

Issues of Legislation Systematization on State Benefits to Citizens With Children

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ABSTRACT

The article analyzes the latest legislation of the Russian Federation and the constituent entities of the Russian Federation, which regulates the provision of benefits addressed to families with children, as well as materials of law enforcement practice. The research has shown that currently, there is no unified system for providing social benefits to families with children in the legislation. The legal regulation of the corresponding payments is carried out by various sources, both at the federal and regional levels. It contains different conditions for the provision of these payments, which does not contribute to the full support of families with children. The authors conclude that it is necessary to ensure the consistency of legislation and its systematization in the form of codification based on Federal Law No. 81-FZ of May 19, 1995 "On State Benefits to Citizens with Children". Also, the article presents an analysis of the use of standard (model) regulatory legal acts in the legal regulation of social payments to citizens with children. According to the authors, this experience is positive, contributes to the formation of a unified legal space and can be used in the regulation of other social payments addressed to citizens with children. At the same time, the study showed the lack of terminological unity in the normative legal acts governing the provision of social benefits to families with children. The article deals with the problem of designating qualitatively homogeneous social payments by various terms. Being benefits by their legal nature, these payments are named in the latest regulatory legal acts as monthly cash payments. The authors conclude that the terminology used for designating new social payments to families with children does not meet the requirements of systemic unity and requires unification. The results of this study can be used for further improving the legislation on social security, and can also be useful in law enforcement.

Keywords: *social security law, conceptual apparatus of social security law, state benefits to citizens with children, systematization of social security legislation*

1. INTRODUCTION

Fundamental demographic indicators are benchmarks for the socio-economic development of any state. Many legislative changes can be explained by the desire to achieve the desired indicators of fertility, mortality, and life expectancy, for example, in the field of migration policy or state support for families with children. According to Yu.V. Vasilyeva and S.V. Shuraleva demographic changes have a tremendous impact on the social security system [1].

The phenomenon of depopulation, which the Russian Federation faced at the end of the last century, became a kind of catalyst for the process of adopting a series of normative legal acts aimed at stimulating the birth rate. The process, which continues to this day, began with the adoption of Federal Law No. 81-FZ of May 19, 1995 "On State Benefits to Citizens with Children" (after this – Law No. 81-FZ). The preamble of this law sets out the purpose of this regulatory legal act. The purpose of the law is to

establish a unified system of state benefits to citizens with children in connection with their birth and upbringing, which provides state-guaranteed material support for motherhood, fatherhood and childhood. In this regard, Law No. 81-FZ is considered by scientists in the field of social security law as one of the normative legal acts of social security legislation that performs systemic functions. Indeed, until recently, it was this normative legal act that secured a unified system of "children's" benefits at the federal level.

The need for a more active response to the demographic situation, recognized by the state, has led to a significant expansion of the legislative framework in this area, both at the federal level and at the level of the constituent entities of the Russian Federation.

On the one hand, in recent years, many regulations have been adopted at the federal level, which introduced new types of social payments to citizens with children, including those aimed at supporting non-working women, since payments related to the birth and upbringing of children themselves do not carry insurance character [2].

On the other hand, many powers that previously belonged to the Russian Federation as a whole were transferred to the subjects of the Russian Federation. The implementation of these powers is associated with the conditions of insufficient elaboration of the terminological apparatus of social security law and significantly different financial capabilities of the subjects of the federation. This circumstance had a negative impact on the consistency of social security legislation as a whole and led to even more significant terminological inconsistency.

2. FORMATION OF SOCIAL BENEFITS SYSTEM TO CITIZENS WITH CHILDREN

Let us trace the indicated tendency on the example of certain social payments related to the birth and upbringing of children. Until 2004, at the federal level, there were general rules for the appointment and payment of monthly child benefits (after this, our italics). From January 1, 2005, to 2012, the conditions for granting this benefit were regulated taking into account the principle of targeting and criteria of need, mainly at the regional level (which often changed depending on the financial situation of the region), turning it from a "benefit for all families with children" into a "benefit for children who live in poor (poor) families" [3].

Subsequently, the position of the regions received support at the federal level. Following the amendments made to Article 16 of Law No. 81-FZ by the Federal Law of December 29, 2015 No. 388 "On Amendments to Certain Legislative Acts of the Russian Federation in terms of accounting and improving the provision of social support measures based on the obligation to comply with the principle of targeting and applying eligibility criteria", the range of recipients of this benefit was reduced (through the use of the targeting principle and the application of eligibility criteria). An indication of the frequency of this payment (monthly) was excluded from the wording of the article.

The lack of financial capacity in most of the constituent entities of the Russian Federation led to an increase in the share of the federal authorities in supporting low-income families. Achievement of this goal would be facilitated by a qualitative revision of the current system of "children's" benefits, enshrined at the federal level, in particular, by making individual adjustments to the conditions for their receipt, increasing the size or adding provisions establishing the duration of their receipt. Indeed, in order for new legislative decisions to have a real effect, it is necessary that they "fit" into the system of existing normative legal acts [4]. However, the legislator chose a different path, establishing new payments to citizens with children. Unfortunately, such fragmentary regulation is characteristic of Russian legislation as a whole [5].

On the terms of co-financing from the federal budget and the budgets of the constituent entities of the Russian Federation, in many constituent entities of the Russian

Federation, monthly cash payment was introduced for the third or subsequent children. Then, in 2018, at the federal level, a monthly payment was fixed in connection with the birth (adoption) of the first child and (or) a monthly payment in connection with the birth (adoption) of a second child (after this – referred to as the monthly payment for the first child). Moreover, in 2020, a monthly cash payment for a child aged three to seven years inclusive is fixed (after this – the monthly payment for a child from three to seven years old).

The unifying factor for all of the above payments is the use of the criteria of need in determining the right, which generally corresponds to the social policy pursued by the state.

A.V. Buyanova, concerning the introduction of criteria for need in the system of "children's" benefits, rightly notes that "the state introduces benefits as a substitute element of support for people who are unable to independently provide for their needs in order to continue the course to stimulate the birth rate and optimize spending in the social sphere, in particular, to prevent the availability of payments to persons who do not correspond to the image of the poor" [6].

Establishing uniform criteria for need is of crucial importance. However, eligibility criteria are defined differently for these transfers. So, in order to receive a monthly payment for the first child, the size of the family's average per capita income should not exceed two times the subsistence minimum of the working-age population established in the constituent entity of the Russian Federation for the second quarter of the year preceding the year of applying for the specified payment, and monthly payment for a child from three to seven years – the size of the subsistence minimum.

At the same time, according to experts, the income of families with children "catastrophically" falls just after the children reach the age of 1.5 years [7]. This circumstance does not contribute to the provision of systematic state support to citizens with children, aimed not only at stimulating the birth rate but also at supporting the real situation of families with children [8].

3. PROBLEM OF TERMINOLOGICAL UNITY OF LEGISLATION REGULATING SOCIAL BENEFITS TO CITIZENS HAVING CHILDREN

Attention should also be paid to the terminology used for designating these payments, namely the using by the legislator of the term "monthly cash payment". This term appeared in social security legislation in connection with the adoption of Federal Law No. 122-FZ on August 22, 2004.

"On amendments to legislative acts of the Russian Federation and invalidation of certain legislative acts of the Russian Federation in connection with the adoption of federal laws "On amendments and additions to the Federal

Law", "On general principles of organization of legislative (representative) and executive bodies of state power of the constituent entities of the Russian Federation" and "On the general principles of organization of local self-government in the Russian Federation".

Separate legal norms securing this concept were introduced into Federal Law No. 178-FZ of July 17, 1999 "On State Social Assistance" and replaced natural benefits. According to T.S. Gusevoy, legislator "deliberately, in order to avoid linking the number of payments to the actual cost of medicines, travel, sanatorium treatment, did not use the term "compensation" to denote them. As a result, the size turned out to be less than the real cost of services" [9].

In the current legislation, this term is used for referring to social payments of a compensatory nature to specific categories of citizens. It replaces previously existing benefits (in particular, to disabled people, veterans of the Great Patriotic War, war veterans, labour veterans).

However, we do not observe such a phenomenon with social payments to citizens with children. Obvious substitution of concepts, violation of the terminological unity of social security legislation, because by their legal nature, these payments are benefits. Moreover, the criterion of need, the use of which unites the named monthly payments, is also known to other benefits enshrined in Law No. 81-FZ, in particular, child benefit.

The fact that these social payments are targeted and are intended for low-income citizens (which brings their legal nature closer to state social assistance) cannot serve as an argument in favour of replacing the term "benefit" with "monthly cash payment". Even in Law No. 178-FZ, the gratuitous provision of a certain amount of money to citizens at the expense of the corresponding budgets of the budgetary system of the Russian Federation is called a social benefit [9].

In our opinion, Law No. 81-FZ needs serious adjustments. To date, the named law, despite the provisions contained in its preamble, does not contain all types of social benefits to families with children. In parallel with it, there are payments introduced by both other laws (for example, monthly payments for the first child) and by-laws. Thus, monthly payments for a child from three to seven years old were established based on the Decree of the President of the Russian Federation of March 20, 2020 No. 199 (after this – the Decree of the President of the Russian Federation No. 199).

A.L. Blagodir, considering the issues of the systematic nature of social security legislation, rightly notes that "the President of the Russian Federation, issuing decrees to reduce social tension for certain segments of the population, performs functions unusual for him, works in the so-called "manual mode", actually substituting data issues of legislative and executive authorities" [11].

4. SYSTEMIC LEGISLATION REGULATING SOCIAL BENEFITS TO CITIZENS WITH CHILDREN

Of great interest is the hierarchy of regulatory legal acts, which fixes the mechanism for the implementation of monthly payments for a child from three to seven years old. The norms of law directly securing this payment are established by the Decree of the President of the Russian Federation No. 199, which enshrines the very right to this payment, and the procedure and conditions for its appointment are established by regulatory legal acts of the constituent entities of the Russian Federation.

At the same time, the Government of the Russian Federation, in its Resolution No. 384 of March 31, 2020, approved the basic requirements for the procedure for the appointment and implementation of a monthly cash payment from three to seven years, an approximate list of documents (information) required to assign the specified monthly payment, as well as a standard application form about its purpose. The question arises about the relationship between the powers of the federation and its subjects. Is the federal legislator not part of "foreign territory"? Does the significance of regional legislation remain in the current conditions?

Standard (model) regulatory legal acts were previously known to the law of social security. They exist, for example, in the field of social services. Thus, by orders of the Ministry of Labor and Social Protection of the Russian Federation, approximate procedures for the provision of social services in the stationary form of social services (order of November 24, 2014, No. 935n), in the semi-stationary form of social services (order of November 24, 2014, No. 938n), as well as in the form of social services at home (order dated November 24, 2014, No. 939n). Also, the order of the Ministry of Labor and Social Protection of the Russian Federation dated April 17, 2014, No. 258n approved the approximate range of social service organizations. There are similar acts in the area of providing free medical care within the framework of compulsory health insurance. For example, by order of the Ministry of Health of the Russian Federation of December 24, 2012 No. 1355n, the form of a standard contract for the provision and payment of medical care for compulsory medical insurance was approved.

At the same time, it should be recognized that model normative legal acts, in general, are not characteristic of social security law. We believe that in this case, the adoption by the Government of the Russian Federation of the basic requirements for the procedure for the appointment and implementation of social benefits can serve as a positive example. This process allows ensuring the unity of legal regulation and prevent the situation when the provision of the same social benefits is regulated differently in different constituent entities of the Russian Federation. We can trace this through the example of regional legislation on social contracts.

At the same time, with the publication of the basic requirements for the procedure for the appointment and

implementation of social benefits, the legislation of the constituent entities of the Russian Federation does not lose its relative independence. If necessary, the regions can establish requirements for the property security of families to determine their need, based on the current socio-demographic situation in a particular constituent entity of the Russian Federation.

This experience should be used in the legal regulation of other social payments addressed to citizens with children. It would allow avoiding specific difficulties in law enforcement practice. For example, those that arose with the introduction in 2012 of a monthly payment for the third child or subsequent children.

Following clause 2 of the Decree of the President of the Russian Federation dated May 7, 2012 No. 606 "On measures to implement the demographic policy of the Russian Federation" (after this – the Decree of the President of the Russian Federation No. 606), the top officials of the constituent entity of the Russian Federation are recommended to establish by July 1, 2012, those in need of to support families, a monthly cash payment in the amount of the subsistence minimum for children determined in the constituent entity of the Russian Federation, assigned in case of the birth after December 31, 2012, of a third child or subsequent children before the child reaches the age of three years.

The legal essence of this normative provision was the subject of consideration by the Constitutional Court of the Russian Federation, which, in its ruling dated July 16, 2013 No. 1073-O, indicated that the provision of paragraph 2 of the Decree of the President of the Russian Federation No. 606 was addressed to top officials of the constituent entity of the Russian Federation and was of a recommendatory nature. However, since this payment is established based on co-financing from the federal budget and the budgets of the constituent entities of the Russian Federation, the existing regulations established at the federal level should serve as a guide for the regions when developing normative legal acts securing this payment.

The small number of legal norms enshrined at the federal level led to a significant difference in the content of regulatory legal acts of the constituent entities of the Russian Federation, in connection with which families with children in different regions found themselves in unequal conditions [12–14]. At the same time, according to scientists, this payment is "extremely necessary for women and children" and should be made to all families "regardless of the date of birth of children and the region of residence, as well as without checking the needs of the family" [15].

Also, the wording given in paragraph 2 of the Decree of the President of the Russian Federation No. 606 has an ambiguous interpretation in terms of the possibility of repeatedly establishing a monthly cash payment for the same family.

The normative practice that has developed in the constituent entities of the Russian Federation confirms this thesis. In many constituent entities of the Russian Federation, a monthly cash payment for third or subsequent children is provided only for one child (third or

subsequent) (Altai Republic, Krasnodar Territory, Kemerovo Region). At the same time, the legislative formulation is used, which directly stipulates that the right to receive a monthly cash payment for the third or subsequent children arises only for one child ("monthly payment ... is provided for only one child"; "the right ... arises once").

In other constituent entities of the Russian Federation, the right to receive a monthly cash payment for third or subsequent children is not limited to the possibility of receiving it only for one child. At the same time, as a rule, it is directly stipulated in regulatory legal acts that "payment ... is assigned for each child ..." (Republic of Tyva, Altai Territory), or when the payment is denoted, the union "and" is used ("... for the third and subsequent children") (Republic of North Ossetia – Alania, Stavropol Territory).

Also, the legislation of individual regions specifically provides for provisions governing the procedure for assigning a monthly cash payment to the third or subsequent children in the event of the simultaneous birth of several children. In such cases, the payment is assigned and paid for each child (Republic of Mordovia).

Also, when appointing a monthly cash payment, provided for in paragraph 2 of the Decree of the President of the Russian Federation No. 606, in the constituent entities of the Russian Federation, various approaches are used for determining the need for a family. Incomes are compared with various values: with a subsistence minimum per capita (Amur region), with a multiple of the indicated value (Republic of Mari El), or with a fixed amount of money (Magadan region).

The conditions for receiving a monthly payment for a third child or subsequent children under the laws of the constituent entities of the Federation differ significantly.

At the same time, the Supreme Court of the Russian Federation in 2018-2019 formed a different position on this issue. So, in the appeal ruling of March 28, 2018, No. 58-APG18-1, the Supreme Court of the Russian Federation indicated that Presidential Decree No. 606 does not entitle the state authorities of the constituent entities of the Russian Federation to determine the category of citizens eligible for this support measure different from the one enshrined in the Decree. According to the legal position of the Supreme Court of the Russian Federation, the regional legislator also lacks the authority to determine its type and size, as well as the conditions for its receipt.

Further, in the appeal ruling of April 24, 2019, No. 36-APA19-2, the Supreme Court of the Russian Federation additionally noted that the financing of the expenditure obligations of the subject, in this case, is carried out on the principles of co-financing from the budgetary allocations of the federal budget. This circumstance does not allow the state authorities subject carrying out legal regulation of the named issue arbitrarily.

A position similar in content was reflected in the appeal ruling of September 23, 2019, No. 49-APA19-25, in which the Supreme Court of the Russian Federation once again emphasized the inadmissibility of establishing other conditions not provided for by the Decree of the President

of the Russian Federation No. 606, indicating that such conditions should be followed regarded as limiting the recipients of this payment.

Based on the above position, any conditions that are not attributed to the targeting criteria cannot be established by the constituent entities of the Russian Federation when determining the procedure and conditions for providing a monthly payment for a third child or subsequent children under the threat of challenging regulatory provisions or bringing a protest by the prosecutor.

In such situations, in order to receive a monthly cash payment for the third or subsequent children, citizens are forced to apply for judicial protection by challenging one or another norm of the legislation of the constituent entities of the Russian Federation. For example, according to the decree of the Governor of the Stavropol Territory dated August 17, 2012, No. 571 "On measures to implement the Decree of the President of the Russian Federation" dated May 7, 2012 No. 606 "On measures to implement the demographic policy of the Russian Federation" (as amended by the Resolution of the Governor of the Stavropol Territory dated October 13, 2016, No. 524, after this – the decree of the Governor of the Stavropol Territory) one of the conditions for the provision of monthly cash payment was the presence of registration at the place of residence in the Stavropol Territory for parents and minor children on the date of birth in the family of a third or subsequent child born after December 31, 2012 (paragraph four of clause 2). This norm was contested by a group of citizens and the prosecutor of the Stavropol Territory as contrary to Articles 7 and 39 of the Constitution of the Russian Federation, Article 20 of the Civil Code of the Russian Federation, Article 2 of the Law of the Russian Federation of June 25, 1993 No. 5242-1 "On the Right of Citizens of the Russian Federation to Freedom of Movement choice of place of stay and residence within the Russian Federation" and violates the rights of citizens to freedom of movement and choice of place of residence.

By the decision of the Stavropol Regional Court dated October 6, 2017, the claims of the administrative plaintiffs were satisfied. By the appellate ruling of the Supreme Court of the Russian Federation in case No. 19-APG17-12 dated February 7, 2018, the said decision regarding the invalidation of this provision was changed, the contested paragraph was declared invalid from the moment of its adoption to the extent that it excludes the possibility of confirming the place of residence on the territory of the Stavropol Territory with other documents and information, not necessarily coming from the registration authorities, but allowing to establish the place of residence of a citizen for the purposes of this resolution.

At present, following the decree of the Governor of the Stavropol Territory, the fact that parents and minor children live in the Stavropol Territory at the date of birth in the family of the third and (or) subsequent child is still a prerequisite for receiving a monthly cash payment for the third or subsequent children. In such a situation, taking into account the legal position of the Supreme Court of the Russian Federation, social protection bodies at the stage of

the procedure for assigning this payment in the absence of information from the registration authorities are deprived of the opportunity to establish the fact of permanent residence in the territory of the Stavropol Territory. They are forced to refuse such citizens to assign a monthly monetary payment for the third or subsequent children. In turn, guided by the above legal position, in order to receive these payments, citizens are forced to go to court with claims to establish the fact of residence in the Stavropol Territory and to recognize the refusal of the social protection authorities as illegal. The situation outlined is quite widespread. According to the SPS "ConsultantPlus", for the period from April 2018 to August 2019, more than 15 such cases were considered at the Stavropol Regional Court in the appellate instance.

Following the order of December 10, 2019 No. 2968-r, in 2020 for 75 constituent entities of the Russian Federation, the Government of the Russian Federation decided to co-finance expenditure obligations arising from the establishment of a monthly cash payment for the third or subsequent children. In this regard, we believe that the adoption at the federal level of the basic (standard) requirements for the procedure for appointing and making a monthly cash payment for the third or subsequent children would help prevent a significant number of litigation arising at the stage of appointing a monthly cash payment for the third or subsequent children.

5. CONCLUSION

Summarizing what has been said, we propose to systematize the federal legislation on "children's" benefits in the form of codification, combining, based on Law No. 81-FZ, all types of payments to families with children and taking into account the legal positions of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation.

Also, we believe it is necessary to consistently use the term "benefit" concerning all periodic and one-time social payments in connection with the birth and upbringing of children. This circumstance will significantly improve the quality and efficiency of legislation in the designated area, simplify law enforcement, and also can serve as one of the starting points in the process of future codification of social security legislation [16].

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