

THE POWERS OF THE BODIES OF THE SOCIAL FUND OF RUSSIA TO CONTROL THE VALIDITY OF SOCIAL SECURITY

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The subject of the study is the norms of Russian legislation providing for the rights and obligations of the bodies of the Social Fund of Russia (SFR) to control the validity of social security. The variety of legal acts that regulate social security relations with the participation of SFR bodies makes it difficult to form a holistic view of the system of powers of these bodies to control the validity of social payments and services provided by the SFR.

The purpose of the study is to systematize knowledge about the powers of the SFR bodies to control the validity of social security, to assess the current legal regulation in this part for its integrity and sufficiency to ensure targeted spending of the SFR budget.

Methodology. Formal legal and comparative legal methods were used to achieve this goal. The research is based on the analysis of the norms of legislation on social security, which enshrine the rights of the SFR bodies to verify information and documents necessary for the appointment and payment of social security, and the practice of its application.

The main results. These rights, in fact, represent the powers of the SFR bodies. The author proposes a classification of the control powers of the SFR bodies in the field under consideration for various reasons. The shortcomings of the current legal regulation of the implementation of control powers by the SFR bodies have been identified.

Conclusions. In order to create a holistic legal framework for controlling the validity of social security provided by the SFR bodies, it is proposed to consolidate the powers of control in a generalized form in the Law on the Social Fund of Russia with the possibility of specifying them in other normative legal acts. At the same time, legal regulation should determine the actual basis for the use of the verification powers and the procedure for their implementation. As one of the directions of further research, the author identifies the question of the relationship between the control powers of the SFR bodies and the obligations of the recipient citizen to inform the SFR body about the circumstances entailing the termination of the right to social benefits or a change in its size.

1. Introduction

Since January 1, 2023, a new subject of legal relations on social security has appeared in the Russian Federation – the Pension and Social Insurance Fund of the Russian Federation (hereinafter also – the Social Fund of Russia, the Fund, SFR), created through the merger of the Pension Fund of the Russian Federation (hereinafter also – PFR) and the Social Insurance Fund of the Russian Federation (hereinafter also – SIF).

For many years, the legal status of the PFR has attracted the attention of representatives of legal science, as it was characterized by insufficient legal certainty. Scientific publications noted its multidisciplinary nature, derived from the diversity of functions performed by the PFR [1, pp. 24-25], and stated the need to adopt a legislative act, which proposed to regulate the legal status of the PFR [2, p. 22]. Similar issues arose in relation to the legal status of the SIF.

The adoption of the Federal Law of July 14, 2022 No. 236-FZ "On the Pension and Social Insurance Fund of the Russian Federation" (hereinafter also referred to as the Law on the Fund) was aimed at eliminating the legal uncertainty regarding the status of the united Fund and caused a scientific discussion about the reasons for the creation of the SFR and its role in the relations on compulsory social insurance (see, for example, [3; 4]). The mentioned federal law enshrined the peculiarities of the legal status of the SFR as a legal entity, defined the system of its bodies and the procedure for their formation, as well as regulated some other organizational aspects of the SFR activity.

At the same time, the rights and obligations of the SFR as a subject of legal relations on social security, including that provided at the expense of compulsory social insurance, are determined by numerous normative legal acts regulating social security relations, the participants of which used to be the PFR and the SIF. An important place in the activities of the Fund as an entity providing a number of types of social payments and services within the framework of various organizational and

legal forms of social security is occupied by the issues of control over the validity of such provision. The latter, according to E.A. Istomina, means not only the confirmation of the fact of realization of social risk in the life of an individual, but also the fulfillment of conditions for the appointment of social security in order to minimize abuses in this area [5, p. 555-556].

The powers of the Social Fund of Russia, and previously – the PFR and SIF, to control the validity of social security provision deserve to be the subject of a special study, since they have a "cross-cutting" character for all social-security legal relations with the participation of the SFR. Nevertheless, the object of interest of representatives of legal science was mainly those control powers of the PFR and the SIF, which were related to the payment of insurance contributions for compulsory social insurance (see, for example, [6; 7]). In this regard, the purpose of this article is to systematize those rights and obligations granted to the SFR bodies to control the validity of social security, as well as to assess the sufficiency and integrity of legal regulation of relations arising in the process of their implementation.

2. General characteristics of the norms of the Russian legislation that enshrine the powers of the SFR bodies to control the validity of social security provision

Part 1 of Article 5 of the Law on the Fund contains an open list of functions and powers exercised by the Fund. This list covers the main areas of the SFR activity, which, apparently, are simultaneously considered by the legislator as its powers (assignment and payment of pensions, organization and maintenance of individual (personified) accounting, etc.). The powers to control the validity of social security provided by the SFR are not mentioned in the above list. Probably, from the legislator's point of view, control is an integral part of the process of realization of functions and powers to assign and provide certain types of social security. Accordingly, the legal norms enshrining control powers of the SFR in the sphere of social security are scattered in numerous normative legal acts regulating social security relations with the

participation of the SFR.

Thus, the right to check documents and information related to the appointment and payment of insurance benefits, formulated in a general way, is considered by the legislator as one of the powers forming the legal status of the SFR as an insurer in the system of compulsory social insurance¹. With minor textual differences, this right ("to check the validity of issuing documents necessary for the establishment and payment of pensions, as well as the accuracy of the information contained in them") is reproduced in the pension legislation². The most detailed regulation at the legislative level was given to the relations arising in the course of the Fund's verification of the completeness and accuracy of information and documents submitted for assignment and payment of insurance benefits in those types of compulsory social insurance in which the SIF acted as the insurer until January 1, 2023³. In certain, very few cases, the procedure for conducting inspections by the SFR is detailed in subordinate regulatory legal acts⁴.

The Social Fund of Russia, along with the functions of an insurer, also exercises a significant number of powers in the sphere of social policy,

realized at the expense of budgetary funds. This peculiarity of the legal status was characteristic earlier for the PFR (see about it [8]) and to a lesser extent – for the SIF. The powers of the SFR bodies to control the validity of "non-insurance" types of social security are stipulated by the normative legal acts regulating their provision. Legal regulation is often limited to the right of the SFR body to verify the reliability of the submitted information by sending requests to other bodies and organizations (see, for example, paragraph 25 of the Rules for the appointment and payment of monthly benefit in connection with the birth and upbringing of a child, to the extent not defined by the Federal Law "On State Benefits to Citizens with Children"⁵ (hereinafter also – the Rules for the appointment and payment of monthly benefit), and sometimes – the corresponding obligation of the counterparty body to provide the information to the SFR (see, for example, part 4 of Article 5 and part 1.2 of Article 8 of Federal Law No. 256-FZ of December 29, 2006 "On Additional Measures of State Support for Families with Children" (hereinafter also referred to as Law No. 256-FZ).

3. Control over the validity of social security provision: right, obligation or authority?

As it was mentioned above, the legislative acts recognize the *right* of the SFR bodies to check the reliability of information contained in the documents submitted for social security assignment. The qualification of a variant of behavior defined by a legal norm as a subjective right, at first glance, should mean the possibility of its holder to choose at his own discretion whether to use such an opportunity or not.

The mechanism of provision of certain types of social security, specified, as a rule, at the level of subordinate normative acts, in a number of cases presupposes the compulsory conduct of verification measures. Thus, within the framework of the application-free procedure for issuing a state certificate for maternity (family) capital (hereinafter also referred to as MSC) introduced on April 15, 2020, the territorial body of the SFR, after receiving information on the fact of childbirth, requests information from state bodies on circumstances that

¹ See, for example, paragraph 1 of Article 11 of Federal Law No. 165-FZ of July 16, 1999 "On the Fundamentals of Compulsory Social Insurance", paragraph 1 of Article 13 of Federal Law No. 167-FZ of December 15, 2001 "On Compulsory Pension Insurance in the Russian Federation".

² See part 9 of Article 21 of Federal Law No. 400-FZ of December 28, 2013 "On Insurance Pensions", part 11 of Article 9 of Federal Law No. 424-FZ of December 28, 2013 "On Funded Pension", paragraph 3 of Article 24 of Federal Law No. 166-FZ of December 15, 2001 "On State Pension Provision in the Russian Federation".

³ See Chapter IV.2 of Federal Law No. 125-FZ of July 24, 1998 "On Compulsory Social Insurance against Industrial Accidents and Occupational Diseases" and Article 4.7 of Federal Law No. 255-FZ of December 29, 2006 "On Compulsory Social Insurance against Temporary Inability to Work and in Connection with Maternity".

⁴ See, for example, the Procedure for the Social Insurance Fund of the Russian Federation to verify compliance with the procedure for issuing, extending and processing certificates of incapacity for work, approved by Order of the Ministry of Health of the Russian Federation No. 1090n of November 23, 2021.

⁵ Approved by Resolution of the Government of the Russian Federation No. 2330 of December 16, 2022.
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are an obstacle to the right to MSC or entail its termination (for example, information on the deprivation of parental rights of the parents with respect to the child (children) (see part 1.2 of Article 5 of Law No. 256-FZ). However, even before the transition to a predominantly application-free procedure of issuing a state certificate for MSC the selective sending of requests for the provision of the specified information was gradually replaced by the practice of their mandatory verification when considering each application for the issuance of a certificate for MSC [9, p. 72]. As a result, the *right* of the authorized body to check the submitted information provided by part 4 of article 5 of the Law No. 256-FZ was transformed into its duty.

Law enforcement practice also knows cases when the obligation of territorial bodies of the PFR to verify the information submitted by a citizen followed from the orders of a higher body (PFR). Thus, in the framework of implementation of the Agreement of March 13, 1992 on guarantees of pension rights of citizens of the CIS member states in the field of pension provision, territorial bodies of the PFR were instructed to the need *in all cases* of initial pension assignment to citizens who arrived from the member states of the said Agreement, to confirm the length of work experience and earnings acquired in the territories of such states, by sending requests to the competent institutions of foreign countries [10, p. 51].

At the same time, even in cases where, in accordance with the law, sending a request by the SFR body to verify the submitted information is formally-legally considered its *right*, one cannot ignore the following. As a general rule, the regulatory legal acts enshrining this possibility do not specify the actual reason for sending such a request, which, obviously, should be understood as the *presence of reasonable doubts about the reliability of the submitted information*. Possible reasons for such doubts are often outlined in the methodological recommendations of the Fund for its territorial bodies (see, for example, [11, p. 52]). According to S.A. Chirkov, the principle of objective truth in the implementation of law enforcement activities by PFR bodies obliges these bodies to take all necessary measures for comprehensive, complete and objective establishment of all the

circumstances of the case [12]. Can the territorial body of the Fund, taking into account this principle, refrain from sending a request, if when considering the submitted documents there are doubts about the reliability of their content? The answer to the question posed seems obvious. With this approach, the right to verify the submitted information becomes at the same time the obligation of the competent body. In the theory of law and management practice it is called *authority* [13].

In the discussed context it is necessary to mention also those rights of the SFR bodies aimed at ensuring the targeted use of MSC funds, which, despite the lack of formal-legal fixation (or in the period preceding such fixation) were recognized as permissible means of control – for example, the right of the PFR body to receive information on the suitability of acquired residential property for permanent residence [14, p. 960]. Such verification activities cannot be considered as mandatory for the authorized body, and their failure to do so cannot indicate the improper exercise of powers when granting maternity (family) capital⁶.

4. Classification of control powers of the SFR bodies in the field of social security

Despite the different degree of legal regulation, the control powers of the SFR bodies in the field of social security are quite diverse and for the purpose of their systematization can be classified on the basis of several criteria.

Thus, depending on the level of their formal-legal fixing, they can be divided into two groups:

- stipulated by the norms of national legislation;
- enshrined in the norms of international treaties in the field of social (pension) security. In particular, administrative agreements concluded to implement international treaties in the field of pension provision, which are based on the principle of "proportionality", as a rule, fix mutual rights of competent institutions (social security bodies) to send requests for information about the circumstances leading to the termination of pension payment or affecting its amount (see about it [15, p. 58-59]).

⁶ See, for example, the cassation definition of the Eighth Cassation Court of General Jurisdiction of October 14, 2020, No. 88A-15976/2020.

Depending on the stage of social security activity, at which the SFR body exercises control over the reliability of the submitted information, it is possible to distinguish verification activities carried out:

- during the review of documents in order to make a decision on the appointment (refusal to appoint) of a particular type of social security, including those whose appointment is carried out without an application procedure;

- after the assignment of social security, including in the process of granting those social payments that are realized for a long period of time (first of all, pensions, compensatory payments, certain types of allowances).

With regard to pension legal relations, some authors note that the reliability of the documents submitted by a citizen is assessed at all stages of the pension process, including in the framework of the so-called advance work with persons who have not reached retirement age [16, p. 28]. It seems that the verification activities that can be carried out at this stage can be considered a subgroup of powers exercised to control the validity of pension assignment.

The presence or absence of the need for interaction with other subjects in the exercise of control powers by the SFR bodies may also serve as a basis for their classification. In most cases, verification by the SFR body of the reliability of the submitted information and documents involves interaction with other public authorities or organizations (including insurers (employers) and medical organizations). Nevertheless, control over the validity of social security provision may also be exercised through the use of information systems operated by the SFR. For example, the fact of a person's labor activity, if it is the basis for the termination of social benefits (for example, social supplement to pension), can be revealed through the use of data of individual (personified) accounting in the systems of compulsory social insurance (see, for example, [17]).

In turn, the control powers involving the interaction of the SFR body with other subjects can be divided into the following groups depending on the form of their implementation:

- powers to conduct inspections (desk and

on-site);

- powers to send (including through the interdepartmental electronic interaction system) requests to public authorities and institutions subordinated to them in order to confirm the verification of information contained in the documents submitted for the appointment of social benefits.

A specific type of verification activity carried out by specialists of the SFR body outside its location can also be considered a so-called inspection, the possibility of which is provided for at the subordinate legislation level⁷ in order to confirm the fact that a citizen takes care of a disabled person.

5. Some problems of legal regulation of relations on the implementation by the SFR bodies of control powers in the sphere of social security

Control powers of territorial bodies of the SFR in the sphere of social security, as it was shown above, can be realized in different forms. The degree of detailing of legal regulation of public relations arising in this case may differ significantly. In particular, with regard to the authority of the SFR body to conduct inspections of insurers' documents related to the assignment and payment of insurance benefits under compulsory social insurance, as well as to the submission of individual (personified) accounting data (paragraph 1 of Article 13 of the Federal Law of December 15, 2001 "On Compulsory Pension Insurance") such fundamental aspects of its implementation as grounds for conducting documentary inspections, frequency and duration of such inspections, etc., remain without proper legal regulation. The methodological recommendations approved by the PFR more than 20 years ago on conducting inspections⁸, which are not a normative legal act, cannot solve this problem. The procedure of the above-mentioned *inspection* (grounds for its

⁷ See, for example, paragraph 34 of the Rules for the Calculation and Confirmation of Insurance experience approved by Resolution of the Government of the Russian Federation No. 1015 of October 2, 2014.

⁸ See Methodological Recommendations on Organizing and Conducting Documentary Verification of the Reliability of Individual Information Submitted by Insurers on the Employment Experience and Earnings (Remuneration), Income of Insured Persons in the State Pension Insurance System, approved by Resolution of the PFR Board No. 11p of January 30, 2002.

conduct, procedure, requirements to the form and content of the act drawn up upon its completion), which may be conducted by the SFR body to confirm the fact that a citizen takes care of a disabled person, has not received legal regulation.

The issue of the authority of the SFR body to establish the facts leading to the termination of the right to a social payment after its assignment – for example, to identify the fact of a change in the recipient's place of residence, if the right to a social payment or its amount is conditioned by residence in a certain area has an important practical meaning. As a rule, these powers of the SFR bodies are not mentioned specifically in the regulatory legal acts⁹. At what frequency should the SFR body send inquiries about the legal facts (e.g., changes in the place of residence of a citizen-recipient), if we are talking about social payments provided over a long period of time? The answer to this question determines not only the timely termination of payment in case of identification of such circumstances, but also – taking into account the practice of the Supreme Court of the Russian Federation – the possibility of recovery of overpaid amounts of pensions and other social payments.

When hearing cases on recovery by the SFR (formerly PFR) bodies of overpaid amounts of social payments, if the period of "overpayment" is several years, the Supreme Court of the Russian Federation consistently directs lower courts to find out, when determining the initial date of the limitation period (Article 200 of the Civil Code of the Russian Federation), when the PFR body, taking into account its function of control over the correct and rational expenditure of PFR funds, should have learned of the citizen's loss of the right to a social payment and why this obligation was not fulfilled in a timely manner¹⁰.

The conclusion that the PFR body has the duty was made by the Supreme Court of the Russian Federation on the basis of paragraph 3 of

the PFR Regulations¹¹. Even leaving aside the question of whether the content of the function of control over the correct and rational expenditure of funds covers the obligation to identify the occurrence of circumstances entailing the termination of payment, it cannot be ignored that the frequency of sending requests to the bodies that have such information is not defined by regulatory legal acts. In addition, as of January 1, 2023, the Regulation on the PFR was declared null and void. Despite the fact that the functions of the PFR, as correctly noted by experts, partially overlapped with its rights as an insurer [18, p. 408], among which there is the right to exercise control over the expenditure of the Fund's resources, the latter, obviously, can be realized only in relation to compulsory pension insurance funds, and therefore, the question of whether the SFR bodies have a similar authority in relation to non-insurance social payments remains open.

Sending requests by an SFR body, including through the interdepartmental electronic interaction system, for confirmation of legally significant circumstances is one of the universal tools of control over the validity of social security. If such requests are sent to verify the information submitted for the purpose of assigning a social payment, the validity of the decision often depends on the timely receipt of answers to them. As it is noted in scientific publications [19, p. 313], if the requested information is provided outside the established time limit, the social security body is often deprived of the opportunity to extend the period for consideration of the application and must make a decision on the basis of the information and documents at its disposal. In this sense, the emergence of legal norms in the social security legislation that allow to suspend the deadline for making a decision until the verification/submission of requested documents is completed deserves a positive assessment. Such norms include, for example, the rule contained in part 7 of Article 23 of the Federal Law "On Insurance Pensions", which is proposed to be considered one of the guarantees of the realization of the citizen's right to a pension [20, pp. 43-44], as well as the provisions contained in part 3 of Article 5 (as

⁹ One of the few exceptions in this regard is paragraph 42 of the Rules for assignment and payment of monthly benefit.

¹⁰ See, for example, Definitions of the Judicial Collegium for Civil Cases of the Supreme Court of the Russian Federation No. 15-KG19-2 of August 26, 2019 and No. 15-KG19-3 of October 7, 2019.

¹¹ Approved by Decree of the Supreme Soviet of the Russian Federation No. 2122-1 of December 27, 1991.

amended on 30.10.2018) and part 1.4 of Article 8 of Law No. 256-FZ (introduced by Federal Law No. 35-FZ dated 01.03.2020).

6. Correlation between the control powers of the SFR bodies in the sphere of social security and the obligations of a citizen-recipient: problem statement

Regulatory legal acts on social security impose on a citizen, who is a recipient of a social payment, the obligation to notify the social security body of circumstances that entail a change in the amount of the said payment or termination of the right to it (see, for example, part 5 of Article 26 of the Federal Law "On Insurance Pensions"). Inadequate fulfillment of such an obligation, which resulted in excessive payment of pensions and other social payments, is often revealed as a result of the SFR bodies exercising their control powers.

The development of information technologies and systems, including interdepartmental electronic interaction, opens new opportunities for social security bodies to verify legally relevant circumstances both in determining the right to a particular type of social security and at the stage of its provision (see, for example, [21, p. 84-85]). According to some authors, in the future, this will lead to the fact that a citizen in legal relations on social security will have only rights, and all the information necessary for the appointment and payment of social security will be accumulated and used by the SFR body without the participation of the citizen [22, p. 25].

Indeed, even now, a significant part of the information required to make a law enforcement decision comes to the disposal of the SFR body not from a citizen, but by sending requests in the order of interdepartmental interaction, and the powers of SFR bodies to request information under this approach cease to be "verification", since the citizen is not the source of relevant information. Nevertheless, it seems that the exemption of a citizen-recipient from the obligation to notify the SFR body about legally significant circumstances and from liability for its non-fulfillment should be preceded by a careful consideration of the proposed legislative solution. The doubts arising in this case are related not only to the fact that interagency information interaction can hardly be

considered as a universal means of preventing abuses in the field of social security, but also to the fact whether the exemption of a citizen-recipient from the obligation to inform the SFR body corresponds to the idea of a citizen's conscious perception of the situation of social risk and responsible attitude to the realization of social security rights?

7. Conclusion

The analysis of the norms of domestic legislation providing for the powers of the SFR bodies to control the validity of social security has shown that the legal regulation of relations arising in the process of their implementation is not characterized by systematicity and integrity, and in some cases by a sufficient degree of detail. This state of affairs is caused by the diversity of normative legal acts adopted at different times and at different levels of lawmaking and regulating the relations on the provision of certain types of social security by the SFR bodies.

It seems that the powers to control the validity of social security, exercised by the SFR bodies both at the stage preceding the appointment of a particular type of social security and at the stage following the decision on its appointment, should be generalized in the Law on the Fund with an indication of the possibility of their additional regulation in other normative legal acts. Legal regulation should provide not only the authority itself (to conduct an inspection, send an interdepartmental inquiry, etc.), but also the actual basis and procedure for its implementation. Widespread use of information technologies in the provision of social security in the future may lead to a change in the role of the so-called control powers of the SFR bodies in this area.

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