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COUNTERING ABUSES AT THE GRANTING OF ADDITIONAL MEASURES OF STATE SUPPORT TO FAMILIES WITH CHILDREN: THE POSSIBILITIES OF THE LEGISLATOR AND LAW ENFORCEMENT PRACTICE EXPERIENCE

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The subject of the article is abuses at the granting of additional measures of state support to families with children and measures of its prevention

The purpose of the article is to analyze legal rules governing the provision of additional measures of state support for families with children, to determine their completeness and adequacy for countering abuses in this area.

Characteristic of the problem field. The implementation of the legislation on additional measures of state support for families with children, has proved to be connected with widespread attempts to use the maternity (family) capital by the persons who do not have the right, or to use it contrary to the restrictions established by law. Analyzed legislation has shortcomings that create the conditions for illegal actions.

Methodology. Both general scientific methods (analysis, synthesis, description) and special scientific methods (comparative-legal and formal-legal methods) were used in the research process .

Results. Countering abuses requires improvement (changes and additions) of the law governing the provision of additional measures of state support for families with children. Refinement and extension of powers of the Pension Fund's of the Russian Federation bodies in this area, however, inevitably entails an increase in the number of organizational actions performed by these bodies when considering applications of the entitled persons. The flip side of strengthening the fight against illegal actions in this sphere can also be the limitation of the possibilities of the entitled persons and the extension of discretion of authorized bodies. When the effective legislative means are absent the judicial practice plays a prominent role in preventing the illegal use of maternity (family) capital. In particular, the qualification of improvement of housing conditions as a necessary result of the contract of purchase and sale of real estate became one of the obstacles to illegal receipt of maternity (family) capital.

Keywords: maternity (family) capital, additional state support measures, reliability of the information, abuse, improving of housing conditions, powers, countering, law enforcement practice

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1. Introduction

Maternal (family) capital, which appeared in the Russian social security system with the enactment of Federal Law No. 256-FZ of December 29, 2006 "On additional measures of state support for families with children" (hereinafter - the Law № 256-FZ), became one of the most discussed kinds of social security. More often than not others focus on issues related to the effectiveness of maternal (family) capital (hereinafter - MSC), the expansion of the number of persons entitled to this type of state support, the increase in the number of areas for which funds are allowed s MSCs (see., e.g. [1]).

Experience in the implementation of Law No. 256-FZ actualized, however, yet another, apparently unexpected for its developers aspect - the problem of countering various kinds of

unlawful actions aimed at illegally obtaining a state certificate for MSCs and (or) using funds for purposes not stipulated by law. The range of such actions, referred to in this article as abuses, is quite broad and covers the acts committed at both stages of the implementation of the right to MSC - when applying to the Pension Fund of the Russian Federation (hereinafter - the PFR) for issuing a state certificate for MSCs and using funds from MSCs. It should be noted that of all prescribed by law boil Ants use CMC funds turned out to be the most sought-after improvement of living conditions, it also became the most "popular" among those who want to circumvent the requirement for the impossibility of a general rule to obtain funds MS to cash. Illegal actions aimed at illegally obtaining MSK funds can be committed both by citizens entitled to this type of state support and by other persons. Logical in this connection is the formulation of the question of ways to counteract such behavior.

The universal means of influencing a person's consciousness in order to ensure lawful behavior is the presence of a criminal-legal prohibition. The work of representatives of the criminal-legal science [2, 3] is devoted to the investigation of MSC as an object of criminal encroachment and qualification of such acts. However, the contradictory nature of the judicial and investigative practice connected with the criminal prosecution of persons who committed fraud in the sphere in question does not allow to fully ensure the inevitability of punishment as one of the bases for the prevention of crimes. In addition, looking at the relationship of providing additional measures of state support to families with children through the lens of criminal law, shifts attention I on the consequences of the offense, leaving in the background conditions that made it possible encroachment. An important role in the fight against abuse in the exercise of the right to the CMC is played by the information and explanatory work carried out by the PFR bodies in various forms. The greatest interest in the context of the problem posed is the study of the legal mechanism for providing additional measures of state support to families for its vulnerability to unlawful actions, identifying the shortcomings in legal regulation that create conditions for abuse, and analyzing the methods of their (drawbacks) of overcoming, developed in law enforcement practices of bodies PFRs and courts of general jurisdiction. The present article is devoted to solving these problems.

2. Verification of the reliability of the information submitted by the applicant

The declarative procedure for the implementation of social security rights presupposes the conscientiousness of a person applying for a particular type of social security, which finds expression, above all, in the obligation to provide reliable information to the social security body when applying for a social welfare benefit. This approach has been implemented in normative acts regulating relations for providing additional measures of state support to families with children . A person applying to the Pension Fund of the Russian Federation with an application for the issuance of a state certificate for a CMC (application for the disposal of MSK funds) should reflect in the relevant application information on circumstances that may prevent the emergence of the right to MSC or lead to its termination or temporary inability to realize (Parts 2, 3 of Article 3, Paragraphs 5, 6 of Part 2 of Article 8 of Law No. 256-FZ).

The accuracy of the information contained in the application for issuing the state certificate for the MSC (application for disposal of the MSC funds) and the applicant's knowledge of the responsibility for submitting false data are confirmed by the signature of the citizen in the relevant application. At the same time, the fact that the applicant signs the necessary signature in the application does not always mean that the information he provided is reliable. The legal mechanism for the realization of the right to maternal (family) capital includes the legal norms adopted at different times and at different levels of lawmaking, which provide for the powers of the RF Pension Fund authorities to monitor the reliability of the information specified in the application for issuing a state certificate for MSCs disposal of the MSC facilities) and the documents attached to it. Thus, Part 4 of Article 5 of the Law No. 256-FZ grants the territorial agency of the PFR the *right* (my italics-OK) to verify the authenticity of the information specified by the person in the application for issuing a state certificate for MSCs, and "if necessary" to request additional

information about facts of deprivation of parental rights abolishing adoption of committed against child (ren) intentional crime relating to offenses against the person, as well as other information necessary for the formation and maintenance of the register. In the current wording, this legislative provision is hardly capable of fully ensuring that the PFR performs a supervisory function, since it presupposes selectivity in the conduct of the audit, without determining the grounds for the exercise of this authority, which allowed some authors to consider this norm as a manifestation of the corruption factor [4, p. 46-47].

Attempts to eliminate this defect of the legislative norm have been undertaken at the subordinate level. Thus, in paragraph 8 of the Rules for the application for issuing a state certificate for MSCs, it is stated that the PFR authorities request additional information from the relevant authorities (on deprivation of parental rights, on committing a crime against a child, etc.) "in the event of obtaining information affecting the right "For additional measures of state support. Thus, the notion of "necessity", with the presence of which the legislator connects the right of the PFR body to send requests for additional information, has acquired more specific content. Another approach before seeing in administrative regulations of the PFR and its territorial bodies for the issuance of state certificate to the CMC public service (hereinafter also referred to as the Regulations) . The sending of requests for the provision of information affecting the right of an applicant to receive a public service is referred to therein as one of the procedures (administrative actions) performed by the PFR in the provision of public services (paragraph 39 of the Rules), and the basis for sending such requests is considered acceptance statements with all necessary documents (paragraph 42 of the Rules). Thus, within the meaning of the rules, relevant requests should be sent by the PFR after receiving each application for the issuance of a state certificate for MSCs. As a result, the selective sending of requests used by the PFR authorities in the first years of the Law No. 256-FZ was replaced by the practice of compulsorily sending requests for each application for issuing a certificate for the CMC.

Granting to the PFR authorities the right to check the indicated by the applicant when applying for a certificate for a CMC, the information itself can not completely exclude the cases of issuing certificates to persons who do not have the right to additional measures of state support. Thus, by virtue of paragraph 2 of Article 3 of the Law № 256-FZ, when a right to additional measures of state support are not considered children for whom the parents have been deprived of parental rights or in respect of which was canceled for adoption, as well as adopted children, who at the time of adoption were stepchildren or stepchildren of these persons. An PFR at the time of making a decision to issue a certificate for a CMC may not have this kind of information for various reasons (for example, as was shown above, the practice of sending requests for verification submitted information on all applications for the issuance of certificates for MSC was introduced only a few years after the law came into force). The issuance of a certificate on MSCs in the absence of the right can also be a consequence of the representation provided by the applicant of false documents about the birth of the child (ren). What actions should be taken by the PFR in case if the information proving the absence of the right was received by the PFR after issuing the certificate for the MSK? In the absence of direct legislative regulation, law enforcement practice developed such a way of responding as the appeal of the PFR to the court with a claim for recognizing the certificate for MSC to be invalid. Despite the fact that issuing a certificate for MSC is not a transaction, but the certificate itself from February 2015 ceased to be a document, the submission of which is mandatory when applying for the disposal of MSC funds, such requirements of PFR bodies, confirmed by evidence of the lack of the right to MSCs, are satisfied by the courts. The decision of the court to recognize the certificate as invalid not only eliminates the violation committed while issuing the certificate, but also makes certainty in the legal relationship between the PFR and the citizen who illegally obtained the state certificate for the MSK, since the absence of the right to additional measures of state support was not identified as one of the grounds for refusing to satisfy the application for disposition of the funds of the ICC in the number specified in Paragraph 2 of Article 8 of Law No. 256-FZ.

The powers of the PFR bodies to verify the information submitted by the applicant when reviewing applications for the disposal of MSK funds are somewhat regulated . For unknown reasons, the body s authority to PFR towards requests for information by the competent authorities about the circumstances that affect the right to MSCs, the law does not provide at all. At the subordinate level, the approach to the regulation of this authority by the PFR bodies evolved from the granting to the PFR authorities of the right , *if necessary* (italics mine - OK) "clarify the reliability" of the information specified in the application, replaced after a short time by the authority to send inquiries to the relevant authorities in order to confirm information received by the PFR, which casts doubt on the right of the person who received the certificate for the CMC, up to the obligation of the PFR to request such information in the consideration of each application for disposition by the CMC funds (clause 14 of the Rules for disposition of the funds of the CMC) . At the same time, for several years there was an inconsistency between the norms contained in the Rules for the application for the disposal of MSC funds and the provisions of the administrative regulation for the provision by the PFR of the relevant public service.

The rules for the allocation of funds to the Moscow Housing Corporation for the improvement of housing conditions, approved in 2007 provide for the possibility for PFR bodies to send inquiries to verify information on the circumstances of the right to MSCs, and after the decision by the PFR to satisfy the application for disposal of MSC funds (paragraph 20 of the Rules). This norm, and areas where action was limited to just one area of using MSCs funds in the current system of legal regulation actually lost its meaning. Calculated for use in circumstances where the obligation of PFR authorities to send requests for verification of the above circumstances for all applications for disposal of funds by the ICC has not yet been fixed, it is currently unlikely to be able to achieve the goal, including because of the very short period of time assigned to the PFR for the transfer of funds to the MSC (from March 2017, it is 10 working days from the date of the decision to satisfy the application for disposal).

The experience of applying by the PFR bodies to the legal norms regulating the relations with the disposal of MSK funds showed that the powers given to these authorities to verify information on the circumstances that affect the right to a CMC are not sufficient to prevent attempts to use maternal (family) capital for purposes not provided for by law. In this regard, in 2015 (after more than 6 years after the emergence of the possibility to manage the funds of the CMC), Article 8 of Law No. 256-FZ was supplemented with Part 1.2, which authorizes the PFR bodies with the *right* when reviewing applications for disposal of MSC funds, verify the fact of the documents submitted by the applicants by sending requests to the relevant authorities. Like the rule contained in Part 4 of Article 5 of Law No. 256-FZ, the rule of conduct in question does not provide grounds for the existence of which the body can exercise its right. Although the analyzed norm is formulated as universal and extending its effect to all directions for which the MSCs are allowed to dispose of , its appearance in the text of the law is connected , mainly, with the intention of the legislator to prevent the use of false documents when using the funds of MSC for improving housing conditions. In accordance with the established practice, PFR bodies send requests for confirmation of the fact of issuing a document certifying the ownership of a dwelling (land plot), building permits and an act of survey of the main works on the construction of an individual housing construction project (part 1.2 of Article 10 of Law No. 256-FZ) in the consideration of each application for the disposal of MSK funds for the improvement of housing conditions. It should be noted that to confirm compliance with the law elected by the person authorized to improve housing conditions, the PFR may need not only information on the fact of issuing the submitted document, but other information . So, may be necessary information on the transfer of rights to a dwelling - with a view to excluding the sending of MSC funds for the purchase of a dwelling formerly owned by the applicant and alienated with the intention of buying it , but already using MSK funds. Granting authorities RPF such information contained in the Uniform State Register of Real Estate, is allowed by the Federal Law of 13 on July 2015 the year № 218-FZ "On State Registration of Real Estate" (clause 12 of part 13 of article 62, clause 12 of part 1 of article 63 of the Law).

3. Improvement of housing conditions as a necessary result of the use of MSK funds

In the Address of the President of Russia to the Federal Assembly of 2006, in which the head of state proposed the idea of maternal capital as an additional measure of state support for families with children, one of the three possible directions of its use was called "solving the housing problem." In the project of the federal law "On Additional Measures for State Support for Families with Children, developed for the purpose of implementing the Message, this direction of the disposal of MSC funds was called" improvement of housing conditions "and it was in this form that was included in the text of the law. However, the legislator refrained from formulating a legal definition of this concept, which is pointed out in publications on the subject matter under consideration [4, p. 48]. The text of the law does not contain, with one exception, quantitative and (or) qualitative characteristics of the living quarters acquired (built) at the expense of the MSC funds, in the presence of which it would be possible to ascertain the improvement of the living conditions of the person who received the state certificate for MSCs and members of his family. The above-mentioned exception is the possibility of using MSK funds for the reconstruction of the individual housing construction object, if as a result of the work carried out, the total area of the living quarters (living quarters) of the reconstructed object is increased by no less than the registration norm of the area of the dwelling space established in accordance with the housing legislation of the Russian Federation Parts 1.2, 1.3 of Article 10 of Law No. 256-FZ). In the situation, when the possibility of "solving the housing problem" (the average level of provision of living quarters, the average cost per square meter and its ratio with the average income level, etc.) differs significantly depending on the subject of the Russian Federation and even on a specific locality, the formulation of a universal definition of "improving housing conditions "Is a difficult, if at all feasible, task.

An analysis of Article 10 of Law No. 256-FZ, which establishes the requirements for the allocation of funds to MSC for improving housing conditions, provides grounds for the preliminary conclusion that the "improvement of housing conditions" is used by the legislator as a collective concept for such varieties as the acquisition (construction) of housing premises and construction (reconstruction) of the object of individual housing construction. Consequently, it can be assumed that, for example, the acquisition of ownership of a dwelling on the basis of a contract of sale itself should be regarded as an improvement in housing conditions. The purpose of this approach to legal regulation seems to be the maximum possible narrowing of the margin of discretion of the PFR authorities when making decisions on applications for the disposal of MSK funds for improving housing conditions. To this should be added a closed list of documents to be submitted by the applicant, depending on the chosen method for improving housing conditions (see paragraphs 8, 9-13 of Regulation No. 862), the purely documentary nature of the conformity assessment of the said method with the requirements of the law and an exhaustive list of grounds for refusal applications for disposition of the funds of the MSC (Part 2 of Article 8 of Law No. 256-FZ), which does not contain a position such as "lack of improvement of living conditions". It turned out, however, that this formal approach also has a downside, as it opens up opportunities for abuse. We are talking about a "scheme" for the "cashing out" of MSC funds that has become quite widespread, through the acquisition of an overvalued (sometimes repeatedly) price of a property, which, as a rule, in a small rural settlement and according to the state register of real estate residential premises, but due to a dilapidated state not suitable for permanent residence [4, p. 48; 5, p. 13; 6, p. 21]. Obviously, the acquisition of such an object is carried out without the intention to reside in it and that such a way to dispose of MSK funds has nothing to do with the goals set by the legislator for providing additional measures of state support.

The situation described posed to the law enforcement authorities the following issues: from which source the PFR can obtain information on the status of the acquired real estate object? What document should confirm the fact of unfitness of the object for permanent residence? Can this type

of information serve as the basis for the authority of the RPF decision to dismiss the application for the disposal of MSCs means?

The way to obtain information about the status of the real estate object by the PFR, which is expected to be purchased using MSK funds, was requests addressed to the administrations of settlements (municipal districts) at the location of the residential premises. The basis for sending a request in such cases is the existence of doubts about the rationality of the variant of housing improvement chosen by the applicant: for example, an applicant residing in the regional center concludes a loan agreement with a view to purchasing a residential house (apartment) for loans in a small rural settlement located in the remote municipal district, while the loan amount corresponds to the size of the parent (family) capital. Local administrations, in turn, based on their powers,can provide the PFR with information on the status of the property on the basis of a visual inspection of the facility with the creation, if necessary, of an act containing a description of its actual state. Is the PFR competent to provide information on the fact that a property purchased using MSK funds is not suitable for permanent residence, refuse to satisfy the application for disposal of MSK funds? Granting authority to the bodies of the Pension Fund of the Russian Federation to consider applications for the disposal of MSK funds, within the meaning of Article 8 of Law No. 256-FZ, implies not only the formal correlation of the direction indicated in the application with the list of options permitted by the legislator,but also the evaluation of the direction indicated in the application in an inseparable relationship with the content of the documents substantiating it for compliance with the provisions of Law No. 256-FZ. If the conclusions drawn on the basis of the analysis of the information submitted by the applicant and additionally requested information disproves the possibility of achieving the objective of providing additional measures of state support (improving housing conditions), then the applicant indicated the direction and The use of MSC funds can not be qualified as provided by law, which forms the basis for refusal to satisfy the application for disposal in accordance with clause 3 of part 2 of article 8 of Law No. 256-FZ.

It should be noted that the name of one of the directions for disposing of MSK funds - improvement of housing conditions - is semantically implied by the legislator that it is necessary to compare in one form or another the "living conditions" of a person who has received a state certificate for MSK and his family available at the time of applying to the authority with a statement on the disposal of MSK funds, and the expected result of using maternal (family) capital. The interpretation of "improving housing conditions", which goes beyond the literal reading of the provisions of Article 10 of Law No. 256-FZ, has been supported by courts of general jurisdiction. Thus, in judicial acts on cases of challenging the decisions of the PFR bodies on refusal to satisfy applications for disposal of MSK funds, one can find judgments that the concept of "improving housing conditions" has a broader meaning than "simple housing purchase" and the result of using the funds of MSCs to improve housing conditions should be the actual change in the living conditions of the family for the better. In the above-mentioned review of the BC practice, the improvement of housing conditions, carried out through the acquisition of a dwelling or construction, the reconstruction of an object for individual housing construction, is among the legally significant circumstances for the correct resolution of disputes over the disposal of MSC funds. Separate attention deserves the use by the Supreme Court of the Russian Federation of the concept of "*actual* (italics mine - OK) improvement of living conditions", which is implicitly contrasted with the" nominal "improvement resulting from the formal correspondence of the documents attached to the application to the approved list. In other words, the improvement of housing conditions began to be viewed as the result of the acquisition (construction) of a dwelling, acting as a prerequisite for channeling MSC funds for the specified purposes.

This understanding of the "improvement of living conditions" makes it possible to prevent the use of MSK funds for the acquisition of facilities, due to old, sometimes close to emergency, conditions not suitable for permanent residence and, therefore, unable to achieve the goal set by the legislator. It is important to note that the Supreme Court of the Russian Federation has supported the approach adopted in judicial practice, according to which the absence of a decision in the established manner to recognize a dwelling unfit for living itself can not serve as an obstacle to

refusal to satisfy the person's demand for the transfer of MSC funds for the acquisition property, the unsatisfactory state of which is confirmed by other evidence (paragraph 7 of the Review of the BC practice).

The construction of actual improvement of housing conditions as an indispensable result of a transaction for the acquisition of a dwelling, in spite of a clearly expressed focus on countering abuses in the sphere in question, is not without some drawbacks and limitations, however. Firstly, its inevitable consequence is a significant widening of the margin of appreciation as an PFR body considering the application for disposal of MSK funds, and the court allowing the case to challenge the "refusal" decision of the PFR body, which results in less predictability of the results of enforcement procedures. After all, the unfitness of living quarters for permanent residence is not always obvious: the content of the answers of local administrations to the requests of the PFR bodies, sometimes does not allow to give an unambiguous assessment of the condition of the dwelling. Besides, as the court practice shows, among the circumstances characterizing the improvement of living conditions, not only the condition of the dwelling premise (need for capital repairs, the availability of a heating system, etc.) is often included, but also the circumstances that are not directly related to it (availability in the settlement of a child's pre-school, the feldsher-midwife station, the opportunities for employment of adult family members, the transport accessibility of educational institutions opportunities for employment of adult family members, transport accessibility of educational institutionopportunities for employment of adult family members, transport accessibility of educational institutions etc.). Secondly, the right of PFR bodies to request information on the condition of a dwelling is not legally formalized. This, on the one hand, gives rise to uncertainty about the existence of appropriate powers and grounds for the PFR bodies, in the presence of which such a request can be sent, on the other hand, significantly reduces the effectiveness of the measures developed in law enforcement practice (even if its legitimacy is recognized), since the addressees requests (local administrations) there is no obligation to provide information to the PFR bodies on the status of the dwelling.

The actual improvement of living conditions, as was shown above, is recognized by the courts as an obligatory component of the subject of proof in disputes over the legality of refusals by the PFR bodies in satisfying applications for disposal of MSK funds in this direction, and the scope of this design is not limited to situations requiring an assessment of the housing condition premises. In particular, it is debatable from a theoretical point of view and does not have a uniform solution in law enforcement practice [7, p. 61] is the question of the admissibility of using the funds of MSCs for the acquisition of a share (stakes) in the right of ownership of a dwelling. The variety of life situations in which the potential for improving housing conditions is the acquisition of a share in the property right, does not allow us to consider in detail all the arguments "for" and "against" this assumption. In the context of the stated subject, it should be noted that the acquisition of a share (stakes) in the ownership of a dwelling often serves as a method of "cashing" in the parent (family) capital. Thus, in the first years of the implementation of the provisions of Law No. 256-FZ on the disposal of MSC funds, cases of acquisition from close relatives with the intention of subsequently using the share (stakes) in the ownership of the dwelling, which had previously become the object of common shared ownership of family members as a result of privatization. For example, a woman who has a ¼ share in the ownership of the apartment in which she lives with the children expresses the intention to send MSK funds to purchase from her mother a ¼ share in the ownership of the same apartment. In fact, the housing conditions of the family remain unchanged. Even more alarming are the situations in which the funds of the MSCs are supposed to be used to purchase 1/10, 1/16 or more modest shares in the ownership right for small residential areas. Attempts to legislatively limit the appearance and use, including for unlawful purposes, of "micro-shares" in the right with having ¼ share in the ownership of the apartment in which she lives with the children, expresses the intention to send the funds of the MSC to purchase from her mother ¼ share in the ownership of the same apartment. In fact, the housing conditions of the family remain unchanged. Even more alarming are the situations in which the funds of the MSCs are supposed to be used to purchase 1/10, 1/16 or more modest shares in the ownership right for small residential areas.

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There are no grounds for ascertaining the improvement of housing conditions and in cases of acquisition by a person who received a state certificate for MSCs of a dwelling (including with the use of borrowed funds) previously owned by him and / or his spouse on the right of ownership and shortly before the realization of the right to MSC of an alienated in favor of a third party on the basis of a paid or gratuitous transaction for the purpose of subsequent return to the property at the expense of the funds of the CMC. Such "schemes" are, in fact, an attempt to artificially create conditions for obtaining funds from the MSC by a person who has received a certificate for MSCs, bypassing legislative requirements. The plaintiffs' claims to declare illegal the refusals of PFR bodies to send the funds of the CMC to fulfill obligations under such transactions are rejected by the courts as not having to do with the improvement of living conditions: in such cases, the actions of the plaintiffs are qualified as deliberate deterioration of housing conditions and the subsequent restoration of the existing situation.

4. Other ways to counteract abusings in the direction of MSK funds to improve housing conditions

During the period of validity of the provisions of Law No. 256-FZ regulating relations for disposition of maternity (family) funds, the transfer of funds to the MSC for repayment of the principal debt and interest payment under the loan agreement (loan agreement) concluded for the purpose of housing acquisition (construction) demanded way of using additional measures of state support. The order arose, however, that this option of disposition of the funds of the MSC, if it is a matter of sending funds to the MSC for the performance of obligations under loan agreements, often acts as a means of unlawful "cashing" of maternal (family) capital. A few years ago, a very common "scheme" of this kind of abuse was the submission of a copy of the loan agreement and a certificate of the amount of debt issued by the lending institution to the person to whom the state certificate for the MSC was issued, to the Pension Fund of the Russian Federation, which together had to confirm the occurrence loan commitment between the "owner" of the certificate for the MSC and the organization that provided him with money to purchase (build) a dwelling. In fact, in some cases, the funds under the agreement to the borrower of the loan was not transferred, that with

regard to the real nature of the loan agreement (paragraph 1 of Article 807 D he Citizens Code of the Russian Federation) meant the non-conclusion of the said contract, and listed PFR authority at the expense of "lender " in response to a non-existent obligation The money was divided between the "owner" of the certificate and the "lender". The described "scheme" with various variations is described in detail in scientific and scientific-practical publications (see, for example, [3, pp. 53, 5, pp. 20, 8, p. 61]) . Its wide distribution is largely due to It is from the opacity for third parties of the relationship between the parties to the loan agreement.

It is quite logical in this light to see the desire of the legislator to determine the range of organizations whose loan obligations with the participation of which can be executed using the funds of MSCs. If at the first stage (January 1, 2009 - June 6, 2013) there were no requirements to the lending institution , the adoption of the Federal Law of June 7, 2013 No. 128-FZ "On Amending Articles 8 and 10 of the Federal Law" On Additional Measures state support for families with children "(hereinafter - Law No. 128-FZ) was an attempt to exhaustively define the circle of such organizations: among them were credit and microfinance organizations, credit consumer cooperatives and other organizations that provide loans under loan agreements, the fulfillment of obligations under which is secured by a mortgage. The non-compliance of the organization with which the loan agreement was concluded for the purchase (building) of a dwelling, at the same time it became qualified as a ground for refusal to satisfy the application for disposal of MSC funds (clause 7 of part 2 of article 8 of Law No. 256-FZ as amended by Law No. 128-FZ)). After almost two years, of lenders who could be repaid at the expense of MSC funds, microfinance organizations were excluded, and with regard to credit consumer cooperatives, an additional requirement arose- the activity for at least three years from the date of state registration (see Law No. 54-FZ) .

Assessing the effectiveness of the measures taken by the legislator, one can not but note, firstly, their chronic lag behind the requirements of law enforcement practice, and secondly, the half-hearted nature. So, the lawmaker's attempt to establish a list of lending organizations was in fact leveled by the preservation of "other organizations" in this list, the debts to which under the loan agreements could be repaid at the expense of MSC funds provided that the loan is secured by a mortgage. Taking into account the legislative norms on the origin of mortgages by virtue of the law in cases of acquisition or construction of a dwelling with the use of borrowed funds the legislative restriction of the circle of organizations that issue loans that can be repaid using the funds of the CMC had very little effect.

Since the entry into force of № 128-FL were several priests current correct legal regulation in said part. Thus, in June 2015 the State Duma introduced a bill, which is assuming l exclusion of potential moneylender "other organizations" (paragraph 4 of Part 7 of Article 10 of the Law № 256-FZ, as amended by Law № 128-FZ), but according to formal reasons was returned to the subjects of legislative initiative. After almost two years, a similar bill was introduced in the Duma of the new convocation, but to date has not been considered. Finally, information was provided on the draft law prepared by the Ministry of Labor and Social Protection of the Russian Federation and submitted to the Government of the Russian Federation providing for the exclusion from the circle of lending organizations of consumer credit cooperatives and employers who lend to their employees.

In order to prevent cases of transfer of MSCs funds for performance of obligations under concluded (penniless) Borrowing Law № 128-FZ, as was a requirement of the need for providing me the person who expressed a desire for MSK funds for repayment of debt and interest payments on the loan agreement, the document certifying they are loaned by non-cash transfer to his account with a credit institution. Failure to comply with this condition was considered by the legislator as an independent basis for refusing to satisfy the application for disposal of the funds of the ICC (Paragraph 7, Part 2, Article 8 of Law No. 256-FZ as amended by Law No. 128-FZ). Contrary to the express will of the legislator, these legislative novels have received an ambiguous interpretation in judicial practice. In accordance with one of the available approaches, failure to comply with the requirement of a non-cash form of a loan, provided that the fact of transferring money to the borrower and improving as a result of the loan agreement of housing conditions is proved, cannot

serve as an obstacle to sending MSK funds to repay the debt under such a loan agreement. It should be noted that the provisions of Law No. 256-FZ do not contain reservations that would make it impossible to comply with the condition for obtaining borrowed funds only in non-cash form on the basis of loan agreements concluded after the entry into force of Law No. 128-FZ. It follows from paragraph 8 of the aforementioned Review of practice of the Supreme Court, failure to comply with this requirement, despite the establishment of the court the fact of the use of borrowed funds to purchase residential premises, is the basis for recognition of the relevant law PFR authority decision on refusal is, in an application for the disposal of IIC funds.

The tendency to narrow down through legislative changes to the bureaucracy of lending organizations for the purpose of using the funds of the IIC gives rise to the question of whether abuses can be counteracted by limiting the scope covered by the subjective right to additional state support measures. It is obvious that tightening requirements for a counterparty in a loan commitment aimed at improving housing conditions inevitably leads to a reduction in the number of options available to the person authorized to exercise the right granted to him. It is significant in this context that in some publications as one of the reasons for the spread of "schemes" for the "cashing out" of MSC funds is called the "narrow framework" of its permitted use [5, p. 10; 9, p. 85]. It seems that, under certain conditions, the narrowing of the circle of lending organizations may prove to be justified. Among these are the mass character of abuses confirmed by statistical data identified when sending MSK funds to accounts of a certain category of organizations, the inability to ensure by other means the targeted use of MSK funds, the extension of the effect of such changes only to the future (contracts concluded after the changes take effect). It should also be noted that the very possibility of improving housing conditions through the use of borrowed funds with subsequent repayment of debt from the funds of MSCs remains, only its content is changing.

Can the logic of reasoning proposed above be used to prevent other abuses in the use of MSK funds? Thus, one of the most common "schemes" for "cashing out" maternity capital in publications on the issues under study is the acquisition, at the expense of the MSCs, of a living quarters from close relatives (most often the parents of one of the spouses) [5, p. 17-18; 8, p. 61]. Is it possible to exclude such situations by prohibiting the use of MSC funds to fulfill obligations under contracts concluded with close relatives? Moreover, examples of such law-making decisions with respect to similar in their legal nature of measures of social support in the housing sector are available in the regulatory legal acts of the subjects of the Russian Federation. Despite some features of the similarity with the problem of "cashing out" MSC through the lending institution described above, the situation under consideration differs in features. First, the thesis about the predominantly imaginary (or feigned) nature of such transactions is based largely on the assumption, since objective data that support it are not usually given. Secondly, the purchase of housing, albeit from close relatives, legally leads to an improvement in the housing conditions of a buyer using MSK funds. Finally, we cannot ignore the "price" of implementing such a restriction , which involves assigning PFR bodies the responsibility to verify the absence of family ties between the parties to the transaction, which will make the procedure for exercising the right to MSK organizationally more complex, both for the empowered person and for the law enforcer.

One of the weakest points in the legal regulation of relations with the disposal of MSK funds for the improvement of housing conditions is still the set of legal rules providing for the submission to the PFR of a notarized obligation to issue a dwelling that was acquired using MSK funds in the common share ownership "owner"of the state certificate for MSK, his spouse and children. The appointment of a unilateral transaction for the issuance of an obligation in the legal mechanism for exercising the right to a CMC is to ensure the registration of a dwelling purchased (built) with the use of MSC funds in the common share ownership of parents and children (Part 4 of Article 10 of Law No. 256-FZ) a hen on the date of occurrence of the right Ownership of the residential premises the composition of the owners is different. The defects in the legal regulation of relations related to the implementation of the obligations presented to the PFR bodies, which are discussed below, are quite obvious and have become one of the prerequisites for the appearance of various "schemes" for the illegal "cashing out" of the parent (family) capital.

1) The body authorized to carry out in one form or another the control over the fulfillment of the obligation of the "owner" of the certificate to design a dwelling in a common shared ownership is not defined [4, p. 47; 5, p. 28; 10, p. 249].

2) not formed a proper legal basis for the exchange of information between the bodies of the PFR and the body responsible for state registration of rights to immovable property. Coupled with the first of the marked gaps, this creates a favorable ground for the alienation of a dwelling premise, which was purchased using MSK facilities and for which an obligation was submitted to the PFR body, without executing the latter. Hence - the well-known practice cases where, within the framework of "schemes" aimed at "cashing" the funds of MSC, a dwelling repeatedly resold, each time - with the use of MSK funds. An exit from a situation could be introduction in the legislation of the changes providing about publishing information on the given out obligation in the Uniform state register of the real estate. The availability of the same entry in the Register on the issued and unfulfilled obligation would be the basis for refusal to state registration of the transfer of the right to a dwelling premise, previously acquired using MSK funds, to third parties. The need for such changes has long been justified by specialists [10, p. 250-251; 11, p. 106; 12, p. 159; 13]. The idea was supported by representatives of the banking community but, in spite of attempts to make her legal form [13; 14], has not yet been implemented by the legislator. Thus, in order to reduce the amount of abuse when sending MSK funds to improve housing conditions, it is necessary to make changes not only to Law No. 256-FZ, but also to legislation on state registration of rights to real estate and transactions with it.

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