



## Significantly about the Insignificant: Practice of Applying Part 2 of Article 14 of the Criminal Code of the Russian Federation (General Description of the Problem)

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### Abstract

*Introduction:* it is known that “significant” and “insignificant” are paired categories, because revealing the essence of the one is unthinkable without referring to the analysis of the other. This article (the first in a series) reveals the social and legal nature of the institution of insignificance in criminal law. *Purpose:* to clarify the legal nature and essence of the institution of insignificance in criminal law and analyze the practice of applying Part 2 of Article 14 of the Criminal Code of the Russian Federation and develop scientific and practical recommendations for law enforcement officers. *Methods:* historical, comparative legal, sociological and psychological, statistical methods, methods of dialectical cognition, abstraction, analysis and synthesis, induction and deduction. *Results:* first, it is stated that the category “insignificance of a criminal act” has not been properly developed in Russian criminal law science. Second, it is revealed that the intensification of the practice of applying Part 2 of Article 14 of the Criminal Code of the Russian Federation is associated with the emergence and further with the deepening of the gap in the norms of substantive law regulating the incurrance of liability for petty theft (Article 7.27 of the Administrative Code of the Russian Federation) and various forms of theft provided for in Chapter 21 of the Criminal Code of the Russian Federation “Crimes against property”. Third, it is stated that law enforcement officers (employees of bodies engaged in operational investigative activities, interrogators, investigators, prosecutors and judges) cannot comprehend the essence of another paired philosophical and legal category – “form” and “comprehension” (crisis of legal psychology and ideology). All the noted problems do not contribute both to the economy of criminal repression and criminal procedural economy in general. Fourth, there is a growing number of legal experts arguing that the problem of the insignificance of an act should be brought up for discussion by the Plenum of the Supreme Court of the Russian Federation. In subsequent articles in the series “Significantly about the Insignificant: Practice of Applying Part 2 of Article 14 of the Criminal Code of the Russian Federation”, the reader will be offered a substantive analysis of the rational and irrational in classifying certain actions as criminally punishable acts and results of the author’s monitoring of the practice of applying Part 2 of Article 14 of the Criminal Code of the Russian Federation.

**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 sciences.

5.1.2. Public law (state law) sciences.

5.1.4. Criminal law sciences.

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### *Public danger and insignificance*

As you know, crime differs from other various illegal acts by a public danger. In particular, it is not so much this abstract public danger itself, but its degree in each specific situation (quantity, significance). Professor A.V. Galakhova, commenting on the term “public danger” in the publication addressed primarily to the Russian legal society argues that it is about “a material element of a crime that reveals its social essence” [1, p. 71]. We agree that the category of “crime” is invented by people and cannot exist outside society. The question arises about the materiality of the public danger of crime, fixed in Part 1 of Article 14 of the Criminal Code of the Russian Federation. According to A.V. Galakhova, this very public danger and its materiality are categories that are “economic, political” [1, p. 71], but we will add that they are also historical: what was criminal yesterday (for example, speculation) is a revered business today. It is no coincidence that the legislator fixes in Part 2 of Article 14 of the Criminal Code of the Russian Federation that the “materiality” of the public danger is sometimes reduced to such “insignificance” that does not pose a criminal danger to the public.

We have repeatedly noted that it is rather difficult to identify a line between criminal and non-criminal [2–4]. A.V. Galakhova, when distinguishing a crime from other offenses (administrative, disciplinary, etc.), suggests that the law enforcement officer (investigator, prosecutor and judge) should be guided by certain indicators of the act that fell into the prism of public proceedings. At the same time, she, comment-

ing on Article 14 of the Criminal Code of the Russian Federation, highlights such data on the crime as 1) quality – nature of the crime and 2) its quantity – the degree revealed under Article 6 “Principle of Justice” and Part 3 of Article 60 of the Criminal Code.

This norm refers to the identity of the perpetrator (whether it is an accidental offender or an inveterate criminal) and also mentions living conditions of family members of a criminal, that is, negative circumstances necessarily accompanying the imposition of punishment, both for the perpetrator himself and for the society as a whole. However, the analysis of certain court decisions shows that the important circumstances listed by some courts (Verdict of the Leninsky District Court of the city of Kursk No. 1-144/4-2022 of February 16, 2022), including by the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation, are not taken into account (Cassation Ruling of the Judicial Board for Criminal Cases of the Supreme Court of the Russian Federation No. 51-UD23-8-K8 of July 5, 2023), or even completely ignored.

The United States is famous for applying exceptionally harsh punishments to hardened criminals for a trifle. For example, the U.S. Supreme Court did not see anything unusual in the punishment of 40 years in prison for stealing 15 rolls of toilet paper. Such a harsh repression was substantiated by the fact that the perpetrator was convicted for the 89th time.

This clearly indicates that “the public danger that transforms an act into a crime” and “insignificance” are paired categories. What is more,

similar acts can be regarded as an audacious crime for someone or as an insignificant act that does not meet the requirements specified in Part 1 of Article 14 of the Criminal Code of the Russian Federation for another by the law enforcement officer and the whole society.

Special attention should be paid to the problem of the unity of legal practice declared by theorists in the Russian Federation. We strongly believe that there is no such a unity and there cannot be, since Russia is a large, multinational and multi-religious country [5].

Taking part in judicial control carried out by specific members of the Judicial Board of the Supreme Court of the Russian Federation, the author had the opportunity to participate in the verification and revision of sentences handed down in different regions of the country, for example, in the Pskov Oblast and the Republic of Dagestan. Moreover, the difference in mentality is obvious: what for northerners is a bribe, for southerners is a non-binding small gift.

Since Article 6 of the Criminal Code of the Russian Federation fixes a principle of justice and Part 3 of Article 60 of the Criminal Code of the Russian Federation stipulates that a punishment will be fair only taking into account data on the identity of a convicted person, one can assume that punishment in controversial situations will depend, for example, only on the place of work of the perpetrator. In particular, a judge involved in a car accident, if there is mutual guilt, will be punished, unlike another driver [6].

The essence of these arguments lies in the proposal to law enforcement officers not to replace the content of the crime (material) with only formal ones [7], not to forget about the duality of punishment. When imposing punishment, not only future life of one particular perpetrator is taken into account, but also all members of his family. According to long-established practice, courts are at least obliged to mention this in their sentences.

According to the father of Russian criminal law science, Professor N.S. Tagantsev, "the very name "crime" presupposes transition (phase transition) in our consciousness beyond some limit" [8, p. 24], that is, something used to be quite ordinary suddenly "becomes illegal" [8, p. 4] and "so essential" [8, p. 31].

Unlike N.S. Tagantsev, modern legal scholars are not so sure about the degree of the public

danger of crime. For example, I.V. Ishchenko, in the monograph "Public danger as an integrative property of crime (concept, characteristic)" [9], refers to Pitirim Sorokin, who in the first half of the last century honestly admitted that there was still no concept of crime [10, p. 128], to Professor N.G. Ivanov, for whom "crime still remains a transcendent phenomenon", and "amorphousness of available definitions" "gives absolutely nothing to define a criminal and the possibility of its separation from the unapproachable" [11, pp. 6–13, 15], to M.M. Babaev and Yu.E. Pudovochkin, who argued that "the essence of public danger is determined by a variety of factors", and most importantly – "the environment in which it takes place" [12, pp. 42–43].

In relation to the chosen topic, the following statement of I.V. Ishchenko is also of interest to us: "the formulation of the insignificance of an act, fixed in Part 2 of Article 14 of the Criminal Code of the Russian Federation, allows us to deduce two important circumstances from it: first, the legislator mentions public danger in general, without focusing on any of its indicators; second, to recognize an act as insignificant, the presence of elements of the crime, albeit formal, is necessary" [9, p. 44]. The scientist also notes that the nature and degree of public danger cannot be excluded from the identity of the perpetrator, and the harm from the crime is revealed through the nature and degree of public danger [9, pp. 46–47].

For some, all of the stated above is Chinese puzzle. At the same time, most Russians are endowed with a burning sense of justice. We have already written that criminal policy is always mysterious obviousness [13].

The above arguments will be used as a methodological key in the analysis of the progress of individual criminal cases of precedent significance.

*Analysis of categories used in the process of cognition*

Categories are fundamental concepts that make it possible to comprehend the being (Aristotle) [14, pp. 274–248]. A pair is two phenomena that make up a single whole [15, vol. III, pp. 19–20] (in our study, first of all, we are talking about the paired construction of the categories "significant" and "insignificant").

Comprehension is the meaning, the essence of something [15, vol. IV, p. 180] (the article

deals with the content of certain crimes). Comprehension in logic and linguistics is “a set of common characteristics peculiar to the same phenomenon, serving for its conceptual definition. In this sense, comprehension is opposed to an expansive (extensional) interpretation. The richer the meaningful definition of the concept, the narrower its scope [14, pp. 558–559].

The form is external outlines, external expression, conditioned by certain comprehension, essence, method of manifestation, appearance, external side, means of external expression [15, vol. IV, pp. 577–578] (norm of the Special Part of the Criminal Code of the Russian Federation). In addition, the form (forme) in some situations is also a goal, having reached the limits of which the substance stops. forme can also be an essence and a basic quality. Thus, the form can be both a defining and definable phenomenon. The form without a substance at all is just an idea [14, p. 665].

Formalism (formalisme) is a judgment not about material comprehension of something, but only about its form [14, pp. 665–666]. A formal reason (formelle causa) has been the answer to the question “Why?” since the time of Aristotle [14, p. 666]. The list of formal reasons to initiate a criminal case is provided for in Part 1 of Article 140 of the Criminal Procedural Code of the Russian Federation.

The authorities engaged in intelligence-gathering always address the goal of identifying those actions in people’s behavior, which, at some stage, can be, even formally (preliminary judgment), elements of the crime (Part 2 of Article 140 of the Criminal Procedural Code of the Russian Federation), provided for by the Special Part of the Criminal Code of the Russian Federation. We are talking about all the necessary elements of its composition provided for by law, which collectively correspond to the concept of “crime” (Part 1 of Article 14 of the Criminal Code of the Russian Federation). Part 2 of Article 14 of the Criminal Code of the Russian Federation contains the following imperative: an act that only in form corresponds to the composition of the crime specified in the Special Part of the Criminal Code of the Russian Federation is not a crime.

#### *“Punitive law”*

The set of legal norms (legislation) regulating, first, a list of acts prohibited under threat

of punishment, and second, types and forms of punishment, it is customary in legal science to call “punitive law”. For example, in Germany, the analyzed branch of law is called “Strafrecht” (from German Straf – punishment, Recht – law) [16]. The relevant laws on crime and punishment are concentrated in the Strafgesetzbuch (StGB, literally, “a book of laws on punishment).

We see the same approach in designing the name of the branch of law in France (droit penal), Moldova (codul penal), and Romania (codul penal).

In English, the combination “criminal law” (law on crimes) is used. This pattern in the construction of the name is also followed in Ukraine – Kriminal’nyi kodeks Ukraini (Criminal Code of Ukraine).

The term “ugolovnoe pravo” (criminal law) in the Russian language has no special meaning except for tradition. The Criminal Code may be sooner or later renamed as the Crime and Punishment Code.

The domestic legislator, for a number of reasons (which we will not dwell on separately), divided the inherently unified branch of “punitive law” into two relatively independent branches (in fact, sub-sectors): 1) law on offenses provided for and punishable by the rules of the Administrative Code of the Russian Federation and 2) criminal law.

In particular, punishment for theft (as well as some other forms of stealing) is provided for in Article 7.27 of the Administrative Code of the Russian Federation and Chapter 21 of the Criminal Code of the Russian Federation. The same can be said about the norms providing for liability for battery, causing minor harm to health: Article 6.1.1 of the Administrative Code of the Russian Federation and Article 116.1 of the Criminal Code of the Russian Federation, respectively.

If acts, such as theft, are difficult to distinguish in form, then what makes the legislator use something uniform in punishing different branches of law? The basic principle of “punitive law” is that the law establishing the minimum possible punishment is applied first. In the analyzed situation, this is Article 7.25 of the Administrative Code of the Russian Federation, according to which the act (with exceptions stipulated in the law) cannot be regarded as a criminal offense under Article 158 of the

Criminal Code of the Russian Federation, if the amount of the stolen does not exceed 2,500 rubles.

According to the law, if the amount of the stolen is 2,500 rubles + 1 kopeck (there is a phase transition), then formally a criminal case should be initiated with all the consequences that follow from this. At this point, a thoughtful reader should ask for what special reasons the fate of the offender will be determined already according to the rules of the law, providing for the most severe criminal liability.

Judge of the Seventh Circuit Court of Appeals of the United States – the famous American theorist Richard A. Posner – has always approached the analysis of criminal law from the position of rational choice in a world where resources are always limited in relation to human needs [17, p. 3]. According to him, “a person commits a crime because the expected benefits of the crime to him exceed the expected costs” [17, p. 302]. However, the theorist also took into account the fact that rational behavior of people does not always prevail. In situations where the search for a rational in criminal law response to the behavior of individual criminals comes to a dead end, “price fixing” is applied [17, p. 298].

It seems that only such a justification can be used as the basis for the above regulations in Article 7.27 of the Administrative Code of the Russian Federation and Part 1 of Article 158 of the Criminal Code of the Russian Federation.

#### *Discussing the problem coverage*

Some problems of judicial discretion in terms of interpreting the norms of criminal law governing exemption from criminal liability have already been in the focus of attention of some Russian scientists, in particular Yu.V. Gracheva [18–22].

According to Professor Yu.V. Gracheva, it is impossible and unnecessary to fix all specific situations that may occur in a real criminal case in the criminal law. There appears a “danger of petty guardianship over the decisions and actions of the law enforcement officer” [20, p. 3]. In this regard, the solution of many issues is left to the discretion of the law enforcement officer; first of all, we are talking about the application of evaluation criteria [20, pp. 3–34]. She also notes that “the state of scientific knowledge about judicial discretion in the application of

criminal law norms in modern Russian doctrine” is “characterized as fragmentary” [20, p. 4].

Other researchers are even more specific on this issue. For example, D.S. Volkova believes that the institution of insignificance of an act, despite its rather long existence, is one of the least developed institutions of both *de lege* and *de lege ferenda* in the General part of domestic criminal law [23].

Undoubtedly, there were attempts to study the category “insignificance” at the monographic level. In 1982, N.M. Yakimenko defended his Candidate of Sciences (Law) dissertation “Insignificance of an act in Soviet criminal law” [24] and prepared a textbook “Assessing insignificance of an act” [25].

These works are still relevant. In particular, we cannot but agree that “the form and comprehension are inextricably linked: the form is always meaningful and the comprehension is framed... This unity is manifested, for example, in the fact that only socially dangerous acts are recognized as criminally unlawful, in turn, only such acts that are provided for by criminal law are socially dangerous. Since the law does not name all elements indicating public danger, but only the most significant ones, *corpus delicti* reflects public danger of the type of act, and not of the specific act committed by a person [25, p. 4].

Therefore, “contradictions may arise between an abstract requirement of the norm and specific features of the life situation. In such cases, this is overcome through norms... specifically providing for that special combination of circumstances that excludes criminal liability”, including through the norm contained in Part 2 of Article 7 of the Criminal Code of the RSFSR (now Part 2 of Article 14 of the Criminal Code of the Russian Federation) [25, p. 6].

In 2005, the Candidate of Sciences (Law) dissertation “Insignificance of an act and its criminal legal significance” was defended [26]. We find some of the researcher’s results rather controversial, for example, “insignificance is objectively subjective in the sense that, being real in principle, it exists outside our consciousness and is simultaneously subjectively perceived by both the legislator and the law enforcement officer” [26, p. 4]. Here, the author, analyzing “material” law, most likely just got confused in philosophical categories, which is

not surprising, because theorists are still arguing the essence of law [27].

In 2019, under scientific supervision of Professor K.V. Obrazhiev, D.Yu. Korsun defended his Candidate of Sciences (Law) dissertation “Insignificance of an act in criminal law: problems of theory and practice” [28]. According to the dissertation, “the functional purpose of criminal law prescriptions on the insignificance of an act is designed to “smooth out” conflicts between the form (criminal wrongfulness) and the comprehension (public danger) of the crime. Their discrepancy is associated with inevitable contradiction between abstractness of criminal law norms and concreteness of the acts prohibited by them, the lag of the conservative system of criminal law prohibitions from the dynamics of social relations, and excessive criminalization of acts. In conditions of excessive criminalization of acts, the gap between the form (criminal illegality) and the comprehension (public danger) goes up, which inevitably increases the “demand” for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation and makes it very popular” [28, pp. 8–9].

The following conclusion of D.Yu. Korsun is particularly important for us: “Quantitative indicators of the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation should be considered as one of the indicators of the quality of criminal legislation that can be used in the process of monitoring law enforcement” [28, p. 9].

If we dive into philosophical categories more deeply and in detail, we will recall that the problem of separating the “insignificant” from the “significant” was very precisely defined by K. Marx in his work “Debates on the law on thefts of wood” (translated into Russian in 1852) [29]. The researcher, being outraged by the fact that the legislator was unable to distinguish “collecting deadwood” (insignificant) from “cutting down forests” (significant), called a specific criminal law a “great hypocrisy”. We regret to say that the problem identified by K. Marx in the middle of the XIX century in Germany is relevant in modern Russian law enforcement practice [6, pp. 205–223].

Despite the fact that the topic of insignificance in criminal law is well known in Russia,

we have to state that modern Russian criminal law science does not have fundamental works based on the analysis of a solid empirical base devoted to a comprehensive analysis of judicial discretion in the implementation of the provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation on the essence of insignificance of an act [21; 22].

It is also worth mentioning that due attention has not been paid by materialistic scientists to the problems of judicial discretion within the framework of the application of Part 6 of Article 15 of the Criminal Code of the Russian Federation [30].

I.V. Ishchenko even raises the question of excluding this norm from the Criminal Code of the Russian Federation [9, pp. 37, 44, 142].

We are talking about theoretical, legislative and practical problems, including issues of legal writing.

The object of our research is public relations, including issues of judicial discretion in the implementation of Part 2 of Article 14 of the Criminal Code of the Russian Federation. The subject of knowledge covers the doctrine of criminal law on the significance and insignificance of acts provided for in the Special Part of the Criminal Code of the Russian Federation and materials of judicial practice. The purpose of the study: a comprehensive theoretical development of judicial discretion in the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation, which may be important for improving “punitive” law in general and current legislation in particular. Achieving this goal is possible by solving the following tasks: 1) determining roles of the legislator and law enforcement officer in terms of the application of Part 1 of Article 14 of the Criminal Code of the Russian Federation; 2) identifying the causes of judicial discretion in relation to Part 2 of Article 14 of the Criminal Code of the Russian Federation; 3) revealing characteristic features of this type of judicial discretion; 4) exploring legal ways to narrow the limits of judicial discretion when applying Part 2 of Article 14 of the Criminal Code of the Russian Federation.

S.A. Markuntsov names the following sources of criminal law prohibition: 1) social; 2) socio-psychological; 3) moral; 4) cultural and historical; 5) economic; 6) political; 7) systemic legal

(international legal and criminal law grounds based on assessments of the scientific and expert community) [31, pp. 376–377].

Professor V.V. Marchuk, analyzing Part 4 of Article 11 of the Criminal Code of the Republic of Belarus (analogous to Part 2 of Article 14 of the Criminal Code of the Russian Federation), writes that the crime itself “is not always a legal expression of public danger. What is prohibited by criminal law may not always be recognized as socially dangerous and, therefore, be criminal. In a specific legal situation, the absence of a public danger in an act neutralizes criminal wrongfulness” [32, p. 32].

In some countries (for example, in France), the conclusion “*summum jus, summa injuria*” (exact observance of the law) is sometimes equal to the highest lawlessness, elevated to the rank of national principles of law [33]. The legislator, as a rule, without going into details, provides the law enforcement officer with freedom of interpretation. Well, where interpretation is, as G.F. Shershenevich said, there is no science, only art [34, p. 724].

For now, we will emphasize the main idea: “Law is not what the author of the law has intended and the legislator has written down as a norm. The law is what a particular judge has read!” [35, p. 175].

#### *Formal approach*

According to Judge of the Constitutional Court of the Russian Federation V.G. Yaroslavtsev, “a formal approach is the evil of the Russian criminal process” [36]. He was very sensitive to the moral component of justice and always recognized the reality of judicial law-making in the field of filling gaps in the law [37]. This idea was developed in legal positions (precedents) of his colleague K.V. Aranovskii, in particular, “courts have always been creating law” [38].

A bold example of such law-making is the case “On checking the constitutionality of Articles 416–417 of the Criminal Procedural Code of the Russian Federation in connection with the complaint of citizen F.B. Iskhakov” (speaker – K.V. Aranovskii) (Resolution of the Constitutional Court of the Russian Federation No. 53-P of December 16, 2021 in the case of checking the constitutionality of Articles 416–417 of the Criminal Procedural Code of the Russian Federation in connection with the complaint of citizen F.B. Iskhakov). The essence of

this decision is a review of the board’s statement: “a formal approach is the evil of the Russian criminal process”. The court should not wait for mercy from the prosecutor’s office, in order to protect the rights of an individual in the criminal process, it should decisively take power into its own hands, of course, in cases where the prosecutor’s office (executive authority) is unable (unwilling) to ensure these rights [39].

However, not all processualists share this principled position. For example, T.A. Alekseeva notes that the Constitutional Court of the Russian Federation is only entitled to point out a gap in the law to the legislator [40]. Let us bear in mind that the execution of this court’s decisions is time-consuming. The illegal sentence against Iskhakov was overturned only after 64 years.

As noted by D.S. Volkova, Judge K.V. Aranovskii wrote in his dissenting opinion to the decision of the Constitutional Court of the Russian Federation (Resolution of the Constitutional Court of the Russian Federation No. 32-P of December 11, 2014 “In the case of checking the constitutionality of the provisions of Article 159.4 of the Criminal Code of the Russian Federation in connection with the request of the Salekhard City Court of Yamalo-Nenets Autonomous Okrug) that “public danger” could not be accurately measured and fully expressed in advance”, since it was also “a human subjective state, depending in this sense on how it is felt, represented and expressed” [23].

#### *The court fills in gaps in the law (the Criminal Code of the Russian Federation) and criminal law*

Relations between people are regulated mainly by moral norms and, when there are not enough of them, by the norms of real positive law, which can be (fully/incompletely) prescribed in specific laws and other normative acts.

We have already written about the role and place of the court in filling gaps in the law [41]. The question arises, whether judges have the right to ignore moral norms? According to U.S. Supreme Court Judge Benjamin Cardozo, “there is an insufficient number of legal norms for organizing judicial activity, as the legal field is a priori empty” [42], therefore, in search of justice, the courts are forced to “cook a strange mixture, the elements of which are law and morality” [43].

It is no coincidence that many modern Russian researchers believe that activities of the court should not be strictly formalized. Consequently, the court can function effectively only if it has a sufficiently wide margin of appreciation [44].

We always proceed from the fact that the court is not only a universally recognized and effective way to resolve social conflicts, but also an element of the state apparatus. The state (as well as law) is a historical reality, unique and at the same time naturally arising social relations [45], the social nature of which lies in the potential ability of a reasonable person to mobilize his resources with the help of his own means of speech, signs and symbols in order to achieve goals, as predetermined at the level of the simplest instincts as well as consciously set by people, to resolve problems and tensions in the field of management [46], as well as in the presence of the society's right to make decisions and seek their mandatory execution [47].

*Judges of the Supreme Court of the Russian Federation, within the framework of judicial law-making, outlined their vision of the provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation*

We state that the court not only can, but also should create law. Often, the courts are literally forced to engage in law-making. Numerous special studies have already been devoted to this problem [48], including some of our own [49].

Judge of the Supreme Court of the Russian Federation E.V. Peisikova, the author of one of the precedent decisions under Part 2 of Article 14 of the Criminal Code of the Russian Federation, begins her publication "Judicial lawmaking as an integral function of the court" [50] with a quote from her colleague V.I. Anishina: "the court cannot be put aside from creating legal norms, since it is one of the powerful elements of management of the whole society, meaning that it has functions of the state in front of society, protecting its citizens" [51].

So, the stated above can be interpreted as the following algorithm: the court has no right to wait until the legislator deigns to propose to society one or another regulation of behavior, because the people demand a balanced and clear decision from the court here and now.

We consider scientists' claims that the court does not have law-making powers [52] as erroneous, because they are refuted by judicial practice.

It is particularly important that Judge E.V. Peisikova suggests defining the very category of "judicial law-making" [50], which is fundamentally different in form from its other types and forms. Courts do not compete with parliaments, they have their place in the check and balance system.

E.V. Peisikova, considering forms of judicial law-making, such as legal positions (precedents) published in various official reviews, mentions "practice-forming decisions" [50], some of which are the subject of our knowledge.

With regard to the chosen topic, we will only recall that any criminally punishable act (crime), as a rule, is just a special case (element) of the entire array of social relations. The task of preliminary investigation bodies, without losing sight of the general context of the relations that have developed between people (the formality of such an assessment is secondary and insignificant, therefore cannot serve as a sufficient basis for a legal reaction to criminal intent, demand, etc.), is to identify only those that are prohibited by a specific provision of the criminal law (Part 2 of Article 140, Part 1 of Article 146 of the Criminal Procedural Code of the Russian Federation), if there are sufficient grounds to initiate a criminal case, take measures aimed at exposing the perpetrators.

Supervision of the legality and validity of criminal cases is entrusted to the relevant prosecutors (Part 4 of Article 146 of the Criminal Procedural Code of the Russian Federation), while approving the indictment, they bear full responsibility for the results of preliminary investigation (Article 221 of the Criminal Procedural Code of the Russian Federation).

#### *Insignificance in "rubles" and "kopecks"*

The conducted research shows that 82% of the cases of application of Part 2 of Article 14 of the Criminal Code of the Russian Federation are somehow related to the calculation of the amount of damage caused by various forms of theft. It is appropriate to recall here that the threshold for criminal liability is artificially low. In the Soviet Union, criminal liability for theft of state (public) property occurred if the amount of the stolen exceeded 50 rubles (that is, it was 50 rubles + 1 kopeck). This amount was commensurate with the minimum wage, the amount of which only after the 1961 monetary reform began to exceed 60 rubles per month.

In Russia nowadays, there are two "punitive" codes: 1) the Administrative Code of the Rus-



sian Federation, which provides, in particular, liability for petty theft (Article 7.27, Part 1 – up to 1,000 rubles and Part 2 – over 1,000 rubles and up to 2,500 rubles); 2) the Criminal Code of the Russian Federation.

Thus, most of the embezzlement in the amount of 2,500 rubles is automatically removed from the criminal process. A criminal case for embezzlement may be legally initiated (the threshold for criminal liability) if the amount of the stolen exceeds 2,500 rubles 1 kopeck.

So, we can conclude that the gap that originally existed in the “punitive” law has rapidly deepened these days. Our conclusion is confirmed in the analysis of the practice of the First Cassation Court of General Jurisdiction, and this conclusion is disappointing: from 2021 to mid-2023, the courts increased the frequency of application of Part 2 of Article 14 of the Criminal Code tenfold.

The following remark. The practice of applying the Administrative Code of the Russian Federation and the Criminal Code of the Russian Federation are non-communicating vessels. The preliminary investigation authorities, having revealed, for example, the fact of embezzlement of money in an amount exceeding the limits established by Article 7.27 of the Administrative Code of the Russian Federation, initi-

ate a criminal case under Part 3 of Article 160 of the Criminal Code of the Russian Federation, as it was in the case of B., accused of stealing diesel fuel in the amount of 2,928 rubles, when only the court concluded that the act committed by B. was insignificant, therefore, did not deserve any attention in the framework of criminal proceedings, and B. was subject to rehabilitation.

Scientists have been paying attention to this contradiction in the law (in fact, a gap not only in the legislation, but also in the law, since the law-making body has not decided on the problems in the sectoral division) for a long time:

– a person who has stolen something in the amount of 2,500 rubles inclusive will be punished, including imprisonment for half a month (administrative arrest for 15 days);

– a person who has stolen something in the amount of 2,928 rubles will not only be acquitted, but also rehabilitated, as well as get compensation for the costs of a lawyer [53].

The issues we have identified are just a small fraction of the problems caused by the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation.

In the following publications, the reader will be offered an analysis of the results of specific judicial practice.

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