



Compositions of Crimes in the Sphere of Economic Activity, Referred to the Competence of the Magistrate (Chapter 22 Of The Criminal Code Of The Russian Federation)

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Compositions Of Crimes In The Sphere Of Economic Activity, Referred To The Competence Of The Magistrate (Chapter 22 Of The Criminal Code Of The Russian Federation)

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ABSTRACT

The international documents oblige the Russian legislator to pay substantial attention to the issues of jurisdiction. These requirements are stipulated in paragraph 1 of Article 14 of the Covenant on Civil and Political Rights, paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, etc. The essence of these requirements is to provide the states with guarantees of the right to a fair public consideration of the case without any delay by a competent court.

The issues of the court competence in the criminal cases in Russia are regulated in Article 31 of the Criminal Procedure Code of the Russian Federation. The significance of meeting the requirements of this article is in the fact that if there are some violations of the rules stipulated in Article 31, it automatically leads to a sentence cancellation. The sign of territorial jurisdiction, as a rule, is not violated, but there are not only the issues, but also the facts of violations and sentence cancellation concerning a compliance with the requirements of subject jurisdiction, i.e. which court should consider a particular criminal case in vertical direction. In such cases, the entire procedure starts again, of course, this is a nuisance for everyone.

However, the arbitrary transfer of criminal cases from court to court is not allowed. In particular, no one can be deprived of the right to his case consideration by that court, to the jurisdiction of which it is attributed by law. This rule seems to be simple, but it should be impeccably observed.

Key words: crime composition, magistrate jurisdiction, crimes in the sphere of economic activity, unlawful entrepreneurship



1. INTRODUCTION

According to the requirements of international documents, each state should ensure strict observance of the rules of jurisdiction. Russia also tried to keep up with other states in resolving the issues of jurisdiction. In this regard, we should recall how the legislator established the maximum punishment of 1 year in prison to which a magistrate could sentence when the Charters were adopted in 1864. In 1882, this upper "threshold" was increased to 1 year and 6 months.

The reason for this was the frequent signals that the purpose, for which the magistrates were created, did not relieve the burden from the courts of second instance (city courts). It turned out that the courts of second instance had a high workload, and the cases in question were from the complex category. So there was an objective need to revise the issues of jurisdiction once again. The only way out was to expand the competence of the magistrates by increasing the upper "threshold" of punishment. In the current period, the legislator was forced to follow the same path, the path of expanding the jurisdiction of the magistrates by increasing the upper "threshold" of punishments imposed by magistrates. Since the creation of the World Justice in 1998 and its inception in 2000, the maximum "threshold" was equal to two years of imprisonment.

The Federal Law No. 174-FZ dated December 18, 2001 stated that the maximum penalty was increased from 2 to 3 years of imprisonment with the adoption of the new Criminal Procedure Code. The latter came into force on July 1, 2002. As a result, not only the crimes of minor gravity, for consideration of which the world justice was created, but also some part of the composition of crimes of medium gravity was transferred to the jurisdiction of magistrates. During this period, the Russian legislator did not come up with the idea of considering the issue of lowering the upper "threshold" to 1 year 6 months of imprisonment, as it was in the tsarist period. Because of the high workload of district judges, the "idea" was only about increasing the upper "threshold" to 3 years of imprisonment. After this increase, the number of components of crime attributed to the magistrate's jurisdiction increased. Judicial practice once again needed an adjustment aimed at reducing the workload.



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However, this state of affairs with the jurisdiction was not satisfactory to the legislator. It took a step further. Ten years later, the Federal Law No. 420-FZ dated December 7, 2011 also increased the maximum penalty for committing crimes of small gravity from 2 to 3 years of imprisonment in Article 15 of the Criminal Code of the Russian Federation. In our opinion, these changes were aimed at reducing the workload of magistrates rather than the federal judges. However, it should be stated that the situation did not normalize the magistrate's workload, and the repeated increase in the number of magistrates not only did not help, but also proved to be unprofitable for the state's budget.

In our opinion, one of the internal reserves is the revision of components of crimes stipulated in Chapter 22 of the Criminal Code of the Russian Federation, which could be excluded from the list of the magistrate's jurisdiction, which would allow optimizing their workload.

2. MATERIALS AND METHODS

As an empirical material, we use the components of crimes stipulated in Chapter 22 of the Criminal Procedure Code of the Russian Federation. Having used the comparative analysis as the content of the Criminal Procedure Code of the Russian Federation and the Criminal Code of the Russian Federation, we will try to develop our proposals to the Russian legislator - as it is known, this is not an easy mission. We will analyze the content of Article 31 of the Criminal Procedure Code "Jurisdiction of Criminal Cases", Article 169-200.3 of Chapter 22 of the Criminal Code of the Russian Federation "Crimes in the Sphere of Economic Activity" (M.: Prospekt, 2016, M.: Prospekt, 2017). During the analysis, we will use the concrete historical and comparative legal methods of research. We considered the legislation of the tsarist period and foreign legislation. We should also note that we used a method of comparative legal science and an analysis of theoretical sources and regulatory legal acts in this study. The Criminal Code and the Criminal Procedure Code were adopted after the formation of the Russian Federation. We analyzed Article 35 "Criminal Cases under the Jurisdiction of the District (City) People's Court" and Article 126 of the Criminal Procedure Code "Mandatory Nature of Preliminary Investigation and Investigative Jurisdiction" (M.: Yuridlit. 1985, The Criminal Procedure Code of the RSFSR, as amended on August 22, 1994.). The



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comments to the Criminal Code of the Russian Federation published in 2001 indicated that the Federal Law No. 420-FZ dated December 7, 2011 amended Article 15 of the Criminal Code to raise the upper "threshold" of crimes of minor gravity from 2 to 3 years of imprisonment.

3. RESULTS AND DISCUSSION

The adoption of four Charters was a gala day for Russia in 1864. Thus, the magistrate, according to Article 33 of the Charter, could impose a maximum sentence of one-year imprisonment. We take this punishment as the starting point in our comparative analysis. Subsequently, the Law dated May 18, 1882 increased the upper "threshold" from one year to 1 year and 6 months of imprisonment. After 25 years, the legislator had to increase the upper "threshold", than created the conditions for expanding the competence of the magistrates of the period for objective reasons.

There was Article 78 "Trafficking" analogous to "Trafficking of Cash and (or) Monetary Instruments" (Article 200.1 of the Criminal Code of the Russian Federation) and "Trafficking of Alcoholic Beverages and (or) Tobacco Products" (Article 200.2 of the Criminal Code of the Russian Federation) in the Soviet Union. Article 78 of the Criminal Code of the RSFSR determined a sanction from 3 to 10 years of imprisonment. For comparison, we should refer to the sanctions of the Criminal Code of the Russian Federation. Thus, Part 1 of Article 200.1 of the Criminal Code established up to two years of compulsory labor, and Part 2 (an act committed in an especially large amount or by a group of persons) - compulsory labor, but up to four years.

In Part 1 of Article 200.2 of the Criminal Code, the legislator defined the punishment up to five years of imprisonment, in Part 2 (an act committed by a group of persons by prior agreement or an official using his/her official position) - an imprisonment from three to seven years, in Part 3 (an act committed by an organized group) - an imprisonment for a term from seven to twelve years. In addition, one more composition of crime is close to the above Article of the Criminal Code of the Russian Federation - Article 156.1 "Violation of the Rules of Liquor Traffic" of the Criminal Code of the RSFSR, which stipulates punishment of up to 1 year of correctional labor.

Part 1 of Article 208 of the Criminal Code of the RSFSR "Acquisition or Sale of Property Knowingly Obtained by Criminal Means" stipulates a punishment of up to 6



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months of correctional labor. This composition is stipulated in Chapter 10 "Crimes against Public Safety, Public Order and Public Health". Part 1 of Article 175

"Acquisition or Sale of Property Knowingly Obtained by Criminal Means" with a punishment of up to 2 years of imprisonment is similar to the above Article from the Criminal Code of the Russian Federation.

Parts 1, 2 of Article 180 of the Criminal Code of the RSFSR "Unlawful Use of Means of Individualization of Goods (Works, Services)" stipulates punishments up to 2 years of imprisonment and up to 1 year of correctional labor, respectively. Article 155 "Unlawful Use of Trademarks" with a maximum punishment of up to 6 months of correctional labor is similar to the above Article from the Criminal Code of the Russian Federation. As we could see, the legislator tightened the punishment for their commission in both cases. Despite this, they remained in the magistrate's jurisdiction. It should be noted that Article 78 of the Criminal Code of the RSFSR was listed in subsection II "Other State Crimes" of Chapter I, that was, the public significance was much higher than the last two compositions of trafficking of Chapter 22 of the Criminal Code of the Russian Federation. Therefore, the maximum amounts of punishment are very different, with the exception of two qualifying compositions (Parts 2 and 3 of Article 200.2 of the Criminal Code of the Russian Federation).

Let us refer to one more composition of crime of the Soviet period: Part 1 of Article 156 "Cheating Buyers and Customers" of the Criminal Code of the RSFSR - a sanction of up to two years of correctional labor, Part 2 - from 2 to 7 years of imprisonment.

However, Article 200 of the Criminal Code of the Russian Federation "Cheating Consumers" on the basis of the Federal Law No. 162-FZ dated December 8, 2003 became invalid.

Thus, even a superficial analysis shows that the criminal legal basis has also changed significantly with a change in the formation, one composition of crime (Article 200 of the Criminal Code of the RSFSR) has even been decriminalized. The Article, which was quite often used in practice, gave considerable results of work, which required considerable time and efforts of the bodies of internal affairs and magistrates. At the same time distracting from other, perhaps more important, cases. There is a trend of the



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modern legislator. Indeed, this is another way (ways to optimize) the solution of the problem in question - to reduce the workload of the magistrates.

Therefore, in order not to change the procedural issues of the magistrate's jurisdiction too often, it is possible to decriminalize the separate elements of crimes in the substantive law. This happened with such a composition of crime as beatings, which was decriminalized by the legislator. The criminal liability can only be imposed with the repeated commission of a homogeneous act. It can be stated with certainty that a sufficiently large number of cases will not reach the magistrates on this basis, they will not draw them away from other important and large number of cases. However, some part of the population will not be guaranteed a legislative protection, which may lead to an increase in tensions in society. The latter goes against the objectives for which the world justice has been created.

Chapter 2 of the Criminal Procedure Code of the RSFSR was called "Jurisdiction" and Article 35 was called "Criminal Cases subject to the District (City) People's Court" was called "Jurisdiction" in it. "The judge should solely consider the cases concerning crimes stipulated in Article 112, Part 1 of Article 116, Article 122... - the list consists of 85 compositions of crimes. At that, this list does not include Article 78 of the Criminal Code, but includes Articles 135, 156.1 and Part 1 of Article 208. Part 2 of Article 35 of the Criminal Procedure Code granted the judge to review the cases of crimes with a sanction up to 5 years of imprisonment alone with the consent of the person accused.

Part 1 of Article 126 of the Criminal Procedure Code of the RSFSR stated that:

"preliminary investigation is mandatory in all cases, except for the crimes stipulated in Articles 112, 115.1..." - these cases should include inquiry. Article 78 and Part 1 of Article 208 of the Criminal Code were not included in the list. Hence, a preliminary investigation was carried out by the investigators of law-enforcement bodies in their regard. The list of Part 5 of Article 126 of the Criminal Procedure Code of the RSFSR referred 107 crimes to the investigative jurisdiction of investigators of the Internal Affairs Directorate, which also included Part 1 of Article 208 of the Criminal Code. Article 15 of the Criminal Code of the Russian Federation stipulated that the crimes of minor gravity are the crimes for the commission of which a punishment not exceeding 3 years of imprisonment should be imposed. In this regard, Chapter 22, consisting of



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Articles 169-200.3, includes 122 compositions of crimes (52 of which - up to 3 years of imprisonment) in 50 articles.

Now, to characterize Chapter 22 of the Criminal Code, we should specify the list consisting of 21 compositions of crimes that are within the magistrate's jurisdiction:

1-2) Parts 1, 2 of Article 169 Obstruction of Legitimate Business Activity (compulsory labor, up to 3 years of imprisonment);

3-4) Parts 1, 2 of Article 170.1 Falsification of a Single State Register of Legal Entities (up to 2 years, up to 2 years of imprisonment);

5) Part 1 of Article 171.2 Unlawful Organization and Conduct of Gambling (up to 2 years of imprisonment);

6) Part 1 of Article 173.1 Unlawful Formation of... a Legal Entity (up to 3 years of imprisonment);

7-8) Parts 1, 2 of Article 173.2 Unlawful Use of Evidence for the Formation of a Legal Entity (correctional labor up to 2 years; 3 years);

9) Part 1 of Article 175 Acquisition or Sale of Property Knowingly Obtained by Criminal Means (up to 2 years of imprisonment);

10) Part 1 of Article 179 Transaction Enforcement... (up to 2 years of imprisonment);

11-12) Parts 1, 2 of Article 180 Unlawful Use of Means of Individualization (up to 2 years of imprisonment, up to 1 year of correctional labor);

13) Part 1 of Article 181 Violation of the Rules of Production and Use of State Hallmarks (up to 3 years of imprisonment);

14) Part 2 of Article 183 Unlawful Receipt and Disclosure of Information (up to 3 years of imprisonment);

15) Article 185.1 Malicious Evasion of the Provision of... Information (up to 2 years of correctional labor);

16-17) Parts 1, 3 of Article 185.2 Violation of the Procedure for Recording Rights to Securities (up to 2 years, up to 2 years of imprisonment);

18) Part 1 of Article 185.4 Obstruction or Unlawful Restriction of the Rights of Holders of the Securities (up to 2 years of imprisonment);

19) Part 1 of Article 185.5 Falsification of the Decision of the General Meeting ... (up to 2 years of imprisonment);



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- 20) Part 1 of Article 189 Unlawful Export of Raw Materials from Russia... when Creating Weapons ... (up to 3 years of imprisonment);
- 21) Part 1 of Article 200.3 Attraction of Money (up to 2 years of imprisonment). (See: 10)

In order to obtain a material for comparison with the magistrate's jurisdiction, we should turn to paragraph 1 of Part 3 of Article 150 of the Criminal Procedure Code of the Russian Federation, which also provides a list of compositions of crimes for which an inquiry is made. Only 18 compositions of crimes of the entire list (27% of 68 compositions of crimes) are from the Section VIII, covering the crimes in the field of economy (1). They include: 1) Article 170 Registration of Unlawful Transactions... (compulsory labor);

2-3) Parts 1, 2 of Article 170.2 Entering Knowingly False Information ... (up to 2 years, up to 2 years of imprisonment);

4) Part 1 of Article 171 Unlawful Business (compulsory labor);

5-7) Parts 1, 3, 5 of Article 171.1 Production, Purchase, Storage... without Marking (up to 3 years, up to 3 years, up to 3 years of imprisonment);

8) Part 1 of Article 175 Acquisition or Sale of Property Knowingly Obtained by Criminal Means (up to 2 years of imprisonment);

9) Article 177 Malicious Evasion of Repayment... (up to 2 years of imprisonment);

10-11) Parts 1, 2 of Article 180 Unlawful Use of Means of Individualization (up to 2 years of imprisonment, up to 1 year of correctional labor);

12) Part 1 of Article 181 Violation of the Rules of Production and Use of State Hallmarks (up to 3 years of imprisonment);

13-14) Parts 1, 2 of Article 191.1 Purchase, Storage, Transportation (up to 2 years, up to 3 years of imprisonment);

15-16) Part 1, 2 of Article 194 Evasion from Payment of Customs Duties... (up to 2 years, up to 5 years of imprisonment);

17) Part 1 of Article 200.1 Cash Trafficking (up to 2 years of compulsory labor);

18) Part 1 of Article 200.3 Attracting Citizens' Money (up to 2 years of imprisonment) .

In this case, the logic lies in the fact that the list of compositions of crimes that are within the magistrate's jurisdiction, and for which an inquiry is made, in our opinion,



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should coincide, and there should be no exceptions. Even the presence of the previously mentioned deficiency can cause both serious confusion and lead to errors in the judicial practice. At least, this can create conditions for the "mechanical" assumption of these errors. Ultimately, this can lead to a decrease in the judicial power authority, which is unacceptable.

In our opinion, if the magistrate accepts criminal cases only through inquiry, then this would simplify the law enforcement practice. The introduction of the proposed changes by the legislator would make it possible not to make mistakes in the issues of the jurisdiction of criminal cases.

Here is a list of crimes that, on the basis of the Federal Law, could be transferred from the magistrate's jurisdiction to the district courts. At the same time, we took into account that these are the qualifying compositions of crimes with high sanctions. One of the compositions of crime is not qualitative, but it is connected with the "Unlawful Export of Raw Materials from Russia... when Creating Weapons (Part 1 of Article 189 of the Criminal Code, refers to the investigative jurisdiction of investigators of the Internal Affairs Directorate). In our opinion, they are as follows: 1) Part 2 of Article 169 (up to 3 years of imprisonment); 2) Part 2 of Article 170.1 (up to 2 years of imprisonment); 3) Part 2 of Article 173.2 (up to 3 years of imprisonment); 4) Part 2 of Article 183 (up to 3 years of imprisonment); 5) Part 3 of Article 185.2 (up to 2 years of imprisonment); 6) Part 1 of Article 189 (up to 3 years of imprisonment) of the Criminal Code of the Russian Federation. In total, we offer to withdraw and hand over to the district courts six compositions of crimes (29% of 21) out of 21 compositions of crimes that are attributed to the magistrate's jurisdiction. In this case, the magistrates would have 15 compositions of crimes out of the 52 ones of Chapter 22 of the Criminal Code, which would make up 29% of 52 compositions of crimes. When the Criminal Procedure Code was created in 2001, the scientists set the task of establishing a 20% of workload for the magistrates. Thus, 29%, offered by us, is the most acceptable ratio.

The above 6 compositions of crimes are currently being considered by the magistrates, which increases their official workload. However, in the case of transferring these compositions of crimes to the district courts, the magistrate's workload will be temporarily optimized.



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It will be interesting to pay attention to foreign experience. Thus, the courts of minor instance began to function after the abolition of magistrates in 1958 in France, consisting of 37,000 communes (Daloz. P. 2005., Ordonnance №58-1270 du 22 decembre 1958//Journal d`official de la Republique Francaise du 23 decembre 1958., Renoux Th. 1999). The jurisdiction of the latter included all claims and disputes over immovable property not exceeding 7 thousand euros. In addition, the courts of first instance included police courts (Articles 521-549 of the Criminal Procedure Code, and Articles 131-12 of the Criminal Code of France) (Ordonnance №58-1270 du 22 decembre 1958, Chazal J. Les magistrats. P., 2005. Bouloc A. Procedure penale. P., 2010.), which were the branches of courts of minor instance. Their jurisdiction includes minor offenses punishable by a fine not exceeding 3 thousand euros. It should be noted that the judges can consider alone the minor offenses related to the cases of the first four categories, with the imposition of fines of up to 700 euros (La Documentation francaise. P., 2005.).

Paragraph 2 of § 243 of the German Criminal Code defines the sanction from 3 to 10 years of imprisonment for the theft (Gerichtsverfassungsgesetz (GVG) in der Fassung der Bekanntmachung vom 9. Mai 1975 (Auszug) // Zivilprozessordnung, Munchen, 2010., Strafprozessordnung (StPO) in der Fassung der Bekanntmachung vom 7 April 1987. Munchen, 2009. S. 1-198.). Art. R. 642-2 of the Criminal Code of France "On Currency Offences" stipulates a fine for the 2nd class violation (the size should be determined on the basis of Article 131-12 of the Criminal Code), that is, in this case we find that the French code defines a soft punishment. (La Documentation francaise. P., 2005.).

4. CONCLUSIONS

We provided the comparative analysis of issues of jurisdiction under Chapter 22 "Crimes in the Sphere of Economic Activity" of the Criminal Code of the Russian Federation. In our opinion, the proposed reduction in the number of offenses attributed to the magistrate's jurisdiction can be attributed to the number of objective and applicable in the practice of the Russian legislator.

5. SUMMARY

A brief analysis of only Chapter 22 of the Criminal Code of the Russian Federation leads us to the conclusion that the delineation of jurisdiction between the district (city)



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courts and the magistrates is not completely resolved and needs careful research. However, the very reality dictates, as is customary in some Western countries, that a Commission of the State Duma should meet and develop specific proposals based on statistical data at the end of each year. After all, the solution of these issues is within the competence of the federal government, therefore, the proposals should be discussed in the State Duma on a regular basis with the adoption of real decisions for the next year.

6. ACKNOWLEDGEMENTS

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7. REFERENCES

- Bouloc A. Procedure penal. P., 2010.
- Code de l'organisation judiciaire. Dalloz. P. 2005.
- Chazal J. Les magistrats. P., 2005. P. 6.
- Gerichtsverfassungsgesetz (GVG) in der Fassung der Bekanntmachung vom 9. Mai 1975 (Auszug) // Zivilprozessordnung, München, 2010.
- La Documentation française. P., 2005.
- M.: Prospekt, 2016. The Criminal Procedure Code of the Russian Federation.. P. 23-25.
- M.: Prospekt, 2017. The Criminal Code of the Russian Federation. -. P. 84-96, P. 131-137.
- M.: Yuridlit. 1985. The Criminal Code of the RSFSR: With Itemized Materials.. P. 45-49, 60-62.
- Ordonnance №58-1270 du 22 décembre 1958//Journal d'official de la République Française du 23 décembre 1958.
- Renoux Th. Le pouvoir judiciaire en France et Europe continentale, approche comparative. P., 1999. P. 965.
- Strafprozessordnung (StPO) in der Fassung der Bekanntmachung vom 7 April 1987. München, 2009. S. 1-198.
- The Criminal Procedure Code of the RSFSR, as amended on August 22, 1994. Perm: "Izdatel" JSC. P. 13-14.