "Right to due process: a more didactic approach ..." op. cit., pp. 99-100.

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<sup>6</sup> PEYRANO, Jorge (1995): *Civil Litigation. Legal Issues Lima*.

<sup>7</sup> PEYRANO, Jorge (1995): *Civil Litigation. Legal Issues Lima*.

<sup>8</sup> FLANDRIN, JEAN L. *Origins of the modern family .... cit.*, P. Four.

<sup>9</sup> WAINERMAN. CATALINA AND Geldstein, Pink, *living in family: yesterday and today .... cit . , P. 184 and 185*.

<sup>10</sup> Malinowski, Branislaw, *Argonauts of the Pacific Wenlern London* . Quoted by Wainerman. Catalina and Geldstein, Rosa. "Living in Family: yesterday and today .... cit, p 185...

<sup>11</sup> KEMELMAJER Carlucci, Aida, opening words of the opening ceremony of the X International Congress on Family Law held in the city of Mendoza September 20, 1998, in *The Family Law and the new paradigms ...*, cit. , p. 13.

<sup>12</sup> CECILIA GABRIELA FUENTES GONZALES. *The right food from the perspective of fundamental rights*. Lima. Judiciary, 2007. Page 14 and 15

<sup>13</sup> Bossert, Gustavo A. and ZANNONI, Eduardo A. *Family Law Manual*. Buenos Aires: Editorial Astrea, 1989. Page 33 and Page 34..

<sup>14</sup> BELTRÁN PACHECO, Janet Patricia. *The barred from leaving the country* . A guarantee for compliance with the allocation of food or an



affectation to freedom of transit of food required. In: Constitutional Gazette No. 13, January 2009. Law Gazette. P. 379.

<sup>15</sup> ARTICLE 472 OF THE CODE CIVIL.-food means it is essential for sustenance, housing, clothing, education, instruction and job training, medical and psychological care and recreation, depending on the situation and possibilities of the family. Also the costs of pregnancy of the mother from conception to postpartum stage, Emphasis added

<sup>16</sup> ARTICLE 92 OF THE CODE OF CHILDREN AND ADOLESCENTES.- food necessary for the sustenance, housing, clothing, education, instruction and job training, medical and psychological care and recreation of the child or adolescent is considered. Also the costs of the mother from conception to the stage of pregnancy postpartum Emphasis added.

<sup>17</sup> CAMPANA VALDERRAMA, Manuel Maria Campana. Food law and obligation. 2nd Edition. Lima: Legal Publishers, 2003. P. 595..

<sup>18</sup> ARTICLE 474 OF THE CODE CIVIL.- food should interact: 1. The spouses. 2. The ancestors and descendants. 3. The brothers

<sup>19</sup> Article 93 of the Code of Children and Adolescents.- is the duty of parents give their children food. In the absence of parents or ignorance of their whereabouts, they provide food in the following order of priority: 1. Older siblings of age. 2. grandparents. 3. The collateral relatives within the third degree. 4. Other responsible for the child or adolescent  
The highlighting is ours.

<sup>20</sup> PLÁCIDO VILCACHAGUA, Alex. Family Law Manual. Lima: Law Gazette, 2002 , p . 17.

<sup>21</sup> Article 415 of the Civil Code.- Outside the cases of Article 402, the illegitimate son can only claim which has had sexual intercourse with the mother during the time of conception alimony until the age of eighteen. The board remains in force if the child reached the age of majority, can not provide subsistence for physical or mental disability. The defendant may request the application of genetic testing or other scientific validity with equal or greater degree of certainty. If they give negative results, shall be exempt from the provisions of this article.

<sup>22</sup> Article 481 of the Civil Code.- "Food by the judge in proportion to the needs regulating who already asks the possibilities that should give them, also taking into account the personal circumstances of both, especially the obligations it falls subject the debtor. Emphasis added

<sup>23</sup> Article IX of the Code of Children and Adolescents.- "Any action concerning the children and adolescents taken by the State through the Executive, Legislative and Judicial Branches, the Public Ministry, regional governments, local governments and other institutions, as well as in the action of society, it is considered the Principle of Best Interest of the Child and Adolescent and respect for their rights. "

<sup>24</sup> BERMUDEZ TAPIA, Manuel. *Procedural family law*. Lima: Editorial San Marcos, 2012. p. 541.

<sup>25</sup> LANDA ARROYO, Caesar. Notes for the constitutional protection of social rights of the family. In "Homage Book Dr. Hector Cornejo Chavez." Lima: Editorial Fund of the Pontifical Catholic University of Peru, 1992. Page 134.

<sup>26</sup> WAKE HUAMÁN, José Alberto. Alternative dispute resolution mechanisms - MARC'S- in Peru. Lima: Peruvian Center for Alternative Justice and Reconciliation - CEPEJAC, p . 21.

<sup>27</sup>

<sup>28</sup> ARTICLE 21 OF THE CODE OF CIVIL.- In matters of custody, guardianship and curatorship, whether or not contentious matters, is competent the judge of where the incapable is.

<sup>29</sup> ARTICLE 161st CODE OF CHILDREN AND TEENS.- The special judge to resolve, taking into account the provisions of the single process set out in Chapter II of Title II of the fourth book of this Code, supplemented, standards Civil Procedure code

<sup>30</sup> AGUILAR PLAINS, Benjamin. *Flexibility in the application of rules to preserve the best interests of the child* . In: Gaceta constitutional and procedural constitutional. Law Gazette, No. 52. May 2014. p. 168.

<sup>31</sup> ARTICLE 168th CODE OF CHILDREN AND TEENAGERS.- Admitted demand, will judge by the evidence offered and shall convey it to the defendant, with knowledge of the prosecutor, by the peremptory period of five days. for the respondent to answer.

<sup>32</sup> PERALTA ANDÍA, Javier Rolando. Family law in the Civil Code. Lima: IDEMSA, 2008. Page 693..

<sup>33</sup> PLÁCIDO VILCACHAGUA, Alex F. filiation and parental authority. In the doctrine and jurisprudence. Lima: Law Gazette, 2003. P. 638..