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THE SOME QUESTIONS OF DEFINITION OF INSIGNIFICANCE OF THE ACT OF THE CRIMINAL LAW

The problematic issues must be focused on the new Criminal Procedure Code of Ukraine (CPC) and practical reform aspects of criminal legislation in the context of the implementation of criminal offenses.

In advance, we will view the substantive definition of a criminal act as the central issue in the concept of insignificance. Firstly, there are problems concerning the content of criteria of the insignificance of the act. Pursuant to P. 2, Art. 11 of the Criminal Code of Ukraine (CC) the legislative criteria of insignificance are identified as: 1) the insignificant act has formally all the objective and subjective characteristics of crime provided for in the Criminal Code; 2) it is not of public danger due to its insignificance; 3) from the subjective side the insignificant act should not be aimed at causing any personal injury [1, p. 38-39].

There are different attempts by legal scholars to define other criteria (or concretization of existing) of the insignificance of the act. According to the opinion of T. Ye. Sevastianova prevalent among legal scholars criteria of the insignificance of the act is lacked or reduced to objective and subjective factors that characterize the insignificant act [2, p. 43]. These scientific positions, as well as analysis of the materials of court and investigative practice, indicate

the existence of current problems of legal understanding and enforcing the law category of «insignificance of the act».

Let us consider problems for determining certain characteristics of the insignificance of the act. Particularly, the legislator does not define the concept of «substantial harm», so judicial and investigative bodies have to interpret this feature on their own. We consider ambiguous the principles of investigators and courts in subjective determination of substantial harm without taking into account the limits of criminal consequences prescribed by the law. For example, during a court procedure there is basis for exemption from criminal liability on the basis of P. 2, Art. 11 of the Criminal Code within thefts of another's property in an amount that exceeds 0.2 non-taxable minimum incomes of citizens. Law courts take into account the following circumstances which they believe indicate the insignificance of the act: insignificant amount of actual damage, compensation for losses, (absence of claims from the victim), an incomplete criminal activity (a guilty person was unable to dispose of stolen property), individual characteristics of a person (commission of a crime for the first time, a predicament material status, a positive characteristic, an employment of guilty person, an admission of guilt, penitence, retention relatives, etc).

In our opinion, there is a substitution of such concepts as «insignificance» and «extenuating circumstances». We agree with T.Ye. Sevastianova that reference to the circumstances is characterizing the offender did not describe in determining insignificant act is unacceptable [2, p. 147]. Undoubtedly, the concept of «insignificance act» a value, but the presence of clear legislative boundaries to criminal consequences, consider questionable position of investigators and courts ignore them and take a rather subjective decision. In the theory of criminal law are different promising solutions to this problem. One of the options - a rejection of the deadline, the other - the preservation of the mentioned concept, but use it only on formal offenses, which act through insignificance is not socially dangerous [3, p. 63]. S.I. Kovalov «in order to increase the probability of the truth of

enforcement in the context of recognition of some insignificant actions» proposes to distinguish acts that can not be recognized insignificant [4, p. 273]. We believe these proposals debatable. Option refusal of such a thing, given the state of the criminal law and the current trends of its application, is, in our view, be premature. In support of this position and demonstrates paragraphs 2 and 3. 11 «The notion of a criminal offense and its species» last draft Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on the introduction of criminal offenses» (reg. Number 2897 of May 19, 2015). Also do not agree with the usage of concept only for formal offenses, since some material offenses do not involve concretized effects (eg, Art. 236, 249, 252, 271, 356 of the Criminal Code, etc.) and have clear guidelines separation of specified regulatory harm it significant. In this context, the position of S.I. Kovalov needs support about not referring to minor offenses that are «characterized by proprietary or physical damage, and its materiality determined directly in the law through reference to a number of non-taxable minimum incomes, the severity of injuries» [4, p. 273]. Therefore, we consider promising to improve Art. 11of Criminal Code of Ukraine through the addition of a new paragraph 3 as follows: «minor acts not set when the offense sufficient and designated persons and property consequences for that part».

Another problem is, in our opinion, the uncertainty of regulation of «significant damage», as that term is used in some criminal law of the Criminal Code, leading to conflicts between standards. For example, if the illegal use of special technical means secret information is not caused significant damage, the perpetrator action should qualify for ch. 1, Art. 359 of the Criminal Code, if there was a threat of substantial harm - on ch. 2, Art. 15 and p. 3 of Art. 359 of the Criminal Code, and if substantial harm inflicted - on ch. 3. 359 of the Criminal Code. Therefore, the actions envisaged ch. 1, Art. 359 of the Criminal Code may be recognized as insignificant because according to ch. 2. Art. 11 of the Criminal Code is not a crime act or omission which, although formally contain elements of any offense under this Code, but due to insignificance do not

constitute a public danger, is not caused and could cause significant damage to natural or legal persons, society or the state. The easiest solution to this problem is to replace the corresponding terms in the disposition norms of the Criminal Code to another: for example, the notion of «significant damage». In this context, the authors support the proposal of the bill (Reg. № 2897 of May 19, 2015) on the use of the term «substantial damage» to characterize the criminal offenses (Part 2 of Art. 11.1), and the term «significant damage» to characteristics of crimes (Part 2 of Art. 11.2).

Procedural problem is the lack of grounds for terminating criminal proceedings - insignificance act (art. 284 CCP). The question arises, and what guided investigators and courts at the close of proceedings. Analysis of the investigative and judicial practices revealed the following: close the investigation proceedings in the absence of corpus criminal offense (para. 2 ch. 1, Art. 284 CCP); Court - in connection with the release of a person from criminal responsibility (para. 1 ch. 2, Art. 284 CCP). This practice, in our opinion, does not meet the theory of criminal law and the norms of the Criminal Code. First, find out the validity of the investigator. In determining insignificance act, in fact, we are, though formally the crime. The absence, in the opinion of the investigator, significant harm (or its threat) for such act is understandable, but there is a real prejudice (or threat of job), which is defined regulatory theft - not deny the existence of adequate crime. Secondly, insignificance explores whether the type of act excluding criminal responsibility. Litigation has a negative answer to this question: Plenum of the Supreme Court of Ukraine in para. 2 of its resolution «On the practice of courts of Ukraine legislation on the exemption from criminal responsibility» of 23 December 2005 r. Number 12 did not determine this kind of exemption from criminal liability. In the theory of criminal law is generally similar position. A well-known expert on the issue said Yu. Baulina also relates to insignificance types of exemption from criminal liability [1, p. 174]. The foregoing indicates a discrepancy legislation court decisions to close the proceedings in connection with the release of a person from criminal

responsibility due to insignificance act. Therefore, it is necessary to fix a new condition to close the proceedings in n. 9 in ch. 1, Art. 284 CCP «is set insignificance act».

Above-indicated is allowed an offer in certain directions of improvement of regulatory problems of understanding and application of the concept insignificance acts: 1) to Art. 11 new CC p. 3 as follows: «minor acts not set when the offense sufficient and designated persons and property consequences for the composition»; 2) replacement of the term «substantial damage» in the disposition norms of the Criminal Code to another - «significant damage»; 3) add ch. 1, Art. CPC 284, paragraph 9 to read: «set insignificance act».

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