

PROBLEMS OF JURISDICTION OF ECOLOGICAL CRIMES, PROVIDED BY THE CRIMINAL CODE OF THE RUSSIAN FEDERATION

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Abstract: The international documents assign to the national legislator of a duty to pay to questions of jurisdiction the closest attention. The specified duties are provided in item 1 of Art. 14 of the Covenant on Civil and Political rights, item 1 of Art. 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 immediately and red tape is imputed an obligation of the states. Questions of jurisdiction, i.e. competence, vessels on criminal cases in the territory of the Russian Federation are provided by article 31 of the Code of Criminal Procedure of the Russian Federation. The rules regulated by this article have the big importance. So, implementation of requirements of article 31 Code of Criminal Procedure of the Russian Federation is in what in case of detection of violations of the rules of this article, automatically leads to cancellation of a sentence and reconsideration of criminal case anew. Territorial jurisdiction in practice, as a rule, is not broken, however to observance of requirements to subject (patrimonial) jurisdiction or by what court of the first or second instance concrete criminal case has to be considered, arise not only questions, the facts of violations and cancellation of sentences are also elicited. In case of cancellation of a sentence all procedure begins anew that tightens terms of consideration of the case and is estimated as rough red tape. It is important to note that any transfer of criminal cases from court is not provided by the Russian legislation in court. Thus, nobody can be deprived of the right for consideration of its business only by that court to which jurisdiction it is carried by the criminal procedure legislation. The provided procedural rule is rather simple therefore under no circumstances it should not be violated.

Keywords: corpus delicti, jurisdiction of the magistrate, ecological crimes, maximum sanctions, The composition of crimes, jurisdiction of a magistrate, environmental crimes, maximum sanctions.

1 Introduction

Since 1864 to jurisdiction of magistrates of the imperial period criminal cases treated with the maximum punishment till 1 year of imprisonment. However 25 years later maximum "threshold" was increased up to 1 y 6 months of imprisonment. Means, the tendency to expansion of jurisdiction of magistrates took place during this period.

The maximum punishment which the magistrate could impose was increased by the federal law of December 18, 2001 No. 174-FZ from 2 to 3 years of imprisonment with adoption of the new Code of Criminal Procedure. The last took legal effect since July 1, 2002. As a result passed to jurisdiction of magistrates not only crimes of small weight for which consideration were the world justice, but also a part of corpora delicti of average weight is created. During this period the Russian legislator had no thought of consideration of a question of decrease in top "threshold" till 1 year 6 months of imprisonment as it was during the imperial period. Because of high office load of regional judges "idea" was only about increase in top "threshold" up to 3 years of imprisonment. After this increase the amount of the corpora delicti referred to jurisdiction of the magistrate significantly increased. Jurisprudence needed the adjustment directed to decrease in office load of magistrates again.

However and this situation with jurisdiction of the legislator did not arrange. It went further. Ten years later, the maximum punishment for commission of crimes of small weight in article 15 Criminal Code of the Russian Federation was also increased by the Federal law of December 7, 2011 No. 420-FZ from 2 to 3 years of imprisonment. These changes, in our opinion, aimed now at decrease in loading not on judges of federal courts, and magistrates. However it should be noted that the situation did not normalize load of magistrates, and numerous increases in states of magistrates not only does not help, but also costs much to the budget of the country.

Revision of the corpora delicti provided in chapter 26 of the Criminal code of the Russian Federation which could be excluded from the list of jurisdiction of the magistrate that

would allow achieving optimization of their loading belongs to separate internal reserves.

2 Methodology

The specified scientific article is written with use of comparative and procedural methods of a research in relation to normative legal acts of the Russian Federation, its short analysis taking into account all earlier adopted procedural laws is stated.

The fact that authors chronologically describe the legislative changes made by the legislator to keeping of structures of ecological crimes of chapter 26 of the Criminal code of 1996 is remarkable.

Such combination is successful as helps to approach consciously the solution of the basic tasks facing the Russian judges of federal courts and magistrates, belonging to vessels of the first instance. Results of this research allow to assess objectively a situation and to make the correct decision on formation of the list of the corpora delicti referred to jurisdiction of magistrates and judges of federal courts of the Russian Federation of the corpora delicti provided by chapter 26 of the Criminal Code of the Russian Federation.

In the course of carrying out research general scientific and special methods of science observation, a comparative, system and structural, structural and criminalistic, historical method, an integrative method and other methods of a research were used.

3 Results and discussion

With reference by the legislator of parts of the first stations of Art. 250 (up to 1 y of corrective works), 251 (up to 1 y of corrective works), 252 (up to 2 l. corrective works), 253 (up to 2 l. corrective works), 254 (up to 2 l. corrective works) (6 structures) to jurisdiction of federal courts can be debated still. In our opinion, the maximum sanctions up to 1 y and 2 l. corrective works assumes automatic transferring them to jurisdiction of magistrates. In this case the ratio of number of the corpora delicti referred to jurisdiction of federal courts - 14 corpora delicti and magistrates - 10 structures, will be according to 58% for 42%. Such ratio does not answer the legislator's plan in any way: 80% of criminal cases, magistrates - 20% belong to jurisdiction of federal courts. For this reason such decision of the legislator, in our opinion, needs to be made as objectively reasonable. In a final version our offers would lead to the following ratio to jurisdiction of federal courts - 84%, magistrates - 16% of criminal cases that will be the correct proceeding decision as of May, 2018 as changes are constantly made to the Criminal code of the Russian Federation (Gibadullin & Nurullina, 2018).

Article 414 Code of Criminal Procedure of RSFSR of Chapter 34 "Protocol form" includes 40 articles in which 57 corpora delicti which were considered in 10-day time. From them 4 structures of ecological crimes from 19 that make 21%, were made out on a protocol form and were considered in 10-day time. According to requirements of Art. 415 of the Code of Criminal Procedure of RSFSR 1963, the protocol form were put into operation since January 1, 1997. Federal law of December 21, 1996 No. 160-FZ (Mardanshin, 2016). From structures of ecological crimes on UK of 1996 as of 2000 three parts of Art. 256, p.1 Art. 260 and p.1 Art. 261, i.e. five structures entering to jurisdiction of magistrates belong to a protocol form. From the Criminal Code of the Russian Federation with changes for April, 2018 to category of criminal cases which could be issued on a protocol form: two structures - the p. 3 of Art. 256 (from 2 to 5 l. imprisonments) and the p. 2 of Art. 258 (up to 2 l. imprisonments) and also five structures belonging to jurisdiction of magistrates: 1-2) p.1, the 2nd Art. 256 (both up to 2 l. corrective works), 3) p.1 Art. 258 (up to 2 l. corrective works), 4) p.1 Art. 260 (up to 1 y of imprisonment), 5) p.1 Art. 261 (up

to 3 l. imprisonment). Presence of two structures which could be issued on a protocol form earlier, in our opinion, is contradictory.

With adoption in 1996 of the Criminal Code of the Russian Federation "Ecological crimes" began to be provided by chapter 26. In this chapter in 2000 with the maximum sanctions to 2 years of imprisonment was 12 (by April, 2018 there were 26 corpora delicti with the maximum sanction to 3 years of imprisonment) corpora delicti (Nurullina, 2014). Under such name in the Criminal code 1960 of the head was not at all. So, to jurisdiction of the magistrate taking into account requirements of part 1 of article 467 Code of Criminal Procedure of RSFSR, the following belonged: 1) the p. 2 of Art. 249 Violation of the rules, established for fight against diseases (2 g of imprisonment) (in the previous UK RSFSR, 1985 it was article 161 with the sanction to 1 y of imprisonment); 2) p.1 Art. 250 "Pollution, contamination, exhaustion ... waters" (1 g of corrective works) (article 163 UK RSFSR, 1985 with the sanction to 1 y of imprisonment); 3) p.1 Art. 251 "Violation of the rules of emission in the atmosphere ..." (1 g of corrective works) (article 223 of chapter 10 of UK RSFSR, 1985 with the sanction to 1 y of corrective works); 4-6) ch. p.1, the 2, 3 Art. 256 "Illegal production of water animals" (respectively up to 2 l. corrective works, up to 2 l. corrective works and 2 g of imprisonment); 7) Art. 257 "Violation of the rules of protection of fish stocks" (up to 2 l. corrective works); 8-9) ch. p.1, the 2nd Art. 258 "Illegal hunting" (up to 2 l. corrective works, 2 g of imprisonment) (ch. p.1, 2 article 166 UK RSFSR, 1985 with sanctions to 1 and 3 l. imprisonments); 10-11) ch. p.1, the 2nd Art. 260 "Illegal felling of trees ..." (respectively up to 1 and 2 l. corrective works) (p.1 article 169 UK RSFSR, 1985 with the sanction to 1 y of imprisonment); 12) p.1 Art. 261 "Destruction or damage of the woods" (2 g of imprisonment) (the p. 2 of article 169 UK RSFSR, 1985 with the sanction to 3 l. imprisonments) (Gilyazov & Nurullina, 2017).

At the same time in jurisdiction of federal judges in the form of exceptions 7 structures of ecological crimes departed: 1) p.1 Art. 247 "Violation of the rules of the address of ecologically dangerous substances and waste" with the sanction to 2 l. imprisonments, 2) p.1 Art. 252 (up to 2 l. corrective works) "Marine pollution ..." (up to 2 l. corrective works) (article 223.1 of chapter 10 of UK RSFSR, 1985 with the sanction to 1 y of imprisonment); 3-4) ch. p.1, the 2nd Art. 253 "Violation of the law of the Russian Federation about the continental shelf" (up to 2 l. corrective works in both parts) (article 167.1 UK RSFSR, 1985 with the sanction to 1 y of imprisonment); 5) p.1 Art. 254 "Damage of the earth ..." (up to 2 l. corrective works); 6) Art. 255 "Violation of the rules of protection and use of a subsoil" (up to 2 l. corrective works); 7) Art. 262 "Violation of the mode of especially protected natural territories" (up to 2 l. corrective works).

Upon transition since July 1, 2002 on the basis of the Federal law No. 174-FZ of the maximum amount of the punishment imposed by the magistrate from 2 to 3 years of imprisonment the number of structures sharply decreased with 12 to 7. The legislator reasonably excluded the following six structures from the list of structures of ecological crimes: 1) the p. 2 of Art. 249, 2) p.1 Art. 250, 3) p.1 Art. 251, 4) the p. 3 of Art. 256, 5) Art. 257, 6) the p. 2 of Art. 258 of the Criminal Code of the Russian Federation were also added by one structure - part 3 of Art. 260 of the Criminal Code of the Russian Federation. At the same time it is necessary to notice that the legislator increased number of exceptions of the list of the corpora delicti excluded from jurisdiction of the magistrate with 7 to 20. That it is necessary to estimate these innovative changes made to the criminal procedure law with advantage.

It is possible to agree with the main changes made by the legislator. However it is simply impossible to agree with addition of the qualifying structure of part 3 of Art. 260 of the Criminal Code of the Russian Federation. This structure, in our opinion, is subject to an exception together with other qualifying corpora delicti, provided by the p. 2 of the same article 260

Criminal Code of the Russian Federation. As the reason for that serves existence in a disposition of the second part of several qualifying signs: 1) repeatedly; 2) the person with use of the official position; 3) in a large size. Existence of these circumstances allows rejecting all doubts on transfer of this corpus delicti in jurisdiction of federal judges.

Earlier the legislator on the basis of the Federal law of 8.12.2003 No. 162-FZ, using almost same qualifying signs, excluded part 3 of this article 256 Criminal Code of the Russian Federation in which the qualifying signs were also provided: 1) with use of the official position, 2) a group of persons by previous concert and 3) organized group. It is worth paying attention that the p. 2 of Art. 256 of the Criminal Code of the Russian Federation is not the qualifying sign, and is independent corpus delicti therefore we and do not make the proposal on its exception.

Thus, having excluded then two above-stated corpora delicti, in jurisdiction of the magistrate there would be 5 simple structures. On need of an exception of the qualifying corpora delicti for chapter 26 neither Khamatova E.V., nor Novokreshchenov N.S. attached significance.

The federal law of 22.07.2008 No. 145-FZ the legislator toughened the sanction of part 3 of Art. 260 of the Criminal Code of the Russian Federation from 3 to 6 years. As a result this corpus delicti automatically passed into the list of corpora delicti, jurisdictional to federal judges.

Generalizing the analysis according to chapter 26 of the Criminal Code of the Russian Federation "Ecological crimes", it should be noted that taking into account our offer on an exception of the p. 2 of Art. 260 of the Criminal Code of the Russian Federation in jurisdiction of the magistrate there would be 5 corpora delicti: 1-2) ch. p.1, the 2nd Art. 256 of the Criminal Code of the Russian Federation "Illegal production (catch) of water biological resources" (sanctions of everyone up to 2 l. corrective works); 3) p.1 Art. 258 of the Criminal Code of the Russian Federation "Illegal hunting" (with punishment to 2 l. corrective works); 4-5) ch. p.1, the 2nd Art. 260 of the Criminal Code of the Russian Federation "The illegal cutting down of forest plantings" (sanctions up to 1 and 3 l. imprisonments respectively); 6) p.1 Art. 261 of the Criminal Code of the Russian Federation "Destruction or damage of forest plantings" (with the sanction to 3 l. imprisonments). Among the excluded corpora delicti, i.e. the federal judges belonging to jurisdiction, there will be 21 structures (them 20 now).

Let's provide chapter 26 of the Criminal Code of the Russian Federation as of 2000.

Chapter 26. Ecological crimes from 35 structures from which 19 corpora delicti up to 2 years of imprisonment, 12 structures treat jurisdiction of the magistrate, and the exceptions carried to jurisdiction of federal court, 7 structures.

- 1) 247 p.1. Violation of the rules of the address ecologically dangerous in/in (2 l.);
- 2) 252 p.1. Marine pollution (up to 2 l. corrective works);
- 3-4) 253 ch. p.1, 2. Violation of the law of the Russian Federation ... shelf (2 l. and / r; 2 l. and / r);
- 5) 254 p.1. Damage of the earth (up to 2 l. corrective works);
- 6) 255. Violation of the rules of protection and use of a subsoil (up to 2 l. and / r);
- 7) 262. Violation of the mode especially protected natural ... (up to 2 l. and / r);

Magistrates have 12 corpora delicti:

- 1) 249th p. 2. Violation of veterinary rules ... (up to 2 l. p/c);
- 2) 250 p.1. Pollution of waters (up to 1 y of corrective works);

- 3) 251 p.1. Air pollution (up to 1 y and / r);
- 4-6) 256th p. 1,2,3. Illegal production of water animals ... (2i/r, 2i/r, 2 l);
- 7) 257. Violation of the rules of protection of fish stocks (up to 2 l. and / r);
- 8-9) 258 ch. p.1, 2. Illegal hunting (up to 2 l. and / r, 2 l. p/c);
- 10-11) 260th p. 1, 2. Illegal felling of trees ... (up to 1 y and / r, 2 and / r);
- 12) 261 p.1. Destruction or damage of the woods (up to 2 l. p/c).

For comparison we will provide chapter 26 of the Criminal Code of the Russian Federation as of 2018. This chapter includes 41 structures of ecological crimes.

Chapter 26. At federal judges (20 corpora delicti):

- 1) 247ch.1. Violation of the rules of the address of ecologically dangerous emissions (up to 2 l. p/c);
- 2) 248 ch.1. Violation of safety rules at treatment of microbiological agents (2 l.);
- 3-4) 249 ch. of the p. 1, 2. Violation of veterinary rules (up to 2 l. p/c; 1 g p/c);
- 5-6) 250 ch. p.1, 2. Pollution of waters (p/c up to 1 y; 2 l. p/c);
- 7-8) 251 ch. p.1, 2. Air pollution (p/c up to 1 y; 2 l. p/c);
- 9-10) 252 ch. p.1, 2. Marine pollution (p/c up to 2 l.; 2 l. p/c);
- 11-12) 253 ch. of the p. 1, 2. Violation of the law of the Russian Federation about the continental shelf (p/c up to 2 l.; 2 l. p/c);
- 13-14) 254 ch. p.1, 2. Damage of the earth (p/c up to 2 l.; 2 l. p/c);
- 15) 255. Violation of the rules of protection and use of a subsoil (p/c up to 2 l.);
- 16) 256th p. 3. Illegal production (catch) of water biological resources (from 2 to 5 l);
- 17) 257. Violation of the rules of protection of water biological resources (p/c up to 2 l.);
- 18) 258 ch. p. 2. Illegal hunting (up to 2 l. p/c);
- 19) 259. Destruction of critical habitats for organisms (up to 3 l. p/c);
- 20) 262. Violation of the mode of especially protected natural territories (p/c up to 2 l.);

Magistrates have 6 corpora delicti:

- 1-2) 256th p. 1, 2. Illegal production (catch) of water biological resources (both up to 2 l. p/c);
- 3) 258 p.1. Illegal hunting (p/c up to 2 l.);
- 4) 258.1ch.1. Illegal production and a turn of wild animals (up to 3 l.);
- 5) 260 p.1. The illegal cutting down of forest plantings (up to 2 l. p/c);
- 6) 261ch.1. Destruction or damage of forest plantings (up to 3 l. p/c) (Lapidus, 1988).

To the Russian legislator we offer the following option:

Chapter 26. (25 corpora delicti up to 3 l. p/c, m/s – 4, φ / with – 21 corpora delicti.

- 1) 247ch.1. Violation of the rules of the address of ecologically dangerous emissions (up to 2 l. p/c);
- 2) 248ch.1. Violation of safety rules at treatment of microbiological agents (2 l.);
- 3-4) 249 ch. of the p. 1,2. Violation of veterinary rules ... (up to 2 l. p/c; 1 g p/c);
- 5-6) 250 ch. p.1, 2. Pollution of waters (p/c up to 1 y; 2 l. p/c);
- 7-8) 251 ch. p.1, 2. Air pollution (p/c up to 1 y; 2 l. p/c);
- 9-10) 252 ch. p.1, 2. Marine pollution (p/c up to 2 l.; 2 l. p/c);
- 11-12) 253 ch. of the p. 1,2. Violation of Law of the Russian Federation about the continental shelf (p/c up to 2 l.; 2 l. p/c);
- 13-14) 254 ch. p.1, 2. Damage of the earth (p/c up to 2 l.; 2 l. p/c);
- 15) 255. Violation of the rules of protection and use of a subsoil (p/c up to 2 l.);
- 16) 257. Violation of the rules of protection of water biological resources (p/c up to 2 l.);
- 17) 258th p. 2. Illegal hunting (up to 2 l. p/c);
- 18) 258.1ch.1. Illegal production and a turn wild a stomach (up to 3 l. p/c);
- 19) 259. Destruction of critical habitats for organisms (up to 3 l. p/c);
- 20) 261 p.1. Destruction or damage of forest plantings (up to 3 l. p/c);
- 21) 262. Violation of the mode of especially protected natural territories (p/c up to 2 l.).

Magistrates have 4 corpora delicti:

- 1-2) 256th p. 1,2. Illegal production of water animals and plants (both up to 2 l. p/c);
- 3) 258 p.1. Illegal hunting (p/c up to 2 l.);
- 4) 260 p.1. The illegal cutting down of forest plantings (up to 1 y of p/c).

Thus, we suggest to report from jurisdiction of the magistrate to federal court: 1) 258.1ch.1 (up to 3 l. imprisonments), 2) 261 p.1 (up to 3 l. imprisonments); and also it is necessary to withdraw in a legislative order from the list of the corpora delicti provided p.1 by Art. 31 of the Code of Criminal Procedure in the form of exceptions, the p. 3 of Art. 256 of UK (from 2 to 5 years of imprisonment).

4 Summary

The provided comparative and comparative analysis of questions of jurisdiction according to chapter 26 "Ecological crimes" of the Criminal Code of the Russian Federation. In our opinion, the amounts of the corpora delicti referred to jurisdiction to the magistrate offered reduction can be referred to number objective and subject to use in practice of the Russian legislator. In Germany functions of vessels of the first instance are carried out by local judges (Amtsgericht), belong criminal cases with the maximum sanction of punishment till 1 year of imprisonment to their jurisdiction (Zenkovsky, 1960; Bustanov & Kemper, 2012). In 1958 the French legislator made the decision on abolition of magistrates (Voll, 1994; Hroch, 1985), i.e. courts of the first instance began to be subdivided into courts of small instance and courts of big instance (Ferrer et al, 2015; Nurhayati, 2018).

5 Conclusion

The short analysis of only one Chapter 26 of the Criminal Code of the Russian Federation leads us to a conclusion that differentiation of jurisdiction between the district (city) courts relating to federal courts, and magistrates it is up to the end not solved and needs careful researches. However and the reality dictates as it is accepted in some countries of the West, in particular, Germany and France, at the end of every year the commission of the State Duma has to gather and on the basis of statistical data to develop offers on correction of situations with the raised office loading of vessels of the first instance. The solution of the matters is referred to competence of the federal authority therefore offers have to be discussed according to plan in the State Duma of the Russian Federation with adoption of real decisions the next year.

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