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TÍTULO: Asuntos de la organización judicial y jurisdicción de primera instancia judicial en la República de Croacia.

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RESUMEN: Las Naciones Unidas impone a todos los gobiernos garantizar los derechos a una audiencia pública justa por un tribunal competente, lo que está consagrado en la cláusula 1 del artículo 6 del Convenio para la Protección de los Derechos Humanos y las Libertades Fundamentales. El Pacto de Derechos Civiles y Políticos requiere que los gobiernos presten la más seria atención a los asuntos de jurisdicción. Este artículo analiza cambios legislativos realizados desde finales de 2001, tendencias inherentes a períodos del desarrollo de Rusia, el sistema judicial de la República de Croacia y la jurisdicción del tribunal de primera instancia. El artículo aborda disposiciones inherentes a los procedimientos judiciales de los tribunales municipales en forma de procedimientos simplificados y condiciones de su aplicación.

PALABRAS CLAVES: corpus delicti, jurisdicción del juez magistrado, sanciones máximas, tribunales de delitos menores, tribunales municipales y de distrito.

TITLE: Issues of judicial organization and First Instance Court Jurisdiction in the Republic of Croatia.

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ABSTRACT: The United Nations imposes on all governments to guarantee the rights to a fair public hearing by a competent court, which is enshrined in clause 1 of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Covenant on Civil and Political Rights requires governments to pay the most serious attention to matters of jurisdiction. This article analyzes legislative changes made since the end of the year 2001, trends inherent in periods of Russian development, the judicial system of the Republic of Croatia and the jurisdiction of the court of first instance. The article addresses inherent dispositions to the judicial procedures of the municipal courts in the form of simplified procedures and conditions of their application.

KEY WORDS: corpus delicti, magistrate judge jurisdiction, maximum sanctions, minor crimes courts, municipal and district Courts.

INTRODUCTION.

In the czarist period from 1864, the jurisdiction of magistrate judges included the consideration of criminal cases with the maximum sentence of up to 1 year in prison according to the Criminal Code. This "limit" was maintained for 25 years, and only in the year 1889 this "threshold" was increased to 1 year and 6 months.

As for the jurisdiction of modern magistrate justices, the maximum "threshold" was 2 years in prison, then it was increased to 3 years. Thus we can conclude that the current legislator is not aimed at the return to the pre-revolutionary "threshold". Moreover, such an approach is being formed under the pressure of the growing burden of magistrate justices, which is both objective and ever-growing.

The judicial practice shows not only episodic increases, but also a stable growth dynamics. It is in this regard that the domestic legislator should develop the bills on the issues of first instance court jurisdiction in a proactive manner.

Not only minor crimes were transferred to the jurisdiction of the magistrate judges, for which their post were created, but also the part of moderate gravity offenses. Subsequently, the Federal Law No. 420-FZ issued on December 7, 2011 prescribed the maximum penalty for minor crimes from 2 to 3 years in prison in the Article 15 of RF Criminal Code. These changes, in our opinion, were aimed at the burden reduction not for the judges of federal courts but for magistrate judges.

DEVELOPMENT.

Materials and Methods.

The comparative procedural method was used to study the regulatory legal acts of Russian Federation, and a brief analysis was made taking into account the previously adopted procedural laws.

To begin with, let's note that with the adoption of judicial statutes in the year 1864, magistrates began to consider criminal cases, and the penalty of up to 1 year of imprisonment could be imposed for their commission. In 1889, this “threshold” was increased to 1 year and 6 months, which was valid until the revolution of 1917. Except for approximately eight large cities, the magistrates were abolished. Regarding the jurisdiction of the modern magistrate judges on criminal cases, in our opinion, the dynamics of their increase is noted.

Since 2000; i.e., the beginning of the work of the magistrates, this “threshold” made to 2 years of imprisonment. Almost two years later, namely, on December 18, 2001, the legislator raised the “threshold” to 3 years. Hence, the Russian legislator does not set a goal to return to the pre-revolutionary "threshold". Thus, not only minor crimes were transferred to the jurisdiction of the magistrates, for which their posts were created, but also the part of the offenses of moderate gravity. Especially since July 1, 2002, there is the tendency to further increase the “threshold” during the current period.

This situation with the jurisdiction did not suit the legislator, and he went on. So, ten years later, the Federal Law No. 420-FZ issued on December 7, 2011 also increased the maximum penalty for minor crimes from 2 to 3 years in prison according to Article 15 of RF Criminal Code. These changes, in our opinion, were aimed at the burden reduction not for federal court judges, but for magistrates.

The given information on Russia will allow us to proceed to the analysis of the jurisdiction issues inherent in the judicial system of the Republic of Croatia.

Results and Discussion.

In Russia, the issues of court jurisdiction on criminal cases are regulated by the article 31 of the Criminal Procedure Code [Criminal Procedure Code of Russian Federation. - M.: Prospect, 2018; pp. 28-29]. For example, it contains the list of corpus delicti provided by RF Criminal Code, in particular, their sanctions cannot exceed 3 years of imprisonment [Criminal Code of Russian Federation. - M.: Prospect, 2018]. At the same time, until July 1, 2002, this limit made 2 years [Criminal Procedure Code of the RSFSR. -M.: Prospectus, 2000]. Subsequently, on December 7, 2011, the Article 15 of the Criminal Code was changed, and the maximum sanction for minor crimes was increased from two to three years in prison [Criminal Code of Russian Federation. - M.: Prospect, 2012; pp. 14-19]. The requirements of this article are of great importance, since the violation of jurisdiction rules leads to the automatic annulment of the sentence and to a criminal case re-examination.

Against this background, it is important to consider the approach of the Republic of Croatia legislator on the jurisdiction of first instance court cases. A proper resolution of jurisdiction issues allows to perform the specified tasks related to citizens' access to justice successfully. At the same time, the analysis of first instance courts is given, which are also related to the legislator's desire to develop and introduce summary (simplified) proceedings in court proceedings. In particular, Misdemeanor Courts are governed by these rules.

Let's note now that the legal system of Croatia is the part of the Roman-German legal family. The Constitution of the Republic of Croatia of December 22, 1990, enshrines the democratic principles of the criminal process that meet international standards [Constitution of Croatia. Legal library: lagalns.com]. The Constitution of this country has ten chapters, consisting of 152 articles. So, the Chapter 4 "Judicial Power" consists of the Art. 115 - 121. Judicial power is exercised by judges who are governed by the Constitution and Laws. Jurisdiction, organization and legal proceedings of courts are regulated by law. The court decision is announced on behalf of the Republic of Croatia. The Article 120 provides that judges are appointed for 5 years for the first time, and the second appointment is indefinite.

The Criminal Code of the Republic of Croatia entered into force on January 1, 2013 [Criminal Code of the Republic of Croatia, 2012]. It replaced the Criminal Code (Kazneni Zakon) of 1997 No. 110 issued on October 21, 1997 and entered into force on January 1, 1998. The current Criminal Code consists of 387 articles.

The article 45 of the Criminal Code is called "Short-term imprisonment" and it sets the maximum term of up to 6 months. The rules concerning sentencing are set forth in article 56 of the Criminal Code. Thus, the court, imposing a prison sentence of up to 1 year, may suspend its execution.

As an example, let's cite the criminal-legal composition of driving a vehicle while intoxicated (up to 1.50 g. of alcohol in blood per 1 kg. of body weight), for which the penalty of up to 3 years in prison is imposed. In addition, the legislator defined the crimes against property in chapter 23. The article 228 "Theft" imposed the penalty from 6 months to 5 years of imprisonment, and up to 1 year of imprisonment in the 2nd part for stealing someone else's property of small value. The same punishment is provided for the crimes in relation to computer data (the Art. 266 of the Criminal Code), as well as for the violation of copyright (the Art. 286 of the Criminal Code) and the rights to an invention. For the provision of substandard services, the supply of substandard goods to consumers, the sanction of the Art. 255 of the Criminal Code prescribes the imprisonment up to 2 years. In Russia, the last crime composition was decriminalized.

The current Criminal Procedure Code is the Criminal Procedure Code issued on July 3, 2009 [Criminal Procedure Code of the Republic of Croatia issued on July 3, 2009]. It was adopted and replaced the CPC of 1997. The CPC has 575 articles. Chapter 2 is devoted to the jurisdiction of the courts. The paragraph 1 discloses the subject matter of the jurisdiction and the court composition. Thus, in matters of jurisdiction and court composition, the article 19 of Criminal Procedure Code determines that they are regulated by a special law.

The article 203 of the second part of CPC states that the consideration of crimes related to the jurisdiction of district courts is carried out according to the rules of the art. 519. In the second paragraph of the Art. 203, the simplified proceedings are mentioned, to which the rules of the third part "Total production" are applied, which includes the art. 520-548 of CPC. Thus, the Article 520 of CPC states that municipal courts consider the criminal cases within the framework of simplified proceedings (the Articles 521-548 of CPC). The Article 521 provides for the restriction of summary proceedings use only to criminal cases, for the commission of which the maximum sanction is established which makes 5 years of imprisonment.

The Article 540 of CPC regulates the judge's court order on the crimes with the maximum sentence of up to 5 years in prison. Among the rules, there is the condition that the prosecutor in this case may require the maximum sentence of up to 1 year of imprisonment. In addition, the fine in the amount of from 10 to 100 average daily incomes may be imposed as an alternative in the Republic of Croatia or they may impose the deprivation of the right to drive vehicles for a period of up to 2 years.

A similar restriction of up to 5 years in prison is also provided by the Criminal Procedure Code of Poland, the Slovak Republic and Belarus.

Returning to the conditions allowing the use of accelerated production: first, the maximum sanctions for *corpus delicti* are not more than 5 years of imprisonment or the damage does not exceed 100,000 zlotys. However, there are the exceptions from this category for which inquiry and expedited proceedings are not allowed. These are criminal cases: 1) about causing death or grievous bodily

harm through negligence; a careless creation of a fire hazard ...; about individual economic crimes; incest; the abuse of power; on a number of crimes against justice; about the crimes in the sphere of economic activity (since the investigation is necessary for them). Secondly, the corpus delicti related to the use of firearms ...; with the theft of property from the deceased ... (the sanctions of these compositions range from 6 months to 8 years in prison). Thirdly, burglary (up to 10 years of imprisonment), fraud, and qualified hijacking, are providing the imprisonment from 6 months to 8 years if the damage does not exceed 100,000 zlotys. Finally, in cases of private prosecution, if the crime was committed out of hooligan motives [Criminal Procedure Code of Poland. Kodeks post powania karnego. <http://www.legeo.pl/pravo/dziennik-ustaw-1997/89/555>].

This list allows to conclude that the Polish legislator has developed in detail all the subtleties that make it possible to successfully use the mechanism of accelerated (summary) proceeding application [Volevodz A.G., Litvishko P.A., 2010].

The Chapter XXIII of the CPC, starting from the Article 463, provides the appeal proceedings for district courts.

The Croatian judicial system is established by the articles 115-121, chapter 4 of the Constitution, which includes courts the of general jurisdiction: municipal, district courts and the Supreme Court, located in Zagreb.

Since April 1, 2015, the Law on Croatian Courts (Zakon o sudovima, NN 28/13, 33/15, 82/15 - na snazi od 1.09.2015) entered into force [The Law on Croatian Courts (Zakon o sudovima, NN 28/13, 33/15, 82/15 – na snazi od 1.09.2015) https://narodne-novine.nn.hr/clanci/sluzbeni/2010_11_122_3172.html]. This law has 16 chapters and 146 articles. The Article 14 “The Organization of Courts” provides a list of instances that administer justice. Among the courts of general jurisdiction, the law provided for the first instance municipal courts, the second instance district courts, as well as the Supreme Court of the Republic of Croatia, which is also mentioned in the Constitution. Besides, specialized courts are cited: 1) commercial courts, 2) administrative courts, 3) magistrate courts, 4) High Economic Court, 5) High Administrative Court; 6) Supreme Court of Tort.

The Article 15 provides for the municipal and criminal courts (Misdemeanor Courts) as the courts of first instance. The country provides for 115 municipal courts. As the courts of first instance, they consider the cases of crimes with the maximum punishment of up to 10 years in prison.

The following is a list of civil cases that are subject to municipal courts: 1) on the recovery of alimony; 2) on the dissolution of marriage and on the recognition of a marriage as invalid (valid); 3) on the establishment of paternity (maternity) and the deprivation of parental rights; 4) on the establishment of guardianship and trusteeship; 5) about property disputes; 6) on accessory and personal servitudes; 7) on the disputes arising from the contract of housing rental; 8) labor disputes; 9) on the protection of honor, dignity and reputation associated with the publications in the media; 10) on civil disputes that are not within the jurisdiction of commercial courts; 11) on the undisputed law (the issuing of court orders) and the provision of court decision enforcement, if this is not within the jurisdiction of other courts; 12) about the disputes related to the inheritance, the disputes arising from the procedure of land cadaster maintenance; and 13) other disputes that are not within the competence of other courts or notaries [10].

According to Art. 19 of the Law, the jurisdiction of the District Courts includes: 1) the carrying out of investigations on criminal cases and violations committed by notaries, and they consider the criminal cases on the crimes related to their jurisdiction by law; 2) the consideration of appeals against the violations committed by public notaries; 3) the fulfillment of responsibilities for the provision of international legal assistance during the consideration of cases; 4) the provision of international cooperation with the Member States of the European Union during the consideration of cases; 5) the execution of foreign court sentences; and 6) the performance of other duties provided by law. These courts consider criminal cases with the punishment of more than 10 years of imprisonment.

Besides, the Article 23 of the Law provides the jurisdiction of the Courts on the cases of misconduct. The judge alone as the court of first instance 1) considers the cases of crimes with the exception of those *corpus delicti* that are within the competence of higher instance courts; i.e.,

municipal and district courts, and 2) performs the duties on international legal assistance provision in the course of the consideration of cases assigned to his jurisdiction.

CONCLUSIONS.

The paper presents the comparative analysis of first instance court jurisdiction of the Republic of Croatia, Russia and individual European countries: Poland, the Slovak Republic and Belarus. The determination of jurisdiction rule violations and the consideration of cases again doubles the expenses from the budget; therefore, it is not profitable for states.

National procedural legislation that meets the requirements of international documents guarantees that no one can be deprived of the right to consider his case only by the court, to whose jurisdiction it assigned by law.

In summary, a brief comparative analysis of jurisdiction issues concerning the courts of first instance shows that the lawmaker's well-chosen distinction of jurisdiction between the two first instances, as well as the well-thought-out rules of simplified (summary) proceeding make possible solve the problems of public access to justice, and budget cuts in the event of jurisdiction rule violation.

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