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On Court Consideration of Disputes regarding Payment for Communal Services and Residential Premises Occupied by Citizens in a Multi-Flat House by Virtue of Social Rent Contract or Ownership

In order to ensure the uniform court application of legislation regulating the payment for communal services and residential premises occupied by citizens in a multi-flat house by virtue of a social rent contract or ownership, with regard to the questions raised by the courts in consideration of this category of cases, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following explanations:

General Provisions

1. The Constitution of the Russian Federation guarantees everyone the right to housing. The realisation of this right presupposes, in particular, that affordable pay for residential premises is stipulated for certain categories of citizens (Part 3 of Article 40 of the Constitution of the Russian Federation).

Citizens realising their rights to use residential premises and to receive communal services of due quality bear the duty to pay for the residential premises and the

rendered communal services, timely and in full (Article 153 of the Housing Code of the Russian Federation).

2. The relations regarding the payment for residential premises and communal services by citizens are regulated by provisions of the Housing Code of the Russian Federation (hereinafter – the HC RF), the Civil Code of the Russian Federation (hereinafter – the CC RF), by other federal laws (e.g. Federal Law No. 35 of 26 March 2003 “On Electric Energy”, Federal Law No. 190 of 27 July 2010 “On Heat Supply”, Federal Law No. 416 of 7 December 2011 “On Water Supply and Disposal”), by normative legal acts issued in accordance with the aforementioned federal laws (e.g. Rules on Rendering of Communal Services to Owners and Users of Premises in Multi-Flat Houses, approved by Decree of the Government of the Russian Federation No. 354 of 6 May 2011, Rules of Maintenance of Common Property in a Multi-Flat House and Rules of Amending the Amount of Pay for Maintenance and Repairs of Residential Premises, where Management, Repair and Maintenance Services and Works in Regard of Common Property in a Multi-Flat House Are Rendered Improperly and (or) with Intervals Exceeding the Stipulated Terms, approved by Decree of the Government of the Russian Federation No. 491 of 13 August 2006).

With due regard to the provisions of Item 9 of Article 13 and Item 10 of Part 1 of Article 14 of the HC RF, relations in regard of payment for residential premises and for communal services may also be regulated by normative legal acts of constituent entities of the Russian Federation and of local self-government bodies.

The powers of public authorities of a constituent entity of the Russian Federation in this sphere include, in particular, the powers: to set the minimal amount of a capital repairs fee (Part 8¹ of Article 156 of the HC RF); to stipulate the standard consumption rates of communal services, including the standard rates of solid communal waste accumulation (Part 1 of Article 157 of the HC RF).

For example, local self-government bodies may set the amount of payment for use of residential premises (rent payment), the amount of payment for maintenance of residential premises for tenants under a social rent contract and the amount of payment for maintenance of residential premises for owners of residential premises, who have not chosen the manner of management of their multi-flat house (Part 3 of Article 156 of the HC RF).

3. The Law of the Russian Federation No. 2300-I of 7 February 1992 “On Consumer Rights Protection” applies (in the part not regulated by special laws) to relations on rendering of communal services to tenants under a social rent contract (hereinafter – tenants), as well as to owners of residential premises in multi-flat houses (hereinafter – owners), who use those premises for residential purposes (Part 4 of Article 157 of the HC RF).

Procedural Issues

4. Disputes regarding the payment for residential premises and communal services by citizens are considered by justices of the peace, as well as by other courts of general jurisdiction in the manner of civil judicial procedure (Articles 22 and 23, Chapters 11, 12 and 21¹ of the Civil Procedure Code of the Russian Federation, hereinafter – the CPC RF).

5. Claims for recovery of indebtedness for residential premises and for communal services, not exceeding five hundred thousand rubles, are subject to consideration in court order proceedings (Item 1 of Part 1 of Article 23, Part 1 of Article 121, tenth and eleventh paragraphs of Article 122 of the CPC RF).

If a justice of the peace refuses to accept an application for issue of a court order on recovery of indebtedness for residential premises and communal services, based on the grounds indicated in Part 3 of Article 125 of the CPC RF, or if a court order issued in regard of these claims is cancelled (Article 129 of the CPC RF), these claims may be considered in action proceedings, including simplified proceedings.

6. When determining, which court has jurisdiction over a certain dispute regarding the payment for residential premises and communal services by a tenant (owner), rules stipulated in Articles 23 and 24 of the CPC RF should be used as guidance.

For example, claims on recalculation of payment, where communal services of undue quality are rendered, and the amount of claim does not exceed fifty thousand rubles, are considered by justices of the peace; claims for determining the manner of payment for residential premises and communal services are within the jurisdiction of district courts – as claims not subject to evaluation.

7. By general rule, claims on recovery of indebtedness for residential premises and communal services from tenants (owners) are considered at the place of residence of the defendant (Article 28 of the CPC RF).

Claims of tenants (owners) may also be filed to the court at the place of residence or stay of the plaintiff or at the place of conclusion or performance of the contract (Part 7 of Article 29 of the CPC RF).

8. When determining the list of persons entitled to apply to court with claims regarding the payment for residential premises and communal services by citizens, the courts should take into account that a prosecutor may apply to court with an application on the grounds and in the manner stipulated in Article 45 of the CPC RF.

Structure of Payment for Residential Premises and for Communal Services

9. The payment for residential premises and for communal services, received from the tenant, as well as the owner, includes:

- payment for the maintenance of residential premises (payment for management services, works in a multi-flat house, maintenance and general repairs of common property in a multi-flat house, for communal services consumed during maintenance of common property in a multi-flat house);
- payment for communal services (payment for cold water, hot water, electricity, heat energy, gas, household bottled gas, solid fuel (in case of furnace heating), payment for wastewater disposal, communal waste treatment (Items 2, 3 of Part 1, Items 1, 3 of Part 2, Part 4 of Article 154 of the HC RF).

If the multi-flat house is directly managed by the owners of premises, as well as if the owners of premises in a multi-flat house have not selected the manner of its management, or if the selected manner of management is not realised, the payment for communal services includes, in particular, payment for cold water, hot water, electricity consumed in the maintenance of common property in the multi-flat house (Part 5 of Article 154 of the HC RF).

10. For tenants, the payment for residential premises and communal services also includes the payment for using the residential premises (rent payment (Item 1 of Part 1 of Article 154 of the HC RF).

Citizens recognised as low-income persons in the manner stipulated in the Housing Code of the Russian Federation and occupying residential premises by virtue of social rent contracts are exempt from the payment for using the residential premises (rent payment) (Part 9 of Article 156 of the HC RF).

Normative legal acts of constituent entities of the Russian Federation may also exempt other categories of citizens from payment for using the residential premises.

11. For owners, the payment for residential premises and communal services also includes the capital repairs fee (Item 2 of Part 2 of Article 154 of the HC RF).

12. Tenants and owners are obliged to pay for the maintenance and general repairs of common property in a multi-flat house independent of whether they use the common property, i.e. an elevator. If an owner does not have a written management contract with the managing organisation, this does not exempt the owner from payments for the maintenance of common property (Part 3 of Article 30, Part 1 of Article 36, Item 2 of Part 1 and Item 1 of Part 2 of Article 154, Part 1 of Article 158, Part 1 of Article 162 of the HC RF).

13. When resolving disputes regarding the payment for maintenance of common property in a multi-flat house, the courts should proceed from the premise that such property only includes the property that meets the criteria stipulated in Article 36 of the HC RF and Item 1 of Article 290 of the CC RF.

In particular, the common property of a multi-flat house includes the land plot on which that house is located (including the elements of plant arrangements and improvements), which has been formed and has undergone state cadastre registration in accordance with the requirements of land legislation and city-planning legislation (Article 16 of Federal Law No. 189 of 29 December 2004 “On Enactment of the Housing Code of the Russian Federation”).

14. Maintenance of common property in a multi-flat house is a complex of works and services aimed at maintaining this property in a condition that meets the requirements of reliability and safety of a multi-flat house, the safety of life and health of citizens, security of their property, possibility to use the residential and (or) non-residential premises, common premises, as well as the land plot on which the multi-flat house is located, constant readiness of utility systems, metering

devices and other equipment comprising the common property for rendering of communal services.

15. The minimal list of services and works necessary for the due maintenance of common property in a multi-flat house, the manner of their rendering and performance is stipulated by the Government of the Russian Federation (Part 1² of Article 161 of the HC RF).

The exact list of works and services covered by the payment for maintenance of residential premises, the conditions of their rendering and performance, as well as the amount of payment for the maintenance of residential premises in a multi-flat house, in which neither a partnership of housing owners nor a housing cooperative, nor any other specialised consumers' cooperative has been created, are determined at the general meeting of the owners of premises in such a house. The amount of payment for maintenance of residential premises in a multi-flat house is determined with due regard to the suggestions of the managing organisation and is stipulated for a term no shorter than one year (Item 5 of Part 2 of Article 44, Part 7 of Article 156 of the HC RF).

The manner of holding a general meeting of owners of premises in a multi-flat house and the manner of judicial appeal against a decision adopted by the general meeting of owners of premises in such a house are stipulated in Articles 45 and 46 of the HC RF, as well as in Chapter 9¹ of the CC RF.

16. When resolving disputes regarding the payment for maintenance and general repairs of common property in a multi-flat house, for management services and works in such a house, the courts should take into account that the amount of such payments, stipulated by the general meeting of the owners, cannot be determined arbitrarily, must ensure the maintenance of common property in a multi-flat house in accordance with the requirements of legislation and must be reasonable (Part 1 of Article 156 of the HC RF).

17. The managing organisation has no right to unilaterally change the manner in which the amount of payment for maintenance of residential premises is determined and to charge payments for maintenance of residential premises in the amount exceeding the amount of such a payment, stipulated in accordance with the concluded contract of management of a multi-flat house (Part 7 of Article 156, Parts 1, 2, 3 and 8 of Article 162 of the HC RF, Item 1 of Article 310, Item 1 of Article 432, Articles 450–453 of the CC RF).

18. If a general meeting of owners of premises in a multi-flat house decides to adopt a fundamental term in the contract of management of the multi-flat house, regarding the manner of determination of the amount of payment for the maintenance of residential premises in the house, and this decision is invalidated by a court decision, such a term is not subject to application. In this situation, the payment for maintenance of residential premises is subject to recalculation based on the manner of determination of payment stipulated in the previous version of the contract of management of a multi-flat house (Part 7 of Article 156, Parts 1, 2, 3 of Article 162 of the HC RF).

19. The amount of payment for use of residential premises (rental payment) is determined depending on the quality and the available amenities of the residential premises, the location of the house, based on the overall occupied area of the residential premises (Parts 2 and 4 of Article 156 of the HC RF).

The amount of payment for communal services is calculated based on the volume of consumed communal services, determined using the readings of the metering devices, and in their absence – based on the standard consumption rates stipulated for communal services by public authorities of constituent entities of the Russian Federation, using the tariffs stipulated by public authorities of constituent entities of the Russian Federation in the manner stipulated in federal law or by a local self-government body, if it is vested with certain state powers (Parts 1, 2 of Article 157 of the HC RF).

20. If the rendered communal services are of improper quality, and (or) if they are rendered with intervals exceeding the stipulated terms, tenants (owners) have the right to decrease the amount of payment for communal services (down to full exemption from payment), which is effected in the manner stipulated by the Government of the Russian Federation (Part 4 of Article 157 of the HC RF).

Tenants (owners) may also change the amount of payment for maintenance of residential premises, if management, maintenance or repair works and services are performed improperly and (or) with intervals exceeding the stipulated terms. This change is effected in the manner stipulated by the Government of the Russian Federation (Part 10 of Article 156 of the HC RF).

21. If a consumer is provided with communal services of improper quality and (or) with intervals exceeding the stipulated term (e.g. if after concluding a contract

containing provisions on rendering of communal services the provider does not timely begin to render communal services; if voltage and frequency in the power lines in the consumer's premises do not meet the requirements stipulated in the legislation of the Russian Federation, etc.), the consumer may claim restitution of damages, payment of a forfeit, monetary compensation for moral harm and payment of a fine from the person guilty of non-rendering of services or guilty of violation of quality and (or) continuity of rendering of communal services, in accordance with the Law of the Russian Federation No. 2300-I of 7 February 1992 "On Consumer Rights Protection" (Part 4 of Article 157 of the HC RF and Item 150 of the Rules on Rendering of Communal Services to Owners and Users of Premises in Multi-Flat Houses, approved by Decree of the Government of the Russian Federation No. 354 of 6 May 2011).

22. When resolving disputes on recalculation of payments for communal services of improper quality and (or) rendered with intervals exceeding the stipulated terms, the fact of non-rendering or improper rendering of communal services may be confirmed not only by the reports drawn up by the provider (on violation of quality or time for rendering the services, on non-rendering of services), but also by any other means of proof, stipulated in Article 55 of the CPC RF (e.g. witness testimony, audio and video recordings, expert conclusions).

The provider of communal services is exempt from liability for rendering a service of improper quality and (or) with an interval exceeding the stipulated term, if it proves that the failure to perform the obligations or their undue performance was caused by force-majeure, and also on other grounds stipulated in law (Item 3 of Article 401 of the CC RF, Item 4 of Article 13 of the Law of the Russian Federation No. 2300-I of 7 February 1992 "On Consumer Rights Protection").

Making the Payments

23. By virtue of a contract of social rent of residential premises, including a contract of social rent of residential premises acquired through exchange of residential premises, the duty to pay for the residential premises and communal services is acquired by the tenant from the day on which the contract is concluded (Item 1 of Part 2 of Article 153 of the HC RF).

If the social rent contract is not concluded in written form, this does not exempt the tenant from the duty to pay for the residential premises and communal services.

24. Payment for residential premises and communal services is not only the duty of the tenant, but also of members of the tenant's family (legally capable and those whose legal capacity is limited by the court) residing with him/her, who have equal rights to the residential premises, independent of whether they are referred to in the social rent contract (Item 5 of Part 3 of Article 67, Parts 2, 3 of Article 69 and Article 153 of the HC RF).

The aforementioned persons bear joint and several liability with the tenant for failure to perform the duty to pay for residential premises and communal services.

25. A former member of the tenant's family, who preserves the right to use the residential premises, bears independent liability on obligations pertaining to payment for residential premises and communal services, if he/she concludes an agreement with the landlord (managing organisation) and the tenant, stipulating the manner and amount of his/her participation in the expenses on payment for residential premises and communal services (Part 4 of Article 69 of the HC RF, Article 421 of the CC RF).

If there is no such agreement, the court may determine the amount of expenses of the former member of the tenant's family on payment for residential premises and communal services, based on the share that he/she has in the overall space of the residential premises, taking into account the number of persons who have the right to use these residential premises (Article 249 of the CC RF). Herewith, the landlord (managing organisation) is obliged to conclude the corresponding agreement with the former member of the tenant's family and provide him/her with a separate payment document in regard of the residential premises and communal services.

26. An owner acquires the duty to pay for the residential premises and communal services from the moment it acquires the rights to such premises (Item 5 of Part 2 of Article 153 of the HC RF).

The moment on which property rights arise is determined by the rules of the Civil Code of the Russian Federation (Item 2 of Article 8¹, Articles 218, 219, 223, Item 4 of Article 1152 of the CC RF).

A person that accepts the premises from the constructor after the latter is allowed to put the multi-flat house into operation becomes obliged to pay for the

maintenance of residential premises and communal services from the moment on which the residential premises are transferred to it by virtue of a transfer deed or another document regarding the transfer (Item 6 of Part 2 of Article 153 of the HC RF).

27. Owners of residential premises in a multi-flat house are obliged to pay for the residential premises and communal services in proportion to their shares in the right of common shared property to the residential premises (Article 249 of the CC RF).

By implication of Article 155 of the HC RF and Article 249 of the CC RF, every one of these co-owners of residential premises may demand that a separate agreement is concluded with it, so that payments for residential premises and communal services are made on the basis of such an agreement, and may demand the issue of a separate payment document.

28. If the owner of residential premises (their share) is an underage person, the duty to pay for the residential premises and communal services is borne by his/her parents, independent of whether they live together with the underage person (Articles 21, 26, 28 of the CC RF, Articles 56, 60, 64 of the Family Code of the Russian Federation).

Herewith, underage persons aged from 14 to 18 have the right to independently pay for the residential premises and communal services. If an underage person does not have sufficient funds, the duty to pay for the residential premises and communal services is imposed upon his/her parents in a subsidiary manner (Article 26 of the CC RF).

29. The owner, as well as the members of its family (legally capable and those whose legal capacity is limited by the court), including former family members retaining the right to use the residential premises, bear a joint and several duty to pay for the communal services, unless otherwise stipulated in an agreement (Part 3 of Article 31, Article 153 of the HC RF).

If a dispute arises regarding the recovery of indebtedness for communal services from the owner and her/his family members, who have concluded an agreement stipulating the manner and amount of their participation in payment for communal services, such indebtedness is established by the court with due regard to said agreement.

The duty to pay for the maintenance of residential premises and to pay the capital repairs fee is borne only by the owner of the residential premises (Articles 30, 158 of the HC RF, Article 210 of the CC RF).

30. The payment for residential premises and communal services is made on a monthly basis, prior to the tenth day of the month following the expired month, unless otherwise stipulated in the contract of management of a multi-flat house or a decision of the general meeting of members of a partnership of housing owners, of a housing cooperative or another specialised consumers' cooperative (Part 1 of Article 155 of the HC RF).

Herewith it should be noted that unless another term is stipulated, the last day for the payment for residential premises and communal services is the tenth day of the month (Articles 190–192 of the CC RF).

31. Payment for residential premises and communal services is made on the basis of payment documents, including electronic payment documents placed in the state informational system of the housing and communal sector (Item 9 of Article 2, Part 2 of Article 155 of the HC RF).

The duty to receive the payment document only on paper or only in electronic form may not be imposed upon a consumer of services.

32. A payment document must indicate, in particular, the name of the service provider; its bank account number and bank account details; for what month the payment is made; the name of every type of communal services paid for; information about the consumer's indebtedness to the provider, incurred in previous periods; information about the subsidies and preferences in payment for communal services.

Monetary funds, paid on the basis of a payment document in which the accounting period is indicated, are offset against the payment for residential premises and housing services within the period indicated in this payment document.

If a payment document does not contain information about the accounting period, the monetary funds paid on the basis of that payment document are offset against the payment for residential premises and housing services within the period indicated by the citizen (Article 319¹ of the CC RF).

If the tenant (owner) did not indicate, for what accounting period the payment is made, the funds are offset against the periods, in regard of which the statute of limitations has not yet expired (Part 1 of Article 7 of the HC RF and Item 3 of Article 199, Item 3 of Article 319¹ of the CC RF).

33. The landlord, managing organisation, another legal person or individual entrepreneur receiving payment for the residential premises and communal services, as well as their representatives, may settle accounts with the tenants (owners) of residential premises and charge payments for residential premises and communal services with participation of paying agents, as well as banking paying agents (Part 15 of Article 155 of the HC RF).

If payment is made to the provider or a paying agent (banking paying agent), acting on its instructions, this constitutes due performance of duty to pay for the residential premises and communal services (Parts 3–6¹, 7, 7¹, 8–10 of Article 155 of the HC RF, Item 1 of Article 408 of the CC RF).

34. By virtue of a decision of a general meeting of owners of premises in a multi-flat house, tenants (owners) may pay for all or for certain communal services to the resource supplying organisations (Part 7¹ of Article 155 of the HC RF).

The tenants (owners) make payments for communal services, including the communal services consumed in maintenance of common property in a multi-flat house, directly to the resource supplying organisations, if the owners of premises in a multi-flat house engage in direct management of that house, or if the owners did not select the manner of management, or the selected manner of management is not realized (Part 5 of Article 154 and Part 8 of Article 155 of the HC RF).

35. A managing organisation managing a multi-flat house acquires communal resources for rendering of communal services to the consumers on the basis of the corresponding contract with a resource supplying organisation (Part 6² of Article 155, Part 12 of Article 161 of the HC RF).

If the managing organisation actually began to manage the common property of a multi-flat house in execution of a decision of a general meeting of owners of premises, and it follows from the presented evidence that tenants (owners) of premises pay for the communal services of the managing organisation, and the resource supplying organisation presents bills to the latter for supply of the

corresponding resource, the relations between the managing organisation and the resource supplying organisation may be qualified as actually existing contract relations pertaining to the supply of a resource via a connected network, in which regard the managing organisation may be recognised as performing the functions of a communal services provider (Item 1 of Article 162 of the CC RF).

36. When a new managing organisation is chosen, due performance of the duty to pay for the residential premises and communal services is effected by payment to this managing organisation, if there is a concluded contract of management of a multi-flat house (Parts 4, 6¹, 7 of Article 155, Parts 1, 1¹ and 7 of Article 162 of the HC RF).

If the tenant (owner), acting in good faith and lacking information that a new managing organisation was chosen, pays the previous managing organisation, this is regarded as due performance of obligation to pay for residential premises and communal services (Parts 3–7¹, 8–10 of Article 155 of the HC RF, Article 10 and Item 1 of Article 408 of the CC RF). In such a situation, the newly chosen managing organisation may claim recovery of monetary funds paid by the tenant (owner) from the former managing organisation, in accordance with the rules stipulated in Chapter 60 of the CC RF.

37. If the premises are temporarily not being used by tenants, owners and other persons, this does not constitute grounds for exemption from duty to pay for maintenance of residential premises, for using the residential premises (rental payment), for heating, as well as for communal services provided for the common house needs, from duty to pay the capital repairs fees.

If the tenants (owners) and (or) of their family members are temporarily absent, the payment for other communal services, calculated based on the standard consumption rates, is performed with regard to recalculation of payments for the period of temporary absence of the citizens, where so stipulated and in the manner stipulated by the Government of the Russian Federation (Part 11 of Article 155 of the HC RF).

Recalculation of payments in such cases is made upon application, submitted by a citizen within the term stipulated in the rules adopted by the Government of the Russian Federation.

If the tenant, owner or other persons occupying the residential premises fail to timely file an application for recalculation of communal services payments due to temporary absence for a good reason (e.g. serious illness or other circumstances beyond control of the person, due to which it had no opportunity to timely file the application), this does not constitute grounds for refusal to satisfy claims for recalculation of such payments.

38. By implication of Part 14 of Article 155 of the HC RF, owners and tenants of residential premises under a social rent contract, who fail to timely or fully pay for the residential premises and communal services, are obliged to pay the creditor a fee, the amount of which is stipulated in law and cannot be increased.

39. If the fee stipulated in Part 14 of Article 155 of the HC RF is obviously disproportionate to the consequences of violation of obligation, it may be decreased upon the initiative of the court resolving the dispute (Item 1 of Article 333 of the CC RF).

In such a situation, the court suggests it to the parties during the case consideration to discuss the facts confirming this disproportionate character of the fee to the consequences of violation of obligation (Article 56 of the CPC RF).

40. Undue performance of duty to pay for a communal service by tenants (owners) and their family members may serve as grounds for suspending or limiting the rendering of this communal service.

The rendering of a communal service may be suspended or limited within the terms and in the manner stipulated by the Government of the Russian Federation, and only after the consumer-debtor is warned (notified) in written form.

It should be noted that the indebtedness for a communal service does not by itself constitute absolute grounds for suspending or limiting the rendering of such a communal service. The actions of a communal service provider in suspending or limiting the communal service must be proportionate to the violation committed by the tenant (owner), must not exceed the limits of actions necessary for the suppression of such a violation, must not violate the rights and lawful interests of other persons or endanger the life and health of the public.

41. A general three-year statute of limitations applies to disputes regarding the citizens' payments for residential premises and communal services. This term is

calculated from the day on which a person discovered or must have learned about the violation of its right and about the proper defendant in regard of claims for the protection of that right (Articles 196, 200 of the CC RF).

The statute of limitations on claims for recovery of indebtedness for residential premises and communal services is calculated separately in regard of every monthly payment (Part 1 of Article 155 of the HC RF and Item 2 of Article 200 of the CC RF).

Social Support Measures

42. As a social state, the Russian Federation establishes guarantees of social support for citizens in realisation of their right to housing.

Measures of citizens' social support in payment for residential premises and communal services include subsidies for payment for residential premises and communal services, compensation of expenses incurred by payment for residential premises and communal services (Articles 159, 160 of the HC RF), other forms of social support (exemption from payment for residential premises and/or communal services).

The categories of persons entitled to social support in payment for residential premises and communal services, the manner and conditions of provision of these measures, the ways and sources of their financing are stipulated in federal laws, normative legal acts of federal executive bodies, laws of constituent entities of the Russian Federation.

For example, federal laws stipulate the corresponding measures of social support for such categories of citizens as disabled persons, families with disabled children, Heroes of Socialist Labour, Heroes of Labour of the Russian Federation, Full Cavaliers of the Order of Labour Glory, citizens exposed to radiation following the disaster at Chernobyl Atomic Power Station (Parts 13–15 of Article 17 of Federal Law No. 181 of 24 November 1995 “On Social Protection of Disabled Persons in the Russian Federation”; Parts 1 and 2 of Article 3 of Federal Law No. 5 of 9 January 1997 “On Social Guarantees for Heroes of Socialist Labour, Heroes of Labour of the Russian Federation and Full Cavaliers of the Order of Labour Glory”; Item 3 of Part 1 of Article 14 of the Law of the Russian Federation

No. 1244-I of 15 May 1991 “On Social Protection of Persons Exposed to Radiation following the Disaster at Chernobyl Atomic Power Station”).

By implication of Part 11 of Article 159 and Part 1 of Article 160 of the HC RF, certain issues pertaining to the realisation of citizens’ social support measures in payment for residential premises and communal services may be regulated by normative legal acts of local self-government bodies, if they are vested with certain state powers by the authorities of constituent entities of the Russian Federation.

43. By implication of Article 159 of the HC RF, a subsidy for the payment for residential premises and communal services is a targeted, full or partial payment for the residential premises and communal services provided to citizens (tenants under a social rent contract or owners of residential premises), performed at the expense of the budget of the corresponding level.

The Government of the Russian Federation stipulates the manner of determining the amount of subsidies and of their granting, the list of documents attached to an application, the conditions for suspension and termination of subsidies, the manner of determining the list of family members of a subsidy recipient and of calculation of joint income of such a family, as well as the features of granting of subsidies to certain categories of citizens (Part 7 of Article 159 of the HC RF).

Users of residential premises of the state and municipal housing funds, tenants under contracts of rent of premises of the private housing fund, members of housing cooperatives, owners of residential premises have a right to receive subsidies for payment for residential premises and communal services (Part 2 of Article 159 of the HC RF).

It should be noted that subsidies for payment for residential premises and communal services are granted to citizens of the Russian Federation; these subsidies are granted to foreign citizens only where so stipulated in international treaties of the Russian Federation (Part 12 of Article 159 of the HC RF).

A subsidy for payment for residential premises and communal services is granted to the aforementioned citizens, taking into account the members of their families constantly living with them. The list of family members of a tenant of residential premises under a social rent contract is determined in accordance with Article 69 of the HC RF, of an owner’s family members – in accordance with Article 31 of the HC RF.

Since sub-tenants of residential premises and temporary inhabitants do not acquire independent rights of use of residential premises, they are not granted with subsidies for payment for residential premises and communal services.

Subsidies for payment for residential premises and communal services are transferred to citizens before the due moment of payment for the residential premises and communal services, stipulated in Part 1 of Article 155 of the HC RF (Part 4 of Article 159 of the HC RF).

44. A subsidy for payment for residential premises and communal services is granted to citizens, if their expenses for the payment for residential premises and communal services, calculated based on the regional standard of area of residential premises (used for calculation of amount of subsidies) and on the regional standard of cost of housing and communal services (established under the rules of Part 6 of Article 159 of the HC RF), exceed the maximum allowed share of expenses incurred by payment for residential premises and housing services in the total income of a family (Part 1 of Article 159 of the HC RF).

When the total income of a family or of a citizen living alone is calculated, this figure comprises all payments stipulated in the remuneration system, taken into account in calculation of average earnings; severance pay; pensions; students' allowance; monetary payments granted to citizens as measures of social support in payment for residential premises and communal services; income received from sublease of residential premises; monetary funds paid to a custodian (guardian) for supporting the person under care, as well as paid to the foster family for support of each child; other payments, unless federal law stipulates a different manner of accounting the citizens' income for the purpose of granting the aforementioned subsidies and compensations (Article 5 and Articles 6–12 of Federal Law No. 44 of 5 April 2003 “On the Manner of Accounting of Income and Calculation of Per Capita Family Income and Income of Citizens Living Alone for Recognising Them as Low-Income Citizens and Granting of State Social Aid”).

For example, a different manner of accounting the citizens' income is stipulated in Item 7 of Article 154 of Federal Law No. 122 of 22 August 2004 “On Amendment of Legislative Acts of the Russian Federation and Abrogation of Certain Legislative Acts of the Russian Federation Due to Adoption of Federal Laws “On Amendments to Federal Law “On General Principles of Organisation of Legislative (Representative) and Executive Authorities of Constituent Entities of

the Russian Federation” and “On General Principles of Local Self-Government in the Russian Federation”, in accordance with which until the corresponding federal law enters into force, the amount of the monthly monetary payment, stipulated in accordance with the Law of the Russian Federation “On Social Protection of Persons Exposed to Radiation following the Disaster at Chernobyl Atomic Power Station”, Federal Laws “On Veterans”, “On Social Protection of Disabled Persons in the Russian Federation”, and “On Social Guarantees for Citizens Exposed to Radiation following Nuclear Tests at Semipalatinsk Test Site”, is not taken into account when the total income of a family (a citizen living alone) is calculated in order to assess whether that family (citizen) is indigent and to determine whether it has the right to receive a subsidy for payment for housing and for communal services.

45. Compensation of expenses incurred by payment for residential premises and communal services is reimbursement of expenses pertaining to payment for residential premises and communal services, granted to certain categories of citizens in the manner and on conditions stipulated in federal laws, laws of constituent entities of the Russian Federation and normative legal acts of local self-government bodies, at the expense of the corresponding budgets (Article 160 of the HC RF).

For example, veterans, disabled war veterans, combat veterans, etc. are granted monthly compensation of expenses incurred by payment for residential premises (Sub-item 4 of Item 1 of Article 13, Sub-item 8 of Item 1 of Article 14, Sub-item 5 of Item 1 of Article 16 of Federal Law No. 5 of 12 January 1995 “On Veterans”).

46. Social support measures regarding payment for residential premises and communal services are provided to citizens by the authorised body, based upon the basis of their applications and documents confirming the right to receive such support.

The list of documents confirming the right of a citizen and (or) its family members to social support measures regarding payment for residential premises and communal services, as well as the grounds for denial of such support, are stipulated, in particular, in the normative legal acts of constituent entities of the Russian Federation (Article 160 of the HC RF).

The grounds for denial of such social support measures may include, in particular, the fact that the citizen failed to provide a full set of documents for receipt of such social support, ambiguous information in the documents presented by the citizen.

47. As a general rule, social support measures regarding payment for residential premises and communal services are provided to citizens if they do not have indebtedness for residential premises and communal services, or if those citizens conclude and (or) perform agreements aimed at settling such debts (Part 5 of Article 159 of the HC RF).

Herewith, the indebtedness in payment for residential premises and communal services does not by itself constitute absolute grounds for refusal to provide social support.

In this regard, when the court is resolving disputes pertaining to provision of social support regarding payment for residential premises and communal services, it needs to ascertain the reasons for which such a debt was accrued, the period during which it accumulated, what measures were taken by the citizen to settle the debt, and (or) whether an agreement regarding the settlement of this debt was concluded. These facts must be indicated in the court decision.

If the indebtedness was accrued for good reasons (salary delays; complicated financial situation of the tenant (owner) and her/his legally capable family members due to job loss or lack of employment opportunity, despite of all measures taken by them; illness, hospital treatment of the tenant (owner) and (or) her/his family members; disabled persons, underage children being family members, etc.), it is not possible to refuse to provide social support.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov