

PROCEDURAL FEATURES OF JUDICIAL PROCEEDINGS ON PENSION AWARD IN THE RUSSIAN FEDERATION

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Abstract: The publication considers the procedural features of judicial proceedings on pension award in the Russian Federation. The issue is relevant due to legislative changes. Due to the changes, the amount of pension capital has become significantly different from the expectations of citizens who had a certain work experience and a minimum amount of pension contributions. The pension reform in Russia aimed at retirement age increase has affected not only the younger generation but also put the citizens of preretirement age in a bind. Russian courts are forced to function under ambiguous interpretation of legislation and uncertainty of the evidentiary basis affecting the enforcement of a basic social right for pension provision.

Key words: pension dispute, right to relief in court, human rights and freedoms protection, benefit of trial within a reasonable time, compensation for infringement of a benefit of trial within a reasonable time, pensions, Russian legislation.

1 Introduction

In 2018 another pension reform was declared in the Russian Federation. Its major provision is focused on retirement age increase (from 60 to 65 for men and from 55 to 60 for women). Alongside with these changes an alternative system of pension coefficients was implemented; it had an impact not only on the amount of pension payments, but the very possibility to receive the insurance pension (instead of the minimal social pension).

These amendments forced citizens to appeal to courts with a claim to assess the legality of refusals of pension award and calculations. So in 2018 the number of disputes related to pension legislation amounted to 94,052 cases¹. It is particularly noteworthy that the number of satisfied claims significantly exceeds the number of refusals and amounted to 82,540 cases in 2018 (87.8% of the total number of pension disputes). However, only 9,715 cases were related to contestation of refusals to grant pensions. Most disputes concerned issues of incorrect calculation of pensionable earnings (30,225 cases) or provision of additional benefits (18,266 cases).

Nevertheless, the share of cases related to award of pensions is increasing: from 6,563 in 2016 to 9,715 in 2018, which is a 48% increase over the two-year period. These statistics contribute to the conclusion that enforcement of pension rights in Russia is a relevant issue. And while the burden on the courts is increasing, the Supreme Court of the Russian Federation is forced to standardize the procedural conditions for such cases.

2 Methods

For the purposes of the research the authors applied a wide range of traditional methods for legal studies. The scope of legal acts and bylaws has been identified with a help of a systemic and functional approach. Its application was aimed to determine the court jurisdiction limitations when considering cases related to pension payments. In order to reveal the essence of terms and definitions widely used in these cases a number of philosophical and legal methods were applied. Among them, a hermeneutic approach allowed the authors establishing the real content of legal norms. In order to determine the trends in court practice the authors employed the historical and legal method and the method of comparative analysis. The formal legal approach allowed the authors to check if the court practice is compliant

with the current legislation. In addition, the authors used the method of complex analysis to be able to make practical conclusions based of existing legal theories.

3 Results and discussion

In 2012 the Plenum of the Supreme Court of the Russian Federation adopted a generalizing resolution that formulated its position on the interpretation of pension and procedural legislation². Separately, the number of supplementary acts were adopted in order to clarify the issues related to jurisdiction of pension cases and the scope of legal acts to be applied.

Here it should be noted that the pension relations are subject to administrative legislation³. A citizen, who seeks to enforce his right to be awarded a pension, is to apply to the department of the Pension Fund of the Russian Federation, an institution endowed with authority and administrative powers⁴. Unlike in a majority of developed countries, the pension insurance agreement is absent in Russia. The Pension Fund is not the agency of state authority and it is vested with a wide discretion when awarding pension payments. Thus, the citizen is in a dependent position, and his relations with the Pension Fund are vertically oriented.

In 2016 the Plenum of the Supreme Court of the Russian Federation clarified that pension cases cannot be considered according to the rules of administrative justice⁵. This conclusion substantiates that violated pension rights are to be considered within the scope of the Code of civil procedure adopted in 2002⁶. So the related disputes cannot be regulated by the Code of administrative legal proceedings adopted in 2015⁷.

The defense of a pension right as a civil procedure led to application of adversary justice general rules in courts. In particular, when appealing against decisions of the Pension Fund of Russia, a citizen must appeal to the court of general jurisdiction on the territory where the corresponding branch is located. This requirement often substantiates the refusals to accept claims by Russian courts. Elderly citizens who worked in different regions of Russia throughout their career are forced to apply to courts in other regions outside their place of residence. Therefore, rights advocates emphasize the need to consider the alternative jurisdiction of pension disputes⁸. Russia's citizens should have a legal opportunity to defend their pension rights in courts at the place of residence, because their age and health conditions contrasted to the vast distance between Russian regions do not help to protect their legitimate interests.

The rules of judicial and administrative jurisdiction are normally applied in pension disputes. Also, if the amount in dispute is fixed and does not exceed 50 thousand rubles, such disputes are considered by the magistrates' court. In Russia the average

²Resolution of the plenum of the Supreme Court of the Russian Federation of December 11, 2012 no. 30 (updated on May 28, 2019) "On court practice regarding actions for enforcement of the right for retirement pension" // Rossiyskaya Gazeta – no. 295 – December 21, 2012

³Cook L., Aasland A., Prisyazhnyuk D. Russian pension reform under quadruple influence // Problems of Post-Communism. – 2019. – Vol. 66. – №. 2. – pp. 96-108. Nepp A., Okrah J. Financial And Social Sustainability Pension Systems In The Face Of Demographic Risks // CBU International Conference Proceedings. – 2017. – Vol. 5. – pp. 331-336

⁴Gietel-Basten S. et al. Ageing in Russia: Regional inequalities and pension reform. – HKUST Institute for Emerging Market Studies, 2017. – №. 2017-49

⁵Resolution of the plenum of the Supreme Court of the Russian Federation of September 27, 2016 no. 36 "On court practice regarding application of the Code of civil procedure of the Russian Federation" // Bulletin of the Supreme court of the Russian Federation – no. 11 – 2016.

⁶Code of civil procedure of the Russian Federation of November 14, 2002, no. 138-FL (updated on December 02, 2019) // Corpus of legislative acts of the Russian Federation – 2002 – no. 46. – p. 4532; 2019 (Part V) - no 49 - art. 6965.

⁷Code of Administrative Judicial Procedure of the Russian Federation of March 08, 2015 no. 21-FL (updated on December 27, 2019) // Corpus of legislative acts of the Russian Federation – 2015 – no. 10. – p. 1391; 2019. – no. 52 (Part I). - art. 7812.

⁸Alexander N. et al. Institutional Risks: General Principles of Influence on Pension Systems // Eurasian Business Perspectives. – Springer, Cham, 2018. – pp. 357-365. Gontmakher E. Mandatory Social Insurance in Russia: Ways of Reforming // Russian Politics. – 2019. – Vol. 4. – №. 4. – pp. 447-465

¹According to the Agency of legal information [electronic source] <http://rapsnews.ru> (access date - March 27, 2020)

amount of regular pension payment is lower, so the majority of disputes are taken by magistrates' courts. District courts deal with all other pension cases and also act as the appeal body considering magistrates' courts decisions. However, non-transparent and sometimes contradictory rules of jurisdiction cause situations where district and city courts refuse to consider pension cases and refer citizens to magistrates. And, on the contrary, at magistrates' courts they tend to refer those cases to district courts causing numerous violation of the Russian procedural law – in accordance with the procedural law any disputes between courts related to jurisdiction over cases are prohibited.

As a result of several pension reforms carried out in Russia, the courts make their decisions not based on the total work experience that matters, but the so-called "pension insurance" experience. Therefore, citizens lost the opportunity to prove the fact of performing labor functions in alternative ways. The only calculations the courts take into account are the ones provided by the Pension Fund based on the citizens' personal accounts used by employers to transfer pension payments. This approach often leads to problems in judicial practice. The citizen himself has few opportunities to control the way an employer fulfills social insurance obligations. So, quite often citizens find out that the amount of insurance contributions is insufficient only when they apply to the Pension Fund or to the court.

The only amendment that has been recently made is on the right of a citizen to recover overdue insurance payments from an employer. Therefore, the Plenum of the Supreme Court of the Russian Federation notes that the "insured person" (employee or former employee) may file a separate suit against the employer, but the amount collected is to be transferred to his personal account at the Pension Fund.

This procedural feature seems to be bizarre, as the Pension Fund itself is responsible to control the way employers fulfill their obligations for on time insurance payments. We also have to mention that the regional departments of the Pension Fund have similar powers. So the judicial interpretation of the citizen's right is reduced to expression of his interest to rapid resolution of such disputes since the controlling bodies normally deal with such issues for a long period of time.

If the pension disputes in Russia are not related to administrative justice, then the procedural legislation allows conclusion of settlement agreement between the parties. As a general rule, Russian courts, following the European trends, are ought to facilitate peaceful settlement, which means - without a standard court procedure. However, in practice, this way to resolve pension disputes is not applied.

Legal scholars emphasize that pension relationships are public and subject to the influence of public norms⁹. Due to this, the conclusion of settlement agreements (as a private legal instrument) in courts is not permissible¹⁰. We believe that this approach should be considered obsolete, since in the context of ongoing pension reforms and westernization of Russian legislation all issues related to pension rights should have an agreement and insurance basis. This means that settlement agreements should become the major means of resolving pension disputes in the Russian Federation.

Another feature of pension disputes resolution in Russian courts is associated with the unvoiced prohibition to collect compensations for moral damage in favor of citizens. On the one hand, the law neither provides any direct restrictions nor establishes such a right. On the other hand, the Plenum of the Supreme Court of the Russian Federation designated such prohibition as a rule of law. Many legal experts adhere to the opinion that the case law in the Russian Federation does not exist. However, the current procedural law obliges all lower

courts to obey the general conclusions of the Supreme Court of Russia. As a result, all gaps and uncertainties of the pension legislation are regulated by judicial precedents.

This approach should be recognized as a global trend, since in a number of European countries and even in the USA all pension claims are considered as property disputes. At the same time, a citizen, whose claim for pension payments was unjustifiably or unlawfully refused, may experience strong moral distress. Taking into account the faulty management practice of the Pension Fund of Russia, it is necessary to extend the right to compensation for non-pecuniary damage in relation to pension disputes. Moreover, the civil legislation of the Russian Federation provides the general basis for such a possibility.

It is worth mentioning that the Russian courts lack the power to grant pensions to people who applied to courts for legal protection. By making decisions the court only obliges the Pension Fund of Russia to award a certain type of pension. Courts can also force it to take into account those circumstances that have been proven in the civil process, if this can affect the type and amount of pension payments. In order to implement this procedure, court decisions should contain detailed instructions on what exactly the Pension Fund must do to enforce the court decision.

4 Summary

The Russian pension legislation contains a number of legal norms to detail the procedure of pension award. However, their redundancy and inconsistency allow the higher courts to initiate new rules and approaches. Limitation of settlement agreements and existence of the right for non-pecuniary damage award are major requirements of the judicial practice. In part, these requirements stray from the international approach, but the findings of the Supreme Court of the Russian Federation on certain issues are consistent with the existing judicial practice in European and North American countries when considering pension cases.

Russian courts are forced to function in the legal context of ambiguous interpretation of legislation and uncertainty of the evidence basis that have an impact on the pension rights enforcement. As a result, the pension cases are becoming more precedent-setting and the range of judicial discretion is expanding.

5 Conclusions

Despite of the ongoing pension reform in Russia, the courts are overwhelmed by pension cases. The majority of these cases are typical disputes related to the Pension Fund practice, which is a living proof that the Pension Fund of Russia is required to change its approach when working with citizens. If the number of court decisions against the Pension Fund is increasing, then the state is to intervene in the activities of the authorized institution to cease unreasonably narrow or wide interpretation of pension legislation. Only these measures can help relieving the burden of pension disputes in courts.

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