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Courts of First Instance in Criminal Cases of the Republic of Azerbaijan: Jurisdiction and Simplified Procedure

Vasilina Solodkova¹, Idris Gilmanov², Muhamat Gilmanov³

Abstract

The UN by means of the international documents obliges the national legislator to pay to questions of jurisdiction special attention. The specified duties are concretized in paragraph 1 of article 14 of the Covenant on Civil and Political rights and in paragraph 1 of article 6 of the Convention on protection of human rights and fundamental freedoms. Providing guarantees of the rights for fair public consideration of the case by competent court without tightening is imputed an obligation of the states. Questions of jurisdiction, i.e. competence, courts on criminal cases in the territory of the Russian Federation are regulated by article 31 of the Code of Criminal Procedure of the Russian Federation. Rules of this article have the big importance. The close attention is given to questions of competence of the courts of the first instance also by the legislator of the Azerbaijan Republic. The legal system of this country enters into the Romano-German legal family, but with distinctive features. In our opinion, for simplification of office loading of courts of the first instance it is necessary to enter offenses into article 15 of the Criminal code of RA as an independent type of punishment. Besides, with the same purpose it is necessary to provide the simplified (total) procedure which is not, unfortunately, in the present legislation in the Code of Criminal Procedure of RA.

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 Graduate student, Department of Chemistry and Ecology, Kazan Federal University - Naberezhnye Chelny Institute. E-mail: vasilina-100@yandex.ru

² Associate professor, Ph.D. in law, Kazan Federal University - Naberezhnye Chelny Institute. E-mail: IMGilmanov@kpfu.ru

³ Associate professor, Ph.D., Kazan Federal University - Naberezhnye Chelny Institute. E-mail: muhamat74@yandex.ru

Introduction

In the sphere of criminal law and process of the Azerbaijan Republic, being the Muslim country, has the Romano-German legal system which passed from socialism. The last was connected with education in 1924 by the Azerbaijani SSR which existed till September, 1991. Everything internally the legislation was borrowed from the Soviet Union. During this period in August 1991 the Azerbaijan Republic was proclaimed the independent state. In 1992 the Azerbaijan Republic adopted the new Constitution existing and till present.

In the further development the Azerbaijan Republic, advancing other former federal republics, began to adopt the new legislation. So, in 1994 Criminal and Criminal procedure codes and also the Code about administrative responsibility were adopted. Thereby, Azerbaijan outstripped the Russian Federation which adopted the Criminal code only in 1996. Let's note that neither in that, nor in the other country there is no concept offense which is inherent in many western states. In fact, it would be possible to bring offense in article 15 Criminal Code of the Russian Federation, to give it definition and to establish the maximum punishment to one year of imprisonment. Such changes, in our opinion, would be attempted to take measures for decrease in load of magistrates of Russia.

At the same time it is important to note that the legal system of the Azerbaijan Republic in the last decades began to be based on strictly secular beginnings directed towards the Romano-German traditions considering requirements of the international documents of the United Nations.

Materials and methods

In the presented work, comparative and procedural methods of a research in relation to the relevant normative legal acts of the Russian Federation are used. The short analysis of questions of competence of the courts of the first instance taking into account earlier adopted procedural laws is provided. The article 15 "Classification of Crimes" of Criminal Code of the Azerbaijan Republic and also the article 15 of the Criminal Code of the Russian Federation give four kinds of crimes. The name of the first version - not constituting big public danger, with the maximum punishment for deliberate crime up to 3 years of imprisonment. In the Criminal Code of the Russian Federation the name slightly differs - crimes of small weight, with the same maximum term of punishment. From what it is possible to draw a conclusion that the criminal procedure legislation of both countries almost does not differ. However Russia discusses acceptance of such new concept as offense that is completely supported by us.

Article 31 of the Code of Criminal Procedure of the Russian Federation regulates questions of jurisdiction of courts on criminal cases [1, p. 28-29]. In the Code of Criminal Procedure the list of corpora delicti from the Criminal code of the Russian Federation which sanctions not over 3 years of imprisonment [2] is given. From 2000 to July 1, 2002 the maximum punishment could not be over 2 years [3, pp. 21, 205]. On December 7, 2011 in article 15, the maximum punishment for commission of crimes of small weight was increased from two to three years of imprisonment [4, pp. 14-19]. Let's note that requirements of this article have essential value especially when determining jurisdiction of criminal cases that first of all affects loading of courts of the first instance. The point of view about need of introduction of magistrates to the judicial system of Azerbaijan was argued by Professor B.I. Ismailov [5].

At a research general scientific and special methods of science observation, historical, integrative methods, comparative, structural and criminalistic, system and structural and other methods of a research were used.

Results and Discussion

The constitution of the Azerbaijan Republic of 15.12.1992 No. 247 [6] provides in article 115 that a state language in the country is the Azerbaijani used in courts (Art. 4). Chapter 22 of the Constitution consisting of the Art. Of Art. 106-116 is devoted to judicial authority. The judicial system of the country which list is completely copied by article 1 of the Law "About Courts" is presented in article 107 of the Constitution. The mentioned list will be given by us below. The principle of independence and immunity of judges, their submission only to the law, is regulated by article 112.

Criminal code of the Azerbaijan Republic of September 22, 1994 No. 2012-XII. [7]. The article 15 "Classification of Crimes" gives four kinds of crimes: 1. the imprisonments which are not constituting big public danger with the maximum punishment for deliberate crime up to 3 years and up to 5 years - for careless crime; 2. less heavy - up to 5 years of imprisonment and over 5 years - for careless crime; 3. heavy - from 5 to 10 years of imprisonment; 4. especially heavy - over 10 years of imprisonment or lifelong imprisonment. According to the p. 2 and 3 of Art. 15, the judge individually considers criminal cases about the crimes which do not constitute big public danger and for commission of less serious deliberate crimes - with the maximum punishment to 5 years of imprisonment.

Article 28 Code of Criminal Procedure is called "Court" and the court of the first instance which is competent to pronounce a sentence or definitions on criminal cases is mentioned in it. At the same time we will note that jurisdiction of courts of Azerbaijan is regulated by the Code of Criminal Procedure, in particular, the article 389 "Jurisdiction of Criminal Cases" of Chapter 48 "Jurisdiction", entering Section 10 "Procedure in Court of the First Instance" [8]. In this article it is specified that all criminal cases are referred to jurisdiction of district (city) court, except affairs, jurisdictional higher and to warships.

To similarly Russian affairs of private charge of Azerbaijan, article 325 Code of Criminal Procedure "Initiation of legal proceedings according to the complaint of the victim" gives the list of 16 structures of the criminal offenses provided p.1 by Art. 105, h p.1 and the 2nd Art. 109, p.1 Art. 110, h p.1 - the 3rd Art. 111, p.1 to Art. 118, p.1 Art. 119, p.1 Art. 121, 136, p.1 and the 2nd Art. 139, h p.1 and the 2nd Art. 140, article 149 of the Criminal code, are excited only according to the complaint of the guilty person who was injured with a request for prosecution. According to Art. 20 of the Code of Criminal Procedure of the Russian Federation, 3 corpora delicti provided belong to affairs of private charge: p.1 Art. 115, 116.1 and p.1 Art. 128.1 of the Criminal Code of the Russian Federation. Thus, almost six times the number of the corpora delicti referred to affairs of private charge in Russia are less than in Azerbaijan. That is why scientists and practicians stand up for increase in number of affairs of private charge. In our opinion, it is absolutely correct approach meeting the modern requirements of jurisprudence.

Activity of inquiry is regulated by Chapter 42 of the Code of Criminal Procedure. So, article 341 establishes inquiry term no more than ten days (as well as in Russia). Chapter 43 of the Code of Criminal Procedure "The general conditions of preliminary investigation" provides the article 345 "Competence of Criminal Case". The list of corpora delicti which have to be investigated by investigators of bodies of prosecutor's office, military prosecutor's office, service of national security is provided in the first four parts of this article. In part 5 the list of the corpora delicti which are subject to investigation by investigators of law-enforcement bodies is given. Treat those: Art. 104-140 (75 corpora delicti), 164-166 (11 structures), 168-173 (16 structures), p.1, the 2nd Art. 183, 186-186.2 (6 structures), 193-204 (21 structures), the p. 1-3 of Art. 213, the p. 1,2 of Art. 214, 216-217 (6 structures), the p. 1,2 of Art. 222, 224 - 229 (18 structures), 243, 244, p.1, the 2nd Art. 245, 247-264 (47 structures), 266-278.6 (32 structures); - total about 250 corpora delicti and also on all cases of the crimes committed by minors.

Besides, regarding the 6th Art. 345 of the Code of Criminal Procedure the list of cases of the crimes provided by articles 167 of the p. 1-3 is given; 176-181 (12 structures); 184th p. 1-3; 185-185.2 (2

structures); 188-192 (11 structures), 241.1-244.3 (9 structures); - total 40 corpora delicti on which investigation is made by the body which brought criminal case. Regarding the 7th Art. 345 of the Code of Criminal Procedure the list of 10 more corpora delicti is also given: according to the Art. 237-241, preliminary investigation is held by that body to whose competence crime in this connection proceedings are initiated belongs. Chapter 62. "Procedure on cases of reconciliation" provides Art. 582 "The criminal cases considered in connection with reconciliation". In this article the reference to Art. 66.1 of the Criminal code in which the list from 50 corpora delicti on which in the person who committed a crime from this list it can be exempted from criminal liability is given. At the same time there are conditions: 1) if the person admitted the guilt; 2) it reconciled and 3) smoothed down the done harm. Among corpora delicti appear: p.1 Art. 105 (the injury intended average weight),... Art. 109 (deliberate slight injury),... p.1 Art. 110 (torture),... Art. 122 (evasion from keeping of minors ...), Art. 123 (evasion from keeping of parents),... h p.1 and the 2nd Art. 139 (slander), h p.1 and the 2nd Art. 140 (insult),... Art. 143 (violation of the author's or inventive rights), p.1 Art. 167 (plunder by assignment or waste), p.1 Art. 168 (fraud), p.1 Art. 169 (theft),... p.1 Art. 266 (violation of safety rules or operation of vehicles),... p.1 Art. 277 (hooliganism), p.1 Art. 298 (violation of the rules of driving or operation of cars).

The law of September 2, 1993 was the previous Law "About Courts". To replace it the Law of the same name which carried out specialization of courts was adopted on December 14, 2000. This Law created courts on criminal cases and courts on civil cases. Besides, courts were exempted from function unusual for them on execution of the decisions and sentences passed by them.

So, article 1 of the Law "About Courts" is called as No. 162-II of December 14, 2000 "Judicial system" [9]: The constitutional court, the Supreme Court, military courts, court of the Azerbaijan Republic on civil cases, economic courts of the Azerbaijan Republic, interdistrict, district (city) courts on civil cases; district (city) courts on criminal cases; interdistrict, district (city) economic courts; district (city) administrative courts. It is important to note that there are no magistrates in Azerbaijan. There are no magistrates also in Germany though there local judges (amtsgericht) function [10]. However, as it was stated above, professor Ismailov B.I. suggested entering local courts, namely: magistrates, the most approximate to the population. It is only possible to agree with such offer. Means, and judicial reform of Russia goes in the right direction.

So, article 37 of the Law "About Courts" is called 2000 "Powers of interdistrict, district (city) court on civil cases; district (city) court on criminal cases; interdistrict, district (city) economic court; district (city) administrative court". Criminal cases and cases of the administrative offenses referred by the law to their competence belong to jurisdiction of district (city) courts. Besides, in this article the list of judicial functions is given, namely: consideration of petitions for application of a measure of restraint detention or house arrest, about discharge of the defendant from a position, about the placement of the person to medical institution, ... about arrest of post and cable correspondence, about refusal in initiation of legal proceedings or about diversion or about release from punishment on the basis of the act of amnesty [9].

Article 41 of the Law "About Courts" of 2000, "Put jurisdiction to warships" provides the list: cases of the crimes committed by the military personnel of the Ministry of Defense, Service of national security, the Ministry of Emergency Situations, troops of the Ministry of Internal Affairs, etc. the military formations created according to the legislation and also persons liable for call-up during passing of training sessions by them; ... all civil and criminal cases in areas where owing to exceptional circumstances courts do not work; the affairs concerning the state secrets ... According to the same article Code of Criminal Procedure, to the Supreme Court of the Azerbaijan Republic affairs of special complexity and the importance are jurisdictional.

Summary

This article is drafted on the basis of the comparative and comparative analysis of competence of the courts of the first instance of the Azerbaijan Republic, Russia and some European countries. Unfortunately, in the judicial system of Azerbaijan there are no magistrates, and rules of jurisdiction absolutely differ from the Russian. A situation with questions of jurisdiction and competence in Azerbaijan very simple therefore cannot lead to the raised cash expenditures from the budget. However such conclusion can be wrong as there are no simplified procedures and also the country needs the lowest instance, the most approximate to the population. Thereby the principle of access for the population to justice would be provided.

Besides, it is necessary to enter the bases for application of the accelerated (total) procedure, as a rule, on criminal cases with the maximum punishment to 5 years of imprisonment into the criminal procedure legislation.

Conclusion

The comparative analysis of questions of competence of the courts of the first instance of Azerbaijan and Russia showed that shortly the national legislator should come back to new development of questions of jurisdiction between courts of the first instance. Coordination of jurisdiction with questions of competence will become the question second in line that was also considered by us in this article. At prevention of violations of the rules of jurisdiction decrease in the budgetary expenses will be positive consequences for Azerbaijan.

Development by the legislator of rules of the simplified (accelerated) procedure will be other important question that will also allow solving problems of access for the population to justice. Rational development and successful use of rules of the simplified (total) procedure will allow solving a problem of congestion of courts of the first instance as the Azerbaijan Republic, and other states.

Acknowledgements

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Footnotes

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2. Criminal Code of the Russian Federation (2018). Moscow: Avenue.
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6. Constitution of the Republic of Azerbaijan (1992). No. 247.
7. The Criminal Code of the Republic of Azerbaijan (1994). No. 2012-XII.

8. The Criminal Procedure Code of the Republic of Azerbaijan (2000).
9. Law of the Republic of Azerbaijan (2000). "On Courts" No. 162-II of December 14, 2000.
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