

Issues of Jurisdiction and Simplified Proceedings of the Republic of Armenia

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Abstract

The legislator of Armenia is actively working on the planned implementation of the UN International Document requirements. In particular, to ensure guarantees of citizen rights to a fair public hearing by a competent court without delay and red tape. This follows from the article 14, paragraph 1 of the Covenant on Civil and Political Rights and the article 6, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The legal system of Armenia is the part of the Romano-German legal family, but with distinctive features. In our opinion, in order to alleviate the workload of the trial courts, the Article 19 of the Criminal Code of the RA “Categories of Crimes” needs to have misconduct as an independent form. For the same purpose, it is necessary to provide for simplified (total) production in the CPC of this country, which, unfortunately, is absent in current legislation. For developments in these areas, you can analyze the article 15 of Criminal Procedure Code of the Russian Federation. The jurisdiction of criminal courts in Russia is regulated by the article 31 of Criminal Procedure Code of the Russian Federation. Violation of this article rules leads to the annulment of the sentence and a criminal case re-examination.

Keywords: competence of courts, courts of first instance, specialization of courts, crimes that do not pose a great social danger, decriminalization, classification of crimes

1. Introduction

On December 6, 2015, Armenia adopted a new Constitution, which is valid to the present. This document abolished the previous Constitution of 1995. Subsequently, Armenia began to adopt its new legislation. So, in 1994, the Criminal Code and the Code of Criminal Procedure were adopted. Pursuant to the requirements of international UN documents, the current Criminal Code of the Republic of Armenia No. 3P-528 was adopted on April 18, 2003. This document repealed the previous Penal Code of 1960, which introduced many changes and additions. It should be noted that certain criminal acts were decriminalized. New offenses were introduced (for example, related to market relations).

The Russian Federation adopted the current Criminal Code in 1996. Note that neither one nor the other country has the concept of misconduct, which is inherent in many Western states. In this regard, the concept of misconduct could be introduced into the article 15 of the Criminal Code of the Russian Federation, a definition and maximum sentence of up to one year in prison could be provided. Such changes, in our opinion, would be an attempt to take measures in order to reduce the workload of Russian justices of the peace.

At that, it is important to note that the legal system of Turkey in recent decades has been based on strictly secular principles aimed at Romano-German traditions that take into account the requirements of international documents of the United Nations. So, in 2014, Turkey refused the services of magistrates in criminal matters.

2. Materials and methods

In the presented work, comparative procedural research methods are applied in relation to the relevant regulatory legal acts of the Russian Federation. The brief analysis of the issues of competence of first instance courts is given taking into account previously adopted procedural laws. The Article 19 “Categories of Crimes” of the RA Criminal Code as well as the Art. 15 of the Criminal Code of the Russian Federation cites four types of crimes. 1. minor severity crimes with the maximum sentence of up to 2 years in prison; 2. moderate crimes - up to 5 years in prison; 3. severe crimes - up to 10 years in prison; 4. particularly severe crimes - over 10 years in prison.

In Art. 15 of the Criminal Code of the Russian Federation, the only difference is the maximum punishment of minor crimes making up to 3 years in prison, and according to the Criminal Code of the Republic of Armenia such punishments make up to 2 years. Thus, we can conclude that the criminal procedural laws of both countries are almost the same. However, Russia discusses the adoption of a new concept of "misconduct." Such an offer is fully supported by us.

The Article 31 of Criminal Procedure Code of the Russian Federation regulates the jurisdiction of courts in criminal cases. The CPC provides the list of corpus delicti from the Criminal Code of the Russian Federation, the sanctions of which make no more than 3 years in prison. From 2000 to July 1, 2002, the maximum punishment could not be more than 2 years. On December 7, 2011, in article 15 of the Criminal Code, the legislator increased the maximum punishment for minor offenses from two to three years in prison. Note that the requirements of this article are essential especially in determination of criminal case jurisdiction, which primarily affects the workload of the courts of first instance. The point of view on the necessity of justices of peace introduction in the judicial system of Uzbekistan was defended by professor Ismailov B.I.

During the study, general scientific and special methods of science were used: observation, historical, integrative methods, comparative, structural and forensic, systemic-structural and other research methods.

3. Results and Discussion

The Constitution of the Republic of Armenia was adopted on December 6, 2015, which recognized the previous Constitution of 1995 as invalid. The article 115 stipulates that the state language in the country is the Armenian language used in courts (Article 12). The Chapter 7 of the Constitution, consisting of Articles 162-175, is devoted to judicial authority. The article 163 of the Constitution presents the country judicial system, the list of which is fully copied by the article 1 of the Law on Courts. The abovementioned list will be given by us below.

The Criminal Code of the Republic of Armenia in the volume of 398 articles was adopted on April 18, 2003, ZR-528. The article 19 "The categories of crimes" provides four types of crimes: 1. minor crimes with a maximum sentence of up to 2 years in prison; 2. moderate crimes - up to 5 years in prison; 3. severe crimes - up to 10 years in prison; 4. particularly severe crimes - over 10 years in prison. The judge examines the criminal cases of crimes that are not of great public danger single-handedly, and for less serious intentional crimes with the maximum sentence of up to 5 years in prison.

The current Code of Criminal Procedure of the Republic of Armenia was adopted on July 1, 1998, ZR-248, and entered into legal force on January 12, 1999. It consists of 500 articles. It is important to note that the new Code of Criminal Procedure (1998) entered into force on January 1999.

Section 2 is referred to as the "Court". Chapter 5 refers to the composition and the powers of the courts and consists of the Articles 38 - 43 of Criminal Procedure Code. Thus, the article 38 provides a list of courts conducting criminal proceedings. These include: trial courts, the Court of Appeal, the Court of Cassation of the Republic of Armenia.

The composition of the court of first instance is stated in the Article 39 of Criminal Procedure Code of the Republic of Armenia. All criminal cases are considered by a single judge. In the Court of Appeal, the criminal cases are considered by three judges.

The Chapter 6 is called "The Jurisdiction of Criminal Cases". The article 44 of Criminal Procedure Code discloses the jurisdiction of criminal cases to first instance courts. The legislator assigned the cases of all crimes to the consideration of the latter. It should be noted that the Special Part of the Criminal Procedure Code of the Republic of Armenia begins with the Article 175 of the Chapter 25, Section 8 "Pre-trial Proceedings for a Criminal Case".

Criminal proceedings are always closely linked to criminal prosecution. Thus, the Article 33 of the Criminal Procedure Code of the Republic of Armenia provides for criminal prosecution in cases of public and private prosecution. It should be noted that the Armenian legislator did not provide for such a criminal prosecution as public-private prosecution (see the article 20 of the CCP of the Russian Federation), thereby a simplified version was chosen. The list of crimes referred to as private prosecution cases is given in the article 183 "The Criminal Cases initiated by Victim's claim" of the Criminal Procedure Code. These were 5 corpus delicti: part 2 of the article 109 "Causing death by negligence to two or more persons" (up to 5 years in prison), part 1 of article 110 "Bringing to Suicide" (up to 3 years in prison), part 1 of the article 131 "Abduction of a human being" (from 2 to 5 years in prison), including part 1 and 2 of the article 132 "Human Trafficking" (from 1 to 4 years and from 4 to 7 years in prison, respectively) of the RA Criminal Code. The abovementioned corpus delicti raises many questions. Let's pay attention to one of the obvious nuances. So, the part 1 of the article 109 of the Criminal Code provides the

maximum sentence of up to 3 years in prison for the death of one person by negligence. However, the legislator did not list this corpus delicti. However, one cannot find the reason for this approach.

However, this list was completely changed by a separate Law (3P-57), adopted on December 14, 2004 and signed by the President of the Republic of Armenia on January 18, 2005. So, the new version of the Art. 183 of the CPC contained the following list of 5 corpus delicti related to private prosecution cases: the Art. 117 "Intentional infliction of slight harm to health" (up to 1 year of correctional labor), 118 "Beatings" (up to 1 year of correctional labor), the part 1 of the article 135 "Defamation" (up to 1 year of corrective labor), including the part 1 and 2 of the article 136 "Insult" (up to 6 months and 1 year of corrective labor, respectively) of the RA Criminal Code. This list is very close to the list of three corpus delicti, provided by the Art. 20 of the Criminal Procedure Code of the Russian Federation (the Article 115, the part 1 "Deliberate infliction of slight harm to health" (up to 1 year of corrective labor), the article 116.1 "Beating by a person subjected to administrative punishment" (up to six months of corrective labor), and the article 128 part 1 "Defamation" (punishable by fines of various amounts).

Besides, there are 4 more crimes committed by the close relatives of the victim: part 1 and 4 of the art. 177 "Theft" (up to 2 years of imprisonment and a fine for theft in small amounts, respectively), part 1 of article 178 "Fraud" (up to 2 years in prison), part 1 of the article 179 of the RA Criminal Code "Assignment or embezzlement" (up to 2 years in prison). Thus, there are nine types of crimes related to private prosecution cases, the last four with certain nuances, i.e. the number of compositions in comparison with the previous edition has almost doubled. This underlines the tendency for their increase. The Russian legislator also needs to pay attention to the last 4 corpus delicti specified in the Criminal Procedure Code of the Republic of Armenia. In our opinion, it is necessary to consider the inclusion of another ten offenses (the Article 20 of Criminal Procedure Code of the Russian Federation) in the list of private prosecution cases: 1) part 1 of the article 158 "Theft" (up to 2 years in prison), 2) 158.1 "Petty theft committed by a person subjected to administrative punishment" (up to 1 year in prison), 3) part 1 of the article 159 "Fraud" (up to 2 years in prison), 4) part 1 of the article 159.1 "Fraud in the field of lending" (up to 2 years in prison), 5) part 1 of the art. 159.1 "Fraud in the field of lending" (up to 1 year of correctional labor), 6) part 1 of article 159.2 "Fraud upon receipt of payments" (up to 1 year of correctional labor), 7) part 1 of article 159.3 "Fraud with the use of payment cards" (up to 1 year of correctional labor), 8) part 1 of the article 159.5 "Insurance fraud" (up to 1 year of correctional labor), 9) part 1 of the article 159.6 "Fraud in the field of computer information" (up to 1 year of correctional labor), 10) part 1 of the article 160 "Assignment or embezzlement" (up to six months of correctional labor) of the Criminal Code of the Russian Federation. Thus, the total number of crimes attributed to private prosecution would be 13. Such an increase of almost four times would save huge financial resources for the Russian budget.

The issues of jurisdiction, which are reflected in the Article 190 of Criminal Procedure Code of the Republic of Armenia are closely related to the issues of jurisdiction. So, the investigators of the prosecutor's office carry out a preliminary investigation on 117 corpus delicti stipulated by the Criminal Code of the Republic of Armenia. In the second part of this article, they stated that the investigators of the internal affairs bodies conduct a preliminary investigation in cases of crimes stipulated by other articles and parts of the RA Criminal Code.

On May 23, 2006, through a separate Law No. 3P-91, signed by the President on June 20, 2006, the Article 190 of the Criminal Procedure Code of the Republic of Armenia was stated in the following wording, increasing the number of crimes attributed to the prosecution by investigators for 128 corpus delicti more than twice. Thus, the investigators of the prosecutor's office are currently conducting a preliminary investigation of 245 crimes under the Criminal Code of the Republic of Armenia.

The part 3 of the Art. 190 of the Criminal Procedure Code of the Republic of Armenia, provides the list of 247 corpus delicti related to the preliminary investigation by police investigators. Consequently, the legislator leveled the number of corpus delicti of prosecution and police investigators.

For comparison, let set the rules of simplified pre-trial proceedings, which are regulated by the Chapter 39 of the Criminal Procedure Code of the Republic of Azerbaijan "on obvious crimes that do not constitute a great public danger, i.e. up to 2 years in prison. The chapter consists of the art. 293 - 297 of Criminal Procedure Code. The Article 295 of the CPC discloses the procedure for simplified pre-trial proceeding conduct. Inquiry in a simplified form is carried out within 10 days. For example, the chapter 32.1 of the Criminal Procedure Code of the Russian Federation regulates inquiries in abbreviated form, which is disclosed in the Art. 226.1-226.9. So, the paragraph 1, Part 1 of the Art. 226.1 of Criminal Procedure Code of the Russian Federation provides the indication of the crimes given in paragraph 1, part 3 of the article 150 of Criminal Procedure Code, i.e. 162 crimes in total. Here are some of them: 116 (beatings - up to 2 years in prison), the article 158, part 1 "Theft" (up to 2 years in prison), the article 158.1. "Petty theft" (up to 1 year in prison), the article 213 part 1 "Hooliganism" (up to 5 years in prison).

The comparison of the abovementioned corpus delicti, according to which the legislators of two countries provided for the application of a simplified procedure, shows that they are ten times different. In this aspect, the Russian legislator uses simplified legal proceedings most effectively, which makes a positive effect on judicial practice. Unfortunately, simplified legal proceedings are generally absent in the legislation of Armenia.

Besides, in order to remove the load from the courts of the first instance of Russia, the tenth section “Special Procedure for the Trial,” consisting of the Art. 314-317 was included into CPC. In addition, for the same purpose, the Code of Criminal Procedure was introduced by the chapter 40.1 “The Special Procedure for Making Judicial Decisions during Pre-Trial Cooperation Agreement Conclusion,” which consists of the Art. 317.1-317.9.

However, repeating, let's note that the legislator did not provide for either simplified pre-trial proceedings, a special court procedure, or a simplified decision in the Code of Criminal Procedure of the Republic of Armenia.

On the basis of the Constitutional Law of the Republic of Armenia No. 3P-95 dated on February 10, 2018, the Judicial Code of the Republic of Armenia was adopted. Earlier, on April 7, 2007, the Law of the Republic of Armenia “On the Entry of the Judicial Code of the Republic of Armenia into Force” was adopted. This Law replaced the Law of the Republic of Armenia No. 3P-233 “On Judicial System” (July 18, 1998). It is important to note that there are no justices of the peace in Armenia and Uzbekistan. There are no justices of the peace in Germany either, although district judges (amtsgericht) function there. However, as was indicated above, the Professor Ismailov B.I. proposed to introduce local courts in Uzbekistan, namely: justices of the peace, closest to the population. One can agree with such a proposal for Armenia. This means that the judicial reform of Russia is performed properly.

The Article 15 provides for the sole consideration of cases by a judge within the appeal of 3 judges. According to the art. 20 “Jurisdiction of the court of first instance of general jurisdiction” all cases are subject to consideration, with the exception of cases falling under the jurisdiction of specialized courts. The art 21 “Specialization of judges in the court of first instance of general jurisdiction” in the court of first instance of general jurisdiction: all criminal cases, with the exception of cases of a separate type (for minors, for the return of children illegally transported and illegally detained in the Republic of Armenia, on requests for the implementation of operational investigations events, etc.) falling under the jurisdiction of the Supreme Judicial Council.

4. Conclusions

This study was carried out on the basis of the comparative analysis of the jurisdiction of first instance courts of the Republic of Armenia, Russia and some European countries. Unfortunately, there are no justices of the peace, and the rules of jurisdiction practically do not differ from the Russian ones in the judicial system of Armenia (except for the maximum term of punishment - up to 2 years in prison). The situation with the issues of jurisdiction in Armenia is very simple, therefore it cannot lead to increased costs from the budget. However, such a conclusion may be erroneous, since there are no simplified proceedings, and the country also needs a lower authority that is closest to the population. Such an approach would guarantee the implementation of public access principle to justice.

In addition, it is necessary to introduce the grounds for applying expedited (summary) proceedings into criminal procedure legislation, as a rule, in criminal cases with a maximum sentence of up to 5 years in prison.

5. Summary

The comparative analysis of the competence issues concerning the courts of first instance of the Republic of Armenia and Russia showed that soon the Russian legislator will have to return to a new development of jurisdiction issues between the courts of first instance. The next issue for resolution will be the agreement of jurisdiction with the issues of jurisdiction, which we also considered in this article. If violations of jurisdiction rules are avoided, the positive consequences for Armenia will be the reduction in budget spending.

Another serious issue will be the development of rules for simplified (accelerated) production by the legislator, which will also allow to solve the problems of public access to justice. The rational development and successful use of the rules of simplified (total) proceedings will allow to solve the problem of first instance court congestion in the Republic of Armenia.

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