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EXERCISE OF THE RIGHT TO THE 'FAIR TRIAL' IN THE CRIMINAL PRACTICE IN TIME (RIGHT TO A 'FAIR TRIAL' IN TIME)

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ABSTRACT

An appeal to the concept of the right to a 'fair trial' and its elements such as jurisdiction and composition of the court reveal itself more and more often in recent times. Some authors, especially in foreign literature, refer to this right as the right to a due process of law. The criminal procedure legislation of the Russian Federation provides for its effect in time. This article represents an attempt to solve the issues of exercising the right to a 'fair trial' in accordance with the rule of law in time. At the same time, unlike criminal law, the new

criminal procedure law has no retroactive effect. The judicial practice on this issue has also changed; its comparative analysis will apparently assist in working out the correct opinion on this issue. Besides, not only changes in the procedural laws affect the determination of the jurisdiction of a particular criminal case but also changes in the criminal and other laws. In this instance, the specified rule of the law in time is applied in each case in different ways. In this article, we will try to reveal and comprehend this difference not only based on a comparison of legislation but also using samples of judicial practice.

INTRODUCTION

According to Article 2 of the Constitution of the Russian Federation, the recognition, observance, and protection of human and civil rights and freedoms is the responsibility of the state. The most important area in the implementation of this obligation is the protection of citizens from socially dangerous encroachments, including through the regulation of relations arising in the field of criminal procedures [1].

The legislators, when introducing innovations into the Russian judicial system, were taken as the basis for the continental system of law [2]. Thus, the concept of the right to a 'fair trial' also came to us from the legislation of foreign countries.

The right to a 'fair trial' is, after all, defined as the right for a specific criminal case to be considered by the very court (the composition of the court), to whose jurisdiction the given criminal case belongs. In some countries, this right is also defined as the right to a due process of law.

Thus, Article 65 (1) of the Seychelles Penal Code defines piracy as a crime committed 'within or outside Seychelles', while Article 65 (2) provides that 'the Seychelles courts have jurisdiction to consider piracy cases as a crime... regardless of whether the crime was committed in the territory of Seychelles or off its limits'. Based on this Article, many piracy suspects have been prosecuted in Seychelles. For the most part, the problem with prosecuting piracy suspects is whether their trial was fair or not. There are many cases of piracy in which the Seychelles courts have considered the issue of the right to a fair trial. Also, among the most important rights are the right to be tried by a competent court; jurisdiction of the Seychelles courts to try piracy cases committed on the high seas; the right not to be subjected to double jeopardy; the right to question witnesses and challenge evidence; the right to remain silent; the right to be considered innocent until proven guilty; and the right to be fully informed of the nature and cause of the accusation [3].

Determination of the competent court for resolving issues with jurisdiction is regulated by the norms at various stages of criminal proceedings (in particular, pre-trial proceedings, execution of the sentence, etc.). It could be stated with confidence that the requirements of the Constitution of the Russian Federation in the field of human rights are implemented through jurisdiction (as an element of the 'fair trial') by establishing a legal court suitable for almost every criminal case [4].

It should also be noted that when determining the court competent to consider a particular criminal case, the competence of the court, the scope of its powers, and the position of the court in the judicial system are taken into account as well. Establishing the jurisdiction over a criminal case requires a comparison of its properties and the terms of reference of courts of different levels [5].

At the same time, both theory and practice 'forget the international rule that only a judicial decision of a competent court can become legitimate. The rule on the competence of the court to consider only cases within its jurisdiction should become the most important principle of judicial activity in resolving cases, along with the principle of legitimacy' [6].

The presence in the criminal procedure law of the rule on the operation of the law in time is primarily aimed at ensuring legal clarity and continuity in the administration of law. The absence of this rule would definitely cause some equivocality and the lack of uniformity in the application of the law, following by the violations of the rights and legitimate interests of parties to the criminal proceedings. Along with that, the rule on the operation of the criminal procedure law in time allows to not interrupt legal proceedings in the event of the passing of a new bill but to continue proceedings under the new law, while the evidence obtained before its promulgation retains the property of admissibility; certainly, the evidence obtained in this case should comply with the requirements of the law in force at the time of the procedural action or the adoption of a procedural decision [7].

The purpose of this article is to reveal the issues of the implementation of the described right when applying the rule of action of the Russian criminal procedural laws in time, and to get an insight on changes in the criminal procedure law, criminal law, as well as other laws affecting the determination of the jurisdiction of criminal cases, along with the choice of the composition of the court - elements inherent to the concept of 'fair trial'.

LITERATURE REVIEW

The works cited in this study were selected by choosing the keywords such as the right to a 'fair trial', the power of the criminal procedure law in time, the composition of the court, the jurisdiction of criminal cases. The work of many authors, such as Ugreninova A.M., Bekhalo S.V., Bezlepkin B.T., Saushkin D.V., Shulgina D.D., Korchagin M.A, Mujuzi J.D., and others are devoted to the problems of the jurisdiction of criminal cases and the exercise of the right to a 'fair trial'. Based on the works of named experts, the authors attempted to study the terms of issues arising in the exercise of the right to a 'fair trial' when applying the rules of the criminal procedure law in time with reference to the judicial practice on this issue.

METHODS

The basic laws of the dialectical method of cognition were applied in conducting the presented research. As particular research methods, the authors

employed a system-structural and comparative analysis of court decisions, and criminal procedural, criminal, and other legislation.

RESULTS AND DISCUSSION

Judicial protection, formalized as a fundamental right, retains this normative quality. This remedy must be interpreted broadly with respect to any challenge in the form of restrictive procedural principles and rules. The regulation of judicial protection lies in ensuring access to justice. The legal boundaries of these rights allow individuals to lead a life of self-determination. The latter is a key expression of human dignity, which is the source of general rights and also the value on which the legal order is based. Judicial protection is a means of satisfying this requirement since the individual is usually representing the minority - being a citizen of another state, and facing the authorities of the collective majority [8].

The main principle of the operation of the law in time is its extension to relations that arose after its introduction into force. Furthermore, the legislator has the right to extend the rules of the newly introduced law to events and actions, as well as to associated legal consequences that arose before the entry of the relevant law into force, that is, to give a new law a retroactive effect [9]. The adoption of a criminal procedural laws, which regulates criminal procedural legal relations in a new manner, often gives rise to a clash of old and new criminal procedural norms, which, in turn, poses a problem for the law enforcement officials to choose the norm to be applied when performing a procedural action or making a procedural decision. The prescriptions of Article 4 of the Criminal Procedure Code of the Russian Federation on the operation of the criminal procedure law in time are specifically designed to resolve such situations [7].

In accordance with the same Article 4, the case will go to trial under the criminal procedural law in force during the performance of the corresponding procedural action or the adoption of a procedural decision, unless otherwise provided by this Code [10].

This means that regardless of the time of committing offence, as well as regardless of acting criminal procedure law at that time, the initiation of a criminal case, its investigation and court trial (both in the first instance and any subsequent ones) will be conducted under the criminal procedure law in force at the time of the corresponding stage of criminal proceedings.

Existing Criminal Procedure Code of the Russian Federation was put into effect on July 1, 2002. Given the above, the decisions taken before July 1, 2002, should have been taken accordingly, following the Criminal Procedure Code of the RSFSR in force at that time. This caused very interesting examples of judicial practice.

Thus, within the framework of the proceeding by the case received by the court on June 20, 2002, the judge, in accordance with Articles 223.1 and 431

of the Criminal Procedure Code of the RSFSR, issued an order to schedule a trial; a preliminary hearing was held on June 28, 2002, following the requirements of Article 432 of the same Code. During the preliminary hearing, defendants V. and K.A. supported their motions for trial by jury, M. agreed with them, L., Yu., and K.M. did not agree with this petition. The court, having regard to the fact that the separation of the case would affect the comprehensiveness and objectivity of the investigation and further resolution of the case, did not consider it possible to satisfy the petition of L., Yu., and K.M. on the allocation of the case against them into separate proceedings and, given the latter's categorical objection to the consideration of the case against them by a jury, and resting upon the requirements of Art. 432 of the Criminal Procedure Code of the RSFSR, which established the inavailability of hearing the case by a jury if at least one of the accused objects, issued a resolution to consider this criminal case by a panel consisting of a judge and two people's assessors. The decree was issued on June 28, 2002, following the requirements of the current legislation. However, the verdict was revoked by cassation ruling, because the accused K.A., M., and V. in the present case had the opportunity to exercise this right only since July 1, 2002; therefore, the court session scheduled for July 10, 2002, should have considered this case with the participation of a jury. The judge did not take into account that from 01 July 2002, in accordance with Art. 217, 325 of the Criminal Procedure Code of the Russian Federation, the case should be considered by a jury. Thus, appointing it to a hearing for the period covered by the new law, the judge should be guided by the provisions of the Criminal Procedure Code of the Russian Federation [11].

The court often faces the choice of whether to conduct certain judicial actions in its absolute discretion or return the case to the prosecutor [12].

Does it mean that the court, making a decision based on the results of the preliminary hearing, should have been guided by the criminal procedure law that was not in force at that time? The authors tend to disagree with this position. In the authors' opinion, the recent position of the Supreme Court of the Russian Federation, according to which the criminal procedure law has no retroactive force, seems more suitable for the case [13].

At the same time, if the procedural issue is resolved based on the criminal procedural law in force at that time, but which was subsequently changed, then this issue is not subject to revision under the new procedural law, regardless of the possible presence of favorable or unfavorable consequences for such revision with the only exception for the situation when the revision is not provided for by retroactive changes in criminal legislation [14]. Following this line of reasoning, the court of the first instance in this situation made, in the authors' opinion, the correct decision within the framework of the current criminal procedure law.

The jurisdiction of a criminal case can be changed both by making changes to the criminal procedure law and to the criminal law. Also, in this instance,

when determining the jurisdiction of a criminal case, in fact, the principle of criminal law's action in time is already applied.

Thus, Article 159.4 was introduced into the Russian Criminal Code on December 10, 2012. Part 2 of this Article provided for criminal liability for fraud associated with deliberate failure to fulfill contractual obligations in the field of entrepreneurial activity committed on a large scale. This provision of the criminal law has ceased to be in force since July 15, 2016 [15]. However, the same day the Criminal Code was amended with part 6 of Article 159, which provided criminal liability for similar acts [16]. At the same time, no changes were made in this part of the Criminal Procedure Code. Still, the court jurisdiction was changed: part 2 of Art. 159.4 of the Criminal Code of the Russian Federation in its penal clause, which was much lenient, now related to the jurisdiction of justices of the peace, and part 6 of Article 159 of the same Code - to the jurisdiction of district courts.

In accordance with the principle of operation of the criminal law in time, the criminality and liability to punishment are determined by the law in force at the time of perpetration. The retroactive effect of a law or its application to an act committed before the law's entry into force is possible only if this law improves the standing of the person who committed this crime. Thus, since the penal clause of part 2 of Article 159.4 of the Criminal Code of the Russian Federation was much more lenient than of part 6 of Article 159 of the same Code, providing for criminal liability for similar acts, then the norms of part 2 of Article 159.4 would apply to acts committed before this date [17]. The jurisdiction of these criminal cases will accordingly apply to justices of the peace.

The next example where changes in criminal law affected the change in the jurisdiction of a criminal case is also definitely worth consideration. The criminal case against G. and G., accused of committing a crime under part 1 of Art. 282.2 of the Criminal Code of the Russian Federation (as amended by the Federal Law of December 7, 2011), was assigned by a jurisdiction to the corresponding justice of the peace of the Sovetsky District of the city of Krasnoyarsk, by the decision of the Sovetsky District Court dated May 29, 2014. The court motivated its decision by the fact that the penal clause of part 1 of Art. 282.2 (as amended by the Federal Law of December 7, 2011) at the time of the commission of the crime provided for punishment in the form of imprisonment for up to three years, and according to Art. 31 of the of Criminal Procedure Code of the Russian Federation, justice of the peace has jurisdiction over cases of crimes for the commission of which the maximum penalty does not exceed three years in prison. Meanwhile, the court did not take into account the fact that the penal clause of Part 1 of Art. 282.2 of the Russian Criminal Code under the Federal Law No. 130-FZ of May 05, 2014 'On Amendments to Certain Legislative Acts of the Russian Federation', which was in force at the time of the decision to assign the case to the jurisdiction of a justice of the peace, added greater punitive measures and provided for punishment in the form of imprisonment for a term of two to eight years. The

application (in labeling process) of the criminal law, which is in force at the time of the perpetration, and which is improving the standing of the accused, is not a basis for giving retroactive effect to the norms of the criminal procedure law governing the rules for determining jurisdiction. So, the court of cassation overturned the decision, and the matter was remitted to the same court that initiated proceedings [18].

The Constitutional Court of the Russian Federation stated in its ruling: 'The norms of criminal and criminal procedural laws - although due to the specifics of the subjects of legal regulation they directly enshrine the legal consequences of the adoption of a criminal law that eliminates or mitigates criminal liability - do not exclude the possibility of retroactive application of the laws of a different sectoral affiliation to the extent that these laws limit the scope of criminal law regulation [19].

An example of determining jurisdiction over the duration of criminal law is the following court decision. On January 23, 2020, Krasnoyarsk Regional Court overturned the verdict of the Irbeysky District Court of November 27, 2019, due to the violation of the rules of jurisdiction. Federal Law No. 209-FZ of July 26, 2019, which entered into force on August 6, 2019, amended Article 327 of the Criminal Code of the Russian Federation with the criminal liability for the use of a knowingly forged document. This was previously established by part 3 of Article 327 of the Russian Criminal Code as amended on December 7, 2011; it is currently provided for by part 5 of the same Article in the new version with the possibility of imposing the same punishment of the same amount as before. The same law amended part 1 of Art. 31 of the Russian Criminal Procedure Code and established jurisdiction of judges of the peace over cases of crimes for the commission of which the maximum punishment does not exceed three years in prison (for instance, part 5 of Article 327 of the Criminal Code of the Russian Federation as amended on July 26, 2019), with the exception of cases of crimes provided for also by pt. 1-3 of Article 327 of the Criminal Code, which, following part 2 of Article 31 of the Criminal Procedure Code, are subject to the jurisdiction of the district (city) courts. It follows from the criminal case files that Sh. was accused by the preliminary investigation bodies of committing a crime under part 3 of Art 327 of the Russian Criminal Code (as amended by Federal Law No. 420 dated December 7, 2011), that is, the use of a deliberately forged document on January 21, 2019. The court, having considered the criminal case and making a court judgment, did not take into account that, by virtue of the provisions of part 1 of Article 31 of the Criminal Procedure Code in the version in effect until July 26, 2019, cases of crimes under part 3 of Art. 327 of the Criminal Code of the Russian Federation (as amended on December 7, 2011) are subject to the jurisdiction of justices of the peace. Federal Law No. 209-FZ of July 26, 2019, has not changed the jurisdiction of criminal cases on the use of deliberately forged documents. A criminal case against Sh., charged with a crime under part 3 of Article 327 of the Russian Criminal Code (as amended by the Federal Law No. 420 of December 7, 2011), was subject to consideration by a justice of the peace of judicial district No. 35 in the

Irbeysky district of the Krasnoyarsk Krai [20].

Another option for changing the jurisdiction is to amend the laws governing the organization of the courts, in particular, the laws of the constituent entities of the Russian Federation concerning the activities of justices of the peace.

Thus, S. was accused by the bodies of preliminary investigation under part 2 of Article 118 of the Criminal Code of the Russian Federation. According to the prosecution, the crime was committed on May 19, 2008, in the vicinity of the Dekabristov Street of the city of Achinsk of Krasnoyarsk Krai. The criminal case was submitted for consideration to the justice of the peace of judicial district No. 6 in the city of Achinsk in November 2008. This criminal case was accepted by the justice of the peace for the further review and subsequently returned to the prosecutor in accordance with part 1 of Article 237 of the Criminal Procedure Code [21].

However, under the Krasnoyarsk Regional Law of April 24, 2008 'On the Establishment of Judicial Districts and Offices of Justices of the Peace in Krasnoyarsk Krai' No. 5-1593 (the law was put in force on May 26, 2008), a new judicial district No. 145 was established in Achinsk. The specified law attributed the jurisdiction of a justice of the peace of this judicial district to the Dekabristov street of the city of Achinsk, Krasnoyarsk Krai [22] (previously referred to the jurisdiction of a justice of the peace of judicial district No. 6 in the city of Achinsk and the Achinsk region). The justice of the peace, when accepting the case for proceedings, was guided by Art. 9 of the Criminal Code of the Russian Federation, that is, at the time of the commission of the crime, the jurisdiction of this criminal case clearly related to his jurisdiction. Still, in authors' opinion, this case assignment should be guided by the provisions of Art. 4 of the Criminal Procedure Code of the Russian Federation, since the decision was made within the framework of the Criminal Procedure Code, and at the time the criminal case was sent to the court, justice of the peace of judicial district No. 145 in the city of Achinsk (whose jurisdiction the criminal case was related to) was already exercising his powers. In this instance, the criminal case against S. was subject to a referral by jurisdiction to the appropriate justice of the peace.

Another example of changing the jurisdiction is the adoption of the Federal Constitutional Law on the establishment of a new constituent entity of the Russian Federation, Krasnoyarsk Krai, by combining three constituent entities: Taymyr Dolgano-Nenets Autonomous Okrug, Evenk Autonomous Okrug, and Krasnoyarsk Krai [23]. As a result, considering the adoption of laws at the federal and regional levels in the newly formed Taymyr Dolgano-Nenets district of the Krasnoyarsk Krai, there are currently four federal courts of general jurisdiction, as well as four justices of the peace (four judicial sections) [24]. At the same time, one of the justices of the peace conducts his activities on the territory of three municipalities, on which there are three federal courts: the urban settlement of the city of Dudinka (belongs to the jurisdiction of the Dudinsky district court), the rural settlement of Karaul

(belongs to the jurisdiction of the Ust-Yeniseysky district court), and Dikson urban settlement (belongs to the jurisdiction of the Dikson district court). According to the established practice, the criminal cases considered by this justice of the peace on the crimes committed in the territories of Dikson urban settlement and the rural settlement of Karaul are considered by the Dudinsky District Court on appeal, since the very office of justice of the peace is located in the city of Dudinka. According to the authors' opinion, such consideration of criminal cases on appeal violates the rights of the parties to criminal proceedings to a 'fair trial', since the territories of these settlements have their own independent district courts, and it is their territorial jurisdiction that includes the consideration of appeals in criminal cases, regardless of where the justice of the peace is actually located. Besides, these settlements are located at a considerable distance, both between themselves and the city of Dudinka; they also have weak transport systems and other communications, which may technically complicate access to justice for citizens when appealing against decisions in criminal cases in this situation.

CONCLUSION

Along with the consolidation of human rights and fundamental freedoms in the Constitution of the Russian Federation, some of them are specified and supplemented by sectoral legislation, including criminal and criminal procedural, through the system of special rights and obligations of subjects of criminally-remedial relations [25].

As a result of the presented research, one can come to some conclusions on the implementation of the right to a 'fair trial' when applying the rule of law in time:

- the criminal procedural law has no retroactive force, that is, regardless of whether it improves or worsens the standing of any of the parties to criminal proceedings, the law in force at the time of the action or decision is applied;
- amendments to the criminal law may serve as a basis for determining the jurisdiction of criminal cases without changing the criminal procedural law, while in this case, the rule of the criminal law is applied in time, that is, at the time a person commits a crime;
- in addition to changes in the criminal and criminal procedural laws, the jurisdiction of the case can be changed by other laws, in particular, those regulating operation of courts, while the rule of the criminal procedural law in time is applied at the time of the action or decision-making.

With regard to the above mentioned, one should definitely agree with E.V. Tsvetkova that the most important thing is that 'the constitutional rights of the parties to criminal proceedings are not violated, their position is not allowed to be deteriorated, and their rights are not to be restricted in the course of procedural and investigative actions or while making procedural decisions' [26].

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