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Significantly about the Insignificant: Practice of Applying Part 2 of Article 14 of the Criminal Code of the Russian Federation (In-Depth Analysis of the Problem)

NIKITA A. KOLOKOLOV
A.S. Griboyedov Moscow University, Moscow, Russia
Moscow Pedagogical State University, Moscow, Russia
nikita_kolokolov@mail.ru

Abstract
Introduction: this publication continues the research of the paired category "significant – insignificant" in criminal law, covered in the previous issue of the journal. It is carried out through the prism of requirements imposed by society on criminal proceedings. *Purpose:* to more deeply study some theoretical aspects of the problem, to get closer to understanding the essence of some aspects of judicial discretion, and to analyze reviews of the latest judicial practice. *Methods:* historical, comparative legal, dialectical cognition, analysis and synthesis. Results: the criminal law doctrine of insignificance is studied in detail. Four relatively independent periods of its evolution (pre-revolutionary (1845–1917), post-revolutionary (1917–1958), developed socialism (1958–1991) and post-Soviet (since 1991)) are identified. The institution of "small size" (1965–1982) is criticized. The author analyses situations when courts at the precedent level, "torpedoing" the severity of the crimes indicated by the legislator, seek options to release certain persons both from criminal liability and criminal punishment. The author comes to the following conclusions: there is no single interpretation of the concepts of significant and insignificant in the theory of Russian criminal law; since algorithms for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation, as well as similar criminal legal regulations (for example, Part 6 of Article 15 of the Criminal Code of the Russian Federation) are still developing, in which a dispute inevitably arises about the significance of what has been done, society has to rely on the level of interpretation art of a particular judge. A growing number of lawyers propose to bring the problem of the insignificance of an act to the discussion of the Plenum of the Supreme Court of the Russian Federation. In subsequent articles, the reader will be offered a substantive analysis of the practice of applying Part 2 of Article 14 of the Criminal Code of the Russian Federation contained in the decisions of the First General Jurisdiction Court of Cassation.

Keywords: insignificance of an act (Part 2 of Article 14 of the Criminal Code of the Russian Federation); paired categories; criminal law; fundamental principle of law; freedom of judicial choice; public danger; punitive law; offense; offense provided for by the Administrative Code of the Russian Federation; criminal misconduct; virtual (alleged) benefit of punishment; real social harm of punishment; judicial practice; unity of judicial practice.

5.1.1. Theoretical and historical legal sciences.

5.1.2. Public law (state law) sciences.

5.1.4. Criminal law sciences.

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Crime: rational and irrational.

As noted in the previous publication [1], the analyzed institution “insignificance” has been known to the theory of law since the time of Ancient Rome, even then lawyers formulated a judgment “summum jus, summa injuria” (exact observance of the law (maxim) is sometimes equal to the highest lawlessness (Cicero – de officiis, I, 10, 33 Terentius – Heatontimorumenos, IV, 5). Literal interpretation of law does not resolve a conflict sometimes, but generates a new injustice. It is no coincidence that the above-mentioned judgment has been elevated to the rank of fundamental principles of law in some countries (for example, in France) [2]. Unfortunately, this principle has not found its place in the current Russian legislation and its study is beyond the scope of curricula and the vast majority of courses on criminal law.

Besides, it is noted in the previous publication focused on doctrinal interpretation of the current legislation that the distinctive characteristic of an act enshrined in the law and qualified as a “crime” (Part 1 of Article 14 of the Criminal Code of the Russian Federation) recognizes special social significance of the deed. It is quite obvious that the Criminal Code of the Russian Federation of 1996 was not developed from scratch; what is more, the current criminal law is a kind of collective image, or more precisely, a set of many compromises suffered by previous generations of lawyers. The question arises when and under what circumstances there were revealed and recognized ideas, embodied in criminal law and applied in everyday investigative, prosecutorial and judicial practice.

At the current moment, almost all existing judicial systems in the world and the technologies inherent in their functioning are the product of the industrial era (20th century and even 19th century). It is quite obvious that many of them at some point simply will not find a place in a post-industrial society. A “classic judicial office” is being rapidly replaced by an “office”, still called judicial by inertia, but already largely virtual [3].

What does the coming day have in store for us under such circumstances? The answer to this question can be found in the writings of Daniel Bell (1919–2011) “The End of Ideology. On the Exhaustion of Political Ideas in the Fifties”. Cambridge, 1960), “The Coming Post-industrial Society”. New York, 1973) and “The Cultural Contradictions of Capitalism”. New York, 1976). If the classics of Marxism-Leninism believed, “the state machine peculiar to industrial society is a “parasite” that must necessarily be completely replaced by something new”, while they persistently urged revolutionaries, discarding “petty-bourgeois illusions of peaceful development of democracy”, to turn to violence, then according to D. Bell “there is no need to destroy old world to the ground”, because the state and law, as well as other achievements of civilization, may well be useful to a new post-industrial society.

In other words, answering the question to what extent the present is determined by the past, D. Bell suggested not to throw away socio-legal values of the past. He is far from alone in this. According to his contemporary, the philosopher S.N. Bulgakov (1871–1944), “in the life of both an individual and a people, their past has a huge influence” [4]. Socio-legal technologies, even if developed by society in the very distant past, are those facets of the invaluable experience of mankind that underlie its modern rational behavior. At the same time, it is indisputable that the real transformation of society entails modernization of both the system of government as a whole and the administrative apparatus – the state, including such an important element of it as the court – an institution to find a clear line between “criminal” and “not criminal” [3]. Let us analyze key stages of the formation of the category of “crime” in Russia.

Generally recognized traditions of the development of Russian criminal law. As you know, roots (sources) of the Russian criminal law go back to ancient times, days of “Russian Truth” and “Sudebniks” of 1449, 1497, 1550. It is there that one can find the first arguments of the legislator about the crime. However, basic concepts and technologies of modern criminal justice were developed and consolidated in the XIX century.

During the reign of Nicholas I (1796–1855), under the leadership of the head of the Second Department of His Imperial Majesty’s Own Chancellery, Count D.N. Bludov (1785-1864), on the basis of old Russian legislation, domestic

judicial practice, and criminal laws of European states, a kind of codification of Russian criminal law was carried out. The document developed at that time was named the “Code of Criminal and Correctional Punishments”, first considered by the State Council, further approved by the Emperor on August 15, 1845 and put into effect on May 1, 1846.

The first section of the Code “On the nature of crimes and misdemeanors” stipulated that “any violation of the law through which a person encroaches on the inviolability of the rights of the supreme authority and the authorities established by it, or on the rights or safety of society or individuals is a crime” (Part 1). “Violation of the rules prescribed to protect certain rights and public or personal safety or benefit defined by laws is called an offense” (Part 2). “For crimes and offenses, according to the nature and degree of importance thereof, the perpetrators are subject to criminal or correctional punishments” (Part 3). “An evil done accidentally, not only without intent, but also without any negligence on the part of the one who has committed it, is not considered a guilt” (Part 7).

So, authors of the Code, defining the essence of a crime (an offense), use the term “evil”– a certain criminal result, materializing and concretizing thereby the reality of illegal activity consequences. The absence of “evil” (consequences), as well as the absence of guilt of a particular person in causing evil”, eliminates criminality, and therefore punishability of the act.

“Evil” is a normative and evaluative category of moral consciousness (values, norms are an ideal that reflects practical experience). Thus, “evil” is everything that receives a negative assessment from people, censure. In Christianity, the category of “evil” is historical, the doctrine authors proceeded from the fact that “evil” would eventually be defeated. The philosopher Andre Comte-Sponville (b. March 12, 1952) interpreted the category of “evil”, referring to the teachings of the rationalist Baruch Spinoza (1632–1677), very broadly, “Evil is everything that separates us from the human ideal” [5. pp. 196–197]. Below we read, “a villain is a person who behaves like a criminal or, more often, like a scoundrel” [5. p. 197].

In the modern sense, in accordance with the Russian language dictionary by A.P. Evgen’eva “evil” means everything bad, harmful, “a villain” is the person who has committed a crime, and “a scoundrel” is a “mean person”.

So, the Code, unlike the current Criminal Code of the Russian Federation of 1996, did not lump together crimes (acts truly dangerous) and offenses (acts that are not characterized by public danger).

The rejection of the institution of “criminal offense” in 1917 deprived both the legislator and the law enforcement officer of the freedom of maneuver they needed, both in qualifying the act committed and in imposing punishment. There is no definition of insignificance in specific acts in the Criminal Code of the Russian Federation, at the same time, the possibility of its hypothetical identification, at least theoretically, is not excluded (Part 2 of Article 14 of the Criminal Code of the Russian Federation).

Let us assume that “insignificance” enshrined in criminal law is nothing more than just a figure of speech. The extreme brevity of the wording chosen by the legislator is a hint that the norm on “insignificance” provided for in Part 2 of Article 14 of the Criminal Code of the Russian Federation, by and large, is not for everyday use. To some extent, the analyzed construction is similar to the mention in the Criminal Procedural Code of the Russian Federation that “a verdict may be acquittal or indictment” (Part 1 of Article 302), since it is quite obvious that society expects guilty verdicts from the court. Justification is a flaw in the work of the prosecution. As for populist arguments regarding a small number of acquittals, the authors of these judgments diligently avoid answering the question: what the state should do if the crime is committed by a person, and the defendant is acquitted.

Once again, we emphasize that the general structure of legislation is such that the law enforcement officer has to look for individual “traces” of insignificance, in other, not at all criminal, laws, for example, in Article 7.27 of the Administrative Code of the Russian Federation.

As for representatives of legal science, the obvious imperfection of the design of the current law forces them to look for parameters of insignificance in the works of classics, both domestic criminal law and specialists from other countries. For example, C. Beccaria (1738–1794) wrote, “a true measure of crimes is the harm they cause to society” [6, p. 226].

The authors of the French Declaration of the Rights of Man and of the Citizen (1989) disclosed the concept of crime as “actions harmful to society”. This legal idea is preserved in the Criminal Code of France in 1992: “the severity of the harm caused to society is what determines the legal essence of a criminal act. Only encroachment on public values constitutes a crime and offenses” [7, p. 35].

It seems advisable to divide the coverage of the problems of “significance” and “insignificance” in Russian legal science into four large periods:

1) pre-revolutionary (1845–1917);
2) post-revolutionary (1917–1958);
3) developed socialism (1958–1991);
4) post-Soviet (1991 – present).

1. Pre-revolutionary period (1845–1917).

We believe that the problems analyzed in this series of articles (“significance” and “insignificance”) in the theory of Russian criminal law were revealed for the first time and best of all by Professor N.S. Tagantsev (1843–1923). The researcher setting out his views on “Criminal act as a subject of study” in the Course of his lectures on Russian criminal law, already in the first subtitle of the Introduction indicated simple concepts, such as: 1) “life event”, 2) “manifestation of personality”, 3) “social phenomenon”, 4) “subject of anthropology” and, what is important, only at the very end, 5) “legal relation” [8. p. 1].

Since that time, the theory of Russian criminal law has been characterized by the following approach in the arrangement of categories to be studied according to their significance: “criminal act”, “its scope”, “criminal law” (“norm”), “culprit” [9, pp. 376–380].

It is noteworthy that N.S. Tagantsev divided categories of “criminal law” and “criminal legislation” (many do not comprehend this even today) and determined relations between the rights and obligations of the guilty, the judge and the state. Specifying the function of the latter, he stressed that “the law is of the greatest importance for the state itself”. By establishing which encroachments are recognized as so **significant** (the emphasis added) conditions of coexistence that the state protects them from nonfulfillment by threat of punishment” [8, p. 111].

N.S. Takagantsev suggested searching for the significant by interpretation (does anyone know other ways?), warning that the search for the meaning of what the legislator has said should begin from the opposite – ad absurdum, so that reasoning does not lead the law enforcement officer to “logical absurdity or physical impossibility of law enforcement” [8, p. 362]. It is good when the law is clear (this does not apply to Article 14 of the Criminal Code of the Russian Federation), because in such a situation it can be applied literally. It is quite another matter when the law will have to be applied taking into account the hidden thought of the legislator: “to give the norm either a restrictive, limited interpretation, or to interpret the law extensively, broadly” [8. p. 363].

Analyzing facets of “significance” and “insignificance”, N.S. Tagantsev found extremely interesting examples of both types of interpretation by the Governing Senate. Extensive (hyper-significant) – resisting the execution of a court decision in a group (Article 270 of the Code of Criminal and Correctional Punishments) regardless of the participation degree. Nowadays, this resembles strict liability recommended by the Plenum of the Supreme Court of the Russian Federation No. 24 of July 9, 2013 “On judicial practice in cases of bribery and other corruption crimes” (No. 3 as amended of December 3, 2013, No. 59 of December 24, 2019): participants in the crime agreed to give and receive a bribe, regardless of the amount received, there are 2 corpus delicti.

Nowadays, a classic example of such an extended interpretation is the hyper-significance of only intellectual participation of the bribe giver in the organization of receiving a bribe – results of the consideration of the criminal case against Judge Kotov and Lawyer Kuvakina. In the actions of the latter, the courts of the first and second instances saw the completed corpus delicti, despite the fact that the latter, at the final stage of the crime commission, actually “worked for a law enforcement officer” who handed a “decoy” to the bribe recipient.

There is an example of restrictive interpretation of the law by the Senate: counterfeiters (Article 571 of the Code “Forgery of State Credit Papers”) forged banknotes by drawing banknotes by hand and using “plain paper” (Paragraph 2) instead of special one (Paragraph 1), which significantly limited the possibility of their distribution. According to the legislator of XIX century, in such circumstances the court should be guided not by the letter of the law, but by reason (ex sententia legis) [8, pp. 363–364].

Such an extremely restrictive interpretation, albeit extremely rare, is still found today. So the prosecution did not consider the following actions as significant (Part 1 of Article 111 of the Criminal Code of the Russian Federation): the huntsman deliberately rammed a motorcycle with a car, on which the poacher took out illegally obtained trophies. The magistrate fully approved such a compromise approach to solving the problem, defining actions of the perpetrator as insignificant – causing harm to health when detaining a dangerous criminal (Part 1 of Article 114 of the Criminal Code of the Russian Federation) [10].

For a correct understanding of the restrictive interpretation, the “multimove game” undertaken by the Vsevolozhsky City Court of the Leningrad Oblast to release from punishment the director of the boarding house for the elderly N. is of particular interest. The latter was accused by the preliminary investigation authorities under paragraph “b” of Part 2 of Article 238 of the Criminal Code of the Russian Federation, for which he was convicted by this court on November 25, 2022. Despite the fact that N. was found guilty of providing services that led to the death of a woman, the court of first instance interpreted what he had done as insignificant, therefore saw grounds for the use of Part 6 of Article 15 of the Criminal Code of the Russian Federation, changed the category of crime from grave to less grave, applied Article 76 of the Criminal Code, Article 25 of Paragraph 2 of Part 5 of Article 302 of the Criminal Procedural Code of the Russian Federation and terminated the criminal case in connection with the reconciliation of N. with the victim (Resolution of Judge Ivanov of the Supreme Court of the Russian Federation on the transfer of a cassation submission for consideration at a court session of the court of cassation instance No. 33-UDP23-17-KZ of October 2, 2023 (Electronic Archive of the Supreme Court of the Russian Federation for 2024)).

Naturally, in all these situations, both the Senate and the Plenum of the Supreme Court of the Russian Federation, and law enforcement officers in specific cases were guided not by the “letter” of the law, but only by its “spirit”, to be more precise, by considerations of expediency.

Naturally, N.S. Tagantsev always agreed with the position of the Senate that “any doubt should be interpreted in favor of the defendant” (in poenalilibus causis beniginius interpretandum; in dubiis – mistius) [8. p. 366]. As follows from the above, some doubts are not far from the far-fetched. It is vicissitudes of the institution of interpretation. It is no coincidence that Professor G.F. Shershenevich (1863–1912) warned “not to look for science in the interpretation, for this is art” [11, p. 724]. In other words, the conflict between categories of “legal certainty” and “legality” is inevitable due to, on the one hand, the brevity of legislative regulations and, on the other, fixation of the most general rules in law.

It is known that the 1864 Statute of Criminal Proceedings not only recognized the right of the courts to interpret the law (Article 12), but also forbade judges to evade this mandatory form of judicial activity, since the judge had no right to stop the decision of the case under the pretext of any ambiguity of the law (Article 13).

It is worth emphasizing that there has been no shared vision on the court’s right to interpretation in Russia. N.S. Tagantsev said that, on the one hand, in view of the denial of precedent as a source of law, the fact of interpretation did not go beyond the scope of a specific criminal case, but, on the other hand, it had always been about the need to form a single legal space in the state, therefore private decisions on specific cases had a certain force of precedent. At the same time, a special role belongs to the higher courts in the formation of this unified legal space [8. pp. 369–361].

Nowadays, a special Russian judicial doctrine is widely discussed again. As in the time of N.S. Tagantsev, concerns are expressed that courts create law, and with the existence of a “rigid judicial system”, “law is written by the highest authorities” [12, pp. 359–361].

Nikolai Tagantsev complained that not all decisions of the higher courts were officially published [8, p. 371]. The same can be said about current judicial practice. For example, it is recognized that not even all decisions of the Constitutional Court of the Russian Federation and the Plenum of the Supreme Court of the Russian Federation are published. The reasons for this approach to solving the problem may be different, but one of them is the lack of confidence in the legality and validity of court decisions.

With regard to the chosen topic we can state that facts of the application (and even more so, refusal to apply) of Part 2 of Article 14 of the Criminal Code of the Russian Federation by the courts are extremely rarely published and the practice analysis results are, as a rule, unavailable. Undoubtedly, in such circumstances, there is no need to talk about a single legal space for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation. And is this possible in a huge multinational and multi-religious country?

What should a law enforcement officer do in such situations? N.S. Tagantsev gives an answer to the question: we are talking about the authority of legal science. However, many Russians will immediately declare that we are not in England to refer to the luminaries of science. We do not have our own W. Blackstone (1723–1780) and D. Marshall (1755–1835). There are few references to the doctrine in criminal proceedings, however, in other types of proceed-

ings, such references are already welcome.

We will also consider the Statute on Punishments Imposed by Magistrates adopted at the time of the Great Judicial Reform of 1864. It was replete with phrases "depending on the circumstances" (Article 9), "admission of guilt", "compensation for damages" (Article 13). Property offenses (theft, fraud) committed in the family (Article 19); cases of forest theft (Article 21) had a special legal status.

Finally, according to Article 47 of the Criminal Code of 1903 (as amended in 1909), "an act directed at an object that does not exist or is obviously unsuitable for the commission of the kind of crime for which it is intended is not considered a crime".

2. Post-revolutionary period (1917–1958).

The slogan from the song "The Internationale": "We will destroy the whole world of violence to the ground, and then we will build our new world" applied to old "exploitative" law. Under such circumstances, the state apparatus had to create a "new Soviet, socialist" criminal law.

The first Soviet Criminal Codes. It is well-known that authors of both the first drafts of the Criminal Code of the RSFSR (1920[1], 1921[2]), the first Criminal Code of the RSFSR in 1922, and its modernized version of the Criminal Code of the RSFSR in 1926, were highly qualified specialists who perfectly knew both the pre-revolutionary legislation of Russia and the best examples of world criminal law.

A.A. Herzenzon (1902–1970), M.M. Isaev (1880–1950), A.A. Piontkovskii (1898–1973), and B.S. Utevskii (1887–1970), participants in author's teams, were well aware of the essence of a crime, its social danger, and significance of formal elements of criminal acts. However, all this knowledge from the past was critically perceived by society, which was divided into "exploiters" and "the exploited". Due to this circumstance, acts of the former were exaggerated, the significance of what the latter had done was downplayed.

For the "letter" of the law (its form) not to contradict its "spirit" (content), at the meeting of the Central Executive Committee specifically dedicated to the draft Criminal Code of the RSFSR of 1922, People's Commissar of Justice D.I. Kurskii (1874–1932) stated that "the law defined crime as Marxists understood it" and "justice was administered by workers and peasants" [13, p. 81]. So, the law is of class character, "Marxist", its "letter" is not a dogma at all, since no one has deprived law enforcement officers (judges from the people) of the right to appropriate forms of discretion.

It is no secret that judges of that period did not find it shameful to have a clearly expressed prejudice against certain categories of persons ("the former") considered "really socially dangerous" a priori [14, pp. 43–44].

Thus, the authors of the first Criminal Code of the RSFSR (1922), fixing in the law that "any dangerous act or inaction is recognized as a crime" (Article 6), did not forget to mention that "it is in action that the danger of a person is identified" (Article 7). In other words: an action is dangerous when it is committed by a dangerous person ("the former") or simply recognized as such – "a particularly dangerous recidivist".

Corresponding Member, Professor A.A. Piontkovskii in 1970 noted that the Criminal Code of the RSFSR of 1922 did not contain any judgments regarding the insignificance of an act, therefore, in 1924, the Central Executive Committee instructed the Presidium to work out the possibility of terminating a criminal case even before the trial in view of the insignificance of the offense on grounds of inexpediency.

Strangely enough, the Presidium of the All-Russian Central Executive Committee found a way out of this dilemma not in material, but in procedural law, supplementing the Criminal Procedural Code of the RSFSR with Article 4 "a". So, the prosecutor and the court became entitled "to refuse to initiate criminal prosecution, as well as to terminate the criminal case, when the act of the person being prosecuted, although it contains elements of a crime provided for by the Criminal Code, cannot be considered socially dangerous due to its insignificance, unimportance and the insignificance of its consequences, as well as when the initiation of criminal prosecution or further proceedings of the case seems impractical" (Resolution of February 9, 1925) [15, p. 30].

The 1926 Criminal Code of the RSFSR stipulated that "any action or inaction directed against the Soviet system or violating the order established by the Workers' and Peasants' government for a period of time transitional to the communist system is recognized as socially dangerous" (Article 6). A note to this article re-

[1] Prepared by the Commission of the General Advisory Department of the People's Commissariat of Justice, published in the Materials of the People's Commissariat in 1920, Issue VII.

[2] Prepared on November 4, 1921 by the Section of Judicial Law and Criminology of the Institute of Soviet Law.

corded that “an action is not a crime when, although formally having elements of any article of the Special Part of this Code, it is devoid of the character of a socially dangerous one but due to its obvious insignificance and absence of harmful consequences”.

Half a century later, scientists stated that this rule had hardly ever been applied in prosecutorial and judicial practice [16. p. 32].

3. Developed socialism period (1958–1991).

Moscow course of Soviet criminal law. According to Professor A.A. Piontkovskii, insignificance of the committed act should be such that criminal liability and punishment in this particular case would be superfluous in terms of implementing general tasks of the legislation of the USSR (Part 2 of Article 7 of the Fundamentals of Criminal Legislation of the USSR and Union Republics).

It is absolutely unacceptable to leave the offender completely unpunished. According to Andrei A. Piontkovskii, recommendations contained in the Resolution of the Plenum of the Supreme Court of the USSR of June 19, 1959 “On the Practice of Applying Criminal Penalties by Courts” can be a way out of the situation. So, “courts should transfer to the public consideration the cases of offenses that do not pose a significant public danger, terminating such criminal proceedings in accordance with Part 2 of Article 7 of the Fundamentals of Criminal Legislation of the USSR and Union Republics”.

The Plenum of the Supreme Court of the USSR returned to this issue on December 19, 1958 in the Resolution “On the Activities of Judicial Authorities in Connection with the Increasing Role of the Public in the Fight against Crimes”. The Resolution of the Plenum of the Supreme Court of the USSR dated March 26, 1960, contains an assessment of the above recommendations: “courts continue to institute criminal cases against persons who have committed acts that do not pose a great public danger, it is necessary to wider apply the practice of transferring such cases to comrades’ courts at the place of work or residence of the guilty one, instead of transferring them to the public, taking into account the opinion of the victim”.

The 1960 Criminal Code of the RSFSR had a special norm – Article 51 “Exemption from Criminal Liability with the Transfer of Cases to a Comrades’ Court”. The Plenum of the Supreme Court of the USSR considered the issue of transferring cases of minor crimes to comrades’ courts on April 9, 1965 in the Resolution “On the Practice of Transferring Cases and Materials by Courts to the Consideration of Comrades’ Courts”. From that moment on, the society was not engaged in deciding the fate of minor offenders, since there was no network of successfully functioning comrades’ courts in the country, there was no one to bail offenders. It should be recognized that “comradely justice” in 1958–1964 was just an element of good wishes and propaganda.

Let us give an example from our own personal experience. Since the beginning of the 1980s, attempts to apply an analogue to Article 51 of the Criminal Code of the RSFSR in Moldova were countered by counter-questions from the prosecutor, “Show me a successfully functioning comrades’ court!”. And the prosecutors were right. Employees of enterprises and local committees lived according to the generally recognized principle: “Judge not, you lest judge”.

However, A.A. Piontkovskii recognized that the termination of a criminal case for insignificance (Part 2 of Article 7 of the Criminal Code of the RSFSR) and the termination of the case with its transfer to a comrades’ court (Article 51 of the Criminal Code of the RSFSR) are far from the same thing [15. pp. 34–41].

It is unapproachable, but immoral, which may be why it is criminal.

In 1970, A.A. Piontkovskii recognized “the line between criminal and non-criminal, but contrary to communist morality, behavior is historically changeable. Behavior that at a certain time is condemned only by communist morality, under certain conditions can be recognized a crime” [15. p. 28].

The researcher, referring to the existence of criminal liability for truancy in 1940–1956 according to the Decree of the Presidium of the Supreme Soviet of the USSR of June 26, 1940 (convicts in places of deprivation of liberty were called “ukaznik” and “ukaznitsa”) noted a negative assessment of absenteeism only according to communist morality rules” [15, p. 29].

It is not clear for what reasons the respected professor forgot about the Labor Code of the RSFSR, according to which an absentee could easily be fired.

Truancy – sabotage: twice to be shot.

To correctly correlate categories “spirit of the law” and “essence of the moment”, the case of locksmith Chvanin is of particular interest, who, according to the verdict of the Molotov Regional Court of August 10, 1942, was sentenced to capital punishment (execution)

under Articles 58–14 of the Criminal Code of the RSFSR for "systematic counterrevolutionary sabotage: since March 1942, he had been absent from work for 34 days; instead of a sick leave, he wrote out fictitious certificates to himself, exempted him from work, forged the seal of the outpatient clinic and the signature of the doctor. He supplied other mine workers with the same fictitious certificates that exempted them from work".

No less remarkable are the disputes that have unfolded over another harsh court decision. By the ruling of the Judicial Board for Criminal Cases of the Supreme Court of the RSFSR of September 4, 1942, Chvanin's actions were reclassified to Part 1 of Article 72 of the Criminal Code of the RSFSR, according to which 3 years of imprisonment were appointed. By the ruling of the Judicial Board for Criminal Cases of the Supreme Court of the USSR of October 28, 1942, the cassation ruling was canceled, the case was sent for a new cassation hearing. By the ruling of the Judicial Board for Criminal Cases of the Supreme Court of the RSFSR of October 31, 1942, the verdict was left unchanged. By the decree of the Presidium of the Supreme Soviet of the USSR of November 21, 1942, the death penalty was replaced by 10-year imprisonment. Finally, by the decree of the Presidium of the Supreme Court of the Russian Federation of July 21, 2010, Chvanin's actions were qualified under Part 1 of Article 72 of the Criminal Code of the RSFSR (1926), according to which he was sentenced to 2 years in prison.

It seems that attentive readers have already noticed that the convict was not accused of forging officially recognized disability certificates (documents representing a certain right), but was convicted only for writing out certificates, which do not entail any legal consequences.

Leningrad Course of Soviet criminal law. Scientists from the Leningrad University, referring to the Marxism-Leninism classics, noted that "the society is not based on the law. These are fantasies of lawyers. On the contrary, the law should be based on society" [16, p. 259]. They concluded, "the public danger of a crime is not limited only to pointing out those objects that it encroaches on. Public danger is also determined by other objective and subjective elements of an act" [17. pp. 158–160].

It seems that the authors of this course in their narrative referred to a very successful example of the insignificance of an act. The Judicial Board for Criminal Cases of the Supreme Court of the RSFSR regarded as insignificant the action of G., who tried to steal a watermelon through a broken hatch. Applying Part 2 of Article 7 of the Criminal Code of the RSFSR, the High Court cited the following motive: "G. did not have a container for carrying watermelons, therefore, he could not cause significant damage".

Here, an astute reader may wonder how to assess the significance of the act, if G. had a container with him (a bag, a wheelbarrow).

"Small size"?

On January 16, 1965, the Presidium of the Supreme Soviet of the RSFSR tried to find a way out of this situation by supplementing the 1960 Criminal Code of the RSFSR with Article 93.2 "Application of a Fine for Theft of State or Public Property". A fine could be imposed for theft of state or public property on persons whose objective side of the act corresponded to Article 89 (theft), Article 92 (embezzlement) or Article 93 (fraud), provided that the amount of the stolen was small, the act was committed for the first time, and the application of the above articles of the Criminal Code of the RSFSR is not necessary.

We are primarily interested in the "small size" category. The authors of the Commentary to the Criminal Code of the RSFSR, bearing in mind that theft of state (public) property in the amount of up to 50 rubles is petty theft, punishable outside the framework of criminal law, determined theft of property in the amount of 100 rubles punishable according to the rules of Article 93.2 of the Criminal Code of the RSFSR. There were some reservations: 1) application of the analyzed norm was a right, not an obligation of the court; 2) theft in the amount of less than 100 rubles could be closely related to the amount of the stolen [18, pp. 238–240]. We can give an example from judicial practice. The group stole six bags of wheat with a total weight of 300 kg., however, the total value of the stolen turned out to be less than 100 rubles. The court refused to recognize this theft as an act provided for in Article 93.2 of the Criminal Code of the RSFSR.

Article 93.2 of the Criminal Code of the RSFSR turned out to be a norm that was not viable (in fact, stillborn), therefore, on December 3, 1982, it was excluded from the Criminal Code.

Practice of applying the Criminal Code in 1964–1991

According to K. Marx, the criminal law was "*Great Acting*" [19, pp. 139–180]. If society does not have clarity on general issues, then why should it suddenly have clarity on private issues, for example, such as criminal policy?

And according to Ch. Darwin and according to K. Marx, any policy is predetermined by Mother Nature. Is it really "forest theft" (a crime) or just "violation of forest rules" (an offense)?

"*Smugglers*" [20]. Having moved from the XIX century to the developed socialism period (1964–1985), we will consider categories of "criminals" and "*smugglers*"? Let us note that mass behavior cannot be a crime. It is the ABC of modern criminology, because the number of offenders will easily exceed the number of law enforcement officers. It is no coincidence that at the end of the Soviet period, workers who pilfered the Rubin TV or even the Zhiguli car in parts were shamefully called not "thieves" (the term "petty theft" was never withdrawn from the Soviet, as well as the post-Soviet legal lexicon) by publicists, but only affectionately "smugglers".

"This problem has become so organically integrated into the psyche of a Soviet person that it is considered indecent to condemn "smugglers" in a normal conversation (not for the record and not for the public). Any attempt to strengthen the public reaction to such offenses and give it at least a somewhat negative connotation has evoked memories of Stalin's repressions" [21].

So, the problem of the ratio of an offense, its severity and prevalence, identified by K. Marx in one of his early works, is relevant today. Let us say more, even in a nightmare, the classic could not have imagined that his direct, official follower I.V. Stalin would be the initiator of a series of normative legal acts, according to which minors could even be executed for petty theft.

We are talking about resolutions of the Central Executive Committee and the Council of People's Commissars of the USSR of April 7, 1935 "On Measures to Combat Juvenile Delinquency", which introduced criminal liability for children aged 12 and over and of August 7, 1935 "On the Protection of Property of State Enterprises, Collective Farms and Cooperatives and the Strengthening of Public (Socialist) Property" (known as Decree "7-8", "Law on three spikelets"), the cumulative effect of which is that children can be shot even for petty theft. For example, on December 9, 1937, Misha Shamonin was shot after stealing several loaves of bread. After studying the practice of applying these acts, the Prosecutor General of the Russian Federation A.Ya. Vyshinskii reported to I.V. Stalin, "115 thousand criminal cases were checked, in 91 thousand cases the application of criminal law norms was regarded as sabotage, 37,425 people who were in custody were released from punishment".

Well, was there a parliamentary debate on this issue. No, all the debates came down to approval of circulars by members of the Political Bureau of the Central Committee of the All-Union Communist Party. As for results of the investigation conducted by A.Ya. Vyshinskii, I.V. Stalin made a resolution: "I am for! (do not publish)".

Punishment goal: "fog" or specifics.

Marx's contemporaries wrote about this in the XIX century [22]. "The prison issue is one of the crucial at the moment" [23]. Punishment is evil, the suffering that the state inflicts on a criminal. The goal is an absolute idea of retribution (Kant), denial of the denial of crime (Hegel), restoration of harmony (Herbart), and protection of law and order by the state. So, the goals of K. Marx's contemporaries were clear. How to achieve them? That is the question! In the XIX century, it was believed that goals could be achieved by intimidation, correction, as well as by simply physically removing a criminal from society (forever – the death penalty, for a time – imprisonment). Even then, the death penalty was regarded as an obviously inhumane excess, and imprisonment was taken as an ideal. Thinkers took care of the problem of how to combine brute physical force (forcible incarceration) with the prospects of re-education and correction of the prisoner.

Since Soviet times, we have been correcting and re-educating the criminal, while we are confident that the criminal law allows the court to impose punishment very specifically and accurately so that the criminal is corrected and re-educated. Based on these artificial theses, deduced exclusively on the tip of a pen, theorists have defended more than one hundred dissertations.

For example, H. Frister honestly admitted that the purpose of punishment was not completely clear to him, criminal punishment could only be approximate, that is why it needed correction. We will find similar thoughts in the works of H.J. Schneider and G. Werle. And it is really so.

At the international scientific and practical interdepartmental conference "The Penal System at the Present Stage: Science-Practice Interaction" (Samara, Samara Law Institute of the Federal Penitentiary Service, June 16–17, 2016), Director of the National School of Penitentiary Administration Sophia Blaise, answering questions from Russian colleagues about

the purposes of detention of convicts in places of deprivation of liberty, honestly confessed that employees of the penitentiary system of her country did not face the issue of correction and re-education of criminals. The employees of this system see their task only in ensuring physical detention of prisoners.

"Saw, Shura, saw".

The development of communist ideas of countering crime rested on the honest concept of the late academician V.N. Kudryavtsev (1923–2007), "many useful and probably effective measures to combat crime proposed by law enforcement agencies or the public cannot be accepted and implemented, because there are more important national interests" [24, p. 50].

On February 17, 2016, the Pope, speaking in Mexico, stated, "We have lost several decades in the hope that we will be able to hide behind prison walls". As we can see, modern society "no longer raves about the morality of punishment", it is "an ostrich hiding its head in the sand".

What about regulations of petty theft in modern Russia? The legislator has been continuously changing the wording of Article 7.27 of the Administrative Code of the Russian Federation "Petty Theft" and Article 158 of the Criminal Code "Theft" for 15 years. K. Marx would have called this mouse fuss acting.

4. Post-Soviet criminal law

Undoubtedly, the authors of the Criminal Code of the Russian Federation in 1996 knew the evolution history of the category of "crime" in criminal law and its parameters such as "significant" and "insignificant". They also understood perfectly well that it was almost impossible to say anything new about this. Due to this circumstance, the definition of the crime was practically unchanged from Article 7 of the Criminal Code of the RSFSR in 1960. It migrated to Article 14 of the Criminal Code of the Russian Federation. The authors of the Encyclopedia of Criminal Law, including N.F. Kuznetsova (1927–2010), limited themselves to a non-binding phrase, indicating only "the ambiguity of the approach of the legislator and the doctrine to the content of public danger" [25, pp. 64–65]. That is how it is: the legislator expects foresight from science, and science expects wisdom from the legislator. But it is only necessary to recognize the legal realism created by judges. But the bad luck is that society does not trust them, relying on the wisdom of the legislator.

Other points of view.

H. Frister, a lawyer from Germany, arguing about the expediency of criminal prosecution, based on the Criminal Code (Strafgesetzbuch StGB), in which illegal acts are ranked into crimes and misdemeanors, notes that nothing prevents the termination of criminal cases of misconduct for insignificance [26, p. 125].

It was precisely this perspective of the case that N.F. Kuznetsova discussed, referring to Part 4 of Article 11 of the Criminal Code of the Republic of Belarus [25, pp. 91–95], the authors of which were able to remove the intersectoral barrier, the presence of which is so revered by some Russian lawyers.

The German legislator is very categorical when the perpetrator attempts to destroy an unusable object: "theft of things of insignificant value" is prosecuted only if there are "statements from victims" and "public interest" (Paragraph 248 "a" of the Criminal Code).

Here are some scientific and practical conclusions.

1. We support ideas of Professor N.F. Kuznetsova that there has never been unity in the interpretation of the concepts of "significant" and "insignificant" in the theory of Russian criminal law. It should be added that there is no complete clarity on this issue in the criminal law of most countries.

2. It seems that a comprehensive conclusion regarding the essence of the crime is the thought of N.S. Tagantsev that such an act is, in any case, a "life event"; necessarily a form of "manifestation of personality"; in general, "a socially significant phenomenon"; and "a subject of anthropology" in the broadest sense. Naturally, a crime generates "legal relations".

3. Since algorithms for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation are still being worked out, as well as similar criminal law regulations (for example, Part 6 of Article 15 of the Criminal Code of the Russian Federation), in which a dispute inevitably arises about the significance of what has been done, society has to rely on the level of interpretation art (G.F. Shershenevich), which our judges possess.

4. It is not surprising that under such circumstances, a greater number of lawyers suggest that the problem of the insignificance of an act should be discussed by the Plenum of the Supreme Court of the Russian Federation.

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INFORMATION ABOUT THE AUTHOR

NIKITA A. KOLOKOLOV – Doctor of Sciences (Law), Professor, Head of the Department of Judicial and Prosecutorial Investigative Activities of A.S. Griboyedov Moscow University, professor at the Department of Theory and History of Government and Law of the Institute of Social Studies and Humanities of Moscow Pedagogical State University, Judge of the Supreme Court of the Russian Federation in Honorable Retirement, Chairman of the editorial boards of the journals "Justice of the Peace" and "Criminal Judicial Proceeding", Moscow, Russia, nikita_kolokolov@mail.ru

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