

## The issues of the judicial system and the jurisdiction of the courts of the first instance in the Republic of Austria

IDRIS MUHAMATYUNUSOVICH GILMANOV\* and  
MUHAMAT MUHAMATYUNUSOVICH GILMANOV

Naberezhnochelninsky Institute (branch) «Kazan Federal University»,  
Russian Federation, 423812, Naberezhnye Chelny, pr.Syuyumbike, 10A,  
Corresponding author E-mail: idris66gilman@mail.ru

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In the article the author gives a brief description of the current status of the justice in Austria, most attention is paid to issues of jurisdiction, which is very interesting among Russian Laws.

**Key words:** Hydra-mechanical gear train, Continuously variable transmission, Differential hydra-mechanical variator, Mechanical diagram, High-torque differential hydra-mechanical variator.

### INTRODUCTION

In all judicial systems round the world a great amount of attention is paid to issues of jurisdiction. They often occur in Russia, but for their successful resolution by using the comparative method, one must have the judicial system of other countries. In this case we take the judicial system of the Republic of Austria and analyze questions of jurisdiction of courts of the first instance in criminal cases. The first let's pay attention to the one feature that the judiciary of the Republic of Austria was influenced by Germany. So, the judiciary of the Republic of Austria consists of general and special courts. In the jurisdiction of general courts (*ordentliche Gerichte*) is related to the review of the civil and criminal cases as well as cases of public law. In the structure of the courts of general jurisdiction includes four elements: 1) Precinct courts 2) District courts (*Bezirksgerichte*), 3) Land courts (Landesgericht<sup>5</sup>, if they are in capital land) and 4) Supreme court.

Moreover, it's necessary to pay attention on the fact that N.G. Eliseev indicates district courts (*Bezirksgerichte*) as the lowest link, for unknown reasons. «(1) District courts (*Bezirksgerichte*) – the

lowest link of the judicial system similar to the district courts of the Federal Republic of Germany. That is the lowest courts which performs function only of first instance»[4, S.121]. However, in our opinion, exactly District courts are similar to district courts of Germany which are the lowest link of the judicial system of the Republic of Austria. The same information A.G. Davtyan results in their work [3, S.12]. There is a feature, which points that judicial systems of Austria and Germany are matching, the land courts in that areas are called equally–Landesgericht<sup>5</sup>.

### The issues of the judicial system and the jurisdiction

The Judicial District of the precinct courts consists of a specific geographic area, which includes one or more municipalities. It's also necessary to pay attention at the judicial district of the district court which includes several districts of precinct courts, and the various appeal district courts includes territory of two or more districts courts of the first instance[3, S.12].

With regard to jurisdiction, disputes of property character precinct courts have jurisdiction to deal with the price of the claim is not more than

130 thousand ATS and separate category of free of charge cases. These include: the case of recognition or contestation of kinship, contestation of paternity, child support, divorce, cases of annulment of marriage and other disputes between spouses, parents and children, about rental property, violation of the right to use, as well as all cases in indisputable order.

In case of decision on cases of undisputed production, Legislation provides the possibility of appeal by filing: either 1) objections or 2) a cassation appeal (Vorstellung 8 Rekurs). Further more such decisions are reserved and this cases are considered in general order i.e. with investigation of all the circumstances of the dispute. Appeal (Berufung) or cassation appeal (Rekurs) are submitted on decisions of the district courts of the first instance which deals with a decision of the action proceedings[4, S.13].

Activities of the courts, which deals with civil and commercial cases, is regulated by the administration of justice Law and jurisdiction of the courts Law in civil cases from August 1, 1895. (Jurisdiction Law) – Gesetz über die Ausübung der Gerichtsbarkeit und die Zuständigkeit der ordentlichen Gerichte in bürgerlichen Rechtssachen – (Jurisdiktionsnorm)[4, S.34].

Analyzing this Law, it's necessary to pay attention on the fact that it has a structure which includes parts and sections. So, the first part of the Law is called «General provisions of jurisdiction» (*Von der Gerichtsbarkeit im allgemeinen*). This part contains the whole system of courts of General jurisdiction, the procedure of conducting meetings and votes of the judges in meeting room, the structure of judicial institutions. The second part includes issues of the tribal and territorial jurisdiction of claim cases, but the third part regulates the jurisdiction of special production cases[4, S.34].

The code of civil procedure of Austria, which is called «The Law regarding legal proceedings in civil cases from August 1, 1895 (Code of Civil Procedure)» – Gesetz vom 1. August 1895 über das gerichtliche Verfahren in bürgerlichen Rechtsstreitigkeiten (Zivilprozessordnung, ZPO).

Approximately since 1860, the legislator repeatedly tried to replace the outdated General judicial Charter 1781 of Joseph II[4, S.35]. For example, there were some attempts to present the projects, similar to the German code of civil procedure. However, they were not destined to be accepted. Privat-docent of the University of Vienna, Franz Klein had a great influence on the shaping of the draft of the civil procedure code. He has thoroughly reworked the German sample of the Law, he took into account identified in practice significant drawbacks. This hard work has led to the fact that the generated project proved to be more progressive than the German code of civil procedure[2, S.88-93]. This rather delicate moment allows you to think and to use correctly the experience in Russia. After all, we must remember instructive proverb - "learn from the mistakes of others". In our opinion, this enlightening moment is not entirely used in our science, otherwise it would be mentioned in the legal literature and the conclusion would be drawn. Unfortunately, it is not.

For about 100 years was acting an Austrian CCP 1895, with some amendments. One of the most important innovations was the sole consideration of the cases provided in process by the Act of June 1, 1914.

In the district courts by a single judge (Einzelrichter) considered both civil and criminal cases. The largest number of civil cases are heard by a single judge – regardless of the amount of the claim. However, in some cases, above the amount of the claim over 650 thousand Austrian shillings, parties have right to demand the transfer of the dispute to the court as part of the panel of three judges (Dreiersenat).

The rules of justice district courts in the first instance are set in the Federal law of May 9, 1985 – Bundesgesetz über die Errichtung des Bezirksgerichtes Donaustadt sowie die Organisation der Bezirksgerichte in Wien (Bezirksgerichts-Organisationsgesetz für Wien) [4, S.35].

In 1983 in the code of civil procedure were made significant changes. In the Law of jurisdiction

and the CCP of Austria was changed in the content of almost two hundred articles.

Significant changes should be named: the first, was revised list of jurisdiction; secondly, for the first time provides for the mandatory procedure of the court order; the third, mitigated the formal part of the proceedings by expanding the possibilities for adjustments carried out procedural actions; fourthly, the extension of the period for filing complaints on judicial decisions was progressive, and other.

It's worthwhile to pay special attention to criminal proceedings in Austria, which we would be interested the first two courts in.

Judicial functions in the country, according to the CPC Austria 1975, is carried out by: 1) the district court (court of the first instance), 2) trial by jury (court of second instance) and 3) the Supreme court[1, S.52]. The courts of first instance include district courts, considering on the merits of offenses (Vergehen), the commission of which the sanctions stipulated penalties in the form of a monetary fine or imprisonment up to 1 year. These courts administer justice courts of first instance like district courts of Germany[2, S. 88-93].

The functional responsibilities of these courts includes preliminary investigations in cases of crimes of medium gravity (VerbreAhen) and less serious crimes, punishable by a term of imprisonment for more than 1 year[3, S.13].

In Russia, the boundary term in the allocation of jurisdiction between international and Federal judges is 3 years imprisonment.

In addition, the courts of the first instance includes: 1) investigating courts (Untersuchungsgerichte), 2) the Trial chamber (Ratskammern), 3) courts of Schöffe and 4) jury trials. So, investigating courts conduct a preliminary investigation in criminal cases. The trial chamber considers complaints against all kinds of solutions investigating judges, except for the election of a preventive measure in the form of detention. The courts of Scheffens (deu.-Schöffe) consist of professional judges and civil judges, including also

courts in the sole judges hearing cases about crimes simplified (total) procedure.

District courts are the courts of the second instance. They handle complaints on sentences and court orders (offences) district courts. In addition, the courts of the second instance are the courts of appeal and the Supreme court[3, S.14].

Criminal proceedings of Austria provides three types of jurisdiction: subject matter, local and functional. The subject-matter jurisdiction means the jurisdiction of the certain courts of criminal cases in the first instance with regard to the type of crime committed[1, S.29]. The second type of jurisdiction is the local jurisdiction, which determines to the choice of one of several relevant the subject-matter jurisdiction of courts to hear a particular case of the first instance is based on the principle finding of the court[1, S.29]. And, finally, functional jurisdiction is the distribution of judicial functions by uniform criminal cases between different courts the first and the second institutions.

In our opinion, this classification of jurisdiction is very good and meets modern requirements.

Undoubtedly, a positive value for the judicial practice has acquired the principle of continuous distribution of functions. It happens when at the beginning of each year in all courts functions of judges allocated to 1 year. This approach can offer and use in justice in Russia. In addition, in Austria ministerial order appoint alternate judges that the Russian lawmaker does not accept. In our opinion, the time has come, when the position of substitute judges legislator should be in place and effectively used. Especially there is a need in the vast territory of Russia, when the magistrates of the rural area in the vast territory go on vacation, magistrate of neighboring district remains instead of him and the citizens in their disputes are compelled to go "far away". In this case, the proper performance of the most important principle of free public access to justice is compromised. Therefore, this issue is topical and urgent, it is necessary to make a decision on the state level[1, S.29].

According to article 91 of the Constitution of Austria, the representatives of the people can participate in the administration of justice in two forms: the first, on the most serious crimes, stipulated by law, and, secondly, for political offences, which are considered with the participation of the Schoffens (deu.-Schöffe). Moreover, the Schoffens (deu.-Schöffe) together with professional judges constitute a unified judicial Board [1, S.29].

According to §9 of the code of criminal procedure, the district court operates through the sole professional judges. The jurisdiction of this court of the first instance includes: the First, the consideration of criminal cases of crimes and misdemeanors, for which sanctions of the articles provide for a sentence of fine or imprisonment not exceeding 1 year.

However, from this list there are some exceptions, i.e., in addition to extortion, pollution and the other. The exceptions are also offences falling under the jurisdiction of the court of jury. So, the exceptions were 69 crimes [1, S.52]. In our opinion, the activities of the district courts coincide with the jurisdiction of the magistrates in Russia, in the latter the maximum penalty depending on the sanction of offences does not exceed 3 years imprisonment.

Secondly, the investigative and judicial actions (for example, §156 of the criminal procedure code provides the examination of witnesses) in those cases, which is not within the jurisdiction. One can also mention that in Russia there isn't the second function in the courts of first instance. Most likely, in the future they also will not appear as there is a big load of courts of the first instance.

The jurisdiction of the courts of the first instance are given in §§10-13 CPC of Austria, the activities of which include the following functions. The first, the functions of the authority investigation (§1 §10 of the CPC) is the institution of criminal proceedings and investigations of all crimes, except for crimes within the jurisdiction of the district courts. Investigative judges are appointed to perform these responsibilities. In Russia these functions assigned

to the district (city) courts, i.e., the courts of second instance.

Thirdly, in accordance with §12 of the code of criminal procedure, functions of a deliberative chamber, which includes 3 professional judges, in their resolution of related appeals against decisions of the investigating judge and verify the legitimacy of the election of preventive measures such as arrest.

Fourthly, the functions of the court of the first instance are also courts of the Schoffens (deu.-Schöffe) (§13 of the code), which mandates the sentence for all crimes, which do not belong to the jurisdiction of the district court or jury. The peculiarity of this court is that they consist of two professional judges. Besides the fact that one of them performs the functions of the presiding officer, there are two the Schoffens (deu.-Schöffe), i.e., assessor, with no legal education. Moreover, the court of the Schoffens (deu.-Schöffe) hears criminal cases for crimes, for which the sanctions of the articles stipulates a maximum sentence for over than 5 years of imprisonment. Let's make clarifying that in Russia the district (city) courts hear criminal cases, the punishment for committing is more than 3 years of imprisonment, i.e. 2 years exceeds the minimum standards, as provided in Austria.

Fifthly, according to §13 of the code individually judges also consider criminal cases as a court of the first instance. Let's make clarifying that these judges can hear cases of crimes that are not within the jurisdiction of the district courts, courts of Schoffens (deu.-Schöffe) or jury. Therefore, the jurisdiction of the judges, who hears criminal cases individually are all non-political crimes, with penalties ranging from 6 months to 5 years of imprisonment. These include 125 crimes [1, S.52-53].

Sixthly, the consideration of criminal cases is committed by minors (§31 CHF). This kind of court of the first instance is composed of two professional judges and one of them shall be the presiding and two Schoffens (deu.-Schöffe). The peculiarity of the Austrian Schoffens (deu.-Schöffe) is that they must be either teachers or educators, or to work in the

bodies of trusteeship and guardianship. However, in §32 CHF provides for cases when there are none, Scoffens (deu.-Schöffe) must be persons of the same sex with the accused[1, S.53-54].

When you are learning the rules of criminal proceedings you can face with an interesting point. Thus, the process of proof in a criminal case, in contrast to the civil process is carried out not at the request of the parties. The duty on their own to take measures to establish all the circumstances of the case lays upon the court. Indeed in criminal proceedings of Austria in order to establish the truth of the burden of proof lays upon the court<sup>1, 1.125</sup>. Consequently, the court is an interested party. In this regard, it is important to note that in Russia, under current law, a court of this initiative does not possess.

In addition, it's necessary to pay attention on the fact that the functions of the court of first instance performs the Senate judiciary considering the appeal against the sentences of the district court.

Here are the statistics, though not new, but in recent years, in our opinion, changed not so seriously. So, on April 1, 1976 . In Austria was 1377 judges, among whom at that time worked 1316; in the courts of the land among 145 seats worked 144 judges [1, S.78].

## CONCLUSION

We have to note that jurors and Scoffens (deu.-Schöffe), which lay judges are not required to have a legal education, and they operate without payment as a public work [1, S.79]. In this regard, we should recall that in the judicial system of the USSR was envisaged people's assessors, which was of great benefit. However, refusing the services of lay judges was based on high financial costs. During this comparative analysis were also identified some positive aspects – Russian lawmakers could use when making changes and amendments to the existing legislation, especially in the area of jurisdiction of the courts of the first instance in the criminal cases.

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