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Changing the Category of Crime by the Court as a Means to Individualize Imposition of Criminal Punishment

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Abstract

Introduction: the article discusses the procedure and grounds for changing the category of crime by the court to a less serious one in conditions where there are reasons for applying the specified norm to individualize punishment. The norm of Part 6 of Article 15 of the Criminal Code of the Russian Federation is often criticized in literature and is the subject of specialists' discussion. *Purpose:* based on the analysis of scientific literature and judicial practice, to show the possibilities of punishment individualization by recognizing a crime less grave in accordance with the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation. *Methods:* historical, comparative legal, statistical, empirical methods of description, interpretation; theoretical methods of formal and dialectical logic. The following private scientific methods were used: the legal-dogmatic and the method of interpretation of legal norms. *Results:* the work conducted reveals researchers' opinions about redundancy of the norm regulating the change in the category of crime. Nevertheless, this rule should be recognized as necessary, as it entitles the court to make the right decision in non-standard situations. The rule under study may be used to individualize punishment for members of organized criminal groups, depending on their degree of involvement in criminal activity and the public danger of their actions. *Conclusions:* to promote individualization of punishments in the domestic criminal law, it is necessary to expand the possibilities of applying Part 6 of Article 15 of the Criminal Code of the Russian Federation, having supplemented the Resolution of the Plenum of the Supreme Court of the Russian Federation with an appropriate paragraph providing for the application of this norm when considering cases in a special order in connection with the conclusion of a pre-trial cooperation agreement with the defendant.

Keywords: criminal legislation; changing the category of crime; categories of crimes; punishment individualization; public danger of crime.

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Effective application of the criminal law norms is a necessary condition for protecting human rights and freedoms, as well as interests of both an individual and the society as a whole. A key direction of the modern criminal policy development is humanization of criminal legislation, understood as a direct consequence of implementing important principles of criminal law, such as legality, justice and humanism. Respecting the humanism prin-

ciple, criminal punishment is aimed at correcting a convict, restoring justice in public relations, and preventing new offenses, but in no way revenging or penalizing. Among the legal tools that serve to humanize the criminal law, we should note the retroactive effect of mitigating punishment norms, amnesty, and the establishment of milder punishments in compliance with the conditions specified in the law.

Introduced in 2011, Part 6 of Article 15 of the Criminal Code of the Russian Federation, is a measure humanizing criminal legislation. The provisions of this article allow the court, in some cases specified in the law, to change the category of crime to a less serious one.

The categories of crimes provided for in Article 15 of the Criminal Code of the Russian Federation, predetermining formally permissible limits for assessing acts of the relevant group, at the same time encourage the court to make variable criminal law decisions. A clear example of this was the right granted to the court to reduce the category of the crime, which significantly affects the scope of criminal responsibility of the guilty person.

The provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation grant the court the right to change the category of crimes of moderate gravity, grave and especially grave to less serious ones, in the case when the defendant is sentenced to no more than three, five or seven years of imprisonment, respectively, or a milder punishment. It should be noted that courts hardly use this rule – only in about 0.5% of cases of conviction for crimes of moderate gravity, grave or especially grave categories [9].

The mechanisms to apply the above norm are specified in the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 of May 15, 2018 "On the practice of courts' application of the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation", Paragraph 2 of which, in particular, stipulates that "in resolving this issue, the court takes into account a method of committing crimes, degree of realization of criminal intentions, role of the defendant in the crime committed in complicity, type of intent or type of negligence, motive, purpose of the act, nature and size of the consequences, as well as other factual circumstances of the crime affecting the degree of its public danger. The court can conclude about the existence of grounds for applying provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation, if the actual circumstances of the committed crime indicate a lesser degree of its public danger".

The concept of public danger can be hardly ever interpreted unambiguously. By its very nature, it is intended specifically for assessing various legal situations, which can often be atypical. Accordingly, they can hardly be assessed on the basis of standardized strict norms. Y.E. Pudovochkin defined public danger as follows: "Being an internal property of an act, public danger, at the same time, is an evaluative sign. An act is assessed as dangerous at two levels: at the level of the legislator when determining criminalization of an act and at the level of the law enforcement officer when choosing an optimal form for realization of the subject responsibility's" [19, p. 155]. Disputes about the degree of public danger of certain committed acts and the measure of punishment for their commission do not subside both in our country and abroad (for example, in the USA there is an active discussion about the frequency of sentencing in the form of life imprisonment for violent crimes). In their publication, M. Bagaric and J. Svilar justify the proportionality of the sentence of life imprisonment for first-degree murder. At the same time, the authors point out that such a penalty is excessive for other crimes that do not entail such dangerous consequences, and suggest considering the possibility of abolishing the practice of assigning this type of punishment for crimes less serious than first-degree murder [26].

Formally, almost every sentence considers the very possibility of applying the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation. Nevertheless, the court hardly ever changes the category of crime to a less serious one, in accordance with this article [20, p. 66]. According to sample studies, the use of Part 6 of Article 15 of the Criminal Code of the Russian Federation is found in only 1.7% of sentences, or in 5 cases out of 300 considered. According to the 2021 statistics of the Judicial Department at the Supreme Court of the RF, the courts of general jurisdiction applied Part 6 of

Article 15 of the Criminal Code of the Russian Federation only in 6,987 cases out of 769,948 completed ones, that is, 0.91% of the cases. In 2020, this article was applied by the courts even less often: in 0.59% of the cases [22].

It should be noted that in the system of norms of the Criminal Code of the Russian Federation, the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation have a special character, and can be applied only in exceptional situations [18]. Thus, a criminal case must have certain features and circumstances (facts) for their application.

D.S. Dyad'kin describes the grounds for applying the rule of Part 6 of Article 15 of the Criminal Code of the Russian Federation, such as exceptional factual circumstances of the crime, and an exceptional degree of public danger of the act. Factual circumstances of the crime should be understood more broadly than just as a set of facts established in the case, simultaneously testifying to both the act itself and its criminality. These should include any circumstances related to the definition of vital facts, phenomena of reality, forming in this particular case the actual basis for applying the norm under discussion" [6, p. 23].

It should be noted that the discussion about the need for further individualization of sentencing is conducted not only in Russian scientific circles. Western researchers also draw attention to the need for additional study of all the evidence in order to identify mitigating circumstances, which will allow a more balanced approach to both the prosecution and defense of the defendant. According to J.B. Meixner Jr., the sentencing process in American courts should be reformed towards greater individualization of sentencing. The author proposes to achieve this by conducting deeper investigation of all facts and examination of evidence, as well as presenting mitigating circumstances so that they can be of effective assistance to the defender in the trial [28]. At the same time, another author emphasizes that the introduction, for example, of mandatory minimum sentences in the United States forces judges to impose minimum prison sentences solely on the basis of charges brought against the accused by prosecutors, deprives judges of the opportunity to exercise discretion and make individual court decisions in each specific case. Since the introduction of mandatory minimum punishment, many unjustifiably harsh sentences have been imposed, including for nonviolent crimes, as well as against criminals who have not been previously convicted [29]. Of course, such a practice, which provides for the same approach to everyone, without taking into account all circumstances of the case, should be avoided in domestic justice.

Taking into account special circumstances of the category change, it is reasonable to consider correlation of Part 6 of Article 15 of the Criminal Code of the Russian Federation and Article 64 of the Criminal Code of the Russian Federation, stipulating "exceptional mitigating circumstances that significantly reduce the degree of public danger of a crime". The Plenum of the Supreme Court of the Russian Federation in the Resolution No. 10 of May 15 , 2018 emphasized that "the court's application of Article 64 of the Criminal Code of the Russian Federation does not prevent a change in the category of crime in accordance with Part 6 of Article 15 of the Criminal Code of the Russian Federation, these norms are applied independently, since the law provides for various grounds for this".

Based on the current practice of law enforcement, it can be noted that the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation are confidently applied by courts, although their application is not widespread due to their exceptional properties. They deserve a certain place in the system of means of individualizing criminal punishment. The basis for discussing problems of the practice to apply Part 6 of Article 15 of the Criminal Code of the Russian Federation is the recognition of the fact that, despite the complexity of existing criminal law norms on categorization of crimes, these prescriptions should not be interpreted as violating the constitutional rights and freedoms of citizens. The Constitutional Court of the Russian Federation considered citizens' appeals regarding compliance of Article 15 of the Criminal Code of the Russian Federation with the basic law. However, none of the cases had any signs of contradiction to the Constitution in the criminal norms under consideration. At

the same time, the Court formulated an important basic thesis: "In the Criminal Code of the Russian Federation, the type and size of the punishment provided for them are used as a criterion for categorizing crimes, which serve as external formalized indicators reflecting the nature and degree of their public danger" [12]. The Court repeatedly emphasized the fact that in this case it refers to the amount of the maximum penalty established in the sanction of the relevant article of the Special Part of the Criminal Code of the Russian Federation, and not to the amount of punishment actually imposed on the defendant.

That is why the opinion repeatedly expressed in the literature that the norm of Part 6 of Article 15 of the Criminal Code of the Russian Federation contradicts the principle of legality raises fair doubts. L.O. Kuleva substantiates this point of view, as "it is the legislator who develops the article sanction, determining the content of a particular category, as well as criminal legal consequences. In case of a change in the category of a crime, the court casts doubt on the sanction of the article, establishing a different category" [8, p. 56].

However, we are not talking here about a routine and daily change in the category of a crime, but about exceptional cases, when the use of the norm of Part 6 of Article 15 of the Criminal Code of the Russian Federation is not to cancel the sanction of the applied article of the Special Part of the Criminal Code of the Russian Federation, but only to individualize punishment for the convicted person to the necessary extent [6, p. 25; 19, p. 80].

As indicated in the Resolution of the Plenum of the Supreme Court of the Russian Federation, when the category of crime is replaced by a less serious one, the legal consequences for the convicted person will be determined with regard to the changed category of crime. This recommendation of the Supreme Court, which is addressed to inferior courts, emphasizes the great importance of the role of judicial authorities in determining the public danger of a crime. According to A.M. Gerasimov, the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation provide the court with additional opportunities to give maximum objective assessments to criminal acts, minimizing the issuance of standard, cliched decisions [5, p. 56].

Besides, L.O. Kuleva argues that the norm of Part 6 of Article 15 of the Criminal Code of the Russian Federation duplicates other articles of the same Code, in particular, Article 64 of the Criminal Code of the Russian Federation on circumstances that reduce a degree of public danger [8, p. 85]. However, in accordance with the clarification given in the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 of May 15, 2018, various grounds are provided for using these articles, therefore, they can be applied simultaneously.

Based on a comparative analysis of the mentioned norms, it can be concluded that, although the grounds for their application have some common features, there are the following differences:

– Article 64 of the Criminal Code of the Russian Federation can be applied to crimes of minor gravity, whereas Part 6 of Article 15 cannot;

– Article 64 of the Criminal Code of the Russian Federation cannot be used in relation to certain crimes specified in Part 3 of Article 64 of the Criminal Code of the Russian Federation, whereas Part 6 of Article 15 is applicable;

– Article 64 of the Criminal Code of the Russian Federation is applied in the presence of aggravating circumstances, whereas Part 6 of Article 15 is not;

– Article 64 of the Criminal Code of the Russian Federation, unlike Part 6 of Article 15, stipulates active assistance of a group crime participant in the disclosure of this crime;

– Article 64 of the Criminal Code of the Russian Federation provides for mitigation of punishment below the lowest limit of the sanction or imposition of a milder punishment than specified in the sanction, or non-assignment of additional punishment provided for as mandatory, while Part 6 of Article 15 of the Criminal Code of the Russian Federation can be applied when imposing punishment within the limits established by the sanction of the applicable article of the Special Part of the Criminal Code of the Russian Federation, taking into account the maximum amount of punishment specified in the article itself.

When circumstances of the case suggest the existence of grounds for using both norms, and there are no legally defined obstacles to the application of Part 6 of Article 15 of the Criminal Code of the Russian Federation, it should be assumed that the court is entitled to impose a more lenient punishment than established for this crime, and at the same time change the category to a less serious one.

Proceeding from the premise that the norms of Article 64 and Part 6 of Article 15 of the Criminal Code of the Russian Federation are intended in criminal law to solve different tasks and do not compete with each other, the same facts and circumstances of the criminal case can be taken into account for their application.

In general, it should be noted that although courts, as a rule, are not ready to apply Part 6 of Article 15 of the Criminal Code of the Russian Federation, at the same time, such an opportunity changes a lot for the defendant, for example, from the appointment of a type of correctional facility to the chance to be released early. It is necessary to use this rule at least occasionally, relying not just on mitigating circumstances of the case, but on exceptional ones. This will bring us closer to solving the problem of individualizing criminal punishment.

In this sense, we should turn to the criminal legislation of the Republic of Kazakhstan. It is a vivid example of the fact that the legislator takes another approach to individualization of sentencing. In this case, the emphasis is not on the category of the crime itself, that is, not on the degree of its public danger, but on the presence or absence of mitigating circumstances. Article 55 of the Criminal Code of the Republic of Kazakhstan [24] exhaustively and specifically states in what circumstances and in what amount the punishment should be reduced. Thus, it is provided that the presence of mitigating and the absence of aggravating circumstances is the basis for reducing the penalty for a criminal offense and crimes of small or medium gravity at least by half, for a serious crime – by no more than 2/3, and for a particularly serious crime – by no more than 3/4 of the amount established by the relevant article of the Special Part of the Criminal Code.

The provisions of the Criminal Code of the Republic of Kazakhstan were supplemented by the Normative Resolution of the Supreme Court of the Republic of Kazakhstan No. 4 of June 25, 2015, indicating the need to take into account not only the severity of the crime established in Article 11 of the Criminal Code of the Republic of Kazakhstan, but also the totality of circumstances accompanying its commission, such as motives, goals, method of commission, form of the criminal's guilt, stage of the crime, public danger of the consequences, etc. Also, the Resolution draws the courts' attention to the fact that the rules on the imposition of a more lenient punishment can be applied only in the presence of exceptional mitigating circumstances, which, first, reduce the degree of public danger of a criminal act, and second, indicate positive characteristics of the defendant from a socio-moral point of view. The last circumstance about moral appearance of a criminal is a significant difference from similar Russian norms and their interpretations, in which there is no reference to characteristics of the criminal's personality as such.

This approach certainly has both positive and negative properties. In particular, some Kazakh jurists believe this issue to negatively affects sentences related to certain crimes. For example, there are situations when almost the same punishment is imposed on members of a criminal group performing roles completely different in importance and social danger (for example, an organizer and a minor perpetrator), for the sale of narcotic substances by one criminal in the amount of one gram, and by another – several kilograms of the same substance [3].

Unlike the Criminal Code of the Republic of Kazakhstan, the Criminal Code of the Kyrgyz Republic [23] directly establishes basic principles of the criminal law, including the principle of individualization of liability and punishment.

At the same time, the 2021 criminal legislation reform carried out in Kyrgyzstan in fact, removed many means of differentiation and individualization previously introduced. Thus, the Criminal Code of the Kyrgyz Republic, adopted in 2017, was abolished. Acts that had been considered offences were transferred to the category of less serious crimes.

Article 19 of the Criminal Code of the Kyrgyz Republic fixes four categories of crimes: minor, less serious, grave and especially grave, the classification is traditionally based on the terms of imprisonment assigned to these categories.

In addition, in 2021, the institute of a cooperation agreement was abolished in Kyrgyzstan, since, according to the legislator, the presence of such an institute led to a significant decrease in the quality of investigative actions [1]. Thus, it seems that these provisions of the criminal legislation of the Kyrgyz Republic reduce the importance and role of the principle of individualization of criminal liability and punishment.

It seems that the expansion of the use of Part 6 of Article 15 of the Criminal Code of the Russian Federation is possible, in particular, in the sphere of sentencing persons who participated in organized groups or criminal communities. Hearing of cases of crimes committed by a group of persons or an organized group, or a criminal community, is always characterized by increased complexity, due to additional consideration of the facts related to determining forms of complicity, roles of each member of the criminal group in the commission of crimes, forms and degrees of guilt of each of them.

In the literature, it is customary to talk about organized forms of crime as phenomena with increased social danger. According to D.A. Yankovskii, this is mainly due to the fact that criminal associations form and operate much more stable antisocial ties of a criminal nature between individual criminal elements, and in this way a special "collective" subject of criminal activity appears [25, p. 117].

According to Paragraph 2 of the Resolution of the Plenum of the Supreme Court of the Russian Federation, application of Part 6 of Article 15 of the Criminal Code, requires, among other factors, consideration of the defendant's role in the crime committed in complicity. However, it seems to us that this formulation is insufficient for forming law enforcement practice in this area.

Criminal organizations and communities differ in a certain distribution of roles and functions between participants according to the established unwritten hierarchy and the degree (prescription) of involvement in criminal activity. Accordingly, the division of income from illegal activities occurs between them also in accordance with this structure and hierarchy. Mandatory features of both the criminal community and the organized group are the following: mandatory identification and definition of the goals of joint activities; detailed elaboration and planning of criminal actions; a hierarchical structure and distribution of roles among criminal community (criminal organization) members; strict discipline with unconditional subordination in the management system; organizers' active efforts to create a system for counteracting various control levels [7, p. 78].

Therefore, when considering cases concerning crimes committed by organized groups of criminals, the court has to determine, among other things, the position of each of the accused in the hierarchy of the community and the degree of complicity. This circumstance in itself sufficiently complicates the process of adjudication in such cases. During the preliminary investigation, it is necessary to establish the degree of guilt and identify the specifics and degree of actual participation of each of the accused in the commission of a crime. At the same time, a person is often involved in the criminal activity accidentally, against his/her own will, through threats, deception, blackmail, under the influence of delusion or not fully realizing consequences of his/her actions. Accordingly, personal responsibility of each person should be determined with regard to all the circumstances set out.

In order to counteract precisely group forms of crime, including latent, socially dangerous criminal phenomenon, the institute of pre-trial cooperation agreement (Paragraph 61 of Article 5 of the Criminal Procedural Code of the Russian Federation). Its effectiveness is achieved through promotion of positive post-criminal actions of the accused, who acquires favorable criminal legal consequences established in the agreement [2, p. 56]. In terms of effectiveness and frequency of application, it can be compared with plea bargaining in the US criminal law [27, 30].

It can be said that the application of a special procedure for considering the case when concluding a pre-trial cooperation agreement

with the accused is a compromise way of both consideration by the court and preliminary investigation of a criminal case. At the same time, assistance of the suspect or the accused to preliminary investigation bodies, as B.T. Bezlepkin notes, should be characterized by such signs as activity, interest and conscientiousness. This, in the researcher's fair opinion, is the legitimate purpose of this agreement [4, p. 233].

We also believe that the institution of a pre-trial cooperation agreement was introduced to establish a mechanism for effective counteraction of organized crime. It was assumed that this mechanism would serve as an obstacle to illegal activities of criminal groups and communities, since their participants often withhold information about criminal activity organizers and their accomplices under the fear of revenge. The norms on the pre-trial cooperation agreement allow investigative authorities to legally provide state protection measures and mitigation of punishment to participants of organized criminal groups and criminal communities in exchange for providing information about accomplices, planned crimes, criminal connections and contacts in the group (community).

According to E.Z. Sakaeva and E.E. Musina, the essence of the pre-trial cooperation agreement is reduced to a special way of investigating and solving the most dangerous and serious crimes (contract murders, banditry, illicit trafficking in narcotic drugs, weapons, corruption crimes, etc.), by encouraging the accused to actively cooperate with the investigative authorities [21, p. 87].

We studied 90 sentences, issued in a special order of the case consideration, with the application of Chapter 40.1 of the Criminal Procedural Code of the Russian Federation on the conclusion of a pre-trial cooperation agreement. Among them there is a relatively small proportion of sentences, in which the court found it appropriate to apply Part 6 of Article 15 of the Criminal Code of the Russian Federation and change the category of crime. In particular, the grounds were the following:

– the defendant was found guilty of committing crimes under paragraph "a" of Part 5 of Article 290, Part 1 of Article 291.2 of the Criminal Code of the Russian Federation. The category of the crime under paragraph "a" of Part 5 of Article 290 was changed from especially grave to grave, she was sentenced to the 3-year imprisonment with serving a sentence in a correctional facility of general regime and deprivation of the right to hold positions in public service, local self-government bodies with organizational and administrative and economic functions for a period of 4 years and the fine to the state revenue in the amount of 70,000 rubles [14];

– the defendant was found guilty of paying a bribe for processing documents confirming the veterinary safety of farm animals under Part 5 of Article 291 of the Criminal Code of the Russian Federation, and the fine of 3,000,000 rubles was imposed. The court, on the basis of Part 6 of Article 15 of the Criminal Code of the Russian Federation, found it possible to change the category of the committed crime from especially grave to grave [17];

– the defendant was found guilty of unlawful deprivation of liberty, violation of the inviolability of the home, and extortion. The court found it necessary to change the category of this crime from especially grave to grave, on the basis of Part 6 of Article 15 of the Criminal Code of the Russian Federation. The final punishment was imposed in the form of imprisonment for a period of four years, without a fine and without restriction of freedom [16];

– the defendant was found guilty of committing four crimes under Part 3 of Article 159 of the Criminal Code of the Russian Federation. The court, guided by Part 6 of Article 15 of the Criminal Code of the Russian Federation, considered it possible to change the category of four crimes committed by the defendant to a less serious one (from grave to the category of medium gravity). The final punishment was be imposed on the totality of crimes by partial addition of prescribed punishments in the form of imprisonment for a period of three years. In accordance with Article 73 of the Criminal Code of the Russian Federation, the sentence imposed on the defendant was changed to suspended, and a two-year probation period was established [15].

It should be noted that most of the mentioned court sentences relate to cases of corruption and economic crimes: bribery or mediation, fraud, and extortion.

The most severe punishment in the form of actual imprisonment was imposed in the

criminal cases, when there was several episodes of criminal activity, with the defendant using her official position, or where there were other crimes, such as illegal deprivation of liberty and violation of the inviolability of the victim's home.

With all the numerous sentences in cases concerning articles of Chapter 25 of the Criminal Code of the Russian Federation, in particular, illicit trafficking in narcotic drugs and psychotropic substances, the court hardly ever uses provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation.

Of the total number of court decisions considered in the framework of this study, there was one in which the court established grounds for changing the category of crime from especially grave to grave. The court took into account, among other things, a degree of realization of criminal intentions (the crime was not completed), non-occurrence of particularly serious consequences, commission of a crime for the first time and young age of the defendant [14]. In the operative part of the verdict, the court decided to find the defendant guilty of committing a crime under Article 30, Part 3, paragraphs "a", "d", Part 4 of Article 228.1 of the Criminal Code of the Russian Federation, impose a sentence of imprisonment for a period of 4 years in the general regime correctional facility, changing the category of crime from especially grave to grave. So, the change in the category affected the type of a correctional institution for serving the sentence.

Thus, it can be noted that the application of Part 6 of Article 15 is rather difficult or seems impossible in relation to violent crimes, as well as crimes against public health and public morality. Taking into account the increased public danger of these crimes, in our opinion, it is difficult to determine which exceptional mitigating circumstances may prompt the court to consider the issue of individual mitigation in sentencing.

At the same time, as mentioned above, the use of Part 6 of Article 15 of the Criminal Code of the Russian Federation in judicial practice is very rare, while the article represents capacities for further development of humanization and individualization of criminal punishment.

Considering the possibility of applying this rule, when the criminal case is considered in a special order with the conclusion of a pre-trial agreement on cooperation and the crime is nonviolent, we would like to draw attention to the following points. Paragraph 7 of Article 317.3 of the Criminal Procedural Code of the Russian Federation stipulates that a pre-trial cooperation agreement should specify mitigating circumstances and criminal law norms that can be applied against the suspect or the accused if the latter meet requirements and fulfills obligations specified in it. Thus, in this case we are dealing with a criminal procedural issue, which in turn covers criminal law, that is, includes application of Part 6 of Article 15 of the Criminal Code of the Russian Federation when considering a case in a special order.

Paragraph 5 of Part 4 of Article 317.7 of the Criminal Procedural Code of the Russian Federation indicates that at the court hearing it is necessary to investigate, among other things, the circumstances that characterize the personality of a defendant, with whom a pre-trial cooperation agreement has been concluded, and the circumstances mitigating and aggravating punishment. The Resolution of the Plenum of the Supreme Court of the Russian Federation No. 16 of June 28, 2012 "On the practice of courts' application of a special procedure for court proceedings when concluding a pre-trial cooperation agreement" [10] also mentions investigation of the circumstances characterizing the defendant's personality, mitigating and aggravating punishment. It is indicated that these circumstances can be established on the basis of additional materials provided by the parties, as well as witness testimony.

At the same time, the law provisions do not clarify the specific purpose of this investigation, thus it seems possible to use results of the court's consideration of these characteristics and circumstances, including for substantiating mitigation of the imposed punishment. So, if there are sufficient mitigating circumstances and personal traits of the defendant, the court has reason to change the crime severity category in accordance with Part 6 of Article 15 of the Criminal Code of the Russian Federation. This approach is confirmed by examples from judicial practice, although quite rare, when, when considering a case in a special order, the court found it pos-

sible to change the category of a crime when passing a guilty verdict [13].

It seems reasonable to recommend to courts, when criminal cases are considered in a special order with the conclusion of a pre-trial cooperation agreement and nonviolent crimes are committed as part of a criminal community (organized criminal group), to apply the rule on changing the category of crime to a less serious one, in accordance with Part 6 of Article 15 of the Criminal Code of the Russian Federation. This approach will ensure achievement of the goal to individualize imposition of punishment for secondary participants in the hierarchy of the criminal community, who perform auxiliary roles and voluntarily cooperate with investigative bodies in order to prevent further criminal activity of the community, to prevent them from committing new crimes.

In this regard, we find it sensible to supplement the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 10 of May 15, 2018 "On the practice of courts' application of the provisions of Part 6 of Article 15 of the Criminal Code of the Russian Federation" with Paragraph 13 of the following wording: "13. When the court considers cases under Chapter 40.1 of the Criminal Procedural Code of the Russian Federation, for example, when the charges are brought against the defendant for participation in a criminal community, the court should individualize and comprehensively assess a degree of participation of the defendant and the impact of the above on occurrence of socially dangerous consequences of the act. If the defendant meets all requirements of the pre-trial cooperation agreement, the court, when imposing punishment, additionally assesses the expediency of applying Part 6 of Article 15 of the Criminal Code of the Russian Federation, taking into account data on the defendant's personality, the scope and nature of charges" [11].

So, the norm of Part 6 of Article 15 of the Criminal Code of the Russian Federation is applied by courts only in exceptional cases when there are special mitigating circumstances. In this case, the court plays an important role in determining a degree of public danger of the act, as well as the threat to society that the defendant's personality represents. The contribution to the development of the theory and applied field of criminal law science is that the conclusions and proposals formulated based on the results of the study are aimed at improving the criminal legislation of the Russian Federation and solving existing problems in law enforcement practice. In particular, there are prospects for expanding the use of Part 6 of Article 15 of the Criminal Code of the Russian Federation in sentencing persons accused of committing crimes as part of criminal communities.

We would recommend courts, when considering criminal cases in a special order, when a person enters into a pre-trial cooperation agreement, charged with committing nonviolent crimes, to apply the rule on changing the category of crime to a less serious one, in accordance with Part 6 of Article 15 of the Criminal Code of the Russian Federation.

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