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Significantly about the Insignificant: Practice of Applying Part 2 of Article 14 of the Criminal Code of the Russian Federation (Systematic Analysis of Current Official Criminal Policy and Controversial Judicial Practice)

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Abstract

Introduction: with this publication we conclude the coverage of results of the study of the paired category "significant – insignificant" in criminal law of modern Russia. *Purpose*: to present the previously announced research material on the practice of applying the provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation contained in the decisions of the First Court of Cassation of General Jurisdiction, to give a substantive analysis of the rational and irrational in classifying certain actions as criminally punishable acts, and to present results of the monitoring of the practice of applying Article 158.1 of the Criminal Code of the Russian Federation. *Methods*: historical, comparative legal, dialectical cognition, analysis and synthesis, method of collecting information (interviewing a number of scientists and practitioners on the issue of their interpretation of Part 2 of Article 14 of the Criminal Code of the Russian Federation). The article contains *results* of the comparative analysis of both typical and organizational situations. The cumulative doctrinal knowledge about each of the analyzed categories is clarified. *Conclusion*: there is still no properly developed concept for correlating categories of "form" and "content", "significant" and "insignificant" in Russian legal science. The author argues that the insignificance of the act does not depend on whether the corpus delicti incriminated to a particular person is material or formal. The main thing in the crime is the reality of the degree of public danger. The author supports theorists and practitioners who propose to bring the socially significant problem of the insignificance of an act in criminal law to the discussion of the Plenum of the Supreme Court 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.

5.1.4. Criminal law sciences.

5.1.1. Theoretical and historical legal sciences.

5.1.2. Public law (state law) sciences.

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Categories of "significant" and "insignificant" are indicative elements of current criminal policy

Determining the ratio of concepts of significance and minor significance in criminal law in relation to the categories of "degree of public danger" and "degree of social harmfulness"" is the exclusive competence of the federal legislator, since only it, within the framework of the concept for separation of powers in accordance with the Constitution of the Russian Federation (Article 10, paragraph "o" of Article 71), is granted the right to official criminalization and decriminalization (including partial) of specific acts.

Taking into account the significance of what was done, the classic example of such partial decriminalization of crimes a priori dangerous in their anti-state nature (taking a bribe (Article 290 of the Criminal Code of the Russian Federation), giving a bribe (Article 291 of the Criminal Code of the Russian Federation) and mediation in bribery (Article 291.1 of the Criminal Code of the Russian Federation) is "petty bribery" (Article 291.2) added to the Criminal Code of the Russian Federation on July 3, 2016 [1].

Taking this important decision for many state and municipal employees in conjunction with "significant – insignificant", the legislator reasonably proceeded from the following facts: first, according to statistics, the amount of a bribe (as a rule, a quick gift) rarely exceeds 10 thousand rubles; second, the bulk of bribe-takers are generally positive in their socio-legal attitude and, most importantly, not only harmless to society, but also very necessary for it (doctors, teachers) [2]; third, a bribe-taker believes that in the case of a minor offense, it is easier to pay off with small money than to incur some kind of formal punishment [3].

For comparison, on the same day (July 3, 2016), the legislator, realizing that the tools of the Administrative Code of the Russian Federation in relation to obviously incorrigible "petty thieves" had been clearly ineffective, criminalized the commission of all minor thefts without exception by persons who had already been punished with an administrative fine for petty theft (Part 2 of Article 7.27) [4].

Similarly, in 2007–2022, the legislator resolved the issue of partial or even complete decriminalization of beatings and minor harm to the victim's health during domestic conflicts both on the basis of personal hostility (Articles 116, 116.1 of the Criminal Code of the Russian Federation) and when committing hooliganism (Article 213 of the Criminal Code of the Russian Federation), referred to as malicious only due to the presence of qualifying elements of "special audacity" and "exceptional cynicism" [5].

As we can see, the categories of "significant" and "insignificant" in the criminal law of post-Soviet Russia (1991–2024) are not something immutable, on the contrary, it turns out that these ideological stamps are quite mobile, and their rapid, often even contradictory transformation is due to socio-political factors [6].

It is obvious that the legislator criminalizes and decriminalizes certain actions within the framework of official criminal policy. Many theorists and practitioners, brought up on concepts (with Marxist-Leninist roots) implying the possibility of an early elimination of crime, demand from the legislator clear algorithms for combating crime which could be used for decades to come [7]. It seems that such expectations in relation to criminal policy are naive, first, due to the fact that the main postulate of criminology has not been refuted: crime is an eternal companion of human society.

It is no coincidence that Professor A. I. Klimenko, analyzing the policy of the state, stated in the first paragraph of his Candidate of Sciences (Law) dissertation, "each state has an inherent ideological function, which it performs both explicitly and covertly" [8]. It should be noted that the dissertation council fully agreed with this conclusion.

If part of criminal policy is a priori a state secret, then the state apparatus in the field of combating crime is often forced to act according to the rules of legal experiment.

The author of these lines has always assumed that criminal policy is a "mysterious evidence" [9]. Since, on the one hand, it is necessary to fight crime, and on the other hand, the state has other goals. As Academician V.N. Kudryavtsev notes, "crime control strategies are a derivative product" [10, p. 55].

The study of a number of explanatory notes to draft federal laws, the initiators of which proposed to modernize the current Criminal Code of the Russian Federation (mainly to expand criminalization and tighten sanctions), as well as confidential conversations with some of them (included observation) allow us to draw a disappointing conclusion: the authors of most draft laws are not professionals in their field, act solely on a whim, within the framework of a legislative experiment recognized by the general

theory of law. This indicates that there is no empirical basis for almost all the latest legislative initiatives, and their lobbyists do not know indicators of real and latent crime, are determined to combat it decisively with the help of the "cudgel" of criminal law, and poorly foresee results of the adopted laws in the future.

So, how does one fight crime anyway? Professor V.V. Lunev liked asking the reader what had to be done in case of theft of a valuable thing in an isolated audience: 1) to search everyone at once, find the object and the culprit, or 2) to investigate the case for many months and find nothing [11]. It is obvious that the famous scientist was at least lying (there is a substitution of the basis in the dispute), because it is possible to subject all those present in the audience to a thorough and complete search, of course, thereby humiliating everyone. Perhaps, the desired thing will even be found, but an experienced thief will find a way to get rid of it in a timely manner.

Illegal provocation and falsification of criminal case materials are often found in modern reality.

So, members of the task force, headed by Police Colonel G. (who officially "proceeded from the falsely understood interests of the service"), consistently gave the same "entrance ticket" to the city managers of Smolensk as a bribe to participate in the improvement of the city (a package with 5 million rubles), after which officials were required to transfer this money to higher authorities, including the governor of the region. The provocation mechanism started by G. worked flawlessly up to a certain point, frightened administration staff, provided "assistance" to law enforcement agencies and transferred money to colleagues. And only one head of the city categorically refused to participate in this farce, did not bear the money to the governor of the region, for which he was detained in the pre-trial detention center. As a result, justice is served, the employees of the Ministry of Internal Affairs of Russia, headed by Police Lieutenant General S., the head of G., were punished (appellate rulings of the judicial board for criminal cases of the Supreme Court of the Russian Federation No. 5-APU17-103ss of December 19, 2017, No. 36-APU17-10ss of April 12, 2017).

Let us ask ourselves, whether any methods are good in the fight against crime, taking into account the significance of its specific manifestations? Let us recall the law "On three spikelets" now condemned by legal science (resolution of the Central Executive Committee of the USSR and the Council of People's Commissars of the USSR of August 7, 1932 "On the Protection of Property of State Enterprises, Collective Farms and Cooperatives and the Strengthening of Public (Socialist) Property"), according to which theft of state property was punished as severely as possible regardless of the volume and value of the stolen (while the institution of insignificance was not canceled).

What can we do about the fact that our law was harsh in some years? For example, in 1942, "for systematic counterrevolutionary sabotage (in fact, only for 34 days of absenteeism and production of fictitious certificates), locksmith Ch. was twice (!) sentenced to death under Articles 58-12 of the Criminal Code of the RSFSR in 1926". However, there were judges who, even in those harsh years, guessed to redefine the act under Article 58-12 of the Criminal Code of the RSFSR of 1926 and sentence Ch. to only 10 years in prison. The Presidium of the Supreme Court of the Russian Federation, in the resolution No. 201p10pr of July 21, 2010, redefined the act of Ch. under Part 1 of Article 72 of the Criminal Code of the RSFSR of 1926, commuting the punishment to two years in prison.

As is known, any judicial action is by its nature sacred, because it has a deeply religious content. Therefore, every conscious or unconscious cognitive distortion – an error in the perception and interpretation of reality by the courts – has negative consequences, regardless of what goals were pursued.

The strategies for combating crime, which Academician V.N. Kudryavtsev wrote about, do not exclude the use of any measures against the offender, from his/her destruction (murder during detention, death penalty) to a mutually beneficial (albeit forced) contract between a criminal and the state [10]. We emphasize that the forms of cooperation between the state and a criminal can be very different – from the imposition of a mild punishment for organizing a particularly serious crime [12] to the consistent promotion of initially false ideas, mistakenly interpreted by someone as true. For example, actions of a determined fighter against poachers in the Kurgan Oblast were intentionally qualified as an insignificant act [13].

It is only accepted that the goals of criminal policy are extremely simple and understandable to everyone. It is no coincidence that Professor L.V. Golovko notes, "if there is anything really relevant in criminal procedure science today, it is the problem of the state and its role in the organization and functioning of judicial proceedings" [14, p. 5].

Regarding the problem of correlating categories of "significant" and "insignificant", the legislator states its existence in Part 2 of Article 14 of the Criminal Code of the Russian Federation clearly, unequivocally transferring (albeit not without reservations) the solution of this issue to the discretion of the law enforcement officer (inquirer, investigator, prosecutor and court).

Let us conclude that the legislator's decisiveness is an extremely complex correlation (mutual dependence of the compared con-

cepts) with the boldness of judicial discretion. We have already described some examples of this practice. In particular, the judicial board for criminal cases of the Supreme Court of the Russian Federation equated individual property relations of cohabitants with similar relations of spouses, therefore, it was concluded that there was no **property** crime at all [15]. At the same time, the same judges refused F. (a mistress of the husband of the ex-senator V.A. Petrenko) in recognition of her right to a car got de facto (but not de jure) as a present [16]. Similarly, the judicial board regarded arbitrariness as an insignificant act – in fact, the self-defense of owners from unscrupulous counterparties in civil law transactions [17].

This means that the same form of social phenomena can receive both a positive and a negative assessment in the courts. In the first case, the act is regarded as insignificant, in the second – as significant.

In any case, the guilt of a particular person must be proved. The system of algorithms for detecting illegal (criminal) manifestations is focused, first, on mass offenses (crimes), and second, on exposing the offender (criminal). The study of the paired category "the ratio of significant and insignificant" in criminal law allowed us to identify unique mass illegal manifestations, which, despite their social significance, have not received a proper legal assessment [18].

For example, in modern Russia, an obviously criminal business is openly flourishing – the manufacture and sale of forged checks for a moderate fee, with the help of which, first of all, truckers legalize their expenses allegedly incurred by them when paying for travel on toll roads, for hotel accommodation and parking. Property damage in this case is caused to the owner of the funds, who advances the expenses of a particular driver in advance. In this illegal combination: the driver is a robber (Article 160 of the Criminal Code of the Russian Federation), and the person making forged checks ("chekist") is his/her accomplice.

Law enforcement agencies have repeatedly tried to develop a methodology for detecting this type of offense (taking into account the volume of criminal turnover – crimes), to bring those responsible for the sale of forged checks to criminal liability, but unsuccessfully, since current legislation requires preliminary investigation and court authorities in each case to establish not only: 1) the identity of a particular "security officer" who openly advertises his/her activities, 2) the fact that he/she sold a forged check, but also 3) all consumers of his/her criminal services and 4) all victims. It takes a lot of time to trace the entire chain of movement of a forged check, therefore, criminal prosecution of "chekists" was simply dismissed, arguing that these acts could be qualified as petty theft (Article 7.27 of the Administrative Code of the Russian Federation; law enforcement intelligence in this case are not provided for by law), by virtue of which, according to Part 2 of Article 14 of the Criminal Code of the Russian Federation, each act is insignificant [19]. At the same time, it is obvious that "chekists" [20; 21] are a criminal category, often the sale of deliberately forged checks is organized by previously convicted persons. What is more, mass demonstrative collection of "dirty money" by criminal authorities [22] is far from insignificant, therefore, counteraction to it should be organized.

The method of combating this kind of illegal manifestations is objective imputation, that is a criminal ban on clearly criminal behavior that brings considerable income to offenders.

At the same time, certain measures in the field of combating "chekists" are taken sometimes. However, in a specific situation, it is not "chekists", but unsuccessful consumers of their criminal services who endure consequences of this struggle; for example, four officers of the Russian Guard who bought fake checks for officers' housing expenses on a business trip from persons not identified in the case. The modern accounting systems existing in the National Guard made it possible to quickly prove that the checks were forged.

However, no one began to look for criminal business owners. The criminal phenomenon did not interest either the preliminary investigation authorities, the prosecutor's office, or the court. Despite the fact that a total of 23 court decisions were made in the cases of the Russian Guardsmen (all cases were eventually dismissed for insignificance [23]), not a single court instance even had the desire to issue a private definition to the preliminary investigation bodies and prosecutors to search for producers of the forged checks sold to the officers? We have to state that within the framework of the current criminal policy, the activities of "chekists" are secondary and insignificant; the presence of Russian organized crime is not denied, but no one is fighting it [24].

Here is a second example of the prosecution's denial of the existence of significant illegal behavior. A corporation selling fuels and lubricants through a network of gas stations identified a system of fuel theft on its own. The scheme of criminal activity, on the one hand, turned out to be extremely simple, and on the other – high-tech. With the help of special equipment, criminals supervised by previously convicted persons organized a massive shortage of fuel to consumers: (they withheld a liter of fuel from each client). The resulting surpluses were also sold to consumers, and the money earned as a result of this massive criminal activity was appropriated.

As you can see, the scale of deception, if we talk about a specific buyer, is minimal, a single

offense in this case does not go beyond the scope of the act punishable under Article 7.27 of the Administrative Code of the Russian Federation. Therefore, there is no criminal liability under Article 159 of the Criminal Code of the Russian Federation in such circumstances. Formally, no damage was caused to the owner, since only unaccounted-for surpluses were plundered by the perpetrators, to which only deceived consumers have a legitimate right.

How can actions of the perpetrators be qualified? In accordance with the response of the Prosecutor General's Office of the Russian Federation to the corporation's request No. 22-73602 of November 29, 2012, in the described situation, there are no grounds for initiating a criminal case under Article 159 or Article 160 of the Criminal Code of the Russian Federation. It is proposed to qualify illegal enrichment under Article 165 of the Criminal Code (causing property damage by deception or abuse of trust in the absence of signs of theft) and it is recommended to fight violators without the use of criminal law measures. At the same time, the Research Institute of the Ministry of Internal Affairs of Russia, in response to the corporation's request No. 3,206 of November 8, 2012, proposed to qualify this under Article 159 of the Criminal Code of the Russian Federation.

So, the business independently identified and documented an obvious crime, however, as in the case of "chekists", law enforcement officers could not find the necessary article in the Criminal Code of the Russian Federation. The reader can contemplate whether it is a gap in Russian criminal law or the dishonesty of a particular law enforcement officer. We state that the significant in illegal activity was once again dismissed and transferred to the category of the insignificant.

The third example. For economic reasons, "Avtodor" ("Russian Roads") liquidated checkpoint systems and, from March 1, 2022, introduced a barrier-free payment system aimed only at bona fide consumers. As a result, 3–4% of the customers hide car numbers and do not pay for travel on toll roads. In fact, we are talking about another kind of mass petty theft, there are no effective methods to expose the perpetrators yet.

If we take into account that the fare for a passenger car on the M-12 from Moscow to Kazan officially amounts to 4,481 rubles, then fare evasion is no longer petty theft, but criminally punishable fraud. According to the road owner, 80 million cars pass through the Central Ring Road alone annually, therefore, the damage caused by 3–4% of drivers is a significant amount.

In a number of cases, the law enforcement system is not focused on combating a real mass offender (despite an obvious degree of increased public danger of his/her activities), which it prefers not to notice for the time being, but strives to "crack down" on small, but really exposed "thieves". Indeed, the effort has been spent on their registration, therefore, the costs must be recouped. The authors of this approach to solving the problem prefer not to think about negative consequences of convicting an actually innocent person.

What should happen for a real mass offender to finally interest the law enforcement system? Probably, we are talking about a set of negative consequences of a specific criminal activity. It is generally accepted that a drunk driver at the wheel is a killer. Has the driver's state of intoxication always been unambiguously interpreted as criminal? Let us recall the waves of criminalization and decriminalization of this act. On October 5, 1968, the Criminal Code of the RSFSR of 1960 was supplemented by Article 211.1; on November 30, 1972, this norm was supplemented by Part 2. At the end of the 1980s, a taboo was actually introduced on the application of Article 211.1 of the Criminal Code of the Russian Federation at the level of "judicial management". It was substantiated in the following way: if the driver is deprived of his/her license, where will he/she work? Finally, on December 24, 1992, Article 211.1 of the Criminal Code of the RSFSR was deleted from the code.

The authors of the new Criminal Code of the Russian Federation did not rush to criminalize driving under the influence of alcohol. The corresponding norm (Article 264.1) was introduced in the Code only by the law of December 31, 2014 and entered into force on July 1, 2015.

No matter how many times a "killer at the wheel" drives a car again, what he/she has done will not go beyond the scope of a minor crime (Part 2 of Article 15, parts 1 and 2 of Articles 264.1 of the Criminal Code of the Russian Federation). The only serious punishment is the possibility of confiscating a car, that is why potential violators of traffic rules make their relatives the owners of cars.

Traffic police officers use weapons to detain a potential "killer at the wheel", while passengers, including minors, suffer. So, the use of weapons against potential criminals is rather debatable.

The head of state personally pointed out the severity and significance of the act! The case of currency traders of Rokotov and others.

It is no coincidence that the compilers of the book "The Supreme Court of Russia" cited the text of the transcript of the meeting of the Presidium of the Central Committee of the Communist Party of the Soviet Union of June 17, 1961, at which the leader of the USSR N.S. Khrushchev demanded the execution of currency traders in the absence of a rule of criminal law, otherwise threatening the Chairman of the Supreme Court of the USSR A.F. Gorkin with dismissal. As a result, the presumption of "retroactive force" was

overcome by a strong-willed decision, the currency traders were shot [25].

The Farber case: the prosecutor and the court "listened" to the opinion of President of the Russian Federation V.V. Putin. The preliminary investigation bodies accused the director of the House of Culture Farber under Articles 285 and 290 of the Criminal Code of the Russian Federation of receiving money from contractor Kh., who carried out the repair of the building. Being controlled by the special services, Farber received 132 thousand rubles from Kh. for signing the act of completed works. The high-profile case, which received an ambiguous assessment, was repeatedly considered by various judicial instances (Cassation ruling of the judicial board for criminal cases of the Supreme Court of the Russian Federation of November 28, 2012). Finally, according to the verdict of the Ostashkovsky City Court of the Tver Oblast of August 1, 2014, Farber was sentenced to 7 years and 1 month in prison. Vladimir Putin, in an interview with Channel One and the AR news agency, called the punishment imposed on Farber "egregious", considering it a mistake. These words turned out to be enough for the Prosecutor's Office to make a submission beyond the time limits for appeal, in which it refused to charge Farber under Article 285 of the Criminal Code of the Russian Federation and asked to reduce the sentence to 5 years in prison under Article 290 of the Criminal Code of the Russian Federation. The appeal instance of the Tver Regional Court wisely went even further, reduced the sentence to 3 years in prison, that is, to the time actually served. The convict was released. The society took it favorably.

A thief was caught red-handed, but what he/she was planning to steal?

According to Article 158 of the Criminal Code of the Russian Federation, criminal liability for theft must inevitably occur.

Usually, the police are reproached for not rushing to find thieves. It would seem that it is a completely different matter when a thief is caught red-handed by the victim him/herself and handed over to police officers. However, criminal proceedings against perpetrators are not always initiated. Here is an example in which police officers prove that valuable things were taken out, but the perpetrator was not a thief.

On November 2, 2014, the warehouse security received a signal that glass was broken in one of the rooms. Later, security officers discovered that two unidentified men had taken out three boxes of expensive electrical appliances from the warehouse. Police officers were called to the scene, who were given a statement on bringing the perpetrators to criminal liability. However, on November 11, 2014, the operative of the criminal investigation department OP-5 of the Ministry of Internal Affairs of Russia in Kursk issued a decision to refuse to initiate criminal proceedings, approved by the head of the relevant police department.

The law enforcement officers motivated their position by the simple curiosity of the perpetrators, who, opening one of the boxes, saw a device that they were not going to steal. The prosecutor's office also found no violations of the law in this situation [26].

One word – explosives!

Usually, the legislator, forming a criminal norm that establishes a ban on the circulation of any dangerous substance, lays down its minimum size, from which its acquisition and storage become socially dangerous (a threshold for liability). In a number of cases, the legislator also distinguishes the motive for the illegal acquisition and storage of a certain substance.

According to Part 1 of Article 222.1 of the Criminal Code of the Russian Federation (introduced in the Code on November 24, 2014 by the Federal Law No. 370-FZ, currently valid as amended by the Federal Law No. 281-FZ of July 1, 2021), regardless of the motive and timing, the storage of any explosives in any amount constitutes a crime, for which real imprisonment (for a period of 6 to 8 years) and a fine is provided.

We believe that any non-alternative sanction is a negative artificial formation, which, without reasonable grounds, significantly limits judicial discretion and often puts the courts at a dead end. As is known, in the framework of partial decriminalization, the legislator in a number of cases foresightedly expanded limits of judicial discretion. For example, the lower limit of the sanction under Part 4 of Article 111 of the Criminal Code of the Russian Federation (intentional infliction of serious harm, resulting in the death of the victim by negligence) is actually reduced to nothing, but often de facto this is premeditated murder with special cruelty. At one of the conferences, Professor A.V. Naumov, having heard the condemnation of this novel, directly asked its critic, "Are you aware of cases when the courts were limited to the minimum of two months specified in Part 2 of Article 56 of the Criminal Code of the Russian Federation?" There was no response. Anatolii Naumov concluded, "Our judges are wise people, therefore they do not need strict instructions from the legislator".

We will return to the criticism of non-alternative sanctions prescribed in Article 222.1 of the Criminal Code of the Russian Federation. It is possible that our critics will object that no one has abolished articles 64 and 73 of the Criminal Code of the Russian Federation. Yes, this is true, but sometimes it is difficult to find grounds for applying these norms if it is already clear that the degree of public danger is extremely low.

Here are examples from judicial practice, how the dispute was resolved about the significance or insignificance of aimless (accidental)

storage of 137 to 293 g of gunpowder – officially explosives. However, under certain conditions, not only gunpowder explodes, but many substances, for example: fertilizers (explosions: 1947 – Texas City, 2015 – Tianjin, 2020 – Beirut), coal and sugar dust, etc.

The gunpowder "flared up" two years later. According to the court verdict, N. was found guilty of illegally acquiring and storing explosives at home in 2011–2013 (137 g of "hunting, smokeless" gunpowder). For committing this act under Part 1 of Article 222 of the Criminal Code of the Russian Federation (still under the old law), she was sentenced to restriction of liberty for 4 months. The court of second instance changed the verdict: 1) excluded the qualifying element "illegal acquisition of explosives" from the conviction; 2) recognized the retirement age of the convicted person as a mitigating circumstance; 3) commuted the punishment to 3 months of restriction of freedom.

The Court of Cassation established the following: N. inherited gunpowder from her hunter husband, which she voluntarily reported to the police. Result: the verdict and the appeal decision were canceled, the criminal case was terminated due to the absence of corpus delicti in N.'s actions for insignificance (Review of the cassation practice in criminal cases of the Supreme Court of the Republic of Bashkortostan (November–December 2014). Case No. 44u–554/2014). So, first the form defeated the content, and then the content corrected the form [27; 28].

A criminal case against S. According to the preliminary investigation authorities, S. found somewhere and appropriated a jar with 140.62 g of smokeless gunpowder, which he kept at home for about a year. S.'s actions were qualified under Part 1 of Article 222.1 of the Criminal Code of the Russian Federation. In accordance with the Decision of the Taldom District Court No. 1-68/22 of April 25, 2022, the chairman of the court, having personally examined the criminal case against S., did not notice any real danger in the latter's actions, therefore he considered it possible to terminate the proceedings for the insignificance of what he had done. The public prosecutor brought an appeal against this decision, in which he indicated that 1) the crime of which S. was accused had been intentional, belonged to the category of serious, as it was directed against public safety; 2) this act was punished by imprisonment; 3) S. did not voluntarily extradite gunpowder at the suggestion of the police officers who came to him.

According to the appellate ruling of the judicial board for criminal cases of the Moscow Regional Court No. 22-4283/2022 of July 19, 2022, the court of second instance did not check the above arguments, preferred to see a fundamental appeal reason in the proceedings – the defendant was not notified of the trial date in time, therefore he could not prepare for it. As a result, the court's decision was cancelled, the case was sent for a new trial to the same court with a different composition of judges. Besides, a private ruling of the judicial board for criminal cases of the Moscow Regional Court No. 22-4283/2022of July 19, 2022 was issued to the chairman of the court, which drew the latter's attention to the fact that "the parties must be notified of the date and time of the court session at least 5 days in advance days before it begins" (Part 4 of Article 231 of the Criminal Procedural Code of the Russian Federation), and a copy is sent to the accused (Part 4 of Article 227 of the Criminal Procedural Code of the Russian Federation).

The general jurisdiction courts of cassation (in the appellate ruling of the judicial board for criminal cases of the Moscow Regional Court No. 22-4283/2022 of July 19, 2022) canceled a private ruling against the judge who terminated the criminal case against S. (which, by the way, was also requested by the prosecutor of the Cassation Department of the Prosecutor General's Office of the Russian Federation), since there were no fundamental violations of procedural law on the part of the chairman.

Upon reconsideration of the criminal case, the Taldom District Court, according to the rules of Article 64 of the Criminal Code of the Russian Federation, imposed a punishment below the lowest limit specified in the law, namely three years of imprisonment with a fine of 5,000 rubles. Moreover, according to the rules of Article 73 of the Criminal Code of the Russian Federation, it was decided that the main punishment should be considered conditional with a probation period of one year.

So, the "keeper" of 140 g of gunpowder that had come "out of nowhere" was fined only 5,000 rubles. It should be especially noted that if the convicted person had voluntarily handed over a can of gunpowder to the police, he could well have avoided not only punishment, but also criminal prosecution (Note to Article 222.1 of the Criminal Code of the Russian Federation).

The author of the decision to terminate the criminal case for insignificance referring to the obvious contrivance of the position of the appellate instance complained that the procedural law does not provide for a mechanism for canceling such decisions on the initiative of the judge of the first instance. Indeed, if S. had appealed against the appeal ruling to the First General Jurisdiction Court of Cassation simultaneously with the receipt of the cassation appeal of the presiding judge there, the second instance would have reconsidered the case of S., dwelt on the significant and insignificant and evaluated all the arguments of the public prosecutor. However, this is a completely different topic.

Legally acquired gunpowder is sold illegally. The ruling of the Constitutional Court

of the Russian Federation stipulates that at one time, B. (formerly a hunter) legally purchased 185 g of smokeless gunpowder within the framework of the rules in force at that time and then sold it to Sh. B.'s actions were qualified under parts 1 and 2 of Articles 221.1 of the Criminal Code of the Russian Federation, since at the time of sale B. no longer had the status of a hunter. The Vichug City Court of the Ivanovo Oblast, considering a criminal case against B. in the first instance, appealed to the Constitutional Court of the Russian Federation with a request about the presence or absence of the right to sell gunpowder after B. lost the status of a hunter.

The resolution of the Constitutional Court of the Russian Federation No. 52-P of November 13, 2023 "In the case of checking the constitutionality of Paragraph 2 of the Notes to Article 222.1 of the Criminal Code of the Russian Federation in connection with the request of the Vichug City Court of the Ivanovo Oblast" states the absence of violations of the constitutionality principle in the construction of Article 222.1 of the Criminal Code of the Russian Federation on the part of the legislator and does not admit the storage and sale of gunpowder as an insignificant act. However, the Constitutional Court transparently hinted that the punishment to the perpetrator in any case should be adequate to the severity and public danger of the act.

In this case, the court confirmed its position on the right of the legislator, due to the degree of public danger, to criminalize any action with any weapon, even if it is an antique dirk (resolution of the Constitutional Court of the Russian Federation No. 18-P of June 17, 2014 "In the case of checking the constitutionality of Part 4 of Article 222 of the Criminal Code of the Russian Federation and articles 1, 3, 6, 8, 13 and 20 of the Federal Law "On Weapons" in connection with the complaint of N.V. Uryupina").

Storage and sale of gunpowder is the latest judicial practice. According to the verdict of the Liman District Court of the Astrakhan Oblast of July 7, 2023, S.A. was sentenced under Part 1 of Article 222.1 of the Criminal Code of the Russian Federation to 4 years in prison with a fine of 30 thousand rubles. The courts of the second and third instance upheld the verdict.

The defender of the convicted person brought a cassation appeal to the judicial board for criminal cases of the Supreme Court of the Russian Federation, in which he proposed to terminate the criminal case against S.A. for insignificance. According to the surveyed representatives of the judicial community, since the volume of explosives stored is extremely insignificant, public danger of the act tends to zero in any case. There is a contradiction between General and Special parts of the Criminal Code of the Russian Federation: despite the fact that when qualifying the deed according to Article 222.1 of the Criminal Code of the Russian Federation, the motive for storing explosives does not make the difference, according to the general rules of sentencing, the court is obliged in any case to take into account the direction of the perpetrator's actions [29].

According to the minutes of the court session on the consideration of case No. 25-UD24-11-K4 in cassation order of August 27, 2024, the prosecutor of the General Prosecutor's Office participating in the second cassation court, relying on the above-mentioned resolution No. 52-P, proposed to mitigate the punishment and the judicial board agreed with it. As a result, in accordance with the cassation ruling of the judicial board for criminal cases of the Supreme Court of the Russian Federation No. 25-UD24-11-K4 of August 27, 2024, the court rulings in the case were changed, the punishment was commuted to 1 year 4 months of imprisonment with a fine of 10 thousand rubles. It was also taken into account that S.A. was an active participant in the special military operation.

The **moral** is obvious. All weapons and ammunition inherited must be registered, surrendered or destroyed. Law enforcement agencies are focused on searching for weapons and explosives stored without registration.

An old sofa: you can throw it away, but you cannot take it for yourself.

B.T. was accused by the preliminary investigation authorities of appropriating an old sofa (Part 3 of Article 160 of the Criminal Code of the Russian Federation), which was on the balance sheet of the kindergarten and transferred to the latter for write-off. By resolution of the Yegoryev City Court of the Moscow Oblast of March 5, 2019, the criminal case against B.T. was terminated for insignificance (Part 2 of Article 14 of the Criminal Code of the Russian Federation).

The representative of the kindergarten in the appeal requested the decision to be canceled, arguing that the sofa: 1) had not lost its consumer properties and was suitable for operation; 2) had not been written off in accordance with the procedure established by law, as a result, damage was caused to the kindergarten in the amount of 4,080 rubles (according to the expert's conclusion – 4,185 rubles).

The prosecutor involved in the case believed that the decision of the first instance should be left unchanged. According to the appellate ruling of the judicial board for criminal cases of the Moscow Regional Court No. 22-2553/2019 of April 16, 2019, the court of second instance, leaving the court's decision unchanged, referred to the explanations of the kindergarten representative, who admitted that the head of the kindergarten verbally asked B.T. to throw out the sofa, also indicating the need to write it off.

Correlation of the significant and the insignificant in the norms of law and morality.

As you know, human relations are regulated by norms, primarily morality, as well as law (including positive, written law), if the potential of morality is not enough for some reason. It is also known that the norms of law may turn out to be unconstitutional and even immoral, but any court decision cannot be immoral. Let us consider court decisions, the authors of which clearly know that morality is primary, therefore, the norms of the criminal law should not contradict it.

"Be human, then!"

At the event dedicated to the memory of the chairman of the Moscow City Court, Z.I. Koneva (years of life – 1930–2012, years in office – 1989–2000), her colleague O.V. Svirenko told a story characterizing Zoya Ivanovna's attitude to the problem of the ratio of the significant and insignificant in the act of a particular person. The presidium considered a supervisory protest in the case in which a woman who came to Moscow was convicted of assault, as she needed money for her daughter's treatment. The author of the protest was hungry for "blood". The members of the presidium were in some confusion, since the crime was indeed serious, and the situation was non-standard. The chairman of the court realized that it was necessary to bring some arguments that would reach everyone. She looked at the presidium members and said, "Be human, then!" The Presidium unanimously refused to satisfy the protest [30].

There is another example. What should the court do in the following situation? A woman was sentenced under Part 4 of Article 159 of the Criminal Code of the Russian Federation to 6 years in prison, the court applied Article 82 of the Criminal Code of the Russian Federation to her – a postponement of execution of the sentence until the child reaches the age of 14. The second instance court canceled the postponement, but the third instance court again applied Article 82 of the Criminal Code of the Russian Federation. The prosecution appealed this decision to the Judicial Board for Criminal Cases, arguing that there was no need to send the child to a social institution, since he had a father. The woman was convicted of going to Belarus to visit her mother.

We think that the convict is not a murderer, it is difficult to understand what she has done to annoy the prosecution, especially considering that victims of fraud themselves are happy to be deceived sometimes.

Leave children with their mother.

The Judicial Board has recently suggested that the courts should find a way not to separate children from their mother. So, a woman was convicted under Part 4 of Article 111 of the Criminal Code of the Russian Federation. It was established that Sh. had been was beaten by her husband. Due to this circumstance, Sh., being in a long-term traumatic situation, deliberately stabbed her husband in the process of another beating, the latter died from the injury (cassation ruling of the judicial board for criminal cases of the Supreme Court of the Russian Federation No. 44-UD23-17-K7 of October 24, 2023).

It should also be noted that the categories of "significant" and "insignificant" have an interdisciplinary character, which, in particular, is noted by M. V. Vostrikov and O.V. Polikashina [31]. It should also be emphasized that the Russian law enforcement officer, accustomed to specific figures and amounts, complains about a lack of detailed regulations in substantive law not only in criminal cases. So, the prosecutor E.V. Yakovenko complains that the courts refuse to satisfy the prosecutor's office claims for the transfer of property of officials to the income of the Russian Federation (in accordance with the Federal Law No. 230-FZ of December 3, 2012 "On Control over the Compliance of Expenses of Persons Holding Public Positions and Other Persons with Their Incomes") only because their expenses slightly exceeded their income [32]. This means that the prosecutor actually denies the courts even the right to discretion permitted by law, depending on specific circumstances of the case.

Insignificance in the field of economics. Damage in the amount of 4,919,350 rubles is not large.

ZAO "PO "Elektrotechnik", using patents of AO "KEAZ" illegally stored and sold counterfeit products. At the initiative of the copyright holder, as part of operational investigative measures in 2014, verification purchases of illegally sold products were carried out: on October 1 in the amount of 111,995 rubles and on October 27 in the amount of 4,807,355 rubles.

On March 24, 2015, the deputy head of the interdistrict investigation department issued a resolution refusing to initiate criminal proceedings and handed over all seized (counterfeit) products, including circuit breakers purchased as part of operational search activities with the money of OOO "Complexstorg-S" to ZAO "PO "Elektrotechnik". The prosecutor's office ignored this fact.

AO "KEAZ" appealed the decision in accordance with Article 125 of the Criminal Procedural Code of the Russian Federation. In order to get out of the zone of judicial control, the head of the Investigative Department for the South-Eastern Administrative District of Moscow of the Investigative Committee of the Russian Federation promptly issued a decree on the cancellation of the decision to refuse to initiate criminal proceedings, the contractor was given a formal instruction: to interview a Rospatent specialist about possible violations of the patent rights of AO "KEAZ" and to perform other verification measures. On August 25, 2015, the deputy head of the interdistrict investigation

department again issued a decision to refuse to initiate criminal proceedings.

The author justified his decision by saying that the damage in the amount of 4,919,350 rubles is not large for AO "KEAZ" [26].

Analysis of the cassation practice of the First General Jurisdiction Court of Cassation.

In the process of studying problems related to the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation, we analyzed the relevant cassation practice in cases considered by the district courts (2021–2022, 1st half of 2023). It was established that during the specified period, with the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation, the judicial board for criminal cases of the First General Jurisdiction Court of Cassation overturned the decisions of lower courts in 15 cases, including 1 criminal case in 2021, 4 in 2022, and 10 in the first half of 2023.

If we take 2021 as the starting point in our monitoring, then there is a rapid increase in the practice of applying Part 2 of Article 14 of the Criminal Code of the Russian Federation: in 2022 by 4 times, in the 1st half of 2023 – by 10 times!

We summarize that, applying Part 2 of Article 14 of the Criminal Code of the Russian Federation, the judges of the First General Jurisdiction Court of Cassation proceeded from the priority of the degree of public danger of the act. At the same time, they considered the totality of socially significant circumstances, such as:

1) degree of realization of criminal intentions;
2) quantitative and qualitative characteristics of the stolen item;
3) defendant's role in the crime committed in complicity;
4) nature of the circumstances that contributed to the commission of the act;
5) actual harmful consequences that have occurred;
6) method of commission;
7) form of guilt;
8) motives and goals of the guilty person;
9) his/her previous criminal and post-criminal behavior.

In most cases, when discussing the insignificance of an act, the court was guided by 1) the insignificant amount of material damage caused, 2) the absence of evidence in the case materials confirming that the actions of a person caused significant harm to the state, to the interests of society protected by criminal law, 3) full compensation for damage and its size.

In two cases, the judicial board having overturned decisions of the courts of the first and appellate instances decided to terminate the criminal case due to the absence of corpus delicti in the actions of persons due to its insignificance on the basis of Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation recognizing the right to rehabilitation, motivating its conclusions by the absence of reasoned conclusions in the appealed court decisions on the presence of public danger.

Example 1. According to the verdict of the justice of the peace of the judicial district No. 52 of the Starodub judicial district of the Bryansk Oblast of April 29, 2022 left unchanged by the court of appeal, N.(T.) was convicted under Part 1 of Article 159.2 of the Criminal Code of the Russian Federation to a fine in the amount of 30 thousand rubles for embezzlement of 30,190 rubles 55 kopecks. The First General Jurisdiction Court of Cassation cancelled the decisions taken in the case and terminated the case for lack of corpus delicti in its decision No. 77-3028/2023 of June 27, 2023, indicating that N.(T.):

– committed crimes of minor gravity;
– was brought to criminal liability for the first time;
– was a student at the time of the commission of the incriminated act;
– was characterized exclusively positively;
– fully compensated for the damage, there were no property claims against her;
– the justice of the peace did not prove: a) the presence of significant harm, the occurrence of which was caused by the commission of the convicted act, b) the degree of public danger in the actions of N. (T.), c) significant consequences resulting from the crime.

Example 2. According to the verdict of the justice of the peace of the judicial district No. 2 of the Pochinkov judicial district of the Nizhny Novgorod Oblast of April 20, 2022 left unchanged in the second instance, P. was sentenced under Part 1 of Article 139 of the Criminal Code of the Russian Federation to a fine of 5 thousand rubles for searching for S.D.S. without obtaining the consent of S.N.A. She entered the apartment of the latter, thereby violating the constitutional right of the latter to inviolability of the home (Article 25 of the Constitution of the Russian Federation). The court of third instance, overturning court decisions, referred to the reasons of the act conditioned by the life situation. The victim's son owed money to the store, P. came to the apartment of S.N.A. to talk to the debtor. This does not indicate an increased public danger of P.'s actions, especially given that the victim herself opened the door and reported that her son was at home (Cassation decision of the First General Jurisdiction Court of Cassation No. 77-1213/2023 of March 14, 2023).

On similar grounds, the sentences of magistrates and the decisions of the second instance in the Bryansk and Lipetsk oblasts were canceled (Cassation decisions of the First Cassation Court of General Jurisdiction No. 77-1868/2023 of April 19, 2023 and No. 77-3164/2023 of June 28, 2023).

Along with the terms “insignificance of the act”, “absence of its public danger”, directly provided for by the Criminal Code of the Russian Federation, the judges used the concept of “insignificance of the harm caused”. We will analyze sentences and appeals decisions of:

– the Volokolamsk City Court of the Moscow Oblast of June 7, 2022 in respect of Ch., convicted under Part 1 of Article 161 of the Criminal Code of the Russian Federation (unqualified robbery) (cassation ruling of the First General Jurisdiction Court of Cassation No. 77-2735/2023 of May 30, 2023);

– the acting justice of the peace of the judicial district No. 1 of the judicial district of Rylsk and Rylsky District of the Kursk Oblast of December 10, 2021 in relation to S., convicted under Part 1 of Article 159.2 of the Criminal Code of the Russian Federation (Cassation decision of the First Cassation Court of General Jurisdiction dated 06/15/2022 No. 77-3002/2022).

The analysis of procedural documents shows that the judges of the First General Jurisdiction Court of Cassation believe that the decision on the insignificance of an act that does not pose public danger is conditioned by: 1) the nature of the act; 2) the role and data on the identity of the subject of criminal liability; 3) the amount of harm and the severity of consequences; 4) the degree of implementation of the criminal intent; 5) the method of committing the crime; 6) the role of the defendant in the crime committed in complicity; 7) the presence of circumstances entailing a more severe punishment in accordance with the sanctions of articles of the Special Part of the Criminal Code of the Russian Federation. The judges believe that the decision to dismiss the case due to the insignificance of the act may contribute to: 1) the presence of negative consequences; 2) the object of criminal encroachment. However, if the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation is refused, the significance for the victim of a particular good that acted as an object of encroachment may be taken into account.

In accordance with the provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation, the act is insignificant, although formally containing elements of a crime, but not posing public danger due to the nature of the committed act and the role of the person in its commission, the severity of the consequences, the content of motives, goals and other circumstances.

It is necessary to take into account all circumstances of the act, information characterizing the subject of criminal liability, including information about his/her personality, material, social status, degree of his/her guilt in committing the incriminated act, as well as other circumstances important for correct resolution of a particular case, including those reducing public danger of a crime, in particular his/her behavior, presence of mitigating and absence of aggravating circumstances.

Circumstances related to post-criminal behavior, for example, provision of medical and other assistance to the victim immediately after the commission of a crime, voluntary compensation for property damage and compensation for moral damage, if the damage and harm were caused as a result of a crime, other actions aimed at making amends for the harm caused to the victim, in themselves are not an unconditional basis for recognizing the act as insignificant and entailing the cancellation of the sentence due to the insignificance of the act, but they can be taken into account when deciding on exemption from criminal liability on other grounds or when imposing criminal punishment.

Taking into account that the concept of insignificance of an act belongs exclusively to evaluative categories, and the law connects the concept of insignificance with significant harm, since the element of public danger of a crime implies exactly such a qualitative definition, the First General Jurisdiction Court of Cassation took into account actual harmful consequences.

Example 3. According to the verdict of the justice of the peace of the judicial district No. 1 of the Engels district of the Saratov Oblast of December 9, 2021 left unchanged in the second instance, Sh. was convicted under paragraph “c” of Part 1 of Article 256 of the Criminal Code of the Russian Federation. In accordance with the cassation resolution of the First General Jurisdiction Court of Cassation No. 77-5384/2023 of October 19, 2022, it was established that Sh. had illegally caught 6 crucians worth 500 rubles each and 2 bream worth 1000 rubles each. Canceling court decisions and terminating the criminal case on the basis of Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation due to insignificance, the court indicated:

– a number and cost of fish caught;

– that it had been released it back into the river;

– a lack of evidence that the act of Sh. had caused significant damage to aquatic biological resources;

that the extraction method used was not dangerous for biological resources.

Judges in their decisions note that the onset or possibility of harm as a criterion affecting insignificance is characteristic of acts with material compositions, since harm, as a rule, has a certain monetary expression. Nevertheless, cases of termination of criminal cases for insignificance and formal compositions are not uncommon.

Example 4. According to the verdict of the justice of the peace of Dolgorukov judicial district of the Terbun judicial district of the Lipetsk Oblast of June 3, 2022, V. was convicted

of two crimes under Part 1 of Article 139 of the Criminal Code of the Russian Federation. The sentence was changed in accordance with the appeal decision of the district court of August 31, 2022. V. was released from the punishment imposed on him upon penetration into P.'s home; upon penetration into S.'s home, the case was terminated due to the expiration of the statute of limitations for criminal prosecution. The case established that V. entered other people's houses in order to clarify relations with S., and the latter hid from him in P.'s home. The prosecution saw this as a violation of Article 25 of the Constitution of the Russian Federation. The First General Jurisdiction Court of Cassation, terminating the criminal case against V. due to the insignificance of the act, indicated that the latter's actions had been conditioned by "family" problems. The court decisions that took place in the case did not contain reasoned conclusions about public danger of V.'s actions (Cassation decision of the First General Jurisdiction Court of Cassation No. 77-2966/2023 of June 14, 2023).

The judges believe that the mere presence of an aggravating circumstance in actions of the subject of criminal liability is not an obstacle to the recognition of the act as insignificant.

We have established that the First General Jurisdiction Court of Cassation applied the provisions of the Criminal Code of the Russian Federation on the insignificance of an act in the presence of circumstances aggravating punishment provided for in Article 63 of the Criminal Code of the Russian Federation in one case.

Example 5. According to the verdict of the justice of the peace of the judicial district No. 299 of the Zhukov judicial district of the Moscow Oblast of December 22, 2020, K. and L. were convicted under Part 1 of Article 330 of the Criminal Code of the Russian Federation each. The commission of a crime as part of a group of persons is recognized as an aggravating circumstance. The second instance court upheld the verdict. The court established in the ruling No. 77-6112/2022 of November 29, 2022 that in order to force G. to return funds from L. for substandard manicure services, K. and L. took 18 gel varnishes belonging to G. with a total cost of 10,720 rubles. When deciding to terminate the criminal case against each convicted person under Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation, the court indicated that the convicts had no purpose to steal property.

Judging by the procedural acts, the judges believe that the law does not define the range or categories of crimes that can be considered insignificant. As a general rule, Part 2 of Article 14 of the Criminal Code applies to all categories of crimes.

In the practice of the First General Jurisdiction Court of Cassation, we have identified only two cases of cancellation of court decisions with the termination of criminal cases due to the absence of a serious crime in the actions of subjects of criminal liability due to its insignificance under Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation with recognition of the right to rehabilitation.

Example 6. According to the verdict of the Obninsk City Court of the Kaluga Oblast of June 1, 2021, taking into account the changes made by the appellate ruling, D. was convicted under paragraph "d" of Part 3 of Article 158 of the Criminal Code of the Russian Federation. It is proved that D. found a lost bank card and used it to make a purchase in the amount of **445 rubles 17 kopecks**. By terminating the criminal case on the basis of Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation, the Court of Cassation indicated the amount of material damage not exceeding the amount of petty theft (cassation ruling of the First General Jurisdiction Court of Cassation No. 77-630/2022 (No. 77-6024/2021) of February 10, 2022).

Example 7. According to the verdict of the Bogoroditsk District Court of the Tula Oblast of August 23, 2019 (left unchanged in the appellate court), B. was convicted under Part 3 of Article 160 of the Criminal Code of the Russian Federation, acquitted under Part 1 of Article 330 of the Criminal Code of the Russian Federation on the basis of Paragraph 2 of Part 1 of Article 24, Paragraph 3 of Part 2 of Article 302 of the Criminal Procedural Code of the Russian Federation due to the absence in his actions of the corpus delicti. His right to rehabilitation was recognized under Paragraph 1 of Part 2 of Article 133 of the Criminal Procedural Code of the Russian Federation. It was established that B., the director of the Water Analysis Management Company, using his official position, refueled his personal vehicle with fuel belonging to the Water Analysis Management Company, which caused damage to the latter in the amount of 2,928 rubles. Terminating the criminal case under Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation, the court pointed out that there was no evidence in the case that B.'s act had caused significant harm to the company's interests (cassation ruling of the First General Jurisdiction Court of Cassation No. 77-1207/2022 of May 13, 2021).

In addition, the court noted that the method of theft (B. – using official position, D. – theft from a bank account) was imputed to them without taking into account specific circumstances of the case.

As follows from the documents indicated above, the provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation were not applied to acts with administra-

tive prejudice by the First General Jurisdiction Court of Cassation. Criminal law does not contain a direct prohibition on recognizing acts committed with administrative prejudice as insignificant in accordance with Part 2 of Article 14 of the Criminal Code of the Russian Federation. Meanwhile, when deciding whether an act is insignificant, the court must take into account the specifics of the composition of a crime with an administrative prejudice, circumstances of a socially dangerous act committed, and data on the identity of the person who committed it. Thus, the circumstances of a socially dangerous act committed may include the amount of damage caused, its significance for the victim, the period of commission of illegal actions and motives for their commission. Personal data may include information about the propensity to commit socially dangerous acts, their specific orientation, and the execution of court decisions regarding the imposed administrative punishment.

It should be particularly noted that the court applied the provisions on insignificance in the presence of qualifying elements in the acts. When making the decision, the court took into account that the method of committing crimes in itself, including by theft from a bank account, using official position, which are qualifying elements of the relevant acts, without taking into account the specific circumstances of the case, could not be recognized as a basis indicating the impossibility of recognizing the act as insignificant.

It is quite natural that in the practice of the court there were cases of refusal to satisfy the defense request to terminate the criminal case due to the insignificance of the act.

Example 8. According to the verdict of the Sovetsky District Court of Orel of September 8, 2021 (left unchanged in the appellate court), A. was convicted under paragraph "d" of Part 2 of Article 161 of the Criminal Code of the Russian Federation for robbery committed with violence not dangerous to life or health. Leaving the court decisions unchanged and the cassation appeal of the convicted person without satisfaction, the First General Jurisdiction Court of Cassation concluded about the absence of grounds for terminating the criminal case, including due to the insignificance of the act (Part 2 of Article 14 of the Criminal Code of the Russian Federation) and indicated the degree of public danger of the crime committed (ruling No. 77-6224/2022 of December 1, 2022).

Example 9. According to the verdict of the Rovenky District Court of the Belgorod Oblast of November 11, 2021, K. and R. were each sentenced to a fine under Part 3 of Article 256 of the Criminal Code of the Russian Federation. The verdict was changed by the appeal decision of the Belgorod Regional Court of January 17, 2022. A qualifying element "using the method of mass destruction of aquatic biological resources" was excluded from the qualification of the actions of the convicts. It was decided to consider the correct qualification of their actions under Part 3 of Article 256 of the Criminal Code of the Russian Federation as illegal extraction of biological resources using prohibited tools. Leaving the court decisions unchanged, the court in the ruling No. 77-2721/2022 of May 31, 2022, based on the circumstances of what the convicts had done, did not see any grounds for applying provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation to them.

As is known, by resolution of the Plenum of the Supreme Court of the Russian Federation No. 22 of June 29, 2021 "On Amendments to Certain Resolutions of the Plenum of the Supreme Court of the Russian Federation on Criminal Cases", Paragraph 12 is excluded from the resolution of the Plenum No. 60 of December 5, 2006 "On the Application by Courts of a Special Trial Procedure for Criminal Cases", according to which Chapter 40 of the Criminal Procedural Code of the Russian Federation does not contain norms prohibiting the adoption of judicial decisions other than a guilty verdict in a case considered in a special order, in particular, what the accused has done can be redefined, and the criminal case itself is terminated (for example, due to the expiration of the statute of limitations, changes in criminal law, reconciliation with the victim, amnesty, refusal of the public prosecutor to charge), etc., if this does not require a study of the evidence collected in the case and the actual circumstances do not change. At the same time, in accordance with the explanations contained in Paragraph 2 of Resolution No. 60 of December 5, 2006, the Plenum of the Supreme Court of the Russian Federation draws attention to the fact that when considering the possibility of making a judicial decision on the petition of the accused to pronounce a sentence without conducting a trial in the general procedure, the courts should establish whether there are necessary conditions for this in a criminal case. According to requirements of the norms of Chapter 40 of the Criminal Procedural Code of the Russian Federation, these are also the absence of grounds for terminating the criminal case.

Since an insignificant act is not a crime due to the absence of public danger (Part 2 of Article 14 of the Criminal Code of the Russian Federation), the criminal case in this case is subject to termination for lack of corpus delicti, and the person is not subject to criminal liability, we believe that when considering a criminal case in a special order, making a decision on the insignificance of the act is excluded.

It is established that the First General Jurisdiction Court of Cassation applied provisions on the insignificance of the act in one criminal case considered in a special judicial procedure.

Example 10. According to the verdict of the Kromy District Court of the Oryol Oblast of September 27, 2022, Ts. was sentenced under Article 151.1 of the Criminal Code of the Russian Federation to correctional labor with deprivation of the right to engage in activities related to the sale of alcoholic beverages to the public for a period of one year. On the basis of Part 5 of Article 82 of the Criminal Code of the Russian Federation, the postponement of the execution of the sentence of the Zheleznodorozhny District Court of Orel of March 26, 2021 was canceled. On the basis of Article 70, paragraph "c" of Part 1 of Article 71 of the Criminal Code of the Russian Federation on the totality of sentences by fully attaching the unserved part of the punishment by the verdict of the Zheleznodorozhny District Court of Orel of March 26, 2021. Ts. was sentenced to real imprisonment for 2 years and 1 month with deprivation of the right to engage in activities related to the sale of alcoholic beverages to the public for one year. The verdict was not appealed. It was established that Ts., being brought to administrative liability under Part 2.1 of Article 14.16 of the Administrative Code of the Russian Federation for the retail sale of alcoholic beverages to a minor by the decision of the justice of the peace, illegally for selfish reasons, realizing the socially dangerous and illegal nature of their actions, knowing about the ban on the retail sale of alcoholic beverages to persons under the age of 18, acting intentionally, in violation of the requirements of Paragraph 11 of Part 2 of Article 16 of the Federal Law No. 171-FZ of November 22, 1995 "On State Regulation of the Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-Containing Products and on Restriction of Consumption (Drinking) of Alcoholic Products", sold one can of beer to a minor E., born on August 10, 2004. The specified actions of the Ts. were qualified according to Article 151.1 of the Criminal Code of the Russian Federation as the retail sale of alcoholic beverages to minors, if this act has been committed repeatedly. Canceling court decisions against Ts. and deciding to terminate the criminal case against her on the basis of paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation for the absence of corpus delicti in the act due to its insignificance, the judicial board for criminal cases of the First Cassation Court of General Jurisdiction pointed to the absence in the case materials of evidence that the act of Ts. caused significant harm to the interests of the minor E., who was 17 years and 4 months old at the time of the commission of the incriminated convicted act. There were no socially dangerous consequences, the act did not have elements of sufficient public danger that would allow it to be recognized as a crime (cassation ruling of the First General Jurisdiction Court of Cassation No. 77-1650/2023 of April 5, 2023).

The documents presented above show that when recognizing an act as insignificant, the court may acquit a defendant on the basis of provisions of articles 254, 302 of the Criminal Procedural Code of the Russian Federation. However, taking into account the prevailing judicial practice, including that of the Supreme Court of the Russian Federation, it is possible to terminate the criminal case for lack of corpus delicti due to the insignificance on the basis of paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation with the issuance of a court ruling or ruling, which does not contradict the requirements of the law.

When making a decision to terminate a criminal case 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 due to its insignificance, the judicial board for criminal cases dismissed the victim's civil claim.

Example 11. By the verdict of the justice of the peace of the judicial district No. 2 of the Pochinky Judicial District of the Nizhny Novgorod Oblast of April 20, 2022, P. was convicted underPart 1 of Article 139 of the Criminal Code of the Russian Federation. It was decided to collect 5 thousand rubles from P. in favor of S. on account of compensation for moral damage and 8 thousand rubles to the federal budget for procedural costs of paying for the services of a representative of the victim. The verdict was upheld on appeal. The third instance court overturned court decisions regarding the claim (Paragraph 2 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation), the civil claim of the victim by virtue of Part 2 of Article 306 of the Criminal Procedural Code of the Russian Federation was left without consideration, as a decision was made to terminate the criminal case on rehabilitative grounds (cassation decision of the First General Jurisdiction Court of Cassation No. 77-1213/2023 of March 14, 2023).

According to the opinion of the judges revealed on the basis of studying procedural documents, by virtue of Part 2 of Article 14 of the Criminal Code of the Russian Federation, an action (inaction) is not a crime, although formally containing elements of any act provided for by the Criminal Code of the Russian Federation, but due to insignificance it does not pose public danger. In accordance with Paragraph 3 of Part 3 of Article 133 of the Criminal Procedural Code of the Russian Federation, the basis for the right to rehabilitation, including the right to compensation for damage related to criminal prosecution, is the termination of a criminal case on the grounds provided for in paragraphs 1, 2, 5 and 6 of Part 1 of Article 24 and paragraphs 1, 4–6 of Part 1 of Article 27 of the Criminal Procedural Code of the Russian Federation.

Considering that, within the meaning of the law, an act is insignificant not by virtue of the law, but can be recognized as such at the discretion of the court, which established that the act did not pose that degree of public danger that would allow it to be regarded as criminal, we believe it impossible to recognize an act as insignificant in accordance with norms of Chapter 18 of the Criminal Procedural Code of the Russian Federation.

We have not identified any examples of denial of the right to rehabilitation when the court applied norms on the insignificance of an act in the practice of the First General Jurisdiction Court of Cassation. Apparently, the practice of this court has no cases when the petition for termination of the criminal case filed in the court of first and appellate instances due to the insignificance of the committed act was not satisfied if there were grounds for applying Part 2 of Article 14 of the Criminal Code of the Russian Federation.

At the same time, judicial decisions of the First General Jurisdiction Court of Cassation and lower courts in two criminal cases, taking into account provisions of Part 2 of Article 14 of the Criminal Code of the Russian Federation, were annulled by the Supreme Court of the Russian Federation [23].

Based on the decisions of the First General Jurisdiction Court of Cassation, it can be concluded that the judges consider that, since, according to Part 2 of Article 14 of the Criminal Code of the Russian Federation, an action (inaction) is not a crime, although it formally contains elements of an act provided for by the Criminal Code of the Russian Federation, but due to the insignificance does not pose public danger and a judicial fine imposed on the basis of Article 76.2 of the Criminal Code of the Russian Federation to a person released from criminal liability is not a criminal punishment, but refers to other measures of a criminal legal nature provided for in Section VI of the Criminal Code of the Russian Federation "Other Measures of a Criminal Legal Nature", we believe that the provisions of the Criminal Code of the Russian Federation on the insignificance of the act are subject to priority application.

As the analysis of judicial practice has shown, the district courts served by the First General Jurisdiction Court of Cassation experience difficulties in law enforcement practice when applying the provisions of the Criminal Code of the Russian Federation on the insignificance of an act, requiring clarification by the Supreme Court of the Russian Federation, which are related to the definition of criteria to be taken into account when determining the insignificance of an act.

Judges of almost all levels of the judicial system are at least in no hurry to apply Part 2 of Article 14 of the Criminal Code of the Russian Federation, and at most they are afraid of this.

At the same time, it should be noted that some problems concerning the ratio of the significant and insignificant began to be discussed by the authorities that form criminal policy. In particular, First Deputy Minister of Justice of the Russian Federation E.L. Zaburchuk speaking at the international scientific and practical conference dedicated to the memory of Professor M.N. Gernet admitted that in practice the termination of a criminal case for insignificance with subsequent rehabilitation of the perpetrator was nonsense. We cannot but agree with the speaker, because it turns out that it is not the thief who owes society and the state, but we all have to compensate him/her for moral harm.

However, the situation is not as simple as it seems at first glance. The problem of insignificance resolved by the courts is aggravated by the fact that some cases terminated under Part 2 of Article 14 of the Criminal Code of the Russian Federation were initially initiated illegally, since there was no crime event (Paragraph 1 of Part 1 of Article 24 of the Criminal Procedural Code of the Russian Federation).

Thus, the judicial board for criminal cases of the Supreme Court of the Russian Federation dismissed the case against S., convicted under Part 3 of Article 160 of the Criminal Code of the Russian Federation for embezzlement of 16,391 rubles (cassation ruling of the judicial board for criminal cases of the Supreme Court of the Russian Federation No. 51-UD24-10-K8 of September 4, 2024). At the same time, the study of this case against the head of S. makes it possible to doubt that the specified amount was stolen by someone at all. There should be no such omissions in court decisions.

Key scientific and practical conclusions

1. The interdisciplinary paired category of "significant – insignificant" is actively being developed by legal science. The analyzed ratio is a social, political category and, by virtue of this, historically variable.

2. As a general rule (Part 1 of Article 14 of the Criminal Code of the Russian Federation), only an act that poses real public danger is criminal and criminally punishable.

3. Attribution of certain acts to the category of significant or insignificant is the exclusive competence of the federal legislator (Article 10, paragraph "o" of Article 71 of the Criminal Code of the Russian Federation).

4. At the same time, in Part 2 of Article 14 of the Criminal Code of the Russian Federation, the legislator recognizes that some acts that formally fall under the description of a specific crime, the disposition of which is given in the Special Part of the Criminal Code of the Russian Federation, do not have a degree of public danger. Thus, the legislator transfers the resolution of the issue of significance or minor significance of the act to the discretion of the law enforcement officer (inquirer, investigator,

prosecutor and court). In our opinion, sending a criminal case to the court against a person who has committed an obviously insignificant act (Part 2 of Article 14 of the Criminal Code of the Russian Federation) is a drawback in the work of the prosecution.

5. We assert that the insignificance of the act does not depend on whether the corpus delicti incriminated to a particular person is material or formal. The main thing in the crime is the reality of the degree of public danger.

6. Data on the identity of the perpetrator plays an extremely important role in determining the degree of public danger of an act.

7. There has been a steady trend towards the termination of controversial (artificial) criminal cases for insignificance in the practice of the judicial board for criminal cases of the Supreme Court of the Russian Federation and all eight general jurisdiction courts of cassation in recent years (2020–2024).

8. The roots of this practice can be seen to a certain extent in the prolonged lag between the norms of substantive law (Article 7.27 of the Administrative Code of the Russian Federation and Chapter 21 of the Criminal Code of the Russian Federation) and the realities of life.

9. Bodies carrying out law enforcement intelligence, as well as preliminary investigation bodies and prosecutors, are in no hurry to deviate from the letter of the law, citing the need to comply with the principle of legality, as well as the fact that impunity for persons who have committed minor acts pushes them to commit serious crimes.

10. Judges of lower courts, in the absence of special explanations, are also in no hurry to apply Part 2 of Article 14 of the Criminal Code of the Russian Federation. It seems that the analyzed issue could be clarified within the framework of the preparation of an appropriate thematic resolution of the Plenum of the Supreme Court of the Russian Federation.

11. Article 7.27 of the Administrative Code of the Russian Federation provides for liability for petty theft of other people's property in the amount of up to 1,000 rubles (Part 1) and up to 2,500 rubles (Part 2). A person guilty of committing petty theft can automatically be punished administratively, including actually imprisonment for up to half a month. The cancellation of sentences on embezzlement of large amounts for insignificance (Part 1 of Article 14 of the Criminal Code of the Russian Federation) with subsequent rehabilitation generally takes many perpetrators of an offense beyond all types of liability. The current situation cannot be considered acceptable.

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