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## Competence of Courts of First Instance in the Republic of Tajikistan

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### Abstract

Issues of jurisdiction competence of courts on criminal cases in the territory of the Russian Federation are regulated by Article 31 from the Code of Criminal Procedure of the Russian Federation. The rules of this article are of great importance, since they comply with the requirements of international documents of the United Nations. Indeed, the first question to be answered by a judge in a case is whether it is subject to the given court. Thus, compliance with the requirements of Article 31 from the Code of Criminal Procedure of the Russian Federation consists in the fact that in case of violation of the rules of this article, this automatically leads to the cancellation of a verdict and the second consideration of the criminal case. The issues of the competence of the courts of first instance also receive serious attention from the legislators of the Republic of Tajikistan. The legal system of this country is included in the Romano-German legal family, but with distinctive features. In our opinion, in order to facilitate the workload of the courts of first instance it is necessary to introduce misdemeanors in Article 18 of the Criminal Code of the Republic of Tajikistan as an independent form of punishment. In addition, for the same purpose it is necessary to provide for the simplified (summary) proceedings in the Criminal Procedure Code of the Republic of Tajikistan, which, unfortunately, is absent in the current legislation.

**Keywords:** Competence of courts, Courts of first instance, Specialization of courts, Non-grave crimes, Crimes of medium gravity, Category of crime, Simplified procedure for judicial investigation.

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## **Introduction**

Being a Muslim country, Tajikistan, has a Romano-German legal system in the field of criminal law and the procedure that has been transformed from a socialist one. The latter was connected with the formation of the Tajik SSR in 1924, which existed until September 1991. All national legislation was borrowed from the Soviet Union. During that period, on August 31, 1991 Tajikistan was declared an independent state. In 1992 Tajikistan has adopted a new Constitution which is in force to the present.

In its further development, Tajikistan, being ahead of other former union republics, began to adopt its new legislation. Thus, in 1994, the Criminal Code and the Code of Criminal Procedure were adopted, as well as the Code of Administrative Responsibility. Thus, Tajikistan has outstripped the Russian Federation which adopted its Criminal Code only in 1996.

At the same time, it is important to note that in recent decades the legal system of Tajikistan has been based on strictly secular principles oriented to Romano-Germanic traditions that take into account the requirements of international documents of the United Nations.

## **Materials and Methods**

The presented work uses comparative-procedural methods of research in relation to the relevant regulatory and legal acts of the Russian Federation. A brief analysis of the issues on the competence of the courts of first instance is given here, taking into account the earlier adopted procedural laws. Thus, Article 31 of the Code of Criminal Procedure regulates issues of jurisdiction of courts in criminal cases [1, pp.28-29]. The Code of Criminal Procedure provides a list of offenses from the Criminal Code of the Russian Federation, the sanctions of which are not more than 3 years of imprisonment [2]. From 2000 to July 1, 2002, the maximum punishment duration could not last more than 2 years of imprisonment [3, pp.21, 205]. On December 7, 2011, in Article 15 of the Criminal Code, the maximum penalty for committing non-grave crimes was increased from two to three years of imprisonment [4, pp.14-19]. It should be noted that the requirements of this article are of great importance, especially in determining the jurisdiction of criminal cases, which primarily affects the load of the courts of first instance.

The research used general scientific and special methods of science observation, historical, integrative methods, comparative, structural-forensic, systemic structural and other methods of investigation.

## **Results and Discussion**

The Constitution of the Republic of Tajikistan of November 6, 1994 [6] in its Article 2 provides that the state language in the country is the Tajik language used in the courts, as well as the language of the majority of the population of the area. Chapter 8 of the Constitution which consists of Article 84-92 is devoted to courts. Article 84 of the Constitution presents the judicial system of the country, from its list it can be seen that the courts of first instance are municipal and district courts.

The Criminal Code of the Republic of Tajikistan was adopted within the volume of 405 articles by the separate Law on May 21, 1998, No. 574, which recognized the former Criminal Code of the Republic of Tajikistan dated August 17, 1961 as invalid, and entered into force on September 1, 1998 [7].

The current Code of Criminal Procedure of the Republic of Tajikistan was signed by President Emomali Rakhmonov on December 3, 2009. It had a volume of 486 articles and was enacted by Law No. 564 dated April 1, 2010. [8] According to paragraph 4 of Article 34 "Composition of the Court" of the Code of Criminal Procedure in the Republic of Tajikistan, a judge single-handedly examines criminal cases of all crimes, except for especially grave crimes, i.e. all crimes with a maximum sentence of up to 12 years

imprisonment are in its jurisdiction. Upon that, according to Article 13 of the Criminal Procedural Code of the Republic of Uzbekistan, it is provided for judges that they deal solely with criminal cases which do not pose a great public danger and with a maximum punishment of up to 5 years of imprisonment for committing less serious intentional crimes (Parts 2 and 3 of Article 15 Criminal Code). The clear difference leads to the idea that there should not be such a divergence. In our opinion, up to 5 years of imprisonment by an international legislator is still permissible, but up to 12 years is a very serious excess of permissible norms. It seems that paragraph 4 of Article 34 in the Criminal Procedure Code of the Republic of Tajikistan should also be supplemented with serious crimes in addition to especially grave ones. In this case, a judge will also individually consider criminal cases up to 5 years of imprisonment, what will lead to compliance with the requirements of international UN documents.

The jurisdiction of the courts in Tajikistan is regulated by Article 251 "Jurisdiction of criminal cases" of Chapter 30 "Jurisdiction" included in Section VIII "Conduct of criminal proceedings in a court of first instance". This article states that city and district courts are entitled to all criminal cases, except cases that are subject to higher courts and military courts. Article 253 of the Code of Criminal Procedure regulates the jurisdiction of the Supreme Court in the Republic of Tajikistan, which refers to the content of Article 252. It says that the jurisdiction of the court of the Gorno-Badakhshan Autonomous Region, the regional courts and the court of the city Dushanbe includes all criminal cases for which a maximum sentence of life imprisonment or death penalty may be imposed, except for cases attributed to military courts. The list of criminal cases referred to the jurisdiction of military courts is given in article 254 of the Code of Criminal Procedure in the Republic of Tajikistan. These include criminal cases: 1) of all crimes committed by servicemen and persons liable for military service during the reserve training; 2) on all crimes committed by servicemen of units and parts of the militia; 3) crimes against the established order of service performed by persons of the commanding staff of corrective labor institutions; 4) on espionage.

Thus, we have given a list of criminal cases referred to the jurisdiction of higher and military courts with the exception of which, the remaining criminal cases relate to the district and city courts.

Article 310 "Simplified procedure for judicial investigation" of chapter 34 from the Code of Criminal Procedure provides for the possibility of applying a simplified procedure provided that defendants recognize their guilt, and when such recognition is not disputed by the parties and does not cause doubts in the court. In this case, the judge should explain to the parties the consequence of the refusal from the investigation evidence, which consists in the inadmissibility of appealing or protesting the verdict on this ground. In addition, a simplified procedure cannot be applied in cases of crimes of minors, serious and especially grave crimes, as well as in case of non-recognition of one's guilt by one of the defendants. In the case of a simplified procedure for judicial investigation by a court, the court may impose a higher sentence by two three parts of the term or the amount provided for the higher penalty.

It is important to note the existence of Chapter 46 "Fast track procedure" to the Criminal Procedure Code of the Republic of Tajikistan (Articles 453-460). Article 454 establishes ten days to complete a fast track procedure. Part 3 of Article 453 from the Code of Criminal Procedure provides for seven days in order an agency of inquiry to obtain an explanation from the person who committed a crime before initiating a criminal case. Part one of the same article provides for a list of 19 crimes under Part 1 of Article 111, part 1 of Article 125, part 1 of Article 126, part 1 of Article 131, part 4 of Article 196, part 1 of Article 230, part 1 of Article 232, part 1 of Article 234, part 1 of Article 237, part 1 of Article 247, part 1 of Article 253, part 1 of Article 254, part 1 of Article 255, part 1 of Article 294, parts 1, 2 of Article 334, parts 1-3 of Article 339 from the Criminal Code of the Republic of Tajikistan. Fast track procedure can be applied by an agency of inquiry provided that the fact of the crime is obvious, a person suspected of committing a crime is known, and he/she does not deny his/her guilt. In addition, a court must consider such a criminal case no later than in five days.

In our opinion, the Russian legislative power could take advantage of the experience obtained by the Republic of Tajikistan and add to its Code of Criminal Procedure such a list that would facilitate the work of an agency of inquiry and trial.

Based on the content of Article 357 from the Criminal Procedure Code of the Republic of Tajikistan, we come to the conclusion that there is no an appeal instance in the country. Chapter 38 is referred to as "A cassation appeal and contesting of a judge's decision that have not entered into force". According to Article 363 of the Code of Criminal Procedure, a ruling (decision) relating to the investigation of evidence, petitions of the participants in the proceedings, applying, modification or cancellation of a measure of restraint, as well as the observance of order in the courtroom are not subject to appeal or contest, except for the rulings (decisions) on imposing a fine. In our opinion, this approach is aimed at reducing the burden of both the courts of the first and the appellate instance.

The previous Law "On Courts" was the law dated September 2, 1993. To replace it, on December 14, 2000, the Law of the same name was adopted which implemented the specialization of the courts. It was this law that created the courts for criminal cases and the courts for civil cases. In addition, the courts were released from their uncharacteristic function of enforcing their decisions and sentences.

On August 6, 2001, the Constitutional Law of the Republic of Tajikistan "On Courts in the Republic of Tajikistan" No. 30 consisting of 143 articles was adopted, then it was replaced by the Constitutional Law of the Republic of Tajikistan "On Courts in the Republic of Tajikistan" dated July 26, 2014 No. 1084 "[9]. In its last article, the Law recognized such constitutional laws as "On the Status of Judges in the Republic of Tajikistan", "On Judicial System", which were adopted simultaneously on November 3, 1995, etc. as invalid.

Thus, Article 1 of the Law of the Republic of Tajikistan "On Courts in the Republic of Tajikistan" discloses the relations regulated by this Law. In particular, they are relationships concerning organization and operating procedures of the courts. Article 2 of the Law is called "Judicial authority" [9]. Judicial power is exercised through constitutional, civil, economic, administrative and criminal proceedings. This article was amended significantly by Law No. 453 dated December 31, 2008.

Article 20 of the Law is referred to as the "Judicial System in the Republic of Tajikistan"; it includes: the Constitutional Court, the Supreme Court, the Higher Economic Court, the Military Court, the Gorno-Badakhshan Autonomous Region Court, regional, city of Dushanbe, city and district courts, the Economic Court of Gorno-Badakhshan autonomous region and economic courts of regions, and economic court of Dushanbe city. The last changes to this article were made by Law No. 36 dated May 17, 2014.

Courts of first instance are provided for by Article 80, which is included in Chapter Seven of the Law. It states that city and district courts (other than cities of regional subordination) are formed in cities and districts. Chapter Seven consists of articles 80 - 85. Thus, Article 8 of the Law is entitled "Powers of city and district courts". The jurisdiction of these courts includes the consideration of civil and criminal cases, and cases of administrative offenses attributed by the law to their jurisdiction.

From the content of Article 35 of the Law it is clear that there are no justices of the peace or an appellate instance in the country. Let's pay attention that there are no justice courts in Germany where justice is administered by district judges (amtsgericht) [10]. However, in 2006 Kh.M. Gafurov suggested in his Ph.D. thesis "The judicial system of the Republic of Tajikistan (comparative legal analysis)" to introduce local courts [5, pp.154-155]: "In our opinion, creation of justice courts in Tajikistan is necessary, and it is caused not by a decrease in the burden of district or city judges, but by making the courts closer to the population". We can agree with this statement, because in our opinion, the author gives weighty arguments. So, up to 35% of the total number of criminal cases considered belonged to non-grave crimes

and committed in rural areas. At the same time, he also cites data that 80% of the country's population lives in villages. The author also points out the remote location of villages from the regional centers, where trips to be made are expensive, especially in winter and spring as the main problem. Indeed, this is an objective reason, which was also in tsarist Russia: vast territories, where it was long and expensive to get. As for the burden, the author points out that a judge in Tajikistan on average reviewed up to 100 cases a year (up to 50 cases per month in Russia), which is the normal burden, and there is no sense to reduce it. But to bring justice closer to the population is the main task of the forthcoming judicial reform in this country. Ultimately, the establishment of the justice of the peace institution will effectively solve all the problems listed above.

In our opinion, supporting the suggestions of Kh.M. Gafurov, it is necessary to give the following argument: simple and insignificant cases should really be concentrated at the judges specializing in the proceedings of this category. This specialization will create conditions for rapid, as required by international instruments and expeditious consideration of cases, as well as facilitate citizens' access to justice. Moreover, the constant increase in the quality requirements of the court decisions is dictated by the introduction of a deepening of specialization, as well as the separation of jurisdiction between courts of different instances.

Kh.M. Gafurov picked up on the general trend in many states which is inherent in the period of development of capitalist relations: it is the expansion of the spheres of restorative justice. This proposal was put forward by V.V. Doroshkov in 2004 [5, p.153].

In the same work, Kh.M. Gafurov proposed a full-time structure of justice courts: one justice of the peace for the 10 thousand population; their jurisdiction would include criminal cases with a maximum sentence of up to 3 years of imprisonment. In our opinion, this will be too luxurious with their poor budget; we would offer at least 15-20 thousand people (even in Russia at first there were 15-30 thousand, and then their number was reduced from 15 to 23 thousand of the population). In our opinion, as far as the maximum punishment limit is concerned, it should be reduced to 2 years of imprisonment, as it was earlier in Russia since 2000, and also 1 year and 6 months in the tsarist period. And in the future, if the burden increases, it will be possible to increase up to 3 years of imprisonment, as well as in Russia.

It is especially necessary to focus on fast track proceedings. For example, Kh.M. Gafurov proposed to simplify the procedure for consideration of civil disputes by civilian judges, and also to make them less formalistic, what could be regulated by the Law on Justice courts. In our opinion, it is necessary to fully agree with this, since this corresponds to the purpose of justice of the peace. However, it will be erroneous to introduce these provisions into the said Law. It is necessary to add this as a separate section to the Civil Procedure Code of the country. In the likeness of Chapter 21.1 "Fast track proceedings" of the Code of Civil Procedure in the Russian Federation (Article 232.1 - 232.4), civil cases for which are considered within 15 days.

## **Summary**

Based on the comparative method, the jurisdiction of courts of first instance in the Republic of Tajikistan and in Russia was analyzed. It is important to note that there are no justices of the peace in the judicial system of the Republic of Tajikistan; therefore the rules of jurisdiction are completely different from Russian ones. The issues of jurisdiction and investigative jurisdiction in the Republic of Tajikistan seem to be solved quite simply, what excludes increased financial expenses from the state budget. The situation analyzed is not simple, so the conclusion presented by us can be erroneous. Procedural legislation does not provide for simplified proceedings. In addition, it is necessary to create a lower court in the country in the form of justices of the peace who would be the closest to the population. The appearance of such an

institution would correspond to the requirements of international UN documents and would ensure the principle of people's access to justice.

In our opinion, it is also necessary for the national legislator to develop and introduce rules for the application of fast track (summary) legal proceedings in criminal procedural legislation. These rules should apply to criminal cases with a maximum sentence of up to 5 years imprisonment.

## **Conclusion**

Analysis of issues on the jurisdiction of courts of first instance in the Republic of Tajikistan and in the Russian Federation showed that the Tajik legislator will have to develop issues on jurisdiction between the courts of first instance. Another important problem will be the coordination of jurisdiction with issues on investigative jurisdiction. Positive consequences for Tajikistan in cases of non-violation of the rules of jurisdiction will be savings in budget expenditures.

The next important problem will be the development by the legislator of rules for simplified (summary) legal proceedings, which will directly solve the problems of access of the population to justice. In addition, rational development and successful use of rules for simplified (summary) legal proceedings will solve the problem of overburden for courts of first instance in the Republic of Tajikistan.

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