

**LITIGATING FOR SOCIO-ECONOMIC RIGHTS
ON NATIONAL AND INTERNATIONAL LEVEL:
PROBLEMS OF STANDING AND LEGAL STRATEGIES**

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The attitude of policy makers, legal scholars and judges to socio-economic rights in post-communist countries is frequently affected by economic considerations and not so often discussed in terms of moral obligations or social justice. For many years after the collapse of the "socialist system" it was a kind of *mauvais ton* in liberal circles to discuss the mere existence of such rights as intrinsic to human dignity, never mind to attempt to insist on their defendability in courts. These rights were considered as a part of communist ideology and propaganda and as something incompatible with market economy and private initiative. However, in the last few years even democratically-oriented scholars have begun to focus on socio-economic rights to look for their justification in the moral obligations of the state, solidarity of social groups, and the principles of equality, dignity and justice. I would add that socio-economic rights can also originate from fear of a revolt, and that at present the governments of post-communist countries rather "tolerate" socio-economic rights than consider them a moral duty of the state; that is why they allow them to exist only to the extent necessary to support social peace and avoid disobedience.

Unfortunately, Russia has not managed to find a proper balance between market economy and social security, and this has led to a situation where many people are ready to trade liberty for social security. For the older generation, but also for many middle-aged people, socio-economic rights are valued higher than, for instance, free speech or the right to free elections. This is quite understandable, taking into consideration the fact that living conditions in Russia are very poor for many people. The UN Economic and Social Council mentioned as areas of its main concern limitations on employment rights, social security, health services and education for people not registered in their place of residence; the high rate of unemployment in some regions (ranging from 32.4 to 56.5 %); the decreased level of employment for people with disabilities, the high level of illegal migration of labor, which results in a large number of people working without legal and social protection, a growing

number of orphaned children and children deprived of parental care, and growing homelessness. It also drew the attention of the Russian authorities to the precarious situation of indigenous communities; the sizeable number of children who do not attend school due to migration, homelessness and neglect; the low level of wages (with an estimated 32.8 percent of workers earning wages equal to or below subsistence level). The minimum wage is insufficient to provide workers with a decent living for themselves and their families, which is a violation of Articles 7 and 11 of the Covenant on Economic, Social and Cultural Rights.¹

Any NGO involved in free legal aid and legal counseling has its own statistics concerning character of complaints, and most can confirm that in general most people approach lawyers with problems in the fields of labor law, housing law, pension rights, social benefits and welfare. Initially, the JURDC litigation center did not plan to handle cases involving socio-economic rights, but it received so many applications for assistance in cases related to social benefits that was not able to ignore them any more. JURDCs cooperation with the federal and regional ombudsmen revealed a similar picture: complaints about violations of social security rights are the second most common after complaints about police violence.

From the other hand, socio-economic rights are hardly defensible in courts because, firstly, their formulation in the Constitution has a very general wording and, secondly, rights and policies are not separated. For instance, Article 7 proclaims that the Russian Federation is "a social state, whose policies shall be aimed at creating conditions which ensure a dignified life and free development of man", but the notion of "social state" (similar to "law-based state" or "separation of powers") is difficult to use to build arguments in court because it is not clear what kind of obligations this declaration imposes on the state: such wordings can be both legal terms and concepts of law.

Article 7(2) provides the obligation for the state to provide support for the family, motherhood, fatherhood and childhood, to develop a system of social services, and to establish benefits and other social protection guarantees. According to Article 38, motherhood, childhood and the family are under state protection. Can these provisions be used, for instance, to challenge the government regulation which established the limitations on payments for sick leave, which also affected pregnant women with high salaries who as a result started to receive no more than 200 USD per month for their maternity leave instead of their full salary?

Article 41, which is becoming more and more frequently employed in political and social discourse after the enactment of a new Housing Code in 2004, provides

¹ Concluding Observations of the Committee on Economic, Social and Cultural Rights: Russian Federation, 12/12/2003, c/c, 12/1/Add.94. <http://www.scprrava.ru/cgi-bin/library.pl?id=99&action=show>

everyone with a right to housing. It imposes an obligation on the state and local government to encourage house construction and create conditions for the realization of the right to housing. It also states that low-income citizens who are in need for housing shall be housed free of charge or for affordable rent out of government or municipal housing funds. The most frequent application we received was from people who sold their apartment or refused their share in privatization of the flat in favor of their wives and children, and then applied for a new apartment from the state. Does constitutional language support their claims?

The Russian Constitution also guarantees the right to education and free education in pre-school facilities, primary secondary and professional secondary school (Article 43). Should this be interpreted as also including free textbooks? Does the plan of the government to cover from budget sources only 75% of the subjects (constituting the so-called "basic program") and to charge 25% for "additional subjects" from parents comply with this constitutional provision? As can be seen, except for labor rights, which are supported by the detailed regulations in the special statute, that is the Labor Code, attempts to define the scope of any other rights involve a great deal of confusion. The judicial practice, which, by creating precedents, can theoretically help in interpreting the general wording in which these rights are formulated, does not help much, because courts of general jurisdiction in Russia traditionally exercise a positivist approach and look into Codes and by-laws rather than into Constitution, interpret all the provisions in a narrow literal sense, and deny the right if there is no direct and clear requirement to grant it in a particular case.

Justice of the Constitutional Court, Nikolay Bondar, in one of his official presentations provided statistics showing that the Constitutional Court during the ten years of its existence reviewed more than thirty federal acts on social protection and social insurance, which constituted approximately a quarter of all the acts reviewed. Issues of social benefits and compensations were considered in more than forty rulings. In most cases, the complaints were submitted by individuals, and only a few by trade unions or legal entities. Most concerned social benefits and compensations, and the Constitutional Court, in trying to approach the problem of socio-economic rights in their constitutional context, considered them in accordance with requirements of social justice, equality and freedom. The Court supported social rights "to the extent, to which it was necessary for the support of social peace and did not lead to the excessive limitation of classical individual and political rights and freedoms", as Justice N. Bondar stated.

The data for 1995-2003 adduced in the book of decisions of the Constitutional Court, published in 2004, show that social protection issues constituted the highest amount of all complaints, totalling 14 825 applications; medical care issues were

raised in 366 complaints, education in 141, and labor rights in 2939. By comparison, issues of equality were raised only in 639 complaints, and complaints regarding violation of all other constitutional rights in 1731 complaints. These figures show that the importance of socio-economic rights outweighs that of political and civil rights for the Russian people in the current moment, and this cannot be accounted only for the still existing Soviet psychology of dependence on the state. It is also a reflection of people's feeling of tremendous social injustice inherent in Russian society and absence of clear social policy. And the most provocative issue turned out to be the issue of social security and social welfare.

The Constitutional Court and other courts have tried to create some standards and find common approaches to interpretation of social rights in response to numerous claims of the citizens. First of all, while adjudicating cases involving social rights, the Court tried to provide interpretation of the social protection clause.

Article 7 of the Russian Constitution: Social State, Dignified Life, Free Development of Man

In 1999, the State Duma approached the Constitutional Court of the Russian Federation with a request to give an interpretation to the words "dignified life" and "free development of man" from Article 7 of the Constitution. They inquired, in particular, whether there was an obligation of the state to establish certain social standards corresponding to these constitutional principles. The Constitutional Court responded that the interpretation of these words would entail interference in the powers of the legislature, which is responsible for enacting laws, regulating social sphere, including labor, pensions and education. To provide an interpretation of these words would mean providing a preliminary review of the constitutionality of bills such as those on the minimum living standard, government pensions, social support for elderly people, the protection of disabled persons, the protection of health, children's rights in the Russian Federation, and so on, which were under discussion in the federal legislature at the time of the request.²

As for the definition of "social state", the Constitutional Court stated that political goals to be a social state "determine the obligation of the state to take care of the welfare of its citizens, their social security, and if by reasons of age, health conditions, or other reasons, which do not depend on a person, this person cannot work and does not have a source of income to support the minimum standard of living for themselves and their family, this person can account for receipt of relevant assistance, material support from the part of the state and the society".³

² Ruling of the CC of July 1, 1999 # 98-0.

³ Ruling of December 16, 1997.

Positive Obligations of the State in the Social Sphere: Do They Exist?

In one of its rulings the Constitutional Court stated that many social rights (such as the right to housing) have been formulated as declarations and required concretization in laws and by-laws. The Constitution is silent about the preferential rights of certain groups to free education, or the right to be provided with accommodation in the students' dormitory, or the size of government scholarships, so any laws which reduce such benefits or do not provide for such benefits cannot be subject to constitutional review (Refusal for consideration of July 3, 1997). For the same reason the court refused to check the constitutionality of acts establishing the size of payments for sick leave or the maximum size of compensations for meals in schools for schoolchildren.

There are no court decisions in Russia requiring the state to undertake specific measures, and at the moment the prospect of initiating such cases looks quite problematic, though the UN Committee on Economic, Social and Cultural Rights in its concluding observations to the Russian Federation recommended strengthening the efforts of the state to promote gender equality by adoption of the federal Law on State Guarantees of Equal Rights and Freedoms, and Equal Opportunities, for Men and Women in the Russian Federation, to take effective measures to raise wages, to promote the integration of persons with disabilities in the labor market, including by strengthening the system of job quotas for them or by providing penalty payments for non-employment, to intensify the measures to combat domestic violence by enacting specific legislation criminalizing domestic violence, and to prevent child neglect by increasing assistance rendered to families with children, including by increasing the level of family benefits'. It also contains other positive measures that the state is recommended to undertake, however, these recommendations are not enforceable in courts.

Not only positive measures, but also entitlement to social benefits and welfare are hard to defend in courts. The difficulty of their defense can be accounted for by the prevailing views of judges and legal scholars that these rights are somehow "donated" by the state as act of its utmost generosity, and thus the government can decide when and how it may restrict, substitute or postpone them. Domestic courts, correspondingly, interpret the statutes, entitling people to pensions or benefits, very narrowly, and try to deny these rights where possible (and also where not possible).

4 Concluding Observations of the Committee on Economic, Social and Cultural Rights, *supra* note 1, at page 42-46.

Constitutional Principles in Protection of Social Rights and Providing Social Benefits

The courts need to decide in each particular case, whether the case concerns social welfare, compensations, benefits and other social payments, established by law, or payments to people who have lost their health or ability to work as a result of harm caused by an employer or the state. In its jurisprudence, the Constitutional Court has been constantly trying to draw a line between social rights and social benefits, and has been firm in its position that introduction of benefits (for instance, tax reductions), their scope, and groups of people entitled to them should be referred to the sole discretion of the legislature, while compensation for harm is different by its nature and could not be regarded as a "donation" from the state.

Social support includes different kinds of assistance, such as pensions, benefits, in-kind payments, and social services. The main goal of all these measures is to provide material support, means of subsistence. Protection from unemployment, which is guaranteed by Article 37 of the Constitution, is provided, alongside other means of social support, for persons who have no job and source of income. The aim of unemployment benefit is to provide a temporary source of subsistence, but payments to unemployed persons for temporary loss of health is another means of support for such persons, and the fact that such payments are provided from the unemployment fund, not from the social insurance fund, does not change their nature, namely to compensate the loss of income caused by inability to work due to some temporary incapacity. In so far as unemployed persons do not receive unemployment welfare when they are ill, they should receive support for the loss of ability to work. The requirement of Law on Unemployment, which restricted this right, was considered unconstitutional.⁵

In adjudicating cases, the Court also followed certain principles which can be used as tests for future cases: 1) the equality principle should not be violated; 2) the statute or its implementation should not reduce the scope of existing obligations of the state; 3) social benefits should be distinguished from compensations for the loss of health or work ability; 4) principle of trust of people to the state should not be ignored.

Equality

The Constitutional Court in several decisions pointed out that, while applying statutes entitling people to social benefits or providing for free social services, the

⁵ Ruling of December 16, 1997.

ordinary courts should pay attention in each and every case that the constitutional right of people to be treated equally in equal situations is observed. Most complaints to district courts on calculation of pensions and social benefits concerned the refusal of social welfare agencies or the pension fund to acknowledge the entitlement of persons to certain payments just because their profession, or legal entity, or position they held during employment was not listed in some by-laws.

One statute established compensations and benefits for persons who were "evacuated (relocated) or voluntarily moved from contaminated communities". Following a literal interpretation of the law, the courts refused to grant benefits to a citizen who was evacuated (moved) to another, newly built, street, since he "didn't move from the contaminated community". The Cheliabinsk Oblast court held that the law does not apply to persons who are moved within the same community. The Constitutional Court disagreed with the literal construction, considering that it "does not correspond to the purpose and meaning of the statute appealed against, as stated in its preamble", which was to protect the rights and legal interests of citizens who found themselves within the area of influence of adverse factors. The application of the statute put citizens in an unequal position, depriving some of them of their right to favorable environment and the protection of their health. In para. 4 of its ruling the Constitutional Court noted that, following the literal meaning of para.3 of Article 1 of the statute, the law enforcement agencies, guided exclusively by a formal criterion, deprived one part of the population of an opportunity to protect their rights and legal interests.

The principle of equality was also violated when payments to social funds were increased for self-employed persons. The Court ruled that new amendments establishing new, higher rates of insurance payments to pension funds, social insurance funds and employment funds for self-employed persons, such as individual entrepreneurs, defense lawyers and notaries, were unconstitutional, because payments at the proposed rate of 28 percent "are becoming for these people, in fact, not so much the financing of their labor pensions, but rather the unjustified deprivation of their legally earned money". They found themselves in a position where they were obliged to pay more than employees, and thus their right to non-discrimination on professional grounds was violated.⁶ The principle of equality was also employed by the court in other decisions.

The position of the Constitutional Court was quoted by JURTX lawyers in one of the cases before the district court. Ms. Romanova, a kindergarten teacher, applied to "Dragomilivo" regional Pension Fund for a professional pension, to which she was entitled. She was denied the professional pension because "Dragomilovo"

⁶ Ruling of February 14, 1998.

Pension Fund's Commission refused to include her work in kindergarten No 156 in her record of service. The decision was based upon the fact that this kindergarten was not an independent legal entity but a department of an enterprise - Badaev's Moscow Brewery. The Commission made reference to the Law on the Education in the Russian Federation that defined the educational institute as a legal entity. Thus, Ms. Romanova's constitutional right to equal treatment and social security was violated.

According to Articles 3 and 4(10) of the Law on Pensions, a professional pension is provided to workers on basis of unfavorable or harmful conditions caused by the character and specific nature of the job. Article 28(1) provides for the right to professional pension to individuals who have worked at schools and other educational institutions for children as tutors, teachers or similar. However, the law did not specify that the pension should be granted only to the teachers of state or municipal institutions with the status of legal entities.

The court decision was made in favor of our client. It was based on the position of the Constitutional Court, who made it clear that the right to a pension could depend on labor conditions, term in service, age, professional functions, character of job, and other objective criteria, but it could not be stipulated by such factors as the form of ownership of the place of work, or the department in which a person had been working.⁷

Unfortunately, clients need to address the court in each and every particular case where they have similar problems, because the social welfare agencies and departments of the pension fund consider that they have no discretion in interpreting the rules, by-laws, or instructions of the Ministries or administrative agencies. For instance, if the list of professions approved by the Regulation of the Government, states that the right to bonus pension is provided to medical workers who have been working in the departments of "ophthalmology", a person who has a labor record that he/she has been working in the "eye-treatment department" (the old name for the same place) can only prove his/her right to such bonus through a court decision, notwithstanding the fact that it is obvious for everybody that this is the same place.

The principle of equality, however, cannot come into contradiction with the principles of social justice, market economy, right to property and other rights. The size of pensions cannot be equal for all people. The same concerns social benefits. Benefits are provided by the state to rectify inequality or to alleviate the position of some less favorable groups. Provisions establishing some benefits for certain groups do not violate in themselves individual rights and freedoms. The norms establishing the benefits for certain groups cannot be considered as violating the rights of others.

⁷ Ruling of the Constitutional Court of December 06, 2001 # 310-O4; of March 6, 2003.

Similarly, failure to provide some benefits to certain groups cannot be considered as violation of the rights of these groups either. In 1996 the Constitutional Court stated that "elimination or cancellation of benefits does not mean the elimination or derogation of the constitutional rights, because this status secured just the more preferable procedure for the realization of the rights".⁸

Ban on Reduction of Existing Obligations

In reviewing the new Law on Social Protection of Persons Suffering from Radiation as a Result of the Chernobyl Catastrophe, the Court held that the compensation for the harm should be appropriate, and cannot be reduced by future legislative acts. The new act for social protection of people suffering from Chernobyl reduced the level of compensation of harm paid in the form of social benefits or additional payments to those suffering, or eliminated the right to such compensation for certain groups who were previously entitled to such payments, or abolished the payments for lost health and property. The Court ruled that any changes in legislation, reducing the payments should be applied only to persons who were going to move to the contaminated areas after the law had been enacted, and should not affect those who had already been awarded such payments, because any reduction of the size of payments aimed at compensation of harm would mean reduction of the scope of obligations the state had previously imposed on itself. On the same grounds, the Court proclaimed as unconstitutional new provisions of the law, which deprived some groups of children of additional payments for meals, imposed an obligation on people entitled to new housing to leave their old apartments to the state, and established differential scale of compensation to people based on the years for which they had been leaving in contaminated areas.⁹ The Court also stated that some of these provisions also violated the right of people to equal treatment.

Benefits and Compensation of Harm

The above mentioned Law on Social Protection of Persons Suffered from Radiation as a Result of the Chernobyl Catastrophe also deprived military servicemen of payments for harm to their health if they received a long-service pension bonus. The Court formulated its position by saying that it was necessary to distinguish between compensation for loss of work ability and health, on one hand, and

⁸ Ruling of November 1996, # 96-0.

⁹ Ruling of the CC of the RF of December 1, 1997.

labor pensions, on the other. "The rights of persons in the domain of retirement guarantees are derived from employment or other socially useful activities. Bonuses to pensions of military servicemen for long service are deserved by their former military service. They have a character of labor pensions, and they cannot be assigned a meaning inconsistent to their social and legal nature, that is they cannot be considered as a payment aimed to compensate the harm to health, caused by Chernobyl nuclear power-station catastrophe", stated the Court.

Trust

The most controversial problem concerns the deprivation of certain social benefits donated to certain groups by some law and then changed or abolished by the state. In 2001 the Russian Constitutional Court stated that a legislator had the right to amend the previous rules on providing such benefits as housing subsidies. However, these changes, which would worsen the position of the people affected by law, should be made in such a way as to secure the principle of trust of people to the state and its actions, stability of legal regulation, and establishment of some transition period for people to adapt to such changes."

Procedure of Payment and Scope of Payments: Tricks to Reduce the Payments

As distinct from proclaimed policy on social support for vulnerable groups, in practice the government looks for each and every opportunity to derogate from its commitments. One of the most frequently used tricks played by the executive in order to reduce the social security payments from the budget supported by district courts is the issuing of by-laws: regulations and orders. In most cases the by-laws created by the ministries acting in realization of the powers delegated to them for prescribing a procedure of payments significantly change the scope of rights, reduce the circle of beneficiaries, or create such obstacles in realization, as practically eliminate the proclaimed right. Though in one of the earliest decisions" the Constitutional Court stated that provisions which established the order of realization of a certain social welfare right could not be construed as defining the group of persons entitled to the right, further in its rulings it did not develop any strategy or test that would help in checking the constitutionality of the by-laws created by the

¹⁰ Ruling of May 24, 2001 # 8-n.

¹¹ Ruling of June 15, 1998.

executive in order to resolve the technical problems of how the payments should be made in practice.

Plaintiffs - rehabilitated persons suffering from repressions - applied to court in 2002 with a claim that the rights of victims of repressions to use once a year a free railway roundtrip ticket was violated by the government's regulation according to which the free ticket was replaced by reimbursement upon presentation of the tickets bought. The procedure has deprived senior citizens of the ability to travel because the price of a railway ticket exceeds the size of the monthly pension they receive. Moreover, reimbursement after the trip was not paid automatically to all the applicants: some of those who applied to court received it according to individual court decisions, while others were denied reimbursement due to the lack of funds in the budget. In 2002, Mr. Sukhanov applied to the Supreme Court challenging section 5 of the Regulation No 419 on the Procedure of Granting Benefits to Rehabilitated Persons and Persons Acknowledged as the Victims of Political Repressions, approved by the Government on May 3, 1994, and lost the case. He did not appeal. The plaintiffs, represented by JURDC lawyers, asked to review the decision, because the Supreme Court did not consider the arguments concerning the scope of the right itself. The Supreme Court said that in Sukhanov's case the difficulty of realization of the right, which was caused by a regulation, did not deprive the plaintiffs of the right itself, and that government had a delegated power to regulate the procedure of payments. The fact that the procedure according to which the applicants had to buy a ticket first, and then receive money for it, was established for the purpose of reducing the number of people using this benefit, was indirectly confirmed by the Ministry of Social Protection in its letter in response to the complaint of the pensioners. However, this argument was not taken into account because absence of money allocated in the state for this purpose was considered a due justification for the imposed restrictions. Thus, indirectly, the Supreme Court confirmed that creating obstacles in obtaining benefits for the purpose to reduce the number of beneficiaries should be considered as a legitimate means to meet a legitimate aim.

JURDC in its trial strategy sought to prove that in the present case the government did not "prescribe the procedure for granting benefits" but, instead, substituted one type of benefit ("free" service) with another one (reimbursement). JURDC obtained expert reviews - both from linguists and law professors, teaching social protection course - in which the leading specialists in the area confirmed that the meanings of words "free" and "reimbursement" were not synonymous either in their ordinary or terminological (legal) sense. "Free" means "without payment at all" (right to free medical service, to free education), provided in kind (by providing service without payment for this service), provided in full extent ("free education" cannot mean education for which you pay only 50%). "Reimbursed" means "provided for pay,

when money is given back after some period of time", provided in a monetary form, can be covered in full extent or in part. However, the Supreme Court refused to consider these expert reviews and confirmed its former decision.

Interestingly enough, in 1998 the Russian Constitutional Court wrote in one of its decisions: "the procedure for payments of pensions in accordance with this law is established by the Government of the Russian Federation in coordination with the Pension Fund of the Russian Federation. Such wording presumes that a by-law issued in pursuance of this provision should not content any rights-and-duties-establishing norms with respect to the conditions with which the right itself to receive the pensions should comply, because the legislator empowers only to define the procedure of their payment".¹² However, a few years later, in 2003, the Constitutional Court, while reviewing the above mentioned regulation of the government, refused to make a judgment on constitutionality of this regulation, because, in its view, the right to such benefit could not be derived from the Constitution and thus was in the sole discretion of the legislator. In the Court's view, the above mentioned regulation, issued as a by-law to a federal law, took into consideration the specific nature of this particular benefit, and in so far as it "guaranteed the final free nature of travel" (let us note that the Court is very cautious in trying to avoid the word "compensation"), it could not be considered as unconstitutional. The question why in practice the state did not return money to people even upon submission of the ticket was waived by the Constitutional Court as not falling within its jurisdiction.¹³

European Court: Cases against Russia

In the European Court of Human Rights socio-economic rights have been defended in numerous cases against Russia, but all these cases were considered on the grounds of Article 6 (access to justice) and Article 1 of Protocol 1 (property) and concerned the failure of the state to fulfill its socio-economic obligations, such as payment of pensions or benefits after the domestic courts had made decisions entitling people to such payments. Violation of Article 6 and Article 1 of Protocol 1 were found in cases *Burdov v. Russia* (recalculation of payments for loss of health during liquidation of Chernobyl, 2002), *Gorokhov and Rusyayev v. Russia* (2005), *Makarova v. Russia*, *Plotnikovy v. Russia* (indexation of the amount of pensions due to delay in their payment, 2005), *Gasán v. Russia*, *Petrushko v. Russia*, *Koltsov v. Russia* (compensation for loss of bread-winner-military serviceman in Chechnya (2005), *Gizatova v. Russia* (compensation for harm caused by injury during work in a municipal en-

¹² Ruling of June 15, 1998.

¹³ Ruling of July 10, 2003.

terprise). In all these cases the state failed to provide social benefits to people, when they were entitled to them by law, and the domestic courts confirmed their entitlement to them in judicial decisions in their favor.

Reasons for this failure were various: absence of funds in the state and municipal budgets 1999-2002, confusion in administration, unclear distribution of functions and powers among different governmental bodies and agencies, and unwillingness of the state to fulfill the social obligations undertaken by previous political players.

JURDC tried to resolve the issue of failure of the state to pay the social benefits within the system of domestic courts. The case was initiated approximately at the same time, when a similar case - *Makarova v. Russia* - was submitted to the European Court. We initiated the lawsuit against the Pension Fund, the Ministry of the Finance of the Russian Federation and the Federal Treasury for failure of the state to enforce judicial decisions and make payments to the pensioners of Boguchary town.

In 1999-2001 pensioners of town of Boguchary sued the Regional Social Welfare Agency for delay in payments of their pensions made in 1998-1999, and asked to index the payments according to the inflation rate. The court ruled in their favor but the Social Welfare Agency refused to pay compensations due to the absence of funds in the budget for these purposes and because their powers concerning payments of pensions were transferred to the Pension Fund. The Pension Fund signed an agreement with the regional administration of Voronezh, stating that it would be an assignee of the agency on the pension matters, excluding payments of debts, imposed by the judicial decisions.

The bailiff arrested the assets of the Pension Fund, but the court released the Pension Fund's assets from arrest on grounds that assets were designated for other purposes. So far Court's decisions in favor of pensioners have not been enforced. The writs of execution, directed to bailiffs once again, came back with remark "returned due impossibility of execution".

In May 2005 a new case was initiated against the Pension Fund and Ministry of Finance. The preliminary proceedings were held on July, 25, hearings took place on September, 28, November 16, November 21 and December 2, when the court finally ruled in favor of the pensioners and obliged the Ministry of Finance to make the payments. Interestingly enough, the proceedings in the European Court took less time. However, it is important to test the domestic judicial system and find a strategic way to obtain the enforcement of judicial decisions within the national legal system so as to make the state to fulfill its social obligations without addressing international bodies.

Conclusion

It is obvious that state made so many commitments in the social security sphere that these became a significant burden for the budget. In addition, the numerous acts contradicted each other or overlapped, and this created difficulties in implementation. Instead of far-reaching social policies and clear action plan in the area of social protection, the ruling political circles used distribution of social benefits as an argument in their electoral campaigns. No structural reforms were made until 2005, but the reform of 2005 nearly failed, because it was badly prepared and the course of its administration evoked serious public disagreement and social explosion.

In order to find a proper balance between social security and successful economic development of the state, it is necessary to define strategically the main starting points which should underlie any developments in legislation providing for social and economic rights. It is also necessary to work out a firm judicial practice, which would be predictable and consistent, and would not depend on subjective criteria such as political expediency or incapability of the state to observe its commitments. The legislature and the executive should take care to create such rules guaranteeing social security to people as, while not contradicting the principles of market economy, at the same time create conditions for decent life and free development of every person.

Definitely, in order to avoid the problem of defendability of social rights in courts, it would be desirable to have in the Constitution only social policies or economic rights, while referring social rights, especially entitlement to benefits and welfare, to statutory regulation. In so far as new constitutions are not on the agenda, at least in Russia, we need to concretize the declarative constitutional language on the social state in clear principles and standards created by judicial practice of the Supreme Court and the Constitutional Court.