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Significantly about the Insignificant: Practice of Applying Part 2 of Article 14 of the Criminal Code of the Russian Federation (Features of Criminal Prosecution of Persons Subject to Administrative Punishment for Petty Theft)

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Abstract

Introduction: this publication continues the research of the paired category "significant – insignificant" in criminal law carried out through the prism of the requirements the society imposes on criminal proceedings and presented in previous issues of the journal. *Purpose*: to analyze issues of liability and its intersectoral differentiation for petty theft, consider the essence of institutions of "significance" and "insignificance" in criminal law through the prism of the concept of "zero tolerance" to the offense, and develop specific scientific and practical recommendations for legislators and law enforcement officers. *Methods*: historical, comparative legal, dialectical cognition, analysis and synthesis. *Results*: the criminal law doctrine concerning the category of the size of the stolen ("significant", "large" and "especially large") is studied. The author analyzes a romantic concept of the "Thaw" period, such as "to transfer all cases of minor crimes to comrades' courts", and relatively young institution of "zero tolerance" for persons punished for qualified petty theft according to the rules of the Administrative Code of the Russian Federation (Part 2 of Article 7.27 of the Administrative Code of the Russian Federation). The author tries to characterize the essence of public danger of crimes in the field of repeat petty theft. Various approaches to determining the nature and degree of levels of public danger of crimes committed by persons already punished for committing petty theft are analyzed. An attempt is also made to carry out a conditional gradation of public danger of the analyzed and heterogeneous category of crimes, depending on public danger of the object of encroachment. The author, among other things, reflects some new ideas of differentiation of the subject of the crimes under consideration. Subsequent articles will present results of the study of the practice of applying provisions of 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, a substantive analysis of rational and irrational in classifying certain actions as criminally punishable acts, as well as results of the author's monitoring of the practice of applying Article 158.1 of the Criminal Code of the Russian Federation.

Keywords: insignificance of the 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.

5.1.4. Criminal law sciences.

5.1.2. Public law (state law) sciences.

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Introduction

As noted in previous publications [1–2], the institution of "insignificance" known since the most ancient times is not properly formalized in the theory of law and is not always correctly perceived by practitioners.

The statement that "there is nothing more practical than a good theory" is ascribed to a famous physicist L. Boltzmann (1844–1906). At the same time, everyone recognizes that a "good theory" should not only clearly explain existing phenomena, but it should also be able to forecast results of an experiment that has not yet been performed". Everyone also knows such an important element of the conclusion we are looking for as a judgment: practice is the criteria of scientific truth.

At the same time, the current understanding of the problem (knowledge) should be distinguished from "blissful after-knowledge" ("knowledge in hindsight"), that is cognitive perception of events that have already happened, and "new" knowledge. This "new" or even "newest" knowledge "leaves no stone unturned" from the once "good practical theory". Experts in the field of criminal law are well aware of how many "good theories" there were in the field of combating "insignificant" crimes.

In this regard, we should mention a resolution of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR of March 2, 1959 "On the participation of workers in the protection of public order in the country". Its authors relying on "a good Marxist theory" came to the hasty conclusion that labor collectives during the period of extensive construction of communism had a real opportunity to successfully fight against "petty" offenders, including persons guilty of committing "petty" theft [3]. In other words, in those years, not only society, but also the state, were quite tolerant of "petty" offenders; according to the "good", scientifically sound and "only true theory", it was not necessary to punish them under the Criminal Code of the RSFSR, it was enough to "scold" perpetrators at a general meeting of the collective.

Half a century passed and the above-described "good" theory was replaced by another "good" theory, according to its authors. It is a concept of "zero tolerance" to persons committing petty theft. The essence of the "new" theory is that persons subjected to administrative punishment for petty theft provided for in Part 2 of Article 2.27 of the Administrative Code of the Russian Federation (that is, they are officially warned that they mustn't steal) are already criminally liable for any (the emphasis added) petty theft of other people's property: the disposition of Article 158.1 of the Criminal Code of the Russian Federation added to the current Code on July 3, 2016 (323-FZ).

Neither the legislator not the criminal law theory clarify how this novel relates to Part 2 of Article 14 of the Criminal Code of the Russian Federation, is silent, there is no serious research on this issue in the theory of criminal law. At the same time, we cannot but mention that the legislator, having proclaimed in 2016 in the Special Part of the Criminal Code of the Russian Federation mandatory criminal liability for any petty theft in conditions of "administrative"" prejudice, came into conflict with its own basic premise contained in the General Part of the Criminal Code of the Russian Federation, according to which an offense formally containing elements of the act described in the Special Part of the Criminal Code of the Russian Federation is not a crime.

A comparative analysis of various practices of applying Article 158.1 of the Criminal Code and Part 2 of Article 14 of the Criminal Code helps conclude that bodies conducting preliminary investigation and prosecutors in some cases interpret Article 158.1 of the Criminal Code literally – the size of the stolen does not play any role for qualification. However, the courts do not always agree with this position, in this regard, some (although relatively small) criminal cases initiated under Article 158.1 of the Criminal Code of the Russian Federation are terminated at trial due to the insignificance of the act for the absence of corpus delicti.

There's no question that such an approach to solving the problem can hardly be called a state one, because it turns out that it is not a "petty" offender who must "serve" the state, but the state and society owe this offender something, at least compensation for moral harm.

The relevance of the issues raised by the author is evidenced by the topic of the Fourteenth Russian Congress of Criminal Law held at Lo-

monosov Moscow State University (Moscow, May 30–31, 2024) "Public danger in criminal, penal law and criminology". Speeches of our leading lawyers Naumov A.V., Rarog A.N. and Klenova T.V. were devoted to the clarification of the "public danger" concept.

Since, according to the firm conviction of the legislator, determining the size of the stolen in matters of theft qualification can be crucial, let us contemplate on the essence of the concept of "size".

Size of the theft: evolution of the legislator's views in 1996–2024. The current criminal law regulating the incurrence of liability for theft (Article 158 of the Criminal Code of the Russian Federation), as well as other forms of theft provided for in Chapter 21 of the Criminal Code of the Russian Federation "Crimes against property", binds the specific composition of the illegal act and, accordingly, the sanction to "damage" (paragraph "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation) and "size" (parts 3 and 4 of Article 158 of the Criminal Code of the Russian Federation), that is, the "value", the "price" of the stolen, at a particular time expressed in rubles.

Initially, from January 1, 1997 (the date of the entry into force of the Criminal Code of the Russian Federation) to December 10, 2003, this "size" was expressed (in the minimum wage (MW). This value, as is known, is a purely calculated category and a priori unstable. In particular, from 1991 until the ruble was denominated in 1998, the minimum wage increased 17 times. On January 1, 1997 (date of entry into force of the Criminal Code of the Russian Federation) the analyzed value amounted to 83,490 rubles. From January 1, 1998, as a result of the denomination, this amount (83.49 rubles) suddenly turned out to be five times less than the subsistence minimum established by that time period – 450 rubles.

At the same time, it should be emphasized that in the 1970s and 1980s, the "threshold" for the incurrence of criminal liability for theft of state and public property was set at 50 rubles, that is an amount commensurate with the minimum income of citizens (approximately 60 rubles) per month. Consequently, the Criminal Code of the Russian Federation toughened the punishment for embezzlement by about five times. According to the first editions of Article 158 of the Criminal Code of the Russian Federation, a minor who broke the glass of a kiosk and committed theft from it through the window ("penetrated by hand"), for example, a bottle of deodorant (paragraph "b" of Part 2 of the Criminal Code of the Russian Federation as amended from January 1, 1997 to November 3, 2002) was threatened with imprisonment for a period of 2 to 6 years with a fine (according to Article 15 of the Criminal Code of the Russian Federation – a serious crime).

Persons convicted more than twice for similar crimes (paragraph "c" of Part 3 of Article 158 of the Criminal Code of the Russian Federation) were subject to a zero option (emphasis added) punishment in the form of imprisonment for a period of 5 to 10 years with possible confiscation of property.

Personal observations of the author (at that time, a judge of the Supreme Court of the Russian Federation) help conclude that terms of more than 6 years of imprisonment were assigned to persons (including elderly women) who committed petty theft of food and, by and large, their fault was that during the period of "Perestroika" they could not find their place in society.

According to Paragraph 2 of the Note to Article 158 of the Criminal Code of the Russian Federation, as of January 1, 1997, the "large size" in articles of Chapter 21 of the Criminal Code of the Russian Federation meant the property value exceeding the minimum wage by 500 times (83,49x500), that is 41,745 rubles.

The concept of "particularly large size" was absent from the criminal law at that time. As for the size of "petty theft", since the beginning of the 1990s the "threshold" for the incurrence of criminal liability for theft had amounted to 100 rubles. Only on May 16, 2008, at the initiative of Deputy of the State Duma of the Russian Federation. Volkov A.N (born 1945), this once "sacred" amount of "100 rubles" was immediately increased 10 times. From that very moment, the threshold for the incurrence of criminal liability under Article 7.27 of the Administrative Code of the Russian Federation amounted to 1,000 rubles and further to 2,500 rubles under Part 2 of Article 2.27 of the Criminal Code of the Russian Federation.

In 2003, the institution of "crimes against property" (Chapter 21 of the Criminal Code of the Russian Federation) as part of general modernization of the 1996 Code (FZ-162 of December 8, 2003) underwent the first serious "rebranding". At this turning point in the history of domestic criminal law, the authors of the updated law, without any regret, mercilessly "buried" concepts of "repetition" and "duplicity" having been developed by their predecessors for decades in an instant.

It is worth recalling that earlier in 1996 the authors of the Criminal Code of the Russian Federation changed the concept of a "particularly dangerous recidivist" to a new idea – "recidivism"". In this regard, to relieve the "heavy burden of the past", the judicial system was obliged from January 1, 1997 to promptly review all previous sentences against "particularly dangerous repeat offenders" according to the rules of Article 10 of the Criminal Code of the Russian Federation.

According to Part 3 of Article 89 of the 1960 Criminal Code of the SFSR, theft committed by a "particularly dangerous recidivist" (a qualified kind of duplicity) was punishable by imprisonment from 5 to 15 years. The term "particularly dangerous recidivist" without disclosing the concept was

introduced into domestic criminal legislation on December 25, 1958 (Foundations of the Criminal Legislation of the USSR and the Union Republics), on July 11, 1969, the same Foundations were supplemented by Article 23.1 "particularly dangerous recidivist". On November 11, 1969, the corresponding Article 24.1 was introduced in the Criminal Code of the RSFSR and criminal codes of other Union republics.

According to the authors of this idea, there are a priori "incorrigible persons" who should not be released from places of detention. In the 1980–1990s, the author of the article had a number of criminal cases against particularly dangerous repeat offenders who specialized in committing petty theft. We remember one of them. Korkodel was first subjected to criminal punishment in the form of imprisonment at the age of 12 in 1948 (such existed in the Soviet Union since April 7, 1935 – Resolution of the Council of People's Commissars of the USSR and the Central Executive Committee of the USSR No. 3/598 "On measures to combat crimes among minors" plus corresponding amendments to the 1926 Criminal Code of the RSFSR until April 13, 1959, when all these unambiguously odious acts were abolished by Decree of the Presidium of the Supreme Soviet of the USSR). As for the case of Korkodel, it was established that by May 1, 1985 (the moment of detention), he had been at large for only 1 year, 3 months and 23 days. Having been released from prison with excellent characteristics and having 700 rubles honestly earned in the correctional facility, Korkodel had no money on the eve of the May holidays when arriving at the relevant police department of the city of Kishinev to be under public administrative supervision. The deputy head of the police I. Kirikov gave the former convict 5 rubles so that he could take a picture and issue a passport. In addition, the same police officer got Korkodel a job at the factory and found him a room in the dormitory. The following day, Korkodel tried to steal personal property, estimated by the owner at 15 rubles (a bag with no consumer value with an old rusty carpentry tool). In this regard, we cannot but recall the answer of one of the convicts to the question of Professor G.A. Krieger (1923–1985) why he would commit crimes again and again: "too harsh living conditions in freedom".

In a previous publication, we have already noted that even Professor N.S. Tagantsev (1843–1923), speaking about the "crime" phenomenon in 1887, noted its mandatory characteristics, such as "manifestation of personality" and "subject of anthropology" [4]. It would seem that this is a "good theory", which contains answers to many permanent questions of our time, a doctrine tested by time. However, as fate would have it, wise ideas of Nikolai Tagantsev were neglected.

It is clear why sound judgments of N.S. Tagantsev were ignored by lawyers of the "Thaw" period. For them Nikolai Tagantsev was a bourgeois scientist who, like his contemporary A.F. Koni (1844–1917), never bothered to accept the revolution in all its diversity [5]. It was the turn of the 1950-1960s, the Third Program of the Communist Party of the Soviet Union was adopted (October 31, 1961), communism was "round the corner", the state and law were about to self destruct, therefore, labor collectives would deal with minor offenders themselves without intervention of state bodies.

The Criminal Code of the Russian Federation was developed at a completely different time: by itself, there was no need to destroy "the whole world to the ground". Nevertheless, it is easier to pull down than to build: developers of the new Criminal Code set the task of destroying many (if not most) of the concepts of their predecessors.

For example, their colleagues, who had been focusing on the modernization of the criminal process since the late 1980s, were so imbued with the ideas of the 1864 Statute of Criminal Proceedings, so carefully read works of the processualists of the XIX century that they saw the future exclusively in the deep past. In particular, Professor L.V. Golovko has recently stated, "I would think about restoring the logic of the institutions of criminal procedure, and this does not even require a pure appeal to French law, it is enough to refer to the Judicial Statutes of 1864 and Soviet law" [6]. The reader can judge on his/her own how effective and indeed how viable the slogan "Forward to the past" is in the organization of criminal proceedings.

Once again, we will only emphasize that neglecting N.S. Tagantsev's arguments about "manifestation of personality" and the "subject of anthropology" was completely short-sighted. A "life event" was put at the forefront almost out of context with the personality and the surrounding being, which corresponds to ideas of N.S. Tagantsev. However, Nikolai Tagantsev considered crime as a systemic phenomenon, while the authors of the Criminal Code of the Russian Federation took only one element from this whole (act) and began to construct an anti-system – "a new vision of well-known phenomena and problems" [7].

We will continue to analyze categories of "significance" and "insignificance" in modern Russian criminal law.

Significant damage to a citizen (paragraph "c" of Part 2 of Article 158 of the Criminal Code of the Russian Federation). From the above moment, according to Paragraph 2 of the Note to Article 158 of the Criminal Code of the Russian Federation, "significant damage to a citizen" in articles of Chapter 21 of the Criminal Code of the Russian Federation "Crimes against property" (with the exception of Part 5 of Article 159 of the Criminal Code of the Russian Federation) is determined with regard to "his/her property status" (the eval-

uation category is the legitimate sphere of judicial discretion), but it amounts to no less than 5,000 rubles (as amended on July 3, 2016 No. 323-FZ)". That is, at the current time, the "significant" is only twice the size of the qualified "insignificant".

For comparison (personal observations of the author), in the Soviet period (the 1980s), thefts of personal property of citizens (with the exception of pocket ones) in the amount of up to 5 rubles were not registered in the crime books, even if there was a suspect.

Since the current criminal law is practically not tied to inevitable inflationary processes in modern conditions, on the one hand, it is safe to state a gradual fourfold tightening of liability from 2016 to 2024, for example, for secret theft provided for in paragraph "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation. On the other hand, the legal and technical construction of the law not only significantly expands limits of the legitimate discretion of the investigator, prosecutor and court within the framework of the interpretation of the concept of "property status of the victim".

However, as judicial practice shows, prospects of finding guilty of embezzlement in the amount of over 5,000 rubles are not excluded at all. something extremely insignificant.

This is how the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation regarded actions of the gas station operator S., who fraudulently stole 5,300 rubles from the consumer. However, his actions were initially mistakenly qualified under Part 3 of Article 159 of the Criminal Code of the Russian Federation – fraud committed by a person using official position. The court of second instance reclassified actions of the guilty party to Part 1 of Article 159 of the Criminal Code of the Russian Federation. The First General Jurisdiction Court of Cassation also agreed with this decision. It was precisely this qualification that the prosecutor of the General Prosecutor's Office of the Russian Federation insisted on when considering the case in the second cassation court. At the same time, in the criminal case against S. it was initially seen that when receiving money from the victim for possible repairs of the gas station, the guilty party had no selfish motive. There was no answer to the question when S. had a selfish motive and how it was implemented in the case. In such a situation, the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, finding it unnecessary to conduct an in-depth investigation of a deliberately insignificant social conflict, considered it beneficial to terminate the criminal case for a lack of corpus delicti [8].

Large and grand size. According to Paragraph 4 of the analyzed note to Article 158 of the Criminal Code of the Russian Federation: "large size" in articles of Chapter 21 of the Criminal Code of the Russian Federation (with the exception of parts 6 and 7 of Article 159, Articles 159.1 and 159.5 of the Criminal Code of the Russian Federation) refers to the value of property exceeding 250,000 rubles and "grand" – 1,000,000 rubles (as amended of April 23, 2018 No. 111-FZ).

There is every reason to believe (a systematic analysis of explanatory notes to the relevant draft laws) that the values of both "damage" and "sizes" given in the note under study are subjective categories, since in 2003 the authors (Law No. 162-FZ) chose them approximately, "with a margin", since there is no economic justification for the above figures. However, these figures cannot stand against inflationary erosion, which is why they need to be revised as soon as possible.

It is no coincidence that some scientists criticize the legislator for classifying a number of crimes against property (Chapter 21 of the Criminal Code of the Russian Federation) as serious, for which imprisonment for up to 6 years (for example, Part 3 of Article 158 of the Criminal Code) and up to 10 years (for example, Part 4 of Article 158 of the Criminal Code) can be imposed; at the same time, the maximum penalty for unqualified intentional infliction of serious harm to health (Part 1 of Article 111 of the Criminal Code of the Russian Federation) does not exceed 8 years in prison.

We cannot but agree with the lawyer K.I. Sklovskii that "a thief is not better that a murderer because he deserves respect, but because he is less dangerous [9]. A similar thought was expressed by the poet Joseph Brodsky (1940–1996) in "Letters to a Roman Friend", "Are you saying that all the governors are thieves? But a thief is nicer to me than a bloodsucker".

We remember that the authors of the Criminal Code of the Russian Federation argued that the law, first of all, had to protect human life and health. We observe that causing death by negligence (Part 1 of Article 109 of the Criminal Code of the Russian Federation) is punishable by up to two years in prison, while theft of personal property in excess of 5,000 rubles – up to 5 years in prison [10].

The above arguments about imprisonment terms that can be imposed with the "value" of damage caused by the robber strictly established in the law are most directly related to the categories of "significant" and "insignificant", since they are important and integral elements of a single "ladder of punishments".

N.A. Lopashenko regards a general doctrine of the categories "crime" and "punishment" as bonds of criminal law. She recognizes correlation of punishments for murder and for theft as one of such bonds. In this regard, Professor N.A. Lopashenko writes that "there is nothing more important than human life", therefore, "encroachment on property cannot be punished more severely than

murder", disregard for this rule destroys the consistency of criminal law [11]. As is known, in the late Soviet period, the Criminal Code of the RSFSR contained Article 93.1 stipulating a death penalty for theft of state or public property that costs more 10,000 rubles (the cost of the iconic GAZ 24 Volga car was originally 9,000 rubles).

Article 158.1 of the Criminal Code of the Russian Federation. Partial modernization of the Criminal Code of the Russian Federation, carried out in 2016, within the framework of which the Code was supplemented by Article 158.1 "Petty theft committed by a person subjected to administrative punishment" (as so July 3, 2016 No. 323-FZ) is a vivid evidence of the victory of the "party", which is against the division of a single "punitive law"[1] into two completely autonomous branches, such as "purely criminal" and "purely administrative".

Since that moment, the state has stated that it does not intend to limit the fight against petty theft only to the punitive potential of the Administrative Code of the Russian Federation. Therefore, in the current period of time (2016–2024), petty theft of other people's property committed by a person subjected to administrative punishment for petty theft provided for in Part 2 of Article 7.27 of the Administrative Code of the Russian Federation is punishable by a fine of up to 40,000 rubles or in the amount of wages or other income of the convicted person for a period of up to three months, or compulsory labor for up to 180 hours, or correctional labor for up to six months, or restriction of liberty for up to one year, or forced labor for up to one year, or arrest for up to two months, or imprisonment for up to one year.

It should be emphasized that if the first petty theft, punishable under Part 2 of Article 7.27 of the Administrative Code of the Russian Federation, a priori must be qualified (in the amount of 1,000 rubles to 2,500 rubles), then the size of the second act (actually committed in conditions of general recidivism under the punitive law) is not important for the qualification of the act under Article 158.1 of the Criminal Code of the Russian Federation.

So, for committing a crime under Article 158.1 of the Criminal Code of the Russian Federation, the legislator traditionally offers the court a choice of several punishments. This repressive potential, for example, was realized by the courts in 2022 as follows. In total, 7,831 people were brought to criminal liability under Article 158.1 of the Criminal Code of the Russian Federation, 0 of whom were acquitted, 3,560 people (45.46%) were sentenced to real imprisonment, 1,274 people got suspended sentence under Article 73 of the Criminal Code of the Russian Federation (16.26%), 379 people were sentenced to restriction of freedom, only 450 persons (5.7%) were fined, 555 people were sentenced to correctional labor, and 1,368 persons – to compulsory labor; medical measures were applied to 30 persons.

The proceedings against specific persons sentenced to imprisonment under Article 158.1 of the Criminal Code of the Russian Federation will be analyzed below. They all share a tendency to commit theft, usually in small amounts (including systematic petty shoplifting). The absence of the acquitted is justified. Being caught red-handed, the perpetrators could not deny the obvious. Almost all cases in this category were considered in a special order, that is, according to the rules of Chapter 40 of the Criminal Procedural Code of the Russian Federation. The amount of punishment (with a maximum of 1 year in prison) rarely exceeds 8–10 months in prison.

According to paragraph "a" of Part 4 of Article 18 of the Criminal Code of the Russian Federation, the commission of a crime under Article 158.1 of the Criminal Code of the Russian Federation does not constitute a recurrence of crimes. What is the purpose of the punishment then? It must be the only one – to try to interrupt a series of petty food thefts. From the moment of detention, the culprit will automatically be provided with food in a correctional facility.

Some representatives of legal science (N.A. Lopashenko, A.A. Tolkachenko) criticized introduction of Article 158.1 of the Criminal Code of the Russian Federation. In particular, Professor A.A. Tolkachenko explained his position by saying that persons specializing in committing petty theft of products do not pose a serious danger to society. The fight against them should be shifted from the criminal-legal plane to the social sphere. We would back this position [12]. At the same time, Professor A.A. Tolkachenko does not describe this special social policy and, most importantly, its price? One can assume that the use of a proven mechanism of placing a "petty thief in prison" ("take more, throw further") at the current moment is both more familiar and cheaper.

Second-class justice? As a general rule, the decision to punish the perpetrator convicted of qualified petty theft is made by the justice of the peace serving the relevant judicial area (Sub-Paragraph 1 of Part 1 of Article 22.1, Part 1 and Paragraph 3 of Article 23.1 of the Administrative Code of the Russian Federation). Also, as a general rule, magistrates consider criminal cases of crimes for which a penalty of no more than three years in prison is provided. For unknown reasons, there is a concept, according to which the judge who considered a case of an administrative offense (predicate act) is not entitled to consider a criminal case derived from it. In order for predicate cases and derivative cases not to be concentrated in the proceedings of one justice of the peace, cases under Article 158.1 of the Criminal Code of the Russian Federation were artificially removed from the jurisdiction of magistrates and

transferred to judges of district courts (parts 1 and 2 of Articles 31 of the Criminal Procedural Code of the Russian Federation).

At the same time, it would not be superfluous to note the following: proceedings according to the rules of the Administrative Code of the Russian Federation at all stages is carried out in the most simplified version. This applies, first, to the body collecting primary evidentiary information, magistrates get only those materials according to which the perpetrators were caught red-handed. The composition of the offense is always complete, since institutions, such as "preparation", "attempt", are not used in the Administrative Code of the Russian Federation.

The law does not provide for mandatory prosecutor's supervision over the collection of material and its presentation in court. There is no classical competition in cases of petty theft; at most the police and the justice of the peace (the latter contrary to Part 3 of Article 123 of the Constitution of the Russian Federation) act on the part of the prosecution, while the person against whom proceedings on an administrative offense are being conducted (Article 25.1 of the Administrative Code of the Russian Federation) and his/her defender (Article 25.5 of the Administrative Code of the Russian Federation) – on the part of defense.

District courts act as an appellate instance in relation to magistrates. Logically, the judge of the district court, who receives for consideration on the merits a criminal case initiated under Article 158.1 of the Criminal Code of the Russian Federation and who is well aware of "anti-procedural" conditions of filing a predicate case, must first check it for full compliance with the law.

As a rule, the implementation of this procedure is significantly complicated by the attitude of the defendant (and sometimes his/her defender) to both the decision of the justice of the peace and results of the preliminary investigation under Article 158.1 of the Criminal Code of the Russian Federation. In fact, persons prosecuted for committing an administrative offense (Article 7.27 of the Administrative Code of the Russian Federation) and criminally liable under Article 158.1 of the Criminal Code of the Russian Federation in both cases, as a rule, were detained red-handed. If they have a defense lawyer in the criminal case, then he/she is appointed (Article 51 of the Criminal Procedural Code of the Russian Federation), and the trial itself is often carried out in a special manner (Chapter 40 of the Criminal Procedural Code of the Russian Federation).

At the same time, practice shows that sentences under Article 158.1 of the Criminal Code of the Russian Federation can be canceled due to violations of the rules of consideration of cases under Article 7.27 of the Administrative Code of the Russian Federation.

It is worth mentioning that if the Administrative Code of the Russian Federation does not apply the institution of attempt, then it is welcome in criminal law, including when applying Article 158.1 of the Criminal Code of the Russian Federation. An analysis of current judicial practice is offered below.

A criminal case on the theft of a Mars chocolate bar. The defendant F.was previously convicted under 1) Part 4 of Article 111 of the Criminal Code of the Russian Federation; 2) paragraphs "a", "b", "d" of Part 2 of Article 162, sub-paragraphs "a", "b", "c" of Part 2 of Article 163 of the Criminal Code of the Russian Federation with the application of Part 5 of Article 69 of the Criminal Code to 14 years and 3 months in the correctional facility of a special regime; 3) Part 1 of Article 119 of the Criminal Code of the Russian Federation to a 1-year suspended sentence; and 4) Paragraph "c" of Part 2 of Article 158 of the Criminal Code of the Russian Federation to a 2-year suspended sentence. By the decision of the justice of the peace, he was subjected to administrative punishment for petty theft, provided for in Part 2 of Article 7.27 of the Administrative Code of the Russian Federation. The preliminary investigation bodies charged F. under Part 3 of Article 30 of Article 158.1 of the Criminal Code of the Russian Federation for the attempted secret theft of a Mars chocolate bar with a purchase price of 39 rubles 79 kopecks. The court dropped criminal charges for insignificance, F. was rehabilited.

A criminal case on the theft of two packs of ice cream. The preliminary investigation authorities accused K. of stealing two packs of ice cream in the amount of 413 rubles 78 kopecks under Article 158.1 of the Criminal Code of the Russian Federation. By the decision of the Ulyanovsk Railway Court of February 17, 2020, the criminal case was terminated for the insignificance of the deed (Part 2 of Article 14 of the Criminal Code of the Russian Federation). In the appeal submission, the state prosecutor asked to cancel the decision of the first instance court, since the minimum amount of such theft in the application of Article 158.1 of the Criminal Code of the Russian Federation is not established by law. Introduction of Article 158.1 in the Criminal Code of the Russian Federation pursued the purpose to prevent commission of repeated petty theft and fix the inevitability of punishment for these acts. At the same time, K. not only did not incur criminal liability, but was also rehabilitated, having received the right to demand compensation from the state for moral damage. The court should also have taken into account the data on the personality of K., who "had been brought to administrative liability for improper exercise of parental rights, the motives for committing her crime had not been related to her property status, caring for children or the state of pregnancy, K. was prone to illegal behavior". The second instance court did not satisfy the appeal.

The prosecutor approved the indictment and then dropped the charges on two episodes. D. was accused by the preliminary investigation bodies of a series of three thefts from the Pyaterochka store: on March 28, 2019 – in the amount of 477 rubles 51 kopecks; on March 30, 2019 – in the amount of 595 rubles 87 kopecks; on May 21, 2019 – in the amount of 1,864 rubles 71 kopecks. The guilty person's actions in each of the episodes were qualified under Article 158.1 of the Criminal Code of the Russian Federation. At the hearing, the state prosecutor refused to support accusation of committing crimes in March 2019 due to their insignificance. Based on Part 7 of Article 246 of the Criminal Procedural Code of the Russian Federation, the court terminated the criminal case on these episodes (paragraphs 1 and 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation and paragraphs 1–2 of Part 1 of Article 27 of the Criminal Procedural Code of the Russian Federation). As for the episode of May 21, 2019, the trial was continued. The decision may be appealed on appeal to the Leningrad Regional Court within 10 days from the date of its proclamation; to the defendants in custody – within the same period from the date of its delivery. In case of filing an appeal, the defendant has the right to petition for his participation in the consideration of a criminal case by the court of appeal, to entrust the implementation of his defense to his chosen defender (by agreement), or to petition the court for the appointment of a defender. There is every reason to assume that there was no evidence for the March episodes other than the defendant's confessions.

"Notorious" Vostretsov. The vulnerability of the construction of criminal prosecution for persons specializing in "insignificant" as well as "petty" theft of other people's property (Article 158.1 of the Criminal Code of the Russian Federation) can be observed in the study results of two criminal cases against Vostretsov (born in 1983). He was sentenced to 2 years and 8 months of imprisonment under paragraph "d" of Part 2 of Article 161 of the Criminal Code of the Russian Federation on October 3, 2014; 2 years and 10 months of imprisonment under Part 3 of Article 30, paragraph "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation with the application of Part 5 of Article 69 of the Criminal Code of the Russian Federation on November 10, 2014; 6 months of correctional labor under Article 319 of the Criminal Code of the Russian Federation with the application of Article 70 of the Criminal Code of the Russian Federation on July 12, 2017; 9 months of imprisonment under Part 1 of Article 158 of the Criminal Code with the application of Article 70 of the Criminal Code of the Russian Federation on November 29, 2017; 2 years and 4 months of imprisonment under paragraph "b" of Part 2 of Article 158, Part 1 of Article 158 of the Criminal Code of the Russian Federation according to the rules of Part 69 of the Criminal Code and with the application of Part 5 of Article 69 of the Criminal Code on December 6, 2017; 2 years and 6 months of imprisonment under Part 1 of Article 158 (4 episodes), according to the rules of Part 69 of the Criminal Code and with the application of Part 5 of Article 69 of the Criminal Code of the Russian Federation on December 13, 2017; 2 years and 9 months of imprisonment under Part 1 of Article 159, Part 1 of Article 158 (6 episodes), according to the rules of Part 69 of the Criminal Code of the Russian Federation and with the application of Part 5 of Article 69 of the Criminal Code of the Russian Federation on January 17, 2018; 3 years and 2 months of imprisonment under paragraph "b" of Part 2 of Article 158 (2 episodes), according to the rules of Part 69 of the Criminal Code of the Russian Federation and with the application of Part 5 of Article 69 of the Criminal Code of the Russian Federation on February 2, 2018. On November 12, 2019, Vostretsov was released on parole for 1 year, 2 months, and 9 days. On March 6, 2020, Vostretsov's parole was canceled, he was sent to a high-security prison for 1 year, 1 month, and 27 days. On September 15, 2020, he was sentenced to 1 year and 10 months of imprisonment under Part 2 of Article 167 of the Criminal Code of the Russian Federation with the application of Article 70 of the Criminal Code of the Russian Federation. On December 30, 2021, Vostretsov was released. On March 25, 2022, by the decision of the justice of the peace of the judicial district No. 1 in Neftekamsk of the Republic of Bashkortostan, Vostretsov was brought to administrative liability for petty theft under Part 2 of Article 7.27 of the Administrative Code of the Russian Federation. On October 12, 2022, by the verdict of the Neftekamsk City Court of the Republic of Bashkortostan, Vostretsov was convicted under Article 158.1 of the Criminal Code of the Russian Federation (two episodes) and under Article 158 of the Criminal Code of the Russian Federation (two episodes) and sentenced to 1 year and 8 months of imprisonment under Part 2 of Article 69 of the Criminal Code of the Russian Federation. The verdict was left unchanged by the appeal decision of the Supreme Court of the Republic of Bashkortostan of February 2, 2023. By the decision of the Sixth General Jurisdiction Court of Cassation of May 16, 2023, the verdict and the appeal decision were also left unchanged. However, on June 21, 2023, by the decision of the Sixth General Jurisdiction Court of Cassation, the decision of the justice of the peace of March 25, 2022 was canceled due to violations of the rules of territorial jurisdiction, the proceedings on an administrative offense were terminated in accordance with Paragraph 6 of Part 1 of Article 24.5 of the Administrative Code of the Russian Federa-

tion due to the expiration of the limitation period for bringing to administrative liability.

In the cassation appeal addressed to the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, the convict drew attention of the second cassation court to this violation. The prosecutor of the General Prosecutor's Office of the Russian Federation participating in the process stated the need to terminate the criminal case regarding Vostretsov's conviction under Article 158.1 of the Criminal Code of the Russian Federation. Taking into account the above, the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation terminated the court rulings against Vostretsov regarding conviction for two crimes provided for in Article 158.1 of the Criminal Code of the Russian Federation in accordance with Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation for the absence of corpus delicti. In accordance with Paragraph 4 of Part 2 of Article 133 of the Criminal Procedural Code of the Russian Federation, he was recognized as having the right to rehabilitation, and according to the totality of other crimes and was sentenced to 1 year and 6 months of imprisonment. So, the bodies that brought a matter in a magistrate's court incorrectly determined jurisdiction. There is no continuous prosecutor's supervision of cases in this category. The magistrate considered the case in violation of the rules of jurisdiction. This error was ignored by the courts of the second and third instances. Vostretsov, "an experienced thief", being aware of the presence of this error, waited for the statute of limitations for bringing him to justice under Article 7.27 of the Administrative Code of the Russian Federation, appealed to the Sixth General Jurisdiction Court of Cassation and the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation. It is worth mentioning that Vostretsov was also sentenced to 1 year and 8 months of imprisonment under Article 158.1 (2 episodes) according to the rules of Part 2 of Article 69 of the Criminal Code of the Russian Federation and with the application of Part 5 of Article 69 of the Criminal Code of the Russian Federation on October 26, 2022. This verdict was overturned by the appeal ruling of January 23, 2023, with the transfer of the case for a new trial. On November 2, 2022, by the verdict of the Neftekamsk City Court of the Republic of Bashkortostan, Vostretsov was convicted under Article 158.1 of the Criminal Code of the Russian Federation (acts of June 26, 2022, July 8, 2022, July 13, 2022); Part 3 of Article 30, Article 158.1 of the Criminal Code of the Russian Federation according to the rules of Part 2 of Article 69 of the Criminal Code and using Part 5 of Article 69 of the Criminal Code of the Russian Federation and sentenced to 2 years in prison. By the appeal decision of the Supreme Court of the Republic of Bashkortostan of March 16, 2023, this sentence was changed, the return of stolen property was excluded from the number of mitigating circumstances for the crime of July 8, 2022; the imposition of punishment under Part 5 of Article 69 of the Criminal Code of the Russian Federation was excluded. Vostretsov A.V. was sentenced to 1-year imprisonment. By the resolution of the Sixth General Jurisdiction Court of Cassation of June 22, 2023, these sentences were left unchanged.

At the time of the review of the case by the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, Vostretsov had been serving a sentence of imprisonment under court verdicts of December 20, 2022 and May 03, 2023. In another appeal addressed to the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, the convicted person in another case drew attention of the second cassation court to the above-mentioned violation of the rules of jurisdiction committed by the justice of the peace. The prosecutor of the General Prosecutor's Office of the Russian Federation participating in the process supported the convict's complaint. The Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation terminated the court rulings against Vostretsov regarding conviction for two crimes provided for in Article 158.1 of the Criminal Code of the Russian Federation in accordance with Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation for the absence of corpus delicti. In accordance with Paragraph 4 of Part 2 of Article 133 of the Criminal Procedural Code of the Russian Federation, he was recognized as having the right to rehabilitation, according to the totality of other crimes, it was decided to consider Vostretsov sentenced to 1 year 6 months of imprisonment. Following the results of the trial, the court verdicts against Vostretsov were terminated, the criminal case was terminated in accordance with Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code for the absence of corpus delicti. In accordance with Paragraph 4 of Part 2 of Article 133 of the Criminal Procedural Code of the Russian Federation, he was again recognized as having the right to rehabilitation, in connection with which the convicted person was sent the notification provided for in Part 1 of Article 134 of the Criminal Procedural Code of the Russian Federation. At the same time, court rulings regarding the recovery of the justified procedural costs were terminated (The ruling of the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation dated February 14, 2024 No. 49-UD 23-36-K6). So, Vostretsov committed dozens of petty crimes, for which he was convicted 12 times, almost all sentences were checked by the courts of the second and third instance, two cases against

this person were twice heard by the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation.

"Notorious" Merzlyakov. Low effectiveness of the application of Article 158.1 of the Criminal Code of the Russian Federation can be assessed on the basis of an analysis of the totality of criminal cases against Merzlyakov (born in 1989). He was sentenced to 3 years of imprisonment under Article 158.1 of the Criminal Code of the Russian Federation (eight episodes); paragraph "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation according to the rules of Part 2 of Article 62 of the Criminal Code of the Russian Federation on September 17, 2014; 3 years and 1 month of imprisonment under Part 1 of Article 158 of the Criminal Code of the Russian Federation (episode of August 12, 2014), Part 3 of Article 30, Part 1 of Article 158 of the Criminal Code of the Russian Federation according to the rules of Part 5 of Article 69 of the Criminal Code of the Russian Federation on July 22, 2015. On August 16, 2016, Merzlyakov was released due to the replacement of the unserved part of the sentence with correctional labor (the term of 1 year, 2 months and 11 days). On March 13, 2017, correctional labor was replaced with imprisonment for 4 months and 23 days. On May 17, 2017, he was sentenced to 1 year and 2 months of imprisonment under Part 1 of Article 158 of the Criminal Code (two episodes), Article 158.1 of the Criminal Code (three episodes) according to the rules of Part 2 of Article 69 of the Criminal Code and with the application of Article 70 of the Criminal Code. On June 9, 2017, he was sentenced to 1 year and 3 months of imprisonment under Article 158.1 of the Criminal Code (two episodes) according to the rules of Part 2 of Article 69 and Part 5 of Article 69 of the Criminal Code of the Russian Federation. On June 20, 2017, he was sentenced to 10 months of deprivation of liberty under Part 1 of Article 158 of the Criminal Code of the Russian Federation (episode of April 18, 2017). The punishment under the sentence of June 9, 2017 was decided to be carried out independently (that is, two terms at once). On July 7, 2017, he was sentenced to 1 year and 8 months and with application of Part 5 of Article 69 of the Criminal Code of the Russian Federation to 2 years and 6 months of imprisonment under paragraph "a" of Part 2 of Article 158 of the Criminal Code of the Russian Federation (episode of April 12, 2017). On January 30, 2017, Merzlyakov was subjected to administrative punishment under Part 2 of Article 72.27 of the Administrative Code of the Russian Federation, after which he committed three minor thefts from the Pyaterochka store again (on April 15, 2017 in the amount of 1,774.8 rubles, on April 19, 2017 in the amount of 2,022.8 rubles and in the amount of 721.23 rubles). On August 8, 2017, by the verdict of the justice of the peace of the judicial district No. 3 in Oktyabrsky of the Republic of Bashkortostan, Merzlyakov, according to the rules of Chapter 40 of the Criminal Procedural Code of the Russian Federation, was convicted under Article 158.1 of the Criminal Code of the Russian Federation (three episodes) on the basis of Part 2 of Article 69 of the Criminal Code of the Russian Federation and sentenced to 3 years and 3 months of imprisonment. The verdict was not appealed. The decree of the Presidium of the Supreme Court of the Republic of Bashkortostan of April 18, 2018 excluded the instruction on the imposition of punishment according to the rules of Part 5 of Article 69 of the Criminal Code of the Russian Federation (sentence of May 17, 2017) and an indication of convictions for sentences of November 22, 2012 and July 22, 2015. The punishment imposed under Article 158.1 of the Criminal Code of the Russian Federation for each of the three crimes was reduced to 5 months of imprisonment, in accordance with Part 5 of Article 69 of the Criminal Code of the Russian Federation (sentence of July 7, 2017), the punishment was 2 years and 11 months. The cassation appeal addressed to the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation referred to the fact that one theft of April 19, 2017 was less than 1 thousand rubles, that is why it was not a criminal offense, and asked to recognize both thefts as one ongoing crime, qualified under Part 1 of Article 158 of the Criminal Code of the Russian Federation. The second cassation court concluded that there were no grounds for qualifying his actions on the episodes of theft of April 19, 2017 as one ongoing crime, since the thefts were committed at different times, a different assortment of goods was stolen each time, and there was no single intent. The amount of stolen property, if it does not exceed 2,500 rubles, after bringing a person to administrative liability for the offense provided for in Part 2 of Article 7.27 of the Administrative Code of the Russian Federation, and imposing administrative punishment on him, for subsequent criminal prosecution during the term of such punishment, does not matter (The ruling of the Court of Cassation instance - the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation dated December 20, 2018 No. 49-UD18-19.). So, Merzlyakov has been sued many times for committing a series of petty and insignificant thefts since 2012. In particular, only for the period from September 17, 2014 to July 7, 2017, he was convicted of committing 18 episodes of embezzlement and sentenced to 15 years of real imprisonment by partial addition of punishments. Of this period, Merzlyakov served less than 5 years. Moreover, in 2016, at the initiative of the correctional facility, a deliberately unsuccessful attempt was made to replace the convicted person's sentence of imprisonment with correctional labor. After being released from

prison, Merzlyakov continued his criminal activities.

Six obvious mistakes made in the Chernikov case. By the verdict of the Sovetsky District Court of Tambov of May 31, 2021 Chernikov (born in 1980) was for the fourth time sentenced to 4-month imprisonment under Part 3 of Article 30, Article 158.1 of the Criminal Code of the Russian Federation. In accordance with Part 5 of Article 69 of the Criminal Code of the Russian Federation to 11 months of imprisonment. He had been previously sentenced to 4-year imprisonment under Part 1 of Article 161, paragraph "g" of Part 2 of Article 161, paragraph "a" of Part 2 of Article 158, paragraph "c" of Part 2 of Article 158 of the Criminal Code of the Russian Federation on March 3, 2017 (released after serving the entire sentence on June 17, 2019); 5-month suspended sentence with a 1-year probation period under Part 3 of Article 30, Article 158.1 of the Criminal Code of the Russian Federation (with regard to changes made by appeal) on January 15, 2021; 10 month of suspended sentence with the probation period of 1 year and 6 months under Part 1 of Article 158 of the Criminal Code of the Russian Federation on January 28, 2021; and 10-month imprisonment under Part 3 of Article 30, Article 158.1 of the Criminal Code of the Russian Federation on April 28, 2021. It was decided to execute the sentences of January 15 and 28, 2021 independently. Chernikov was taken into custody, the term of punishment was calculated from the date of entry into force of the sentence, in accordance with paragraph "a" of Part 3.1 Article 72 of the Criminal Code of the Russian Federation the time of detention in the period from May 31, 2021 to the date of entry into force of the sentence was counted as the time of serving the sentence at the rate of one day per day. By the appeal decision of the Tambov Regional Court of August 5, 2021, the verdict was left unchanged. As a result, Chernikov was found guilty of attempted petty theft of other people's property committed on October 29, 2020 in Tambov by a person subjected to administrative punishment for petty theft.

In the cassation appeal, the convicted person, referring to the fact that at the time of the verdict, the decision on the administrative offense case of March 16, 2020 did not enter into force, asked the court decisions to cancel and terminate the criminal case against him.

In the cassation submission, the Deputy Prosecutor of the Tambov Oblast also asked for the latest court decisions against Chernikov to be terminated due to their illegality and unreasonableness. The criminal case against him was considered in a special order; however, according to the conclusion of the outpatient forensic psychiatric examination No. 17-A of January 13, 2021, Chernikov had signs of a mental disorder. In addition, the first instance court did not take into account that Chernikov had appealed the decision of the justice of the peace of March 16, 2020, that is, at the time of the criminal case in the first instance court, the defendant no longer actually recognized the charge.

According to the resolution of the Second General Jurisdiction Court of Cassation, the verdict and the appeal decision were cancelled, the criminal proceedings were terminated on the basis of Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation due to the absence of corpus delicti in the act. In accordance with Part 2 of Article 133 of the Criminal Procedural Code of the Russian Federation, the court recognized P.V. Chernikov's right to rehabilitation (Cassation ruling of the Second Constitutional Court dated December 14, 2021 No. 77-4110/2021).

As we can see, the main reason for the judicial error committed in the criminal case against Chernikov was the lack of proper communication links in the systems: "preliminary investigation bodies – courts", "magistrates – district courts", "courts of first and second instance". "An experienced criminal" (according to Soviet legislation – a candidate for "particularly dangerous repeat offenders"), having discovered a mistake made by the preliminary investigation bodies and prosecutors, patiently waited for the moment when his case could no longer be given a "reverse course", filed a cassation appeal, according to the results of which the court of third instance made an uncontested decision. The prosecutor's office apologized to the "actually justified" person (Part 1 of Article 136 of the Criminal Procedural Code of the Russian Federation). Chernikov's next step was a leisurely appeal to the court with a claim for compensation for moral damage. As a result, the perpetrator did not only serve his sentence, but also "earned money legally".

The relevance of this problem is evidenced by the fact that it was discussed at the meeting, held by the Deputy Chairman of the Supreme Court of the Russian Federation, Chairman of the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, Professor V.A. Davydov on May 16, 2024.

The most elementary criminal case against Chernikov has once again highlighted the existence of a whole range of problems in our criminal proceedings. First, we are talking about the legislator's persistent unwillingness to pay attention to "notorious offenders" specializing in committing petty theft, which was mentioned by Professor N.S. Tagantsev in the XIX century, and the presence of which was taken into account by the legislator in 1958–1996. The above decribed cases of Vostretsov, Merzlyakov and Chernikov are direct evidence of the extremely low effectiveness of the analyzed norm (Article 158.1 of the Criminal Code of the Russian Federation) in relation to

malicious violators of social rules. As mentioned above, this problem has been long discussed in legal science. According to Professor T.V. Klenova, the importance of data on the identity of a criminal, clearly underestimated by the legislator, is constantly emphasized by specialists in the field of criminal law [13].

Besides, a single "punitive" process is divided into two formally autonomous procedures: one of which is carried out by the justice of the peace according to the rules of the Administrative Code of the Russian Federation and another by the federal district judge in accordance with the norms of the Criminal Procedural Code of the Russian Federation. It significantly complicates identification and punishment of the offender.

Another problem is almost complete absence of continuous prosecutor's supervision over the movement of all cases of administrative offenses (emphasis added), for which the perpetrators can be brought to criminal liability according to the rules of administrative prejudice. Hence, prosecutors should not track the movement of such cases. They are forced to make conclusions solely on the basis of documents filed in a specific criminal case.

What is more, when considering criminal cases under Article 158.1 of the Criminal Code of the Russian Federation, first instance courts got used to rely only on documents filed in a criminal case. There is no practice according to which they must make sure in each specific case that the decision of the justice of the peace, which has a prejudicial value, has entered into legal force.

Besides, the insignificance of the act provokes the courts to consider cases of the analyzed category in a special order, which, in relation to Article 158.1 of the Criminal Code of the Russian Federation, has long become the main one.

Moreover, the insignificance of the act provokes judges to neglect the state of the defendant's mental health.

L.V. Golovko expressed an absolutely correct opinion on this issue, "Our system often proceeds from criminalization of an act, and the punishment is a forgotten child. Everyone thinks of crimes, and penalization is secondary, hence there appears the imbalance" [6].

The relevance of the topic touched upon in this article is confirmed by the totality of a number of dissertation studies [14, 15, 16] and articles [17] devoted to criminological, criminal law and criminal procedure analysis of the practice of applying Article 158.1 of the Criminal Code of the Russian Federation.

In particular, T.I. Matyukhina empirically proved that "when criminalizing petty theft, there are technical and legal miscalculations that reduce the effectiveness of the criminal law norm, for example, Article 158.1 of the Criminal Code of the Russian Federation does not provide for liability for committing petty theft by a person with a criminal record for theft or extortion, which puts them in a privileged position with respect to persons subjected to administrative punishment under Part 2 of Article 7.27 of the Administrative Code of the Russian Federation" [15 p. 9, 16 p. 9].

Indeed, in criminology and the theory of criminal law there is no answer to the question why, in the case of petty theft by a "recidivist thief" (a person who has previously been repeatedly convicted of theft), the law enforcement and judicial systems do not have the right to immediately apply criminal measures to him/her, but are obliged to "take a pause", warn the "notorious" about serious intentions by applying to him/her Article 7.26 of the Administrative Code of the Russian Federation.

Contradicting herself, T.I. Matyukhina, first, writes about humanism [15 p. 8, 16 p. 8], second, mentions "the absence of an obvious degree of public danger inherent in crimes in the act" [15 p. 9; 16 p. 9]. However, later the researcher states that the inclusion of Article 158.1 in the Criminal Code of the Russian Federation "is due to the cumulative (total, synergetic, resultant) effect, depending on the repeated unlawful encroachment on the protected public relation of property rights [15 p. 9; 16 p. 9].

T.I. Matyukhina proposes to supplement Article 158.1 of the Criminal Code of the Russian Federation as follows: "theft of other people's property, the value of which does not exceed two and a half thousand rubles, is recognized as petty" [15 p. 12; 16 p. 12].

As already noted above, we also believe that the legislator, in relation to the concept of "theft" (Chapter 21 of the Criminal Code of the Russian Federation), due to the specifics of this illegal phenomenon, should still draw a clearer line between criminal and non-criminal not only in the Administrative Code of the Russian Federation, but also in criminal law.

Thus, the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, discussing the issue of the degree of public danger of the act of U., previously convicted and again sentenced to 3-year imprisonment under paragraphs "a", "b" of Part 2 of Article 158 of the Criminal Code of the Russian Federation and under paragraph "a" of Part 2 of Article 158 of the Criminal Code of the Russian Federation according to the rules of Part 2 of Article 69 of the Criminal Code of the Russian Federation and Article 70 of the Criminal Code of the Russian Federation, carried out a formal calculation of the value of items stolen together with Shch. U. and Shch stole necessary and really valuable property in the household from a pensioner, such as a metal ladder worth 3,000 rubles, sections of a metal fence worth 2,000 rubles, as well as two metal pipes with a total value of 500 rubles (in total – in the

amount of 5,500 rubles), took them to the metal reception point and received 400 rubles. Most likely, the last sum prompted the Judicial Board to judge that there was no significant damage to the pensioner. As a result, their punishment was mitigated (Definition No. 11-UD22-19-K6).

This example probably should have been qualified as a private manifestation of judicial discretion, if not for one thing – it was put up for discussion by interested parties for inclusion in the quarterly review of judicial practice of the Supreme Court of the Russian Federation and, accordingly, in the Bulletin of the Supreme Court. We would like to ask the reader, why the sum of 5,000 rubles is prescribed in the criminal law (Paragraph 2 of the Note to Article 158 of the Criminal Code of the Russian Federation).

The Chairman of the Supreme Court of the Russian Federation I.L. Podnosova, opening the plenary session of the Council of Judges of the Russian Federation on May 21, 2024, noted that in the first quarter of this year alone, criminal cases against 30 thousand persons had been terminated by the courts, which had comprised 13.2% of the completed proceedings. Taking into account the analysis of the established judicial practice, we can guess that a significant part of the cases was initiated against persons who committed minor acts. We would like to add that the practice of distinguishing of criminal from non-criminal is still in its infancy.

Some scientific and practical conclusions.

1. The legislator, supplementing the Criminal Code of the Russian Federation with Article 158.1, has actually reanimated (recognized) the institution of "special recidivism". It is possible to bring to criminal liability a person previously subjected to administrative punishment for petty theft provided for in Part 2 of Article 7.27 of the Criminal Code of the Russian Federation for any petty theft committed once again. However, at the current moment it turns out that persons who commit petty "theft" more than once a year pose a "special danger" to society.

2. Through the so-called "administrative" prejudice, the institution of "repetition" and, to a certain extent, "duplicity" was reanimated and rejected in 2003. The institution of "recidivism" is not reflected in it due to paragraph "a" of Part 4 of Article 18 of the Criminal Code of the Russian Federation. Therefore, the punishment imposed under Article 158.1 of the Criminal Code of the Russian Federation cannot exceed 1 year 6 months of imprisonment (in practice, such rarely exceeds 10 months of imprisonment). At the same time, such an approach to solving the problem is much more humane than the previously existing rules provided for in Part 3 of Article 89 of the Criminal Code of the RSFSR and paragraph "c" of Part 3 of Article 158 of the Criminal Code of the Russian Federation as in force from January 1, 1997 to November 3, 2002.

3. The study of the practice of applying Article 158.1 of the Criminal Code of the Russian Federation, on the one hand, allows us to conclude that criminal cases initiated on clearly insignificant facts (theft of one chocolate bar, two packs of ice cream) are sent to the courts. On the other hand, the punishment options provided for in Article 158.1 of the Criminal Code of the Russian Federation, a priori, are not able to have an adequate impact on persons specializing in petty theft.

4. The multi-step approach to bringing perpetrators to criminal liability for petty theft (first according to the rules of the Administrative Code of the Russian Federation, and then the Criminal Procedural Code of the Russian Federation) unnecessarily complicates the sentencing procedure (first by the justice of the peace, and then by the federal district court), which inevitably leads to the appearance of criminal procedural errors.

5. It seems reasonable to return to the previously existing uniform procedure for bringing to justice persons who commit petty offenses. It is advisable to assign the decision on the "significance" of what has been done to specific law enforcement officers: interrogators, investigators, prosecutors and courts.

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