

## Offences against public justice committed against individuals involved in the trial

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**Abstract.** The article analyzes the criminal legislation on liability for offenses against public justice. In the given work the author considers object, subject, objective and subjective elements of crimes committed against individuals involved in the proceedings. The author of the article studies each constituent element of the crime relating to crimes against the judiciary, committed against persons involved in the trial, cites the statistics on these crimes.

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### Introduction

Particular features of this group of crime are that they are committed at the stage of administration of trial and therefore the victims are not only those directly dispensing justice but also other members of the trial. In this regard, the aspectual object of the crime is normal functioning of the judiciary, its credibility and personal immunity of those participating in the proceedings.

Encroachment on the life of a person involved in the proceedings is a crime in many countries, for example in USA. [1] In England such a crime committed by such unlawful means as violence, bribery, threats or improper pressure, is known as Perverting the course of justice[2]. In Australian Crimes Act 1900 there are one criminal action against mentioned persons: Section 326 — Reprisals against judges, witnesses, jurors etc[3]. In Russia this action is criminal according to article 295 of the Criminal Code of the Russian Federation (hereinafter - art., CC) [4].

Along with encroachment on life of a judge, juror and arbitration juror involved in the administration of justice, as well as their relatives, the provision of law provides for responsibility for encroachment on the life of those involved in the proceedings or casework, as well as their relatives to obstruct their lawful activities or out of revenge for such activity. Unfortunately, as it implies from the literal interpretation of Art. 295 of the Criminal Code, it is very poorly worded. So in article 295 of the CC the individuals involved in the trial and casework in court are prosecutors, advocates, experts, specialists and bailiffs[4]. These may also include investigators and persons of prejudicial inquiry when they are called to court to testify or public prosecutors in district court according to point 6 of article 5 and point 4 of article 37 and article 320 and 321 of the Criminal Procedure Code. According

to article 56 of the Criminal Procedure Code, inspectors and investigators may participate in the trial and casework in court as witnesses.

Thus the number of persons involved in the trial or casework in court, much wider than that given, for example, in point 1 of article 297 of the Criminal Code.

The author analyzes features of the crime in relation to the encroachment of the life of a judge, juror or arbitration juror involved in the administration of justice, as well as relatives. Feature of them, for the participants of cases or materials in court is determined by the motivational sphere of the commission of the crime by a guilty when choosing their circle of victims.

In the literature, some authors offer a different version of art. 295 of the Criminal Code. So according to experts this article should look as follows:

Article 295. Encroachment on the life of a person in connection with the preliminary inquiry, execution of the sentence, a judgment of court or other judicial act [5].

Encroachment on the life of a person to obstruct the proper implementation of the preliminary investigation, justice, execution, judgment or other judicial act or out of revenge for appropriate participation in such activities shall be punishable with imprisonment for a term of 12 to 20 years or life imprisonment.

Threat or acts of violence in connection with the examination of cases or materials in court (point 2 of article 296 of the Criminal Code).

In contrast to point 1 of article 296 of the Criminal Code, point 2 provides for liability for death threats, bodily harm, destruction or damage of property against a prosecutor, defense attorney, expert, specialist, bailiff, the bailiff, and their relatives, in the proceeding or casework in court.

Public relations ensuring the normal functioning of the judiciary in the course of reviewing the materials and relevant court cases are direct object of the act [6]. As a further object serve life and health of trial participants, as well as their relatives.

Circle of victims is defined by categories of cases considered in the criminal, civil and arbitration proceedings, that participants in the proceedings, which are the victim and his representative, witness, defense counsel, the state prosecutor, expert, specialist, civil plaintiff, civil defendant and their representatives, the defendant, teacher or psychologist, the private prosecutor and his representative, witness, interpreter, court clerk, plaintiff, defendant, third party claimants and other interested persons, public bodies, local authorities and other bodies, as well as representatives of these bodies [7].

Objective and subjective part of the act is determined by us in relation to point 1 of article 296 of the Criminal Code, but their difference is not characterized by the administration of justice by victims and by their participation in the proceedings, the content of which is disclosed by us in the analysis of point 1 of article 297 of the Criminal Code.

The age of criminal liability is sixteen years.

Judicial practice of the Russian Federation for this category of cases is as follows: under point 2 (hereinafter – p.) of article 296 of the Criminal Code in 1999 (hereinafter – y.) has been convicted 15 people and 3 people for multiple offenses under other articles of the Criminal Code, in 2000 respectively - 1 and 2 people, in 2001 - 10 and 3 people, in 2002 - 8 people, in 2003 - 11 and 1 people, in 2004 – 10 people, in 2005 - 11 and 1 people, in 2006 - 20 and 13 people., in 2007 - 21 and 14 people., in 2008 - 26 and 12 people, in 2009 - 28 and 13 people.

Contempt of court (point 1 of article 297 of the Criminal Code).

Unlike point 2 of article 297 of the Criminal Code provides for liability for insult of a judge and persons involved in the administration of justice point 1 of this article establishes liability for insulting individuals who are participants in the proceedings [8]. Proceeding from this the main direct object of the act is public relations providing normal functioning and authority of the judiciary in the implementation review of materials related matters. As a further object serve the honor and dignity of people participating in the proceedings.

As for the nature of the content objective and subjective sides of the crime they are disclosed by us in relation to point 2 of article 297 of the Criminal Code. And their only difference is in the field of motivational behavior in choosing their

perpetrators in the act circle of victims. In this example, point 51.5 Code of Criminal Procedure stipulates that unlike justice litigation covered by the trial courts 1, 2 and supervisory authorities. Consequently, the act in question can only be committed during the trial.

The subjects of the crime are any individuals who are over the age of sixteen including the participants of the trial. For example, the defendant might cause offense to any victim or witness, civil defendant - the civil claimant and others [9]

Judicial practice for this category of cases is as follows: in 1999 under point 1 of Art. 297 of the Criminal Code has been convicted eight people and 1 person was convicted along with other crimes, in 2000 respectively - 4 and 6 people, in 2001 - 7 and 4 people, in 2002 - 3 and 1 person, in 2003 4 and 1 person, in 2004 - 5 and 1 person, in 2005 - 16 and 4 people, in 2006 - 18 and 6 people, and in 2007 - 21 and 8 people, in 2008 - 28 and 11 people, in 2009 - 31 and 15 people.

Bribery or coercion to testify or to evade of testimony or to mistranslation (article 309 of the Criminal Code).

Social danger of these crimes is that bribery or coercion of the witness and victim to give false testimony, expert or specialist to give false conclusion or false testimony, a translator to a mistranslation and coercion of them to evade giving testimony, conclusions or mistranslation in court disrupts the normal functioning of the judiciary and adversely affects the administration of justice. In many countries commitment of this crime is punished very severe. Bribing a witness is a class D felony by article 215 of New York Law (at least 5 years and not to exceed 7 years)[10].

As a formal element of a crime, bribery is considered consummated since an offender gives a bribe to the above individuals. So the decision of the Supreme Court of the Russian Federation dated 10 February 2000 emphasizes that giving and taking bribes is considered consummated since a bribetaker gets at least a part of the transmitted values. If a bribetaker refuses to take bribes or objects when the transmission failed due to circumstances beyond the control of persons attempting to give or take bribe, the act should be qualified as attempted bribery. [11] It follows that a promise or offer to give a compensation for false testimony should be qualified as attempted bribery under Point 3 of Article 30 and Point 1 of article 309 of the Criminal Code.

Direct object of bribery is the public relations, ensuring the normal functioning of the judiciary to ensure justice, associated with obtaining reliable information on the case. Additional object

appear legal rights and interests of the individual are additional object.

Therefore it is difficult to agree with O.V. Lysenko that bribery under point 1 of Article 309 of the Criminal Code does not cause any harm to any interests of justice by deleting its criminal liability [12].

The objective element is characterized by bribery of the individuals above, which should be determined as illegal transfer money, securities or other assets to these individuals as well as providing illegal services to them for perjury, conclusions or mistranslation during the trial. This conclusion follows from the content disposition st.204 the Criminal Code, which defines the concept of commercial bribery. In the USA criminal law the objective element of this crime may be expressed much simple: "to give or offer or promise to give a witness"[13]. The subjective element of bribery is characterized by direct intention, i.e. an offender conscious social danger of committed bribery, foresees the possibility of the consequences in the form of an irregular resolution of case and so wishes. In this case the guilty party has a purpose to achieve false testimony, conclusion and mistranslation from a witness, expert, specialist as a result of bribery.

Subject of bribery can be an individual who are over age of sixteen.

Judicial practice indicates that in 1999 under point 1 of art. 309 of the Criminal Code has been convicted 18 people and the same amount was involved in other crimes committed in 2000 respectively - 6 and 9 people, in 2001 - 5 and 7 people, in 2002 - 10 and 4 people, in 2003 - 7 and 6 people, in 2004 - 6 and 3 people, in 2005 - 6 and 7 people, in 2006 53 and 14 people, in 2007 - 98 and 234 people, in 2008 - 101 and 24 people, in 2009 - 113 and 32 people.

Disclosure of information about security measures taken against persons involved in criminal proceedings (Article 311 of the Criminal Code).

Along with the safety of judges, jurors and other individuals involved in the administration of justice, security measures can be applied for persons participating in the proceedings, as well as for their relatives. This provision is based on Part 1 of Art. 311 of the Criminal Code, which provides for liability for disclosure of these security measures in relation to other participants in the criminal procedure.

Criminal procedure law provides the legal requirements in the implementation of procedural activities of the bodies exercising pre-trial proceedings (preliminary investigation) legal proceedings and execution of the sentence [14]

Judicial proceedings as a prerequisite and a stage of justice involves the questioning of victims, witnesses, defendants in a criminal prosecution, experts, specialists, other evidence examination, forensic examinations and other actions constituting a judicial investigation. It follows that art.311 Criminal Code provides security and measures for individuals participating in proceedings : victims, witnesses, defendants and other participants, which include, for example, government experts, specialists, interpreters, civil plaintiffs and civil defendants, their legal representatives, advocates, court clerks, bailiffs. These persons and can act as victims of the disclosure of information about safety measures, as well as their relatives, in connection with their participation in the trial or out of revenge for such participation.

Hence, the basic direct object in the commission of the crime is social relations that ensure the normal course of the trial as a prerequisite for achieving justice. The additional object is life and health of these individuals [15].

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