

ON INDEXATION OF MONEY AWARDED BY A COURT DECISION IN THE RUSSIAN FEDERATION

SOBRE INDEXAÇÃO DE DINHEIRO CONCEDIDO POR DECISÃO JUDICIAL NA FEDERAÇÃO RUSSA*

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Abstract: Through three resolutions adopted in 2018 and 2021, the Constitutional Court of the Russian Federation «revived» the indexation institution of funds collected by a court decision, recognizing Articles 208 of the Civil Procedure Code of the Russian Federation and Articles 183 of the Arbitration Procedure Code of the Russian Federation as inconsistent with the Constitution of the Russian Federation. The author of the study shows that the reproaches of the body of constitutional justice against the articles of procedural codes are unfounded. Indexation is an institution of substantive, not procedural law, and the application of the rules of procedural law without taking into account the results of the creditor's application of substantive legal methods of protection entails unjust enrichment and is unacceptable. «Money collected by the court» is a generic concept, their indexation without taking into account the economic content of these funds and the legal nature of the requirements, as a result of which they were awarded, is impossible.

Keywords: Constitutional justice. Indexation of funds. Inflationary losses. Protection. Constitutional Court of the Russian Federation.

Resumo: Através de três resoluções adotadas em 2018 e 2021, o Tribunal Constitucional da Federação Russa "ressuscitou" a instituição de indexação dos fundos recolhidos por decisão judicial, reconhecendo os artigos 208º do Código de Processo Civil da Federação Russa e os artigos 183º do Código de Processo Arbitral da Federação Russa como inconsistentes com a Constituição da Federação Russa. O autor do estudo mostra que as acusações do órgão de justiça constitucional contra os artigos dos códigos de processo são infundadas. A indexação é uma instituição de direito substantivo e não processual, e a aplicação das regras do direito processual sem ter em conta os resultados da aplicação pelo credor de métodos legais substantivos de protecção implica um enriquecimento injusto e é inaceitável. O "dinheiro cobrado pelo tribunal" é um conceito genérico, a sua indexação sem ter em conta o conteúdo económico destes fundos e a natureza jurídica dos requisitos, em resultado dos quais foram concedidos, é impossível.

Palavras-chave: Justiça constitucional. Indexação de fundos. Perdas inflacionistas. Protecção. Tribunal Constitucional da Federação Russa.

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1. INTRODUCTION

Through three resolutions adopted in 2018 and 2021, the Constitutional Court of the Russian Federation «revived» the indexation institution of funds collected by a court decision, Articles 208 of the Civil Procedure Code of the Russian Federation and Articles 183 of the Arbitration Procedure Code of the Russian Federation, which establish that the amounts recovered by a court decision are subject to indexation at the request in the manner and amount established by law or the contract.

Before three abovementioned resolutions, these articles were actually «dead» due to the lack of a federal law establishing the grounds and amount of indexation. There was no practice of contractual establishment of the obligation to index the sums of money awarded in creditor's favor.

The Constitutional Court of the Russian Federation recognized these articles of two procedural codes as unconstitutional as violating the right to judicial protection, guaranteed by the Constitution of the Russian Federation due to the absence in the system of current legal regulation of the mechanism for indexing the sums of money, collected by the court (Garlicki et al., 2007). The constitutional defect was that these articles do not contain criteria to carry out the indexation.

Revealing the legal nature of indexation, the Constitutional Court of the Russian Federation formulated the following legal position:

- Indexation is aimed at restoring the purchasing power of the funds due to the creditor by court decision, lost due to inflation during the period of execution by the debtor. Without this, the very right of the claimant to judicial protection would be called into question, which means the opportunity not only to go to court, but also to receive not formal, but real protection of violated rights and freedoms.

- The indexation institute of awarded money is regarded as a simplified procedure, provided by the procedural legislation for compensating the claimant's financial losses, caused by the debtor's untimely execution of a court decision, when the amounts are depreciated as a result of economic phenomena.

At the same time, indexation is not a measure of the debtor's civil liability for improper performance of a monetary obligation. Indexation is a legal compensation mechanism for the losses of the claimant from a long non-execution by a court decision in the context of inflationary processes (Bortolotti & Ufot, 2019).

The Constitutional Court of the Russian Federation ruled that, pending the adoption of the relevant federal law, the official statistical information on the consumer price index (tariffs) for goods and services in the Russian Federation, which is posted in the information and telecommunications network, should be used to index the amounts, awarded by courts of general jurisdiction and arbitration courts, on the official Internet website of Rosstat.

Undoubtedly, the resolutions of the Constitutional Court of the Russian Federation will active application of Article 208 of the Civil Procedure Code of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation, and therefore make it relevant to consider a number of issues, both theoretical and practical, the significance of which goes far beyond the indexation institution of funds, collected by a court decision, in its procedural meaning.

2. LITERATURE REVIEW

Before the adoption of the analyzed decisions by the Constitutional Court of the Russian Federation, Article 208 of the Civil Procedure Code of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation were not actually applied; and the indexation issue did not attract the attention of researchers. So, this question, in fact, was not considered in the scientific literature.

In the comments to the procedural codes, it was stated that indexation is one of the ways to compensate the creditor for losses, caused by inflation, and consists in increasing the amounts, recovered by applying the coefficients established by law or contract (Yarkov, 2020). Here only the procedural aspects of the problem were revealed – the very procedure for considering the issue of indexation by the court.

Among the special publications, one can single out the article by E.G. Kornilov «Problems of application of indexation of awarded sums of money in the civil proceedings framework» (Kornilov, 2007). The author states that the institution of indexation in the procedural codes «is not regulated at all, it is only proclaimed» and analyzes such aspects of the problem as the moment from which the amounts, collected by the court, are subject to indexation (from the date of the court decision or from the date of its entry into force) etc.

Thus, the meager historiography of the problem requires additional research in the field of decisions of the Constitutional Court on the issue of indexation of sums of money recovered by court decision.

3. METHODOLOGY

In this article, the indexation of funds, collected by the court, is the subject of research in a system with other methods of protecting civil rights (Ram et al., 2018), which, among other things, provide compensation for the creditor's losses from inflation, namely, losses, penalties, interest for the use of other people's funds, etc. Such a comparison will allow answering the question of whether any sums of money, collected by the court, are subject to indexation, or only amounts of a certain economic content, under what circumstances indexation may be refused. This comparison will allow also to understand how to prevent the use of indexation for the purpose of claimant's unjust enrichment.

4. RESULTS

1. Legislation that provides for compensation to the creditor of losses from inflationary depreciation of amounts, not paid by the debtor in a timely manner, only for the period from the date the court decision on the recovery of these amounts, enters into legal force, and not from the moment of delay in the monetary obligation performance, is internally contradictory. Non-execution of a court decision does not constitute a new civil offense of the debtor in relation to the creditor, and the economic content of the creditor's losses does not depend on whether the funds were depreciated before the entry into force of the court decision or after.

2. The indexation of money, collected by the court, does not constitute a procedural instrument independent of the substantive legal methods of protecting the creditor's rights. Indexation is an additional mechanism for restoring the interests of the creditor, which is applied only when the methods of protection, used by the creditor, did not provide compensation for inflationary losses from untimely receipt of funds.

So, indexation should be creditable in relation to other methods of compensation for inflationary losses of the creditor (for example, in relation to interest for the use of other people's funds, in accordance with Article 395 of the Civil Code of the Russian Federation).

3. Funds collected by the court is a generic concept that does not allow automatic indexation of any funds, collected by the court, regardless of their economic content and the legal nature of the claims, as a result of which they were collected.

Indexation is subject only to those funds that reflect the value of goods, not received by the creditor, or the costs of acquiring which he is forced to incur as a result of the debtor's failure to fulfill the obligation. So, in liabilities, in which cash is the subject (loan, credit), indexation is not possible.

4. DISCUSSION

1. First of all, it is necessary to question the initial claim of the Constitutional Court of the Russian Federation to the norms of procedural codes, which is that they do not have indexation criteria. Indeed, these articles are blanket, because they refer to the law or the contract, on the basis of which indexation of money, awarded by the court, can be carried out. But the referential nature of the norm can hardly be considered a defect in general. In fact, the subject of constitutional review was the absence of a law that provided for the size and other indexation criteria.

The question of whether the very absence of normative regulation can be the subject of constitutional control is an independent problem, is the subject of research in both Russian and foreign legal literature.

From recent Russian works on this topic we can note the Ph.D. dissertation by E.V. Taribo, in which the author claims, that the absence of the possibility for challenging legislative gaps indicates the qualified silence of the constitutional and federal legislator, which corresponds to the «Kelsen component» in the Russian model of judicial constitutional normative control, since its subject is precisely positive law (Taribo, 2019). At the same time, the Russian model transformation of judicial constitutional rule-making towards judicial law-making raises the problem of the response impossibility from the Constitutional Court of the Russian Federation to situations where the legislator evades the adoption of the necessary constitutional regulation.

Accordingly, it is advisable to supplement the Federal Constitutional Law «On the Constitutional Court of the Russian Federation» with a section that would contain the right for citizens (their associations) and courts to appeal to the Constitutional Court of the Russian Federation. This is necessary if the attempts of these subjects to exercise the right of legislative initiative to eliminate gaps were ignored by the legislator. It is also necessary to give the subjects the right to challenge the constitutionality of the gaps, formed due to the absence of a normative legal act, if its adoption follows from the Constitution of the Russian Federation (Taribo, 2019).

Thus, according to the researcher, at the moment the Constitutional Court does not have the ability to recognize a gap in law as unconstitutional, including the absence of a federal law regulating a particular issue.

If we assume that the highest body of constitutional justice deliberately goes beyond its powers in order to protect such values as the binding nature of a judicial act that has entered into force and the protection of the rights of creditors, who do not receive the execution awarded by the court and suffer losses due to inflationary depreciation of funds, the decisions of the Constitutional Court RF raise objections.

They do not substantiate whether the need for the presence in the legal system of the institute of indexation of funds collected by the court, but not paid by the debtor in a timely manner, follows from the Constitution of the Russian Federation itself. The blank character of Article 208 of the Code of Civil Procedure of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation gives reason to believe that for the legislator they are of a «reserve» nature.

These articles are included in the procedural law solely for creating procedural conditions for the courts to consider applications for indexation, if in the future the legislator deems to introduce this indexation. But the legislator remains free both in deciding whether to carry out indexation at all, and in what amounts awarded and in what amount to subject to indexation. The absence of indexation criteria may contradict the Constitution of the Russian Federation only if indexation is constitutionally conditioned, i.e. cannot be absent from the legal system, and the claimant's right to such indexation is a right, that is objectively part of the right to judicial protection. In other words, the absence of indexation criteria is then unconstitutional, when the very absence of articles on indexation in procedural codes would be unconstitutional.

The Constitutional Court of the Russian Federation did not give a detailed answer to this question (Determination of the Constitutional Court of the Russian Federation, 2008). The only judgment that can be considered an argument in justifying that the legislator does not have the right not to regulate indexation is the statement of the Court that in the absence of indexation «the very right of the claimant to judicial protection is called into question, which means the opportunity not only to go to court, but and receive not formal, but real protection of violated rights and freedoms» (Determination of the Constitutional Court of the Russian Federation, 2008). It concluded that the reality of the right to judicial protection requires granting the claimant the right to index the amounts,

awarded due to the very nature of this right, the legislator has no discretion in this matter. This thesis is not indisputable or obvious and needs serious substantiation for two reasons.

First, the inflationary depreciation of money causes damage to the creditor from the moment the obligation is not fulfilled, and by no means from the moment the decision enters into legal force. Therefore, compensation for this type of loss, if it should exist, is to be awarded from the default date. It can hardly be reasonably explained why the inflationary depreciation should be reimbursed to the creditor for the period after the entry into force of the court decision, but is not recoverable for the entire period before the filing of a claim, and it can be up to three years, and for the case consideration period in court, which can also be several years.

Accordingly, there is no reason to associate the compensation right for inflationary losses only with the right to judicial protection - their regulation is the subject of substantive law.

As for the current civil legislation of Russia, it does not know such a type of losses as inflationary losses. In the Decree of the Presidium of the Supreme Arbitration Court of the Russian Federation of January 21, 2997 No. 4517/96, repeatedly reproduced in judicial practice, it was noted: «The court did not take into account that the inflation index itself cannot be automatically used to determine the number of losses».

The modern Russian history of compensation for inflationary losses, which also includes the period of awarding a court penalty on the sums of money collected by the court, regardless of their legal nature, as provided for by the decision of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 04.04.2014 No. 22, does not constitute the subject of this research.

We will only point out that inflationary losses from the depreciation of funds in accordance with the officially established level of inflation are rejected by modern practice, arguing, in particular, that «a measure of creditor's civil liability and protecting means in the obligation from the debtor's misuse of the creditor's funds directed to eliminate the consequences of inflationary processes that lead to the depreciation of funds (including non-cash) and a decrease in their purchasing power» is the collection of interest for the use of other people's funds on the basis of Article 395 of the Civil Code of the Russian Federation» (determination of the Supreme Court of the Russian Federation of October 12, 2017 No. 309-ES17- 7211; (Determination of the Constitutional Court of the Russian Federation, 2008).

Traditional and indisputable is only the indexation to the consumer price index of funds not paid in a timely manner to a citizen if these amounts are social assistance, monetary incentives, pensions, benefits and similar payments from public funds of a social nature (determinations of the Supreme Court of the Russian Federation of 10.12.2009 No. 4n-242 / 09 (g), dated 07.04.2009 No. 3n-18 / 09, Review of the judicial practice of the Supreme Court of the Russian Federation «Review of the judicial practice of considering civil cases on claims and complaints of military personnel against actions and decisions of military command and control bodies and military officials for 2001», etc.). But this indexation rightly has nothing to do with the delay in the execution of a court decision - it is carried out from the date when the corresponding amounts should have been paid to the citizen, to the day they are actually paid.

Secondly, the right to judicial protection is the subject of procedural law, which - and this is generally recognized - regulates the procedure for performing procedural actions performed by the court and participants in the process in the course of considering and resolving a dispute on civil law. Accordingly, the purpose of Article 208 of the Code of Civil Procedure of the Russian Federation and Article 183 of the Arbitration Procedural Code of the Russian Federation is limited to regulating the procedure for consideration by the court of an application for indexation, and the conditions (criteria) of indexation are not and cannot be the subject of regulation of these articles.

Further, we will reveal these arguments, which cast doubt on the position of the Constitutional Court of the Russian Federation, in more detail.

2. The key issue in the application of the procedural law norms under consideration on indexation is the question of which amounts recovered are subject to indexation: all or only the amounts of the principal debt, and in relation to the latter, the question of whether we are talking about any debt (payment for goods, works, services, the number of damages awarded under the rules of tort, the amount of unjust enrichment, the debt under the loan agreement)? Or is it a debt of a strictly defined economic content?

The expression «money collected by the court» is a generic concept, which hides the amount of the principal debt, interest for the use of borrowed funds, interest for the use of other people's money (Article 395 of the Civil Code of the Russian Federation), the amount of the penalty, the amount of losses, which in turn can compensate for the cost of the debtor not performed (losses instead of performance) or the creditor's losses from delay in performance (moratorium damages) or his expenses for eliminating defects in the subject of performance, may amount to real damage or lost profit (Article 15 of the Civil

Code of the Russian Federation). Are any amounts recovered by the court subject to indexation?

2.1. To answer the question posed, one should first analyze the range of those requirements, the indexation of which was denied to the applicants who applied to the Constitutional Court of the Russian Federation and won it.

The applicant in the case in which the Constitutional Court of the Russian Federation adopted Resolution No. 1-P dated January 12, 2021, was, among others (Ivanova et al., 2018), citizen Bakina et al. (2021), who received a refusal from the courts of general jurisdiction to index the amounts owed under a loan agreement. Judicial acts in his case are subject to review (paragraph 4 of the operative part of the decision). The awarding of victory in the constitutional proceedings to this applicant gives reason to think that credit debts are also subject to indexation, although the Constitutional Court of the Russian Federation did not give any explanations on this issue directly.

Satisfaction by the same decision of the complaint by citizen Bakina et al. (2021), whom the courts refused to index unjust enrichment, including with reference to the fact that she was awarded interest on these amounts under Article 395 of the Civil Code of the Russian Federation, and statements in paragraph 4 of the reasoning part of the decision that indexation is not a measure of liability, and interest under Article 395 of the Civil Code of the Russian Federation is a measure of liability, give grounds for the conclusion that the amount of unjust enrichment is also subject to indexation when losses from the untimely return of unjust enrichment to the creditor are compensated by the payment of interest for the use of other people's funds.

Finally, the applicant Starorublevtsev, at the request of which, among other things, the decision of July 22, 2021 No. 40-P was adopted, asked the court to index the amounts of damages previously awarded by the decision of the arbitration court. This case is also subject to review by the arbitration court (Storublevtsev, 2021).

The foregoing allows us to conclude that the Constitutional Court of the Russian Federation proceeds from the possibility of indexing any sums of money collected by the court, regardless of their economic content and, accordingly, regardless of the legal nature of those requirements that were satisfied by the courts. We emphasize that the body of constitutional justice did not speak directly on the question of whether there is a relationship between the type of monetary claim, satisfied by the court, and the possibility of indexing the amount recovered. But it is this question that will become the key one in modern practice, because there is no clarity in it.

A prerequisite for its decision should be the quite indisputable thesis of the Constitutional Court of the Russian Federation that indexation is designed to ensure the restoration of the purchasing value of money that has suffered from inflation. Money, of course, always has a purchasing value, but in civil disputes, the latter is discussed when the court satisfies claims for monetary obligations, i.e., obligations, where money acts as a measure of the value of a good. This value does change due to inflation, and therefore there is an interest in compensating for inflationary losses. If the money is awarded to the creditor not in fulfillment of a monetary obligation, but in a dispute in which money is the subject of an obligation – this is the case in loan / credit relations – then in such relations there is no reason to talk about inflationary depreciation of money.

2.2. To consider the question in more detail.

2.2.1. Indexation of amounts owed under a loan/ credit agreement and interest for using it.

In a loan or credit agreement, money does not act as a measure of the value of any good that becomes inaccessible to the lender due to the inflationary depreciation of money (in relation to a loan, they cannot lose their purchasing power). Due to untimely repayment, the lender cannot again «grow them» (loan again), but the income not received from this is compensated by the continued accrual of interest for the use of borrowed funds both after the loan repayment period has come and after the court decision.

It is also critically important that in an interest-bearing loan or credit agreement, the inflationary depreciation of the funds that are its subject is provided for by the initial terms of the agreement and is included in the interest rate for the use of credit funds, as well as, as a rule, in an increased interest rate for the period of using the funds. funds after the due date for their return. It is hardly possible to imagine the terms of a loan agreement in which the interest rate would not cover the rate of inflation. In the absence of a clause in the agreement on an increased interest rate for the period of using the money after the due date for their return, the creditor's losses are compensated by the accrual of interest in his favor under Article 395 of the Civil Code of the Russian Federation (clause 1 of Article 811 of the Civil Code of the Russian Federation).

Thus, for the period after the due date of payment, the debtor pays either interest for the use of borrowed funds and interest, under Article 395 of the Civil Code of the Russian Federation, or increased interest provided for by the loan agreement, therefore, borrowed funds not returned by the debtor on time are not subject to indexation, since

compensation for their inflationary depreciation provided by the collection of these percentages.

As for the amounts of interest for the use of a loan or credit not paid on time, they, of course, depreciate as a result of inflation, but this does not explain the possibility of their indexation. The fact is that they themselves are compensating means for losses from inflation over the period of using borrowed funds.

2.2.2. Indexation of amounts owed for delivered goods (works, services)

In relations for payment for goods (works, services), money acts as a measure of the value of the good transferred to the debtor, which (value) changes over time due to inflation, and, accordingly, the amounts awarded by the court depreciate over time. Therefore, in general, such amounts are subject to indexation. However, if interest is accrued on the disputed amount, under Article 395 of the Civil Code of the Russian Federation or a contractual penalty, then they also compensate for the creditor's losses from untimely receipt of funds, including losses from inflation. Indexation without taking into account interest or penalties accrued over the period of delay in repayment can lead to unjust enrichment of the creditor (see below).

2.2.3. Indexation of amounts, paid as an advance (prepayment) and collected upon termination of the contract (as a result of the cancellation of the contract)

The money paid as an advance (prepayment), on account of which the performance stipulated by the contract was not provided, is the cost of a good, which, as a rule, cannot be bought for the same amount due to inflationary depreciation, because prices change upwards. Therefore, their indexation is permissible and fully corresponds to the purpose of this institution, which was determined by the Constitutional Court of the Russian Federation.

At the same time, changes in prices for goods (works, services), including those due to inflationary processes, are compensated for by the recovery of losses in accordance with the rules provided for in Article 393.1 of the Civil Code of the Russian Federation (replacement transaction). Double collection of the same property losses is unacceptable, because it would lead to unjust enrichment of the creditor, therefore, the indexation of funds that were not returned in a timely manner in execution of a court decision, previously paid as an advance payment (prepayment) and collected upon termination of the contract, should be offset against losses recovered in accordance with the rules of Article 393.1 of the Civil Code of the Russian Federation. If these damages were collected prior to the application for indexation, then indexation should be denied.

In turn, the losses provided for in Article 393.1 of the Civil Code of the Russian Federation reflect a change in the cost of a good (goods, work, services), which [the cost] continues to change due to inflationary processes after the decision to collect them is made, so the amounts of such losses can be indexed, if not promptly paid by the defendant.

2.2.4. Indexation of amounts, recovered as losses for delay in performance of the contract (moratorium losses)

As a rule, the losses caused by the delay in the performance of the contract are lost profits caused by the failure to receive performance under the contract on time (the income that the creditor could not receive due to the fact that he could not fulfill his obligations to his counterparties: resell the goods that he did not delivered on time, transfer to the customer the result of the work, which the subcontractor did not transfer on time to the general contractor, etc.), or penalties that the counterparty had to pay due to the debtor's malfunction (a fine for not delivering the goods that had to be paid due to the fact that the supplier did not deliver this product to the seller, etc.). Such losses do not directly reflect the value of the benefits that could have been acquired with the money recovered. At the same time, this is money that he would use in his activities and for which he would acquire a certain amount of goods or receive interest income on them if he placed them in a bank, if it had arrived to the creditor in a timely manner or remained at his disposal. Given that there are currently no other ways to compensate for losses from untimely receipt of these funds, they can be indexed.

2.2.5. Indexation of amounts recovered as losses replacing non-delivered performance under the contract

Losses instead of performance («replacement» losses) primarily reflect the cost of the good that was the subject of the contract (non-delivered goods, outstanding work, etc.). As a rule, this is real damage - the costs that must be incurred in order to acquire this benefit from a third party. Such expenses objectively increase due to inflation, therefore, the amounts collected in this capacity are subject to indexation.

2.2.6. Indexation of the amounts, recovered as losses constituting the costs of eliminating deficiencies in the subject of performance under the contract

Losses that are the costs of eliminating defects in the subject of performance under the contract are the real damage to the creditor, calculated on the basis of the prices for the work that he will have to order in order to correct the defects in the sold goods, the result of the work performed, etc. Such expenses objectively increase due to inflation: if there is not an immediately receiving the amount of such losses from the debtor, then the prices

for these works will increase over time, and applicant will not be able to order them for the money, awarded after a while. Therefore, the amounts collected in this capacity are subject to indexation.

2.2.7. Indexation of forfeit amounts

The penalty does not reflect the measure of the value of any goods, the acquisition of which becomes impossible for a given amount due to inflationary price increases, therefore, as a general rule, they should not be subject to indexation. Their indexation is justified only in cases where these amounts are offset against losses or are collected instead of damages (alternative or exclusive penalty) which – if they were collected on their own, without the collection of a penalty – would be subject to indexation, as described in previous paragraphs.

In other words, the indexation of a penalty is admissible when the losses against which this penalty is offset or instead of which it is collected would be indexed. If the amounts of such losses are not indexed, then the penalty, which in fact is part of them, is not indexed either. Thus, the indexation of a penalty requires the identification of a connection with the interest that it protects, if this interest is subject to inflationary depreciation, then the penalty is also indexed.

Now we should take a closer look at the examples.

A. If the penalty is established for failure to fulfill the obligation to supply the goods, and as a result of the failure to fulfill the buyer ultimately refused the contract, then until the date of termination of the contract, a penalty is collected, and the buyer is also entitled to recover damages in accordance with the rules of Article 393.1 of the Civil Code of the Russian Federation, in relation to which the penalty is offset. If further the court decision is not executed in a timely manner, then the recovered damages, as described above, are subject to indexation, respectively, the recovered amount of the penalty must also be indexed, because it was set off against losses.

B. If a penalty is collected for the delay in fulfilling a specific obligation stipulated by the contract (late submission of a report, failure to send an act, etc.), then the amount of such a penalty is not subject to indexation, because the contractual interest is not a subject to inflationary depreciation.

C. The penalty forfeit is not subject to indexation, because in itself it does not reflect the measure of the value of any goods that would depreciate due to inflation, and - this is the main thing - if it is allowed to be indexed, then the creditor's losses will be compensated twice, i.e. he will be unjustly enriched: if a fine and losses are collected, which

include compensation for losses from inflation (for example, losses under the rules of Article 393.1 of the Civil Code of the Russian Federation), then the indexation of the fine will mean compensation for non-existent losses of the creditor from inflation. Of course, the amount of the penalty in itself is depreciated, but due to its punitive nature, it has no connection with the protection of a contractual interest, which, due to untimely satisfaction, suffers from inflation (or this interest is protected by the same indexation of damages – see above).

2.2.8. Indexation of interest amounts under Article 395 of the Civil Code of the Russian Federation

These amounts are not subject to indexation, because they themselves compensate for the inflationary depreciation of the principal amount of the debt (the cost of the delivered goods, the work performed, the service rendered, the amount of compensation for harm or unjust enrichment), on which they are accrued: this is the conditional income that the creditor would receive by placing – if it were returned to him on time – the principal debt amount in the bank account, and which would cover the inflationary depreciation of this principal amount (for such coverage should provide a normal interest on a bank deposit). Being in this sense a type of inflationary loss, interest for the use of other people's funds from inflation (in contrast, for example, from losses under Article 393.1 of the Civil Code) does not suffer. Otherwise, it would mean a «bad infinity» of compensation for the inflationary depreciation of amounts intended to compensate for the inflationary depreciation of other amounts, which in turn are collected to compensate for the inflationary depreciation of third amounts, etc.

3. The position of the Constitutional Court of the Russian Federation on the question of how the indexation of recovered amounts, on the one hand, and the legal and economic nature of the principal debt, interest under Article 395 of the Civil Code of the Russian Federation, and various types of losses, on the other hand, correlate, can be tried to be deduced from the definition of 06.10.2008 No. 738-O-O, in which he called the methods of protecting civil rights, established by Articles 317, 393, 394, 395 of the Civil Code of the Russian Federation, «methods of protecting against losses from inflation» (Determination of the Constitutional Court of the Russian Federation, 2008).

Taking into account this statement (and taking into account common sense), it should be assumed that the Court in any case did not mean the possibility of using these methods simultaneously with indexation, because the result of such use will be the unjust

enrichment of the creditor – it is impossible to repeatedly compensate for inflationary losses.

This means that if the losses from the inflationary depreciation of the sums of money collected by the court are compensated by other means (by collecting interest for the use of other people's funds, forfeit, etc.), then there is no place for indexation. This leads to the key conclusion: indexation is only an additional mechanism for compensating for those losses from inflation that are not compensated by other methods of protection. That is why it was stated above that the indexation of debt for delivered goods (works, services) is permissible only to the extent that inflationary losses are not compensated by other protection means.

4. The foregoing makes it possible to put forward the thesis that the creditor applying to the court for indexation must prove that the legal means used by him at the time of filing such an application to protect his interests (interest, penalty, etc.) do not allow to fully compensate for the losses from not receiving the awarded. Conversely, if the first mechanism resorted to by the creditor was indexation, then subsequent ones are to be used if he proves that indexation did not cover the corresponding part of the losses.

From a practical point of view, this requires establishing what type of loss is compensated for in specific circumstances by one or another method of protection. We should recall that losses can compensate for three types of losses: losses from delay in performance (losses for not receiving performance on time), losses from failure to provide performance (losses instead of performance) and losses in the form of expenses for correcting defects in the performance subject. Accordingly, the recovery of some does not exclude the recovery of others: in particular, if damages for delay were collected at first, but, despite this, the debtor did not provide the subject of performance, losses may subsequently be recovered instead of performance – they compensate for losses that are different in the economic sense and therefore economically do not compete with each other.

5. The foregoing leads to the conclusion that the proceedings on the application for indexation are «filled» with the burden of proving that other methods of protection used by the creditor did not provide full compensation for his losses. It must be admitted that, according to the original ideology, Article 208 of the Code of Civil Procedure of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation were «free» from the burden of proof: indexation in accordance with the law or agreement does not imply correlation of the results of legal instruments already applied to

protect the interest of the creditor with the results of inflation – indexation should be «automatic». But in the legal reality created by the Constitutional Court of the Russian Federation, such a burden of proof will become an obstacle to the use of indexation with the effect of unjust enrichment of the creditor.

6. In conclusion, we will consider a number of issues, related to the application of Article 208 of the Code of Civil Procedure of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation on the basis of the legal positions of the Constitutional Court of the Russian Federation.

6.1. The indexation deadline

On the one hand, as a claim aimed at restoring violated rights, the requirement for indexation is subject to the statute of limitations. On the other hand, being a method to be applied after the right of the creditor has been protected by the court, the requirement for indexation cannot be long-standing, since the failure to fulfill the obligation is delayed, and the limitation period for the demand for its fulfillment is interrupted by filing a claim and more. In the conditions of a decision on claim satisfaction, such a period for the fulfillment of obligations no longer flows.

In any case, the applicant can declare indexation before the end of enforcement proceedings, no matter how long it lasts. This means that until the end of the enforcement proceedings by the actual execution, the limitation period for the requirement for indexation does not flow. So, as long as it is possible to demand enforcement, it is possible to demand indexation. But from the moment the enforcement proceedings are completed, the period for filing an application for indexation should begin. By this time, the number of inflationary losses not compensated by other means of protection is finally determined, and there are no obstacles to submit such an application. Until statutory regulations are issued, it must be assumed that the time limit is three years from now.

6.2. Are rulings of the Constitutional Court of the Russian Federation subject to application to cases considered before their issuance? Can indexation be charged for periods prior to the adoption of resolutions?

As noted at the introduction, the rulings of the Constitutional Court of the Russian Federation «breathed life» into the articles of the procedural codes (Titko et al., 2021), which had practically no application for almost twenty years. Those creditors, who during this period could not receive the sums of money collected by the court in a timely manner, of course, wish to receive compensation for their inflationary depreciation in accordance with the rules, formulated by the constitutional justice body, namely on the basis of official

statistical information on the consumer price index (tariffs) for goods and services in the Russian Federation, which is posted on the Internet information and telecommunications network on the official website of Rosstat. In other words, they are interested in applying the indexation criterion provided for by the Constitutional Court of the Russian Federation to periods of inflationary depreciation of money that have elapsed before the adoption of decisions by the Constitutional Court of the Russian Federation (Petkov and Shklyar, 1999; Novikova et al., 2020). The order of the Constitutional Court on the use of the consumer price index is a surrogate, a functional analogue of the norm that is absent in the law. Therefore, its effect in time must be the same as that rule of law would have, as if it had been adopted.

In turn, if such a rule appeared, then in the absence of special instructions to the contrary, it would be valid for the future (Article 4 of the Civil Code). Article 208 of the Civil Procedure Code of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation are blanket.

So long, as there is no law to which they refer, these articles are not subject to application; as soon as such a law appears, they «turn on», but «work» according to the rules of action in time, according to which this law operates.

Otherwise, the operation in time of the law rule on the amount and conditions of indexation would be subject to the rules on the operation in time, Article 208 of the Code of Civil Procedure of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation, and not its own rules on the operation in time.

If these articles were in force before the adoption of this norms, then the article of the law on the size and conditions of indexation automatically has effect in the periods preceding its adoption, i.e., in all periods of validity, Article 208 of the Civil Procedure Code of the Russian Federation and Article 183 of the Arbitration Procedure Code of the Russian Federation.

There are, of course, no grounds for such a conclusion, because the norm that determines the rules for indexing is substantive and not procedural. This means that indexation operates in time according to the rules on the action in time of the rule of law that determined its size, i.e., according to substantive law.

Indirectly, this conclusion is also confirmed by the fact that the Constitutional Court did not retroactively give its decisions - it did not indicate that all judicial acts that were previously denied indexation by creditors were subject to review (according to clause 7 of part 3 of Article 79 of the Federal Law «On the Constitutional Court of the Russian

Federation» from 09.11.2020 judicial acts adopted not in the case in which the applicant won the case in the Constitutional Court of the Russian Federation are subject to review only if the Court expressly states this in its decision).

This means that money, collected by the courts, are subject to indexation according to the rules established by the Constitutional Court of the Russian Federation, only for the periods after the adoption of the resolutions in question.

5. CONCLUSION

The civil legislation of Russia should answer the question of whether inflationary creditor's losses as an independent type of losses are subject to compensation. The assignment of this task to procedural legislation is an attempt to solve the problem by unsuitable means, which inevitably leads to unsatisfactory consequences, both theoretical and practical. The indexing of any funds collected by the court, introduced by the Constitutional Court of the Russian Federation, regardless of their economic nature, is a lapse that must be corrected by the legislator.

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