

## JUDICIAL PROTECTION OF PENSION RIGHTS: PROBLEMS OF THEORY AND PRACTICE

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**The subject.** The article is devoted to analysis of pension disputes resolution in courts.

**The purpose of the article** is to reveal trends of pension disputes resolution and identify the ways of increasing the efficiency of judicial protection of citizens' pension rights.

**The methodology.** Both general scientific methods (analysis, synthesis, description) and special scientific methods (formal-legal methods method of legal interpretation) were used.

**Results, scope of application.** Pension legislation still does not contain a legal definition of the term «pension dispute» despite currently the prevalence of this category of cases; the legal science still has not developed a uniform approach to definition of the essence of the pension dispute.

Special attention is paid to the issues of definition of the facts in proof, that is complicated because of instability of the pension legislation and a large amount of normative array. Special rules relating to the admissibility of evidence are divided from legally significant circumstances. The attention is focused on the most problematic points that arise in the process of proving: the procedure for confirmation of experience, employment in certain types of work quotas.

Recommendations aimed at improving the effectiveness of judicial protection of the pension rights of citizens are formulated on the basis on the analysis of the identified problems that arise during consideration of pension disputes by law enforcement authorities. Recommendations include the need to improve the quality of normative legal acts, systematization of the pension legislation, increasing demands for training of judges, the creation of conditions conducive to the judges' specialization. The necessity of increase activities of the Supreme Court in the process of issuing clarifications on issues arising in the application of the pension legislation is also considered.

**Conclusions.** The existence of a number of features of the substantive and procedural legal order in pension legislation is proved. Such features include the retrospective of the pension legislation, the resolution of pension disputes in both administrative and judicial procedures, the inability to use the mediation procedures and settlement agreement, the specifics of the subject of the relevant dispute, a large number of exemptions from payment of state fees, and special requirements for the content of the operative part of the judgment.

*Key words: protection of the rights of citizens, pension disputes, citizens' pension rights, social security, social insurance*

### 1. Introduction.

Securing the supreme value of a person, his rights and freedoms (Article 2 of the Constitution of the Russian Federation), the state guarantees citizens the possibility of their unimpeded implementation, contributes to the creation of a proper order for their protection and protection. Guaranteed by the Basic Law of the Russian Federation the right to protection (Article 45) refers to the inalienable rights and freedoms of man and citizen. Recognition of its objective nature is the starting point in the construction of a system of special legal means aimed at ensuring the protection of human rights.

Pension disputes are one of the most complex and at the same time the most widespread category of disputes in the sphere of social security. The statistics show a consistently high number of these categories of cases, which are considered by the courts of general jurisdiction. So, in 2016

the courts at the first instance considered 77 800 disputes arising from pension legal relations, including 6 563 cases on claims of individuals to invalidate the decisions of the regional branches of the Pension Fund, of which more than 88% of the claims were satisfied<sup>1</sup>.

**Statistical information on the consideration by courts of disputes,  
arising from violation of pension legislation  
(claims of individuals to the Pension Fund of the Russian Federation)**

Categories of cases	2012	2013	2014	2015
<b>Total number of cases reviewed with a decision</b>	88,685	90 755	82 610	78,353
<b>Claims satisfied</b>	80 778	83,055	75,498	71,382
<b>Claims have been refused in satisfaction of the claims</b>	7,907	7,660	7 112	6,971
<b>Total amount awarded for collection</b>	184 608 653 rubles.	271 765 996 rubles.	219 074 828 rubles.	200 202 398 rubles.

*Note : The data of the judicial statistics of the Judicial Department  
under the Supreme Court of the Russian Federation<sup>2</sup>*

**2. The concept of a pension dispute.** Despite the "mass nature" of such cases, the pension legislation does not contain a legal definition of the pension dispute. In the scientific literature, attempts were made to define this concept. Thus, D.R. Kazanbekova under disputes related to pension provision understands unsettled differences between subjects of compulsory pension insurance or non-state pension provision, their successors in matters of applying pension legislation [1, p. 10]. More perspective from the point of view of disclosing the essential features of pension disputes is the approach of O.V. Erofeeva, who understands under this concept the disagreement between the parties to pension and closely related procedural relations [2, p. 65]. When constructing the desired concept, the author builds on the characteristics of social relations, between the subjects of which there may be disputes related to pension provision. It is possible to carry the following.

*First*, pension disputes arise only with respect to unsettled disagreements over the provision of pensions, in other words, they *cover only the totality of social relations that is regulated by the social security law*. Issues of pensions cover a whole set of norms that are included in the structure of not only the rights of social security, but also financial and administrative law. Thus, the relationships that form during the accumulation of funds in the formation of extrabudgetary funds are regulated by financial law, and the relations arising in connection with the management of these means are related to the subject of administrative law. Social relations are those that arise between pension authorities and individuals in connection with the latter's right to pension provision [3, p. 34].

*Secondly*, the structure of relations regulated by the social security law will also be heterogeneous. Along with the relations of a material and legal nature, the subject of this branch also includes *procedural relations* connected with the establishment and verification of legal facts necessary for the emergence of social security relations and, in particular, pension legal relations [4, p. 63-64].

<sup>1</sup> URL: <http://www.cdep.ru/index.php?id=79&item=3832>

<sup>2</sup> URL: <http://www.cdep.ru/index.php?id=79&pg=0>

*Thirdly*, in the implementation of the rights of stakeholders to pension provision, relations may arise in which the parties to material and procedural relations protect the right to adequate security - *procedural relations* [5, p. 42]. The question of including this kind of relations in the structure of the subject of social security law remains very debatable. The position of E.E. Machulskaya, according to which the consideration of the dispute by the higher executive authority constitutes the essence of administrative relations, and the resolution of the dispute by the court is the sphere of the administration of the civil process. Only relations on consideration of the above-mentioned disputes by higher-level bodies of state extra-budgetary funds can be considered as socially-providing, since they are not executive bodies [4, p. 65].

### **3. Material and procedural features of consideration of pension disputes.**

Pension disputes have a number of substantive and procedural legal features. These include the retrospective effect of pension laws. Pension legal relations are lasting, and the right to adequate security is "earned" throughout the entire working life of citizens, when the situations of reforming legislation invariably arise. Any transformation in this area should provide for a mechanism for preserving the previously acquired pension rights of citizens. The retrospective application of pension legislation is understood as the possibility of applying the provisions of normative acts that formally lost validity when establishing a pension [ 6 ] . The ultraactivity of the law is manifested, first of all, when calculating the length of the insurance period. This phenomenon extends to the calculation of the insurance pension due to significant changes in the rules for determining their size. The main difficulty lies in the need for thorough examination by the court of both current and formerly active pension legislation. In the foreseeable future, this feature of the pension law will not lose its significance.

Another feature is the impossibility of carrying out mediative procedures, concluding a settlement agreement. In accordance with Art. 148 of CPC the Russian Federation, tasks of preparation of business for proceeding are, including, reconciliation of the parties. Procedural legislation knows two types of conciliatory procedures: mediation and the conclusion of a settlement agreement. Federal Law No. 193-FZ of July 27, 2010 "On an Alternative Procedure for the Settlement of Disputes Involving an Intermediary (Mediation Procedure)" outlined the range of relations to which the mediative procedures are applicable, where the pension legal relations do not belong.

The prohibition on concluding an amicable settlement with respect to pension disputes is not directly established by law. However, based on the public-legal nature of the relations under consideration, the possibility of reconciliation by concluding an appropriate agreement seems unlikely.

The specifics of pension disputes include the inability to satisfy claims for compensation for moral harm caused by an illegal refusal to establish pensions. Despite the obvious moral suffering caused by the impossibility of obtaining a legitimate citizen money amount, sometimes the only source of existence, the current legislation does not fix the possibility of collecting appropriate monetary compensation for such suffering. According to the position of the Supreme Court of the Russian Federation, the violation of pension rights affects the property rights of citizens, and since a special law allowing in this case the possibility of involving bodies that provide pensions is not provided for this kind of liability, claims for compensation for moral harm are not subject to satisfaction. Such a position is characteristic not only for domestic law-th I. In a number of countries (for example, in the United States and some European countries), claims of citizens for the protection and restoration of pension rights are considered by courts as property protection claims [7, p. 398; 8, p. 199]. According practice of the European Court of Human Rights, the denial of a pension is considered by the court as a violation of the right to peaceful enjoyment of possessions [9, p. 66]. Therefore, the recognition by Russian courts of the relevant disputes as property in general corresponds to the global trend.

Protection of rights is carried out in certain forms, which is understood as a set of internally coordinated organizational measures to protect subjective rights under a single legal regime [10, p. 337; 11, p. 10]. The traditional doctrine is the classification of forms of protection depending on the

subject carrying out human rights activities. According to this criterion, two forms of protection are distinguished - *jurisdictional* and *non - jurisdictional* . The possibility of using the latter as applied to the protection of social security rights, including pension benefits, is not directly provided for by current legislation. In turn, the jurisdictional form of protection is divided into a general and special order: *judicial* and *extrajudicial* (administrative).

Disputes arising in the appointment, calculation and payment of pensions can be resolved both by appealing to a higher body of pensions (*extrajudicial procedure for the consideration of a dispute*) or by direct application to the court. In this case, the interested person has the right to independently choose the appropriate form of protection of violated rights, without any preliminary administrative procedures. This right is directly enshrined in paragraph 20 of Art. 21 of the Federal Law of December 28, 2013 No. 400-FZ "On Pension Insurance" (hereinafter - the Law on Pension Insurance), Clause 17, Art. 9 of the Federal Law of December 28, 2013 No. 424-FZ "On funded pensions" (hereinafter - the Law on funded pensions), as well as art. 65 of the Law of the Russian Federation No. 4468- I of February 12, 1993 "On the provision of pensions for persons who have served in the internal affairs agencies, the State Fire Service, the bodies responsible for controlling the circulation of narcotic drugs and psychotropic substances, institutions and bodies of the penitentiary system, The Federal Service of the Troops of the National Guard of the Russian Federation, and their families " (hereinafter - the Law on the provision of pensions for military personnel). Similar procedures are enshrined in the legislation of other states that used to belong to the so-called "socialist camp", for example, in Bulgaria [12, p. 181-183].

Pursuant to these provisions of laws, pension authorities develop and approve the relevant instructions and / or regulations on the organization of citizens' admission and the procedure for considering their applications. For example, the Resolution of the Board of the RF Federal Assembly No. 275n dated November 2, 2007 approved the Instruction for dealing with citizens, insured persons, organizations and insurants in the Executive Directorate of the FIU and the Audit Commission of the FIU and the Regulations on the organization of admission of citizens, insured persons, representatives of organizations and policyholders in the Pension Fund of the Russian Federation".

The disputes relating to the establishment of facts of legal significance, as well as disputes on the right to certain types of pensions, are directly *adjudicated in court* . Also, within the framework of the judicial form of the protection of the law, pension disputes arising between insurants and pension authorities are considered, which follows from the provisions of Cl. 1, Art. 14 of the Federal Law of December 15, 2001 No. 167-FZ "On compulsory pension insurance in the Russian Federation" (hereinafter - the Law on Obligatory Pension Insurance).

**4. Jurisdiction of pension disputes.** In the theory of civil process, subordination is understood as the relevance of disputes concerning the right and other legal matters requiring government-authoritative resolution to the conduct of a state or other body; this property of legal cases, by virtue of which they are subject to resolution by certain jurisdictional bodies [13, p. 118]. Concerning the judicial procedure for resolving disputes, subordination means certain categories of cases that are eligible to be tried by a court [14, p. 124].

Article 22 of the Civil Procedure Code of the Russian Federation (hereinafter - the Code of Civil Procedure of the Russian Federation) establishes general rules for determining the jurisdiction of civil cases, as well as the procedure for their consideration - the type of proceedings (order, litigation, special proceedings, etc.). So, according to p. 1 part 1 of Art. 22 of the Code of Civil Procedure of the Russian Federation, courts consider and resolve lawsuits involving citizens, organizations, public authorities, local governments on the protection of violated or contested rights, freedoms and legitimate interests, disputes arising from civil, family, labor, housing, land, environmental and other legal relations. Thus, the choice of procedural order of cases depends on two criteria: the *nature of the disputed legal relations* and its *subject composition* (one of the parties to the dispute is a citizen).

Based on the above criteria for determining the jurisdiction of a civil case, pension disputes are considered by the courts of general jurisdiction by virtue of cl. 1, part 1, Art. 22 of the Code of

Civil Procedure of the Russian Federation. The indicated position was formulated by the Supreme Court of the Russian Federation in paragraph 1 of the resolution of the Plenum of the Supreme Court No. 30.

The above criteria also affect the definition of the procedural order of the dispute. From the theoretical point of view, the assignment of pension disputes to this or that type of production causes a number of difficulties.

*First*, the relations between citizens and pension authorities because of the lack of coordination between them do not fit into the classical interpretation of public relations. In pension legislation, the use of a generally permissive type of legal regulation is not typical, the opposite principle prevails here, expressed in the formula: everything that is not directly permitted is prohibited. In addition, pension relations, as well as others, related to the provision of social security to citizens, are of a distributive nature and are of exceptional social importance, which requires the use of tools of an imperative method of legal regulation. These arguments allow us to characterize pension legal relationships as *public-law* relations .

*Secondly* , the legal status of the parties to the dispute is of significant importance in determining the type of production. The Pension Fund of the Russian Federation, acting as an insurer, performing operational management of mandatory pension insurance and ensuring the appointment and timely payment of pensions, in the exercise of the constitutional rights of citizens to pension provision, performs public authority. However, proceeding from the content of the norms of Art. 5 of the Law on Mandatory Pension Insurance, clause 1 of the Regulations on the Pension Fund of the Russian Federation (Russia) the Pension Fund of the Russian Federation and its territorial bodies are public finance and credit institutions, which formally excludes the possibility of attributing it to the executive authorities.

The above motivated the basis for the concept of the need to consider pension disputes in the order of production, resulting from public relations, which has its supporters both among specialists in the field of procedural law (see about this: [ 15 ] ) and among scholars of social security law (see: [ 16 ] ).

The actualization of this discussion was facilitated by the adoption of the Code of Administrative Procedure of the Russian Federation (hereinafter referred to as CAS RF). Since 2015, administrative cases related to the protection of violated or contested rights, freedoms and legitimate interests of citizens (organizations) are considered according to the rules established by the CAS of the Russian Federation (Article 17). In particular, in the event of violation of rights and freedoms, legitimate interests, citizens (organizations, other persons) have the right to challenge the decision, the action (inaction) of a state authority, local government, other body, an organization endowed with separate state or other public powers of an official, state or municipal employee in the order of Chapter 22 of the CAS RF (Article 218).

Based on the literal interpretation of the provisions of paragraphs 1 and 5 of the Resolution of the Plenum of the Supreme Court No. 30, such a category of cases is subject to review according to the rules of *the proceedings*. The final position of the law enforcer on this issue was set out in paragraph 1 of Resolution of the Plenum of the Supreme Court of the Russian Federation No. 36 of September 27, 2016 "On Some Issues of Application by the Courts of the Code of Administrative Judicial Proceedings of the Russian Federation", where it is directly stipulated that cases related to the appointment and payment of pensions, the exercise by citizens of social rights, are not subject to review under the rules of the CAS RF. Verification of the legality of the disputed decisions is impossible without establishing the presence or absence of the subjective right of a citizen applying for a particular type of pension provision. In this case, the court checks not only the reasonableness of the decision of the pension security authority, but also confirms the presence or absence of the relevant right of the citizen.

Often the implementation of citizens' rights to pensions requires the establishment of I certain legally significant circumstances, for example, the presence of the special experience of finding dependents, etc. Issues related to the establishment of legal facts that affect pension relations are also subordinate to the courts of general jurisdiction, but are considered already in the

order not of the claim, but of *special proceedings* (Chapter 28 of the Code of Civil Procedure of the Russian Federation). In this case, by virtue of Part 3 of Art. 263 of the Code of Civil Procedure of the Russian Federation, if there is a dispute about the law subordinate to the court, the court issues a ruling on leaving the application without consideration, which explains the right of the applicant and other interested parties to resolve the dispute in the proceedings. Thus, courts can accept applications for the establishment of facts and examine them in special proceedings only if the fact-finding is *not connected with the subsequent resolution of the dispute on the law*.

**5. Jurisdiction of pension disputes.** At the stage of the adoption of the statement of claim to the production important is not only the correct determination of the jurisdiction of a particular dispute, but also to determining whether a given dispute is within the jurisdiction of this court. Unlike jurisdiction, jurisdiction delineates the competence of various courts of general jurisdiction among themselves and determines the relevance of subordinate cases to the jurisdiction of a particular court [14, p. 128].

In determining the *generic (subject) jurisdiction* of pension disputes, one should follow the general rules defined in art. 23 and 24 of the CCP RF (paragraph 2 of the Resolution of the Plenum of the Supreme Court No. 30). So, by virtue of point 5 of part 1 of Art. 23 of the Code of Civil Procedure of the Russian Federation Cases on property disputes at the price of the claim, not exceeding 50 thousand rubles. on the day of the filing of the claim are subject to jurisdiction by a magistrate (for example, on the recovery of excessively paid pensions, on the recovery of a pension that has been granted, but not paid). In the event that the claim is not subject to evaluation (for example, in disputes arising in connection with the refusal to establish an insurance pension), cases *are subject to jurisdiction by the district court* (Article 24 of the RF Code of Civil Procedure). At the same time, when the related requirements that are not subject to assessment and the property claims that are subject to such assessment are combined, the case is subject to the district court.

When determining the *territorial (spatial) jurisdiction*, it is necessary to proceed from the general rules established by Art. 28 ГПК the Russian Federation: jurisdiction of dispute is defined by a residence of the citizen or a place of a finding of the respondent - body of the provision of pensions which has refused appointment of the pension or paying a pension. However, there is an exception to this rule. In accordance with Part 6 of Art. 29 of the Civil Procedure Code of the Russian Federation, claims for the restoration of pension rights related to compensation for damages caused to a citizen by unlawful conviction as a measure of restraint of detention, a written undertaking not to leave the place or unlawful imposition of an administrative penalty in the form of arrest may be filed in court at the place of residence of the plaintiff, according to the rules of *alternative jurisdiction*.

**6. The subject composition of the pension dispute.** The procedural law does not contain a definition of participants in the civil process, nor specifies its composition. In the theory of civil process, it is customary to identify three groups of participants in the civil process: the court, the persons participating in the case (parties, third parties, the prosecutor) and persons facilitating the administration of justice (witnesses, experts, translators) [14, p. 142]. The main participants in the civil process are the parties to the dispute, which have opposite substantive interests, an interest in the outcome of the dispute, and also defend the subjective rights on their own behalf.

With regard to pension disputes, its parties will be *participants of pension legal relations*, between which there is an unsettled disagreement that arose in the process of realizing the right to pension provision. As a rule, *citizens* and *bodies implementing pension provision* act as parties to the pension dispute. The specific composition of participants in pension disputes will depend on the type of pension provision in connection with which there are disputable legal relationships:

- 1) disputes about Pension Insurance;
- 2) disputes about the pension on state pension provision.

According to the Law on Mandatory Pension Insurance, the subjects of compulsory pension insurance are the insured, insurer and insured persons (Article 4). As an insurer in the relationship of mandatory pension insurance are the Pension Fund of the Russian Federation and its territorial bodies (Article 5). In addition, along with the Pension Fund of the Russian Federation in relations

on compulsory pension insurance can act and non-state pension funds when forming the means of pension savings (funded pension). Also, the Law on Mandatory Pension Insurance establishes categories of persons who are insured (Article 6), and insured persons (Article 7). As subjects of the mandatory pension insurance relationship, the said persons, in the presence of unsettled differences, will act as parties to the pension dispute.

In turn, Pension Insurance are divided into retirement pension, disability and loss of breadwinner (Article 6 of the Law on Pension Insurance). Different reasons for the emergence of rights to pension provision cause differences in the subject composition of the pension dispute. In one case, such will be the attainment of a certain age and satisfaction of other requirements established by the Pension Insurance Act or the employment in certain sectors of the economy for a certain period of time (with respect to pension disputes arising in the establishment of early insurance saving for old age). In another case, for recognition as a subject of a pension dispute, it is necessary to have a certain status for citizens (establishing disability I, II or III group, or recognition of a person as a non-able member of the family of the deceased breadwinner, who was dependent on him). In addition, the right to protection of pension rights is enjoyed by persons referred to in Art. 10 of the Law on Pension Insurance

Other subjects will be different disputes arising from pension legal relations for state pension provision. First of all, this applies to the bodies that provide pensions. Thus, the Law on the provision of pensions for servicemen establishes the principle of departmental organization of pension provision for persons who have served in the military, served in law enforcement bodies and members of their families. Article 11 of this Law establishes that it is stipulated that the pension provision of the said persons is carried out depending on the last place of service by the relevant federal executive bodies: the Ministry of Defense of the Russian Federation, the Ministry of Internal Affairs of the Russian Federation (hereinafter - the Ministry of Internal Affairs of Russia), the Federal Security Service of the Russian Federation, and the Federal Penitentiary Service of the Russian Federation. In the structures of these bodies, specialized services have been established that carry out general management of pension provision. For example, the Ministry of the Interior of Russia includes the Financial and Economic Department.

A party to a pension dispute may be a policyholder. For example, if he does not fulfill his obligation to pay insurance premiums on time and in full, the insured person has the right to exercise his right to judicial protection by presenting a relevant claim for recovery of insurance premiums from the policyholder for the previous period (paragraph 6 of the Decree of the Plenum of the Supreme Court No. 30).

Persons involved in the case include third parties. For example, when resolving disputes on early retirement benefits, employers (insurants) are employed by courts as persons who do not claim independent claims regarding the subject of the dispute. In the case of presentation by the insured person to the insured of a claim for collection of insurance premiums, the court is obliged to attract a territorial body of the Pension Fund of the Russian Federation as a third party.

A special procedural position among the persons participating in the case is taken by the prosecutor. The procedural law distinguishes two forms of participation of the prosecutor:

1. *Entry into the process for giving an opinion* (Part 3, Article 45 of the Code of Civil Procedure of the Russian Federation). The use of this form is possible only in cases directly stipulated by the law: in cases of eviction, restoration at work, compensation for harm caused to life and health and in other cases (for example, Articles 244.12, 273, 283 of the RF Code of Civil Procedure).

2. *Appeal of the lawsuit by the prosecutor* (Part 1, Article 45 of the Code of Civil Procedure of the Russian Federation). Two kinds of handling established by the CPC:

- a) in the interests of the state, society or individual citizens. In this case, the prosecutor must be justified before the court, for what reasons the citizen could not apply for judicial protection on his own, and also what is the need to protect public interests, how they were violated.

b) in the interests of citizens who have appealed to the prosecutor. Here we mean the initiation of a trial based on the results of a check by the prosecutor of appeals or statements of citizens.

When a prosecutor appeals with a claim, he enjoys the rights of the plaintiff, but in fact he is not. Therefore, any change in the claim, as well as other procedural actions, can be carried out only in agreement with the plaintiff [17, p. 124-129].

The pension legislation does not establish the need to give the prosecutor an opinion on pension matters, therefore his participation is possible only in the form of filing a lawsuit, which occurs, as a rule, after the appeal of citizens to the prosecutor's office. This form of implementation of the protection of citizens' rights is an effective tool used to maintain law and order in the country. According to statistics, only in 2015, the prosecutor's office received more than 4.5 million applications (including applications and complaints) of citizens, and in 2016 this figure increased by 7.4%. Among them there is a consistently high number of citizens' appeals for protection of rights in the sphere of pensions, the verification of which, as a rule, ends with the presentation of the relevant suit by the prosecutor.

**7. Litigation costs. Government duty.** This institution of civil procedural law determines the rules for reimbursement of costs incurred by persons participating in the case, in connection with the consideration of civil cases in court. According to Part 1 of Art. 88 Civil Procedural Code of the Russian Federation, court expenses consist of a state fee and costs associated with the consideration of the case, including, but not limited to, amounts payable to witnesses, experts, specialists and translators, expenses for payment of representative's services postage and other charges. 94 ГПК the Russian Federation, and also recognized by court necessary.

With regard to pension disputes, there are a number of features that must be taken into account when determining the amount and order of payment of a state fee, as well as the distribution of court costs.

*First*, the tax legislation establishes privileges for payment of state duty (Article 333.36 of the Tax Code of the Russian Federation), which can be divided into the following groups:

1) privileges established depending on the subject of the dispute (the status of the person participating in the case). In particular, plaintiffs on cases of protection of the rights and legitimate interests of the child were released from payment of the state duty (for example, when a suit was filed challenging the legality of the decision of the pension authority to refuse to establish a survivor's pension), the plaintiffs are invalids of Groups I and II (at a price a claim not exceeding 1 000 000 rubles), as well as prosecutors on applications in defense of the rights, freedoms and legitimate interests of citizens, and state bodies (local self-government bodies) acting as a plaintiff or defendants.

2) benefits established depending on the nature of the dispute. For example, plaintiffs are pensioners who receive pensions in accordance with the procedure established by the pension law, for claims of a property nature to the Pension Fund of the Russian Federation, non-state pension funds, federal executive bodies that provide pensions to persons who have served military service. In this case, the citizen-pensioner is granted appropriate benefits only in the case of a suit in defense of his pension rights. When applying for judicial protection with other requirements, including the establishment of legally significant events (facts) affecting the amount of the pension that is prescribed, the current tax legislation of any benefits for this category of citizens does not provide for.

Thus, if a person who is not a recipient of a pension has applied for protection of pension rights, the state fee is paid in the amount and in accordance with the procedure provided for in Art. 333.19 and 333.20 of the Tax Code. At the same time, its size will directly depend on the nature of the claims of the plaintiff. When filing a claim of a property nature (for example, upon presentation of claims for the collection of an accrued but not received pension amount), a combined rate is established that combines a firm amount of money and a percentage of any amount. In the case of presentation of claims of a property nature that can not be assessed (for example, on recognition of the right to a pension), the state fee is paid in a hard cash amount of 300 rubles.



As a rule, in the pleading part of the statement of claim for the protection of pension rights, several interrelated requirements of both non-property and property nature are formulated, which individually do not entail the emergence or modification of pension relations, but in combination form a complex legal entity that is the basis of the claim. This situation is possible when filing a claim for recognition of the right to an insurance pension, on imposing the obligation to appoint and pay a pension. Since such requirements are interrelated and derived from each other, there are no grounds for paying a state fee for each claim separately (subparagraph 1 of clause 1 of Article 333.20 of the Tax Code of the Russian Federation).

Also, when filing a suit (appeals and cassation complaints), the territorial bodies of the Pension Fund of the Russian Federation are *not exempted* from payment of the state fee, since they are a state institution and do not formally fall within the list of persons specified in pp. 19 p. 1 tbsp. 333.36 (paragraph 5 of the Resolution of the Plenum of the Supreme Court No. 30).

When considering pension disputes, the rules for the distribution of court expenses do not contain any exceptions and are applied in accordance with Art. 98 and 100 of the CCP RF. Often, the plaintiff, in favor of which the court decision was held, is exempt from payment of state duty. In this case, it is recovered from the defendant in proportion to the satisfied part of the claims that the plaintiff should have paid if he had not been exempted from paying the state fee (paragraph 4 of the resolution of the Plenum of the Supreme Court No. 30).

As a rule, the resolution of a pension dispute is not limited to the first instance. If, in the review of the case, the decision was made in favor of the defendant (the territorial body of the Pension Fund of the Russian Federation), imposing on the plaintiff exempted from payment of the state fee, the obligation to pay it, is unlawful.

**8. Decision of the court.** According to Part 5 of Art. 198 of the CCP RF in the operative part of the decision must be reflected conclusions from the failure to satisfy the claim or to refuse to satisfy the claim in full or in part, as well as an indication of the distribution of court expenses, the time and procedure for appealing the court decision. With regard to pension disputes, some features are established.

It should be borne in mind that the court can not independently appoint this or that type of pension, since it does not possess the relevant powers in this area. However, in case of satisfaction of the lawsuit of a citizen claiming the appropriate security, the court is entitled to oblige the institution that carries out the pension provision to do this. According to paragraph 32 of the Resolution of the Plenum of the Supreme Court No. 30, the resolution part of the decision should specify which requirements are to be satisfied, what duty is assigned to the defendant, and also from what time the respondent is obliged to assign a pension to the plaintiff. When certain periods are included in the insurance or other length of service in the operative part, it is necessary to indicate the dates of the beginning and the end of the period.

With further revision of the decision of the court of first instance, the *turnaround of the execution of the court decision* is not allowed. The exception to this rule is the cases of dishonesty on the part of the citizen or a countable error.

**9. Features of evidence subject to the pension dispute and rules of admissibility of evidence.** Proof, in addition to procedural aspects, has a logical basis, consisting in building a system of value judgments of the court and persons participating in the case, which are aimed at justifying the circumstances of the case being proved [18, p. 132]. Therefore, the substantive relationship determines the subject of evidence in a particular case, that is, the totality of legally significant circumstances that are established to resolve the dispute.

In the science of social security law there is no uniform approach to the classification of pension disputes. It seems that such a unit is derived from the nature of pension relations in general. In essence, the claimed claims, the whole set of disputes arising in connection with the realization by citizens of the right to pension provision can be divided into *proper pension disputes* related to material legal relationships (disputes on recognizing the right to a pension, on recognizing as illegal the decision of a pension authority to refuse a pension, recognition of illegal denial of the appointment of a pension), and *disputes arising in the course of procedural relations* (disputes

arising in connection with the violation of the procedure for establishing and paying, the recalculation of pensions, suspension or termination of payment of pensions). Depending on the type of pension provision, pension disputes are divided into *disputes arising from the relationship regarding the realization of the rights of citizens to Pension Insurance*, and *disputes arising from relations on state pension provision*. From the basis of the appointment of a pension, the relevant disputes can be divided into those arising from old-age pensions, disability, survivors' benefits, seniority and social pensions. On this classification of pension disputes is not exhausted and can be continued. However, the format of this work does not allow us to cover all the problems of determining the subject of proof for pension disputes. It is more expedient to focus on the most problematic issues that arise in law enforcement practice.

According to Part 2 of Art. 56 of the Code of Civil Procedure of the Russian Federation, the duty to determine the subject of proof is to establish the circumstances that are relevant to the case, the party that is to prove them must be identified by the court. The difficulty in determining the subject of proof for pension disputes is due to a change in pension legislation that occurred over the past decades, which affected the rights of those citizens who began to form their pension laws before the 2002 reform. In addition, the pension legislation establishes special rules concerning the admissibility of proving individual circumstances that are important in the occurrence and modification of pension relations. The most problematic moments in the process of proof are the issues of confirming the length of service (insurance and special), and with regard to early retirement provision, the procedure for confirming employment in certain types of work, including work in institutions named by the Lists that give the right to early retirement of the old-age insurance pension, and confirmation of the rate of production.

The insurance nature of pension provision makes the existence of an insurance period one of the key reasons for obtaining the right to an insurance pension. This circumstance affects the process of proof in general, and the admissibility of evidence, in particular.

General rules for confirming the insurance period are established by Art. 14 of the Law on Pension Insurance, the Rules for Counting and Confirming the Insurance Experience for Establishing Pension Insurance as well as Order No. 258n of the Ministry of Healthcare and Social Development of the Russian Federation of March 31, 2011 "On Approving the Procedure for Confirming the Periods of Work Granting the Right to Early Retirement of the Retirement Pension". Specific means of proof will depend on the time span to which the relevant period of work refers. So, the insurance experience after registration of the person as the insured is subject to an establishment only on the basis of data of the individual (personified) account. Until the time of such registration, as well as in the information of individual (personalized) records, incomplete information on the periods of work (other activities) or information on individual periods of work is missing, the length of service is confirmed on the basis of the documents established by cl. 11- 25 of the Rules.

In the insurance period, along with the periods of work (other activities) for which premiums were paid, the "non-insurance" periods specified in Art. 12 of the Law on Pension Insurance. In the event that an individual (personalized) account contains incomplete information about other periods or there is no information on certain other periods, the insurance period is confirmed by the documents specified in clauses 27-36 of the Rules.

Also, work periods prior to registration as an insured person can be confirmed on the basis of witness testimony (two or more witnesses), provided that the work documents are lost due to a natural disaster and other causes not caused by the employee's fault. Witnesses should know this employee on joint work with one employer and have documents about their work for the time in respect of which they confirm the work of the citizen. However, the testimony can not be recognized as an admissible proof when confirming the nature (characteristics) of the work. Data on the nature of work and other factors that determine the right to early assignment of an old-age insurance pension, as well as the fulfillment of the norm of working time (pedagogical or educational load) are confirmed by certificates issued by employers or relevant state (municipal bodies), as well as the results of certification of workers places, conclusions of the bodies of state

expertise of working conditions (paragraphs 4-6 of the Order of the Ministry of Health and Social Development of the Russian Federation of March 31, 2011 No. 258n).

In practice, there are situations when the refusal to assign an early insurance pension for old age is due to a formal inconsistency of the position of the employee indicated in the workbook to the requirements of the current lists of professions, jobs and positions. In the case of establishing the identity of the specifics and nature of the work performed by the person, the position held, the current profession, those jobs, positions, professions that qualify for early retirement insurance, claims are subject to satisfaction, and the disputed period is set off for special service. However, the identification of the *identity of the various names of works, processions, and posts is not permissible* (paragraph 16 of the Resolution of the Plenum of the Supreme Court No. 30).

*Decision of the territorial pension authority was refused X. in the appointment of an early insurance pension for old age due to the lack of required length of service with difficult working conditions (Schedule No. 2), since the document confirming the fact that the work was done as a fitter in the oil industry was not documented. Labor book X. contains a record that in the disputed period the plaintiff was working in the position of "repairman". Having examined the presented evidence, the court concluded that the plaintiff's work in the disputed period was held in the oil production field, the nature of the plaintiff's work has not changed, therefore the fact that since 1991 the List No. 2 in the section related to oil and gas production and gas condensate, there were provided "mechanics-repairmen", does not entail the conclusion that the nature of the plaintiff's work was different from that provided for by List No. 2 of 1991. When making the decision, the court proceeded from the fact that when changing the legislation (introduction of the Lists of 1991), the employer did not fulfill his duties on the correct indication of the name of the profession, which can not lead to negative consequences for the plaintiff.*

Another indicative case is known to the practice of the Moscow City Court. *The reason for I.'s appeal for judicial protection was the refusal of the pension body to designate an early insurance pension as a person engaged in creative activity on the stage in theatrical and entertainment organizations (I. worked in circus organizations as an actor-equilibrist). The basis for not taking credit in special service became the fact that I worked in organizations not listed by the list of professions and positions of workers of theaters and other theater and entertainment enterprises and collectives and the existence of periods of forced downtime during the work period (breaks and waiting for sending and receiving baggage, breaks between contracts, travel during tours, registration of personal and accompanying documents, etc.). To include the relevant periods of work in the special length of service, the court examined archive certificates, constituent documents of organizations and other documents confirming that the basis of their activities was circus activity, that is, the creation and rental of circus programs, the production of circus props. The exclusion from the special period of the periods of finding AI in forced idle time is recognized by the court as illegal, because, firstly, the legislation that was in force at the time of the labor activity did not provide for such a possibility, and secondly, the specificity of the work of circus artists must be taken into account. To maintain a high level of professionalism and readiness to demonstrate tricks of increased complexity, during the idle time the circus performers need to work on improving their numbers, maintaining their physical and athletic form, practicing in sports and gyms, in circus and other rooms, that is, doing the same job and during public appearances, rehearsal periods.*

N When you change the organizational and legal form of institutions engaged in educational and therapeutic activities, in the case of preservation in their former character of professional activity of the court is entitled to establish the identity of the posts, the work which is counted in the length of the pre-term labor retirement pension, the positions that are set after such a change.

*The decision of the head of the UPF RF was refused by B. in the appointment of an early retirement pension due to the exclusion from the special period of the period of work in ZAO City Dental Clinic No. 6. Having examined the evidence, the court concluded that it was necessary to include a controversial period in the special period of service, since the materials of the case, including a historical reference, confirmed the fact of the establishment in 1985 of the Dental Clinic*

*No. 6 (institution), which subsequently changed the organizational and legal form (currently - CJSC "GSP No. 6"). According to the license presented to the court, the company implements primary health care in all areas of dentistry, receives patients from several districts of Novosibirsk. The nature of the plaintiff's work since the day of employment did not change. The work in the position of a dentist, its intensity and tension, adverse effects of various factors, increased psychophysiological loads are the same as for dentists in state and municipal dental polyclinics, the work in which entitles them to credit her in the seniority in accordance with 20 parts of 1 Art. 30 of the Federal Law No. 400-FZ of December 28, 2013.*

From the general rule on the distribution of the burden of proof between the parties, exceptions can be established in the form of legal presumptions. For example, when considering a dispute on the appointment of a survivor's pension on the basis of Cl. 4, Art. 10 of the Law on Pension Insurance establishes a presumption of dependency for children of deceased parents, which does not require evidence. It follows from the provisions of the Family Code of the Russian Federation, according to which parents are obliged to support their minor children (clause 1, article 80). This circumstance exempts children from the obligation to prove the fact of being dependent on their parents when granting a survivor's pension.

On the contrary, the norms of the pension law do not provide for the presumption of spousal support, so this fact is subject to proof by the rules of Part 1 of Art. 56 CPC. It is not stipulated by the pension legislation and the presumption of permanent employment when working under an employment contract. By virtue of law, this fact is subject to confirmation by certain means of proof. In the case of recovery from the citizen - pensioner of the amounts of an unreasonably paid pension, the conscientiousness of the recipient of the pension security is presumed (part 3 of Article 10 of the Civil Code of the Russian Federation), and the evidence of abuse on his part is placed on the pension body.

In completing the review of the specifics of the process of proof in resolving pension disputes, it is impossible to ignore the active role of the court in the process of collecting evidence. Often, only with the help of the court, it is possible to present some or other evidence justifying the position of the retired plaintiff.

#### **10. Ways to improve the effectiveness of judicial protection of citizens' pension rights.**

**Conclusions.** Analysis of material and legal and procedural features of pension disputes allows the development of a number of recommendations aimed at improving the effectiveness of judicial protection of pension rights of citizens. First of all, we are talking about the quality of the legislative base. The effectiveness of pension legislation is impossible without its stability. The continuing character of the relationship presupposes the need to see not only tactical, but also strategic goals [19, p. 388-389].

It is necessary to take immediate steps to systematize pension legislation, which can be implemented in the form of consolidation and in the form of codification. The significant difficulties in applying pension legislation are caused not only by the multiplicity of sources of law and their instability, but also by the lack of uniformity of the conceptual apparatus enshrined in the relevant legislative acts, and therefore it is necessary to amend the legislative acts, bringing them to some common denominator as at the legal level, and in the doctrine of social security law.

In order to improve the system of protection of pension rights of citizens, the stability of judicial practice plays an unimportant role. A potential participant of pension disputes can become practically any person who carries out its socially useful activities, and therefore it is difficult to underestimate their social significance. Therefore, a fairly "careless" attitude to the fate of the pension rights of citizens on the part of both legislative and law enforcement bodies is truly bewildering.

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