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CONDITIONS OF REALIZATION OF REGIONAL CIVIL SERVANTS' RIGHTS ON PENSION PROVISION

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The subject of the paper is civil servants' right on pension provision and realization of this right in Russian regions. The purpose of the paper is to check the constitutionality and legality of limits to this right. Some limits were imposed by the court practice of the Supreme Court of the Russian Federation.

The methodology. General scientific methods as analysis, synthesis, induction, deduction, comparison were used. The authors also use the formal legal interpretation of judicial decisions of the Supreme Court of the Russian Federation, concerning pension rights of public servants.

The main results and scope of their application. The principle of budget balance is very relevant for the Russian Federation and is crucial in the system of public administration. But different courts' approaches to the protection of the rights of citizens depending on their official position and social affiliation means a violation of the constitutional principle of equality of rights, infringe the rights of civil servants to state pension provision. The results of research may be used as the basis of correction of judicial practice of the Supreme Court of the Russian Federation and legislation concerning pension rights of public servants.

Conclusions. Deprivation of rights to receive a pension when there is an absence of the region's necessary budget funds leads to unjustified differences in the implementation of this right in relation to civil servants in certain regions of the Russian Federation. The constitutional principle of equality of citizens' rights should always be taken into account by the courts when considering the most important cases related to the establishment of social support measures for certain categories of citizens.

1. Introduction

In accordance with Article 7 of the Constitution of the Russian Federation, Russia is a social state. The Russian Federation protects the work of people, provide state support for the disabled and senior citizens, developing the system of social services and establish government pensions, and other social security guarantees. According to A.I. Kazannik and A.N. Kostyukov: " Art. 7 of the Constitution of the Russian Federation lists all the legal guarantees of the right to social protection of the population. At the same time in art. 39 of the Constitution of the Russian Federation highlighted the two most important forms of realization of this prospect - social security and social insurance. But since the provisions of Art. 39 of the Constitution may contradict the fundamental principles of the constitutional system of the Russian Federation, it can reasonably be argued that with its about keeping regulatory decorated just *right to social security* (Art. 2 of Article 16 of the Constitution of the Russian Federation)" [1, p. 87].

In accordance with Part 1 of Art. 39 of the Russian Constitution, Everyone shall be guaranteed social security at the expense of the State in old age, in case of an illness, disability, loss of the bread-winner, for upbringing of children and in other cases established by law. State pensions and social allowances shall be established by law. In this regard, the Constitution guaranteed the right of certain categories of citizens to the various measures of social support to meet the essential needs, including in the form of pensions, additional payments to pensions, benefits, receipt various governmental benefits, etc.

The detailing of the constitutional norms establishing the social rights of a person and a citizen is carried out with the help of the development of social legislation. At the same time, the dynamics of state and legal development leads to an increasing accumulation of regulatory legal acts in various sectors of the social sphere. Thus, the social function of the state itself is intensively developing [2, p. 1-22].

On the other hand, with according to parts 1, 2, Art. 19 of the Constitution of the Russian Federation the State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic or religious grounds shall be banned. However, insulating the principle of equality is not always considered a direct enforcer - such as courts of law when considering the types of cases relating to the establishment of social support to certain categories of citizens. In this connection, this article considers some aspects of judicial practice in this field in terms of compliance with the constitutional principle of equal rights of citizens.

Since the most effective form of protection of social rights is judicial protection. It is the court that has the right to oblige the state and its bodies to fulfill their obligations to the person and compensate him for the damage. In this regard, in legal literature it is noted that the powers granted to the court turn it into a powerful stabilizing force capable of protecting the rights and freedoms of citizens, protecting society from destructive social conflicts [3, p. 27; 4, p. 5-17; 5, p. 26].

2. Records of income and budget of the subject of the Russian Federation in establishing various measures of social support.

The law of Omsk region of July 4, 2008 № 1061-OZ "The Code of Omsk region on social protection of certain categories of citizens" established a measure of social support for permanent residents and workers in rural areas employees of medical organizations of the state health system of Omsk region and non-working pensioners dismissed in connection with retirement from these organizations (more – medical workers), which By the law of Omsk region of December 6, 2012 № 1494-OZ" on amendments to the code of Omsk region on social protection of certain categories of citizens" was suspended from January 1 to December 31, 2013.

The question of legality of suspension of this measure of social support was considered by the Supreme Court of the Russian Federation. The reason for the temporary suspension of the measures of social support to medical workers was the lack of sufficient funds in the regional budget for its implementation, as well as the fact that in respect of these workers, a phased increase in wages was carried out in accordance with the decree of the President of the Russian Federation dated may 7, 2012 № 597 "on measures for the implementation of the state social policy".

However, according to the Supreme Court of the Russian Federation from November 13, 2013 No. 50-A11Г13-10 lack of subject of the Russian Federation financial resources in fulfillment of obligations on granting of measures of social support cannot be the basis for the violation of the rights of citizens and the suspension of these measures. Making changes to the content of social protection measures, including those aimed at its narrowing, the legislator must proceed from the inadmissibility of the publication in the Russian Federation of laws abolishing or diminishing the rights of citizens, and base its decisions on constitutional principles and norms, both fixing a single constitutional status of the individual for all citizens of the Russian Federation, and determining the special status of certain categories of citizens – recipients of social support measures.

On the basis of the above definition of the Supreme Court of the Russian Federation law of the Omsk region of December 26, 2013 № 1603-OZ "on the implementation of article 36 of the code of Omsk region on social protection of certain categories of citizens" from November 13, 2013 resumed the provision of social support to medical workers. On the issue of cancellation or suspension of measures of social support for certain categories of working citizens living in rural areas (medical workers, employees of educational organizations), similar decisions of the Supreme

Court of the Russian Federation (the Supreme Court of November 13, 2013 № 82-APG13-3; April 25, 2012 № 74-APG12-3; August 31, 2011 № 19-G11-15, etc.) were also adopted.

On the other hand, there is the opposite court practice on the establishment of pensions for years of service (pension Supplement) (hereinafter – the pension for years of service) of former civil servants of the Russian Federation, as well as persons holding certain public positions of the Russian Federation (hereinafter – civil servants). Thus, in accordance with the appeal determination of the Supreme court of the Russian Federation from July 27, 2016 No. 42-AПГ16-6 is recognized as invalid the Law of the Republic of Kalmykia dated 22 February 2007, No. 335-III-Z "On pensions for years of service to the persons holding state positions of the Republic of Kalmykia, office of the state civil service of the Republic of Kalmykia". The said court decision is based on the fact that the implementation by the public authority of the subject of the Russian Federation of its discretionary powers to establish additional material guarantees for civil servants directly depends on the level of filling the budget with its own revenues, ensuring the possibility of independent execution of its expenditure obligations, objective indicators of the socio-economic situation of the subject of the Russian Federation.

In addition, the court concluded that at a low level of budgetary security and low social security indicators of the population, the establishment of additional guarantees for civil servants by the disputed law of the Republic of Kalmykia, contradicts the principles of independence and balance of budgets, does not ensure the balance of private and public interests and does not allow to allocate funds for the full implementation of public obligations. Similar judicial practice has developed in other subjects of the Russian Federation (for example, Bryansk and Omsk regions).

Indeed, for the Russian Federation, the principle of budget balance is very relevant and crucial. It should be noted that the problems associated with ensuring the balance of budgets of the budget system of the Russian Federation have a long history [6; 7, p. 38]. Budget balance is an interdisciplinary concept. In Economics, the balance of the budget is defined as a fixed value at a certain point, which is the result of a comparison of income and expenditure on the basis of the balance method [8, p. 63]. However, this principle, based on its legislative content, is not only characterized by equality of budget revenues and expenditures, but also allows for some deviations from such equality (formation of a budget deficit).

In various concepts of development of the Russian legislation it is also noted that expenditure obligations should be accepted only on the basis of careful assessment of their efficiency and in the presence of resources for their guaranteed execution within the accepted budgetary restrictions [9]. In this regard, the study of the legal scientific problem of ensuring the efficiency of budget expenditures is of direct practical importance [10].

At the same time, the presented court decisions, which are of the opposite nature, do not allow to determine why the rights of certain categories of citizens (medical workers and employees of educational organizations) to social support measures provided at the expense of the budget of the subject of the Russian Federation are subject to implementation regardless of the financial capacity of the regional budget, and the right of civil servants to retirement pension, which is the same measure of social support, can be canceled on the basis of a court decision due to the subsidized budget of the subject of the Russian Federation. We believe that the existing different approaches to the protection of the rights of citizens, depending on their official position and social affiliation, indicate a violation of the constitutional principle of equality of rights, infringe the rights of civil servants to state pension provision.

3. Taking into account the volume of budget revenues of the Russian Federation in the establishment of the same measures of social support.

According to part 4 of Art. 7 of the Federal law of December 15, 2001 № 166-FZ "on state pension in the Russian Federation" "the conditions for granting the right to pension to civil servants at the expense of budgets of subjects of the Russian Federation are determined by laws and other regulatory legal acts of subjects of the Russian Federation. Thus, the establishment of the expenditure obligation of the subject of the Russian Federation to provide pensions for years of

service to civil servants is the duty of the subject of the Russian Federation, established by Federal law, regardless of such conditions as the presence or absence of the subject of the Russian Federation necessary own funds for the payment of pensions for years of service.

In the above-mentioned decisions of the courts as one of the main reasons for invalidation of certain laws of the Russian Federation on provision of pensions for long service to civil servants, the budgets of regions for a long time is scarce, the corresponding subjects of the Russian Federation related to the number of subsidized regions of the Russian Federation, the revenue of which a significant proportion of budget is transfers from the Federal budget of the Russian Federation, and therefore their actual funding is from the Federal budget.

Deprivation of a certain category of citizens of the right to receive a pension for years of service in the absence of the region's necessary own funds leads to unjustified differences in the implementation of this right by civil servants in certain regions of the Russian Federation. This entails such a differentiation in the legal status of citizens belonging to the same category of civil servants, which has no objective and reasonable justification, is incompatible with the requirements of Article 19 of the Constitution of the Russian Federation and is not consistent with the constitutionally significant objectives of possible restrictions of human and civil rights and freedoms provided for by part 3 of Article 55 of the Constitution of the Russian Federation, as repeatedly pointed out by the constitutional Court of the Russian Federation. Thus, in this case there is a violation of the constitutional principle of equal rights of citizens depending on their place of residence.

4. Different approaches in establishing similar social support measures at the Federal, regional and municipal levels.

In accordance with article 4, paragraph 4, article 6 of the Federal law of July 27, 2004 № 79-FZ "on the state civil service of the Russian Federation" the unity of legal and organizational bases of the Federal civil service and civil service of the Russian Federation is one of the principles of civil service; the relationship of civil service and public service of the Russian Federation of other types is provided by the correlation of the basic conditions of state pension provision of citizens who have served in the Russian Federation. According to paragraph 6 of article 7 of the act, clause 6, article 5 of the Federal law of 2 March 2007 No. 25-FZ "on municipal service in the Russian Federation", the relationship between the civil service and municipal service is ensured by the correlation of the basic conditions of state pension provision for citizens who have served in the civil service and citizens who have served in the municipal service.

There is no doubt that Federal civil servants and persons holding separate Federal positions (e.g. judges, prosecutors, military personnel, members of the internal Affairs bodies, etc.) are entitled to a retirement pension regardless of the fact that they have financial difficulties in the Russian Federation, whether they live in a subsidized region or not. At the same time, according to the Supreme Court of the Russian Federation, most regions of the Russian Federation received subsidies from the Federal budget, which was the basis for depriving civil servants of the right to receive pensions for years of service. In our opinion, the establishment of dependence of social support measures on the official position, that is, the level or type of public service of the Russian Federation (Federal or subject of the Russian Federation), clearly violates the constitutional principle of equality of citizens' rights, as well as the principle of unity of legal and organizational bases of the public service of the Russian Federation.

Even more interesting in this light are the decisions of the courts on the legality of the establishment of pensions for seniority for municipal employees and persons holding certain municipal positions. For example, in accordance with the appeal decision of the Supreme Court of the Russian Federation of June 8, 2016 № 83-APG16-2 in satisfaction of the administrative claim of the Prosecutor of the Bryansk region on the recognition contrary to Federal law and invalid decision of the Bryansk city Council of people's deputies of February 28, 2007 № 644 "on the adoption Of regulations on pension provision of persons holding municipal positions of the city of Bryansk" was refused.

Thus the Supreme Court of the Russian Federation fairly noted that local governments can't be deprived of opportunity to enter and change the order and conditions of providing at the expense of own means to the persons substituting positions of municipal service in this municipality, additional providing in the form of pension for length of service. Falsely claiming that the lack of municipal formation "the city of Bryansk" own funds for the payment of the above pensions is a sufficient basis for the recognition of the disputed legal normative act as invalid, Bryansk regional court has effectively deprived the specified category of citizens of the city of Bryansk is guaranteed by Federal law the right to receive additional pension in the form of retirement pensions.

Deprivation of the persons substituting the municipal position of the right to receive the pension assigned to it for length of service in case of absence at municipality of necessary own money for the specified payment leads to unreasonable differences in implementation of this right by the persons passing municipal service in other municipality, and entails such differentiation in the legal status of the citizens belonging to the same category which has no objective and reasonable justification, is incompatible with requirements of Art. 19 of the Constitution of the Russian Federation. In such circumstances, the arguments given by the Prosecutor of the Bryansk region about insufficiency of own means of the budget of municipality in the presence of proofs of it, could have value only at check of its requirements about the overestimated size of the monthly surcharge established by the disputed regulatory legal act to the state pension.

In this case, it is paradoxical that in the same region (Bryansk region) with a difference of six months, the Supreme court of the Russian Federation takes diametrically opposite decisions: persons holding public positions in the Bryansk region were deprived of the right to a pension for years of service (the Supreme court of the Russian Federation Of December 2, 2015 № 83-APG15-15), and persons holding municipal positions, such right was defended (the Appeal ruling of the Supreme Court of the Russian Federation of June 8, 2016 № 83-APG16-2). It seems that in this case it was not so much the constitutional right to social security that mattered as the subject that had this right, which casts doubt on the implementation of the already mentioned constitutional principle of equality. Other authors see the reason for the inconsistency of judicial acts in the absence of recognition of judicial precedent as a source of law, which is opposed to the legal positions of courts (judges) and judicial discretion, which can take place only where there is no judicial precedent [11].

The examples given clearly show how the law enforcement officer formulates approaches to the regulation of relations based on the conflict of constitutional principles; how he tries to find a balance between such provisions and the values constitutionally protected by these provisions. The examples given show the difficulty of finding an appropriate balance; in some cases, the court has taken a very cautious approach to formulating its legal positions.

It should be noted that the balance of constitutionally protected values and interests is a prerequisite for the implementation of social guarantees provided by the Constitution of the Russian Federation [12; 13]. In this regard, it is necessary to agree with I. A. Umnova in the allocation trends expansion of range of subjects the application of the provisions of the Constitution of the Russian Federation and, as consequence, growth of conflicts and disputes in the judicial practice in the context of the law interpretation of certain constitutional provisions. This trend, estimated I. Smart as negative, complicates the effectiveness of the Constitution of the Russian Federation by courts of General jurisdiction, as demonstrated by the examples [14].

5. Conclusions.

The indicated infringement of civil servants' rights to state pension provision, obviously, does not contribute to the formation of professional personnel of the civil service and will lead to the release of a significant number of highly qualified specialists due to the weakening of their interest in the further civil service, to a shortage of citizens wishing to enter the civil service. In this regard, the constitutional principle of equality of citizens' rights should always be taken into account by the courts when considering the most important cases related to the establishment of social

support measures for certain categories of citizens. Only then will the individual's right to social protection and the necessary balance of private and public interests be ensured.

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