



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

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On Judicial Practice in Cases on Illegal Crossing of the State Border of the Russian Federation and on Crimes pertaining to Illegal Migration

In order to ensure the uniform court application of legislation on criminal liability for illegal crossing of the State Border of the Russian Federation, organising illegal migration, fictitious registration of citizens of the Russian Federation at a place of stay or place of residence in residential premises in the Russian Federation, fictitious migration registration of foreign citizens or stateless persons at a place of residence in residential premises in the Russian Federation, as well as fictitious registration of foreign citizens or stateless persons at a place of stay in the Russian Federation (Articles [322](#), [322.1](#), [322.2](#), [322.3](#) of the Criminal Code of the Russian Federation), the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following clarifications:

1. It is brought to the attention of the courts that in considering criminal cases on crimes stipulated in Articles 322, 322.1, 322.2, 322.3 of the Criminal Code of the Russian Federation (hereinafter – the CrC RF RF), they need to take into account the requirements of legislation of the Russian Federation regulating the rules of crossing the State Border of the Russian Federation, entry into the Russian Federation, transfer across the territory of the Russian Federation, stay on the territory of the Russian Federation and exit from the Russian Federation contained in Laws of the Russian

Federation No. 4730-I of 1 April 1993 “On the State Border of the Russian Federation”, No. 5242-I of 25 June 1993 “On the Right of Citizens of the Russian Federation to Freedom of Movement, Freedom to Choose One’s Place of Stay and Residence within the Russian Federation”, Federal Laws No. 114 of 15 August 1996 “On the Manner of Entry into the Russian Federation and Exit from the Russian Federation”, No. 115 of 25 July 2002 “On the Legal Status of Foreign Citizens in the Russian Federation” and No. 109 of 18 July 2006 “On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation”, as well as in the acts of the President of the Russian Federation and of the Government of the Russian Federation, adopted in furtherance thereof.

2. Socially dangerous acts stipulated in Article 322 of the CrC RF are contained in crossing the State Border of the Russian Federation (hereinafter – the State Border) while passing through border control procedures at checkpoints or in crossing the State Border outside of such checkpoints – under the circumstances indicated in Part 1 or Part 2 of said Article of the Criminal Code of the Russian Federation.

3. In Part 1 of Article 322 of the CrC RF, valid documents confirming the right to enter the Russian Federation or exit from the Russian Federation should be understood as documents, issued in the stipulated manner, certifying the identity of a citizen of the Russian Federation, a foreign citizen or a stateless person (a passport, a travel passport, a diplomatic or service passport, a Russian Federation residence permit, etc.), as well as other documents recognised as such by international treaties of the Russian Federation, federal laws, orders of the President of the Russian Federation or decrees of the Government of the Russian Federation (e.g. a temporary document certifying the identity of its holder and granting the right to enter (return) to the Russian Federation or a different state (a certificate of return), a refugee’s travel document).

Due permission obtained in the manner stipulated in the legislation of the Russian Federation is understood, in particular, as a permit to enter the Russian Federation and stay in the Russian Federation or to perform transit transfer across the territory of the Russian Federation issued by an authorised state body (visa), a local border traffic permit, a permit issued by the Government of the Russian Federation or a border authority (for the purposes of multiple crossing of the State Border, for conducting works on the State Border, etc.).

4. Crossing of the State Border without valid documents confirming the right to enter the Russian Federation or exit from the Russian Federation should be qualified as actions liability for which is stipulated in Part 1 of Article 322 of the CrC RF, where a

person perpetrates them with the use of knowingly counterfeit (forged) documents (e.g. documents with false information entered therein about the identity of the holder, including her/his family name, first name, patronymic, date of birth, as well as documents counterfeited in a different manner) or with the use of authentic documents belonging to a different person, as well as where a person perpetrates them without any documents confirming the right to enter the Russian Federation or exit from the Russian Federation.

Where a foreign citizen or a stateless person crosses the State Border while passing through border control procedures at checkpoints or crosses the State Border outside of such checkpoints, and there is a valid decision of the authorised authorities in regard of those persons, prohibiting them from entering the Russian Federation for reasons stipulated in the legislation of the Russian Federation, in particular a decision declaring their stay (residence) in the Russian Federation undesirable, a decree or court ruling on appointment of administrative punishment in the form of administrative expulsion from the Russian Federation, a decision on deportation, this is qualified under Part 2 of Article 322 of the CrC RF.

5. Taking into account the definition of the State Border, contained in Law of the Russian Federation No. 4730-I of 1 April 1993 “On the State Border of the Russian Federation”, the crimes stipulated in Article 322 of the CrC RF are regarded as accomplished from the moment of actual crossing of the State Border by a person, independent of the location and manner of crossing (on foot, using any means of transportation, covertly or overtly, with or without passing through border control procedures at a State Border checkpoint).

6. The courts should take into account that the crimes indicated in Article 322 of the CrC RF may only be committed with direct intent, whereby the guilty person acknowledges the fact that he/she is crossing the State Border without valid documents confirming the right to enter the Russian Federation or exit from the Russian Federation or without due permission obtained in accordance with the legislation of the Russian Federation, as well as the fact that he/she is crossing the State Border during entry into the Russian Federation, when it is known to that person that entry to the Russian Federation is not allowed to her/him as to a foreign citizen or stateless person for reasons stipulated in the legislation of the Russian Federation.

The facts that a person’s identity document contains a mark regarding prohibition to enter the Russian Federation (as stipulated in Part 2 of Article 27 of Federal Law No. 114 of 15 August 1996 “On the Manner of Entry into the Russian Federation and

Exit from the Russian Federation”), that a person was handed, against written acknowledgment, a notification on adoption of a decision to disallow her/him entry into the Russian Federation, or that an act on refusal to receive said notification was drawn up, etc., may indicate that it is known to the foreign citizen or stateless person that he/she is prohibited from entering the Russian Federation.

7. In Article 322.1 of the CrC RF, organising illegal migration is understood as intended perpetration of actions that create conditions for illegal entry into the Russian Federation, illegal stay in the Russian Federation, illegal transit transfer over the territory of the Russian Federation by one or several foreign citizens or stateless persons, including entry into the Russian Federation by foreign citizens using tourist visas for the purpose of illegal migration to a different state while using the territory of the Russian Federation as transit territory.

Organising illegal migration is qualified as an accomplished crime from the moment the guilty person intentionally creates conditions for perpetration of at least one of the illegal actions, listed in said Article, by foreign citizens or stateless persons, independent of whether they perpetrate such actions or not.

The fact that foreign citizens or stateless persons in whose interests the crime was committed have not been held liable, in particular due to the fact that they are outside the Russian Federation, is irrelevant for qualification of a person’s actions under Article 322.1 of the CrC RF.

8. If, in addition to other actions of organisational nature, organising illegal migration includes fictitious registration (migration registration) of foreign citizens or stateless persons at a place of residence or place of stay in the Russian Federation, this should be qualified as a cumulation of crimes stipulated in the corresponding Part of Article 322.1 of the CrC RF and in Article 322.2 of the CrC RF or Article 322.3 of the CrC RF. Where the actions of a person consist only in fictitious registration (migration registration) of a foreign citizen or stateless person at a place of residence or place of stay, this is qualified under Article 322.2 or Article 322.3 of the CrC RF and does not require additional qualification under Article 322.1 of the CrC RF.

9. Where conditions for commission of several violations of migration legislation, indicated in Part 1 of Article 322.1 of the CrC RF, by a foreign citizen or stateless person (e.g. illegal entry into the Russian Federation and illegal stay on the territory of the Russian Federation), as well as for perpetration of one or several such illegal actions by two or more foreign citizens or stateless persons simultaneously, are created with

single intent, this should be qualified as a single crime stipulated in the corresponding Part of Article 322.1 of the CrC RF.

10. Organising illegal migration for the purposes of commission of a concrete crime with participation or in regard of foreign citizens or stateless persons on the territory of the Russian Federation, in particular where the foreign citizens or stateless persons themselves were unaware of participation in commission of that crime, is fully covered by Item “b” of Part 2 of Article 322.1 of the CrC RF. If a person organising illegal migration for such purposes participated in commission of said crime, her/his actions, where there are corresponding grounds, are qualified as a cumulation of crimes stipulated in Item “b” of Part 2 of Article 322.1 of the CrC RF and in the corresponding Article (Item, Part of an Article) of the Special Part of the Criminal Code of the Russian Federation.

11. The actions of a person organising illegal entry of foreign citizens or stateless persons into the Russian Federation through their illegal crossing of the State Border are covered by the corresponding Part of Article 322.1 of the CrC RF and do not require additional qualification under Part 3 of Article 33 and under Article 322 of the CrC RF.

If a person that organised illegal migration her-/himself illegally crossed the State Border when committing that crime (e.g. acting as a guide), her/his actions are subject to qualification as a cumulation of crimes stipulated in Articles 322 and 322.1 of the CrC RF.

12. When considering cases on crimes, liability for which is stipulated in Articles 322.2 and 322.3 of the CrC RF, the courts should be guided by definitions of the notions of place of residence and place of stay, fictitious registration (migration registration), as well as by other provisions contained in Article 2 of the Law of the Russian Federation No. 5242-I of 25 June 1993 “On the Right of Citizens of the Russian Federation to Freedom of Movement, Freedom to Choose One’s Place of Stay and Residence within the Russian Federation” and in Article 2 of Federal Law No. 109 of 18 July 2006 “On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation”.

13. By implication of Article 322.2 of the CrC RF, fictitious registration of a citizen of the Russian Federation at a place of stay or place of residence or fictitious registration of a foreign citizen or stateless person at a place of residence is the recording, in the stipulated manner, by bodies engaged in registration (migration registration), of the fact that a citizen of the Russian Federation is located at her/his place of stay or place of

residence in residential premises in the Russian Federation, of the fact that a foreign citizen or stateless person is located at her/his place of residence in residential premises in the Russian Federation, based on presentation of knowingly false information or documents to those bodies for such registration, or in the absence of intention of said persons to stay (reside) in those premises, or in the absence of intention of the proprietor or tenant of residential premises to provide those premises for the stay (residence) of said persons.

Fictitious migration registration of a foreign citizen or stateless person at a place of stay, liability for which is stipulated in Article 322.3 of the CrC RF, is comprised by recording, in the stipulated manner, by bodies engaged in migration registration, of the fact that a foreign citizen or stateless person is located at a place of stay in premises in the Russian Federation, based on presentation of knowingly false information or documents to those bodies, or in the absence of intention of those persons to actually reside (stay) in those premises, or in the absence of intent of the hosting party to provide those premises to them for actual residence (stay); or by recording the fact that a foreign citizen or stateless person is located at a place of stay at the address of an organisation in which he/she is not engaged, in the stipulated manner, in labour or other activities not prohibited by the legislation of the Russian Federation.

Acts stipulated in Article 322.2 or Article 322.3 of the CrC RF are qualified as accomplished crimes from the moment when registration (migration registration) bodies record said facts.

14. Taking into account that the crimes stipulated in Articles 322.2 and 322.3 of the CrC RF may be committed only with direct intent, an officer of a registration (migration registration) body who performed registration (migration registration) of a citizen of the Russian Federation, foreign citizen or stateless person is criminally liable for that act only if he/she was aware of the unreliability (falsehood) of information or documents presented for registration or migration registration, or of the fact that there were other circumstances precluding registration (migration registration).

The proprietor or tenant of the corresponding residential premises, a person authorised by them, the head or another authorised employee (member) of an organisation in which a foreign citizen or stateless person are not engaged, in the stipulated manner, in labour or other activities not prohibited by the legislation of the Russian Federation, or other persons acting on their behalf may be subjects of the crime stipulated in Article 322.2 or Article 322.3 of the CrC RF, if they presented knowingly unreliable (false) information or documents to registration (migration registration) bodies for the purpose of

registration (migration registration) or were aware of other circumstances precluding registration (migration registration) when presenting the information or documents.

15. If the single intent of the guilty person covered fictitious registration (migration registration) of two or more citizens of the Russian Federation, foreign citizens or stateless persons at the same place of stay or place of residence simultaneously, this forms one crime, stipulated, correspondingly, in Article 322.2 or Article 322.3 of the CrC RF.

16. When considering cases on crimes liability for which is stipulated in Articles 322–322.3 of the CrC RF, the court, having established the facts of illegal crossing of the State Border, organising illegal migration, fictitious registration of citizens of the Russian Federation at a place of stay or place of residence in residential premises in the Russian Federation, fictitious registration of foreign citizens or stateless persons at a place of residence in residential premises in the Russian Federation or fictitious migration registration of foreign citizens or stateless persons at a place of stay in the Russian Federation, is obliged to refer, in a judgment of conviction or in a different decision finalising the case, to the articles, parts of particles, items of normative legal acts regulating the rules of crossing the State Border or regulating registration (migration registration) at a place of stay (place of residence) in the Russian Federation that the guilty person violated, indicating in what exactly the corresponding violation was expressed.

17. In Note to Article 322.2 of the CrC RF and in Note 2 to Article 322.3 of the CrC RF, contributing to solving a crime should be understood as actions of a person performed both before and after the initiation of the criminal case in regard of a particular person or following the fact of commission of the crime, and aimed at rendering assistance to preliminary investigation bodies in establishing the time, place, manner and other circumstances of commission of the crime, participation of that person her-/himself in the crime, as well as at incriminating the accomplices of the crime. The court resolves whether there are grounds for exempting a person from criminal liability in accordance with Note to Article 322.2 of the CrC RF and Note 2 to Article 322.3 of the CrC RF on a case-by-case basis, depending on the nature, content and volume of actions performed by the person, as well as their significance for establishment of circumstances of the crime and incrimination of persons that committed it, thereby providing the reasons for the adopted decision in the text of the court decision.

The fact that a person is exempt from criminal liability for commission of a crime stipulated in Article 322.2 or Article 322.3 of the CrC RF based on Notes to those Articles does not preclude the holding of that person criminally liable for other illegal actions perpetrated by her/him, if they are subject to independent qualification (e.g. for organising illegal migration, counterfeiting a citizen's passport for the purpose of using it).

18. When giving legal assessment to actions comprised in organising illegal migration without qualifying elements (Part 1 of Article 322.1 of the CrC RF) or fictitious registration (migration registration) at a place of stay or place of residence, the courts should take into account the provisions of Part 2 of Article 14 of the CrC RF, which states that an action (failure to act), although formally containing the elements of an act stipulated in criminal legislation, but not presenting public danger due to its insignificance, is not a crime. When resolving whether an act is insignificant, the courts should in particular take into account the motive and the aim that guided the accused (defendant), her/his relations with the person pertaining whom the provisions of migration legislation were violated (e.g. in case of fictitious registration of a close relative at a place of stay or place of residence in residential premises in the Russian Federation).

19. It is recommended to the courts, in consideration of criminal cases on crimes pertaining to illegal crossing of the State Border and (or) illegal migration, to discover the circumstances that contributed to commission of said crimes, violation of rights and freedoms of citizens, as well as other violations of law committed in the course of preliminary investigation or during consideration of the criminal case by a lower court, and to draw the attention of the corresponding organisations and officials thereto by special court decrees (rulings) in accordance with Part 4 of Article 29 of the Criminal Procedure Code of the Russian Federation.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
the Supreme Court of the Russian Federation

V.V. Momotov

ANNEX

Translation of Articles of the Criminal Code of the Russian Federation, referred to in the text of the Ruling (as of 1 September 2020)

Article 322. Illegal Crossing of the State Border of the Russian Federation

1. Crossing of the State Border of the Russian Federation without valid documents confirming the right to enter the Russian Federation or exit from the Russian Federation, or without due permission obtained in the manner stipulated in the legislation of the Russian Federation -

is punished by a fine in the amount up to 200 000 rubles or in the amount of salary or other income of the convicted person for a period up to 18 months, or by compulsory labour for a term up to 2 years, or by deprivation of liberty for the same term.

2. Crossing of the State Border of the Russian Federation by a foreign citizen or a stateless person entering the Russian Federation, where it is known to the guilty person that entry into the Russian Federation is not allowed to her/him for reasons stipulated in the legislation of the Russian Federation, -

is punished by a fine in the amount up to 300 000 rubles, or by compulsory labour for a period up to 4 years, or by deprivation of liberty for the same term.

3. Acts stipulated in Parts 1 or 2 of this Article, where perpetrated by a group of persons by prior conspiracy or by an organised group, or with the use of violence or threat of violence, -

are punished by deprivation of liberty for a term up to 6 years.

Note:

This Article does not apply where foreign citizens and stateless persons arrive to the Russian Federation in violation of rules of crossing the State Border of the Russian Federation in order to use the right of political asylum in accordance with the Constitution of the Russian Federation, unless their actions contain the elements of a different crime.

Article 322.1. Organising Illegal Migration

1. Organising illegal entry of foreign citizens or stateless persons into the Russian Federation, their illegal stay in the Russian Federation or illegal transit transfer across the territory of the Russian Federation -

is punished by deprivation of liberty for a term up to 5 years with or without restriction of liberty for a term up to 2 years.

2. The same acts, where perpetrated:

a) by a group of persons by prior conspiracy or by an organised group;

b) for the purposes of committing a crime on the territory of the Russian Federation;

c) with the use of powers vested in a person by virtue of her/his office, -

are punished by deprivation of liberty for a term up to 7 years, with or without a fine in the amount up to 500 000 rubles or in the amount of salary or other income of the convicted person for a period up to 3 years, with or without restriction of liberty for a term up to 2 years.

Article 322.2. Fictitious Registration of a Citizen of the Russian Federation at a Place of Stay or Place of Residence in Residential Premises in the Russian Federation and Fictitious Registration of a Foreign Citizen or Stateless Person at a Place of Residence in Residential Premises in the Russian Federation

Fictitious registration of a citizen of the Russian Federation at a place of stay or place of residence in residential premises in the Russian Federation and, likewise, fictitious registration of a foreign citizen or stateless person at a place of residence in residential premises in the Russian Federation -

are punished by a fine in the amount of 100 000 to 500 000 rubles or in the amount of salary or other income of the convicted person for a period up to 3 years, or by compulsory labour for a term up to 3 years with or without deprivation of right to hold a certain office or engage in certain activities for a term up to 3 years, or by deprivation of liberty for a period up to 3 years with or without deprivation of right to hold a certain office or engage in certain activities for a term up to 3 years.

Note:

A person who committed a crime stipulated in this Article is exempt from criminal liability, if he/she contributed to solving the crime, and if her/his actions do not contain the elements of a different crime.

Article 322.3. Fictitious Migration Registration of a Foreign Citizen or Stateless Person at a Place of Stay in the Russian Federation

Fictitious migration registration of a foreign citizen or stateless person at a place of stay in the Russian Federation -

is punished by a fine in the amount of 100 000 to 500 000 rubles or in the amount of salary or other income of the convicted person for a period up to 3 years, or by compulsory labour for a term up to 3 years with or without deprivation of right to hold a certain office or engage in certain activities for a term up to 3 years, or by deprivation of liberty for a period up to 3 years with or without deprivation of right to hold a certain office or engage in certain activities for a term up to 3 years.

Notes:

1. Fictitious migration registration of foreign citizens or stateless persons at a place of stay in the Russian Federation is understood as their registration at a place of stay in the Russian Federation based on presentation of knowingly unreliable (false) information or documents, or registration of foreign citizens or stateless persons at a place of stay in the Russian Federation in premises in the absence of their intention to actually reside (stay) in those premises or in the absence of intention of the hosting party to provide those premises for them for actual residence (stay), or registration of foreign citizens or stateless persons at a place of stay at the address of an organisation in which they are not engaged, in the stipulated manner, in labour or other activities not prohibited by the legislation of the Russian Federation.

2. A person who committed a crime stipulated in this Article is exempt from criminal liability, if he/she contributed to solving the crime, and if her/his actions do not contain the elements of a different crime.