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ISSUES OF DIFFERENTIATION OF CRIMINAL ACT FROM THE MINOR ACT IN ACCORDANCE WITH FOREIGN LEGISLATION

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Annotation
The article deals with the peculiarities of the institute of insignificance of the act in the criminal law of foreign countries. In particular, the review on foreign vision of essence of insignificance of act in the countries of Romano-Germanic and Anglo-Saxon legal families, as well as Muslim law is given.

Keywords: insignificance of act, crime, deed, criminal offence.

Introduction

Problematic of the institute of insignificance of a deed is an urgent issue not only for domestic criminal law, but also for foreign criminal doctrine. In this regard, the study of the issue in terms of foreign experience is necessary. It will be most appropriate to begin the consideration with the countries with historically common for us foundation of criminal legislation that come from the same legal family, namely the CIS countries.

Discussion and Results

First of all, let's consider how the cases in this matter are forthcoming in the Criminal Code of the Russian Federation. Thus, the provision on the insignificance of an act is established in Part 2 of Article 14 of the Penal Code, devoted to the concept of crime, which states that an act (or omission), which although formally containing the elements of any act provided for by this Code, but which does not represent public danger by virtue of insignificance, is not a crime [1]. This norm, as well as the domestic one, does not specify the signs and criteria of insignificance of a deed, and also, in our opinion, has not so correct wording in the part where it says: "although formally containing the signs of a deed". This is expressed in the fact that when interpreting this norm there is a doubt about the presence of features of a crime in the act of little responsibility, because it indicates the nominality of the presence of these features. At the same time, it becomes illogical to allocate this provision into a separate norm, as in the absence of at least one element of the corpus delicti it is impossible to talk about the presence of low significance of the act, otherwise, the differences between the concept of crime - guilty committed socially dangerous act prohibited by this Code under threat of punishment [1] - and low significance of the act will be obvious, which a priori puts into question the need for this norm.

Next, let us consider the rule of insignificance of an act in the Criminal Code of Ukraine, enshrined in Article 11 of this Code, which states: "an action or inaction, although formally containing the signs of an act stipulated by this Code, but due to insignificance does not represent public danger, that is did

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not and could not cause substantial harm to a natural or legal person, society or the state, is not a criminal offense" [2]. In contrast to the national version of the wording of insignificance of the act, the Criminal Code of Ukraine has the so-called explanatory provision, which states: "that is, it did not and could not cause substantial harm to a natural or legal person, society or the state". In this case, it is emphasized which object of the crime "does not cause harm". In other words, the legislator made an attempt to specify the features of a minor act, but the wording of the infliction of substantial harm again raises questions, as in the theory of criminal law there is no unified concept of what is meant by substantial harm, and in the Criminal Code of Ukraine this point is not regulated. At the same time, the provision on insignificance of an act in the Criminal Code of Armenia has an identical wording in Part 2, Article 18 of the Code [3].

In the Criminal Code of the Republic of Belarus the norm of insignificance of an act took its position in Part 4 of Article 11 of the Code, which provides: "An act or omission which formally contains the features of an act provided for by this Code, but which due to insignificance do not have the public danger inherent in a crime, shall not be considered a crime. A deed, which has not caused and could not cause essential harm to the interests protected by the criminal law, shall be recognized as insignificant. Such an act, in cases provided for by law, may entail the application of measures of administrative or disciplinary punishment" [4]. In this case, the legislator has successfully chosen the wording "not having public danger inherent in a crime", that is, we are talking about actions or inactions, public danger of which does not reach the criminal level, but still exists. In this case, there is a clarification on the type of punishment and responsibility in the case of revealing the fact of insignificance of the act does not reach the level of criminal liability.

In the Criminal Code of Kazakhstan the provision on the insignificance of a deed is set out in Part 4 of Article 10 of the Criminal Code [5], the content of which is almost identical to the provision set out in the Criminal Code of the Russian Federation, where the question of the criteria for insignificance of a deed is also not regulated. A similar formulation of the norm in question is found in the Criminal Code of the Kyrgyz Republic in part 2 of article 18 [6] and in the Criminal Code of the Republic of Tajikistan in part 2 of article 17 [7].

Paragraph 2 of Article 14 of the Criminal Code of Azerbaijan fixes that an act (action or inaction) although formally containing elements of any act stipulated by the criminal law is not a crime, but by virtue of its insignificance does not represent public danger, that is, has not caused or created a threat of causing harm to a person, to society or to the state. In this case, the legislator in a general sense indicated the infliction of harm, without any qualitative and quantitative specifications [8].

Finally, in the Moldovan Criminal Code, the provision on insignificance of an act is found in art. 14 part 2, which provides that an act or omission, which, although formally containing elements of an act provided for in this Code, does not constitute a crime, but which does not represent the risk of a crime because of insignificance [9]. This wording "not representing the degree of harm of a crime" in our opinion is the most logical, since from the semantic point of view in this case there is no denial of the presence of public danger, but we are talking about its insufficiency for the recognition of a deed as a crime.

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Analyzing the norms on insignificance of a deed in the Criminal Codes of the above countries a unified concept and approach to the formulation of this norm can be traced, although in some of them there are still distinctive features, but they are not fundamental and do not change the essence of the content as a whole. At the same time, very interesting is the fact that in contrast to national criminal legislation the norm of insignificance of a deed takes its place in one article with the concept of crime, and among the list of circumstances precluding criminality of a deed is not enshrined as such. This provision tells us about the conceptually different approach of domestic criminal legislation, but still it should be noted that in a substantive sense there are no fundamental differences. At the same time, common to all the above countries is the lack of regulation and unification of the criteria of insignificance of a deed, which tells us that this issue is open not only in our criminal legislation, but also in the above-mentioned countries as well.

Next, we turn to the legislation of some countries from the Romano-Germanic legal family, namely the continental law countries. Looking ahead, it should be noted that in view of the absence of the institute of insignificance of a deed in the criminal legislation of these countries, we will focus on the concept of the crime as such, in order to identify the possible characteristics of insignificance of a deed.

First of all, let us turn our attention to the Criminal Code of the Federal Republic of Germany, where §12 in addition to the concept of crime enshrines the concept of criminal misconduct. Part 1 of this paragraph states that criminal offences are unlawful acts for which the law provides for a minimum penalty of imprisonment of one year or more [10]. It should be noted that this definition does not reveal the concept of crime, but gives it a broad interpretation. At the same time, according to Part 2 of the paragraph in question - criminal offences are unlawful acts for the commission of which the law provides for a minimum penalty in the form of a shorter term of imprisonment or a monetary fine [10]. We can notice that the differentiation between a crime and a misdemeanor is based on the so-called amount of punishment, which makes it obvious that a misdemeanor is the least serious act than a crime, because the minimum amount of punishment is stipulated for its commission. In order to clarify the concepts of crime and misdemeanor, let us disclose the definition of an unlawful act, as it lies at the heart of these concepts. Thus, according to §11 of this Statute, where the conceptual apparatus used in it is disclosed, in paragraph 5 it is stated that unlawful acts are: only those which form the composition of a criminal act provided for by criminal legislation [10]. In other words, we can see that a criminal misdemeanor also has the corpus delicti of a criminal offense, which does not reach the level of public danger to the criminal offense, for the commission of which the minimum punishment is provided. If we draw a parallel between the concepts of insignificance of an act and a criminal offence, we can see that they both have the corpus delicti of a crime, have insufficient criminal public danger, not reaching the degree of a crime, but the difference lies in the criminal-law consequences of their commission.

Very interesting is the French Criminal Code, which does not have specifically defined criteria for crimes, but according to articles 111-1 and 111-2 of this code - criminal acts are classified according to their gravity into crimes, misdemeanors and violations. The law defines crimes and misdemeanors and establishes the penalties applicable to their perpetrators. The regulations define violations and establish, within the limits and according to the distinctions established by law, the penalties applicable

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to the perpetrators [11]. It is important to emphasize that violations, according to this classification, are the most minor acts, for the commission of which, as a rule, the criminal law provides for a fine. In other words, even a minor act is punishable by criminal law and does not provide for exemption from liability due to its insignificance.

The Austrian Criminal Code gives a special classification of offences in §17 of this Code. Part 1 of the paragraph in question states that offences are willful acts punishable by life imprisonment or by three years' imprisonment [12]. In this case, the classification is based on the criterion of the size of the sentence, which sets the minimum term of imprisonment that is necessary in order to recognize an act as a crime, namely not less than three years. In this case, it should be noted that we are referring only to such type of punishment as deprivation of liberty. The second part of this paragraph states that all other punishable acts are misdemeanors [12]. In other words, acts for which the punishment is less than three years of imprisonment, as well as other types of punishment, fall into this category.

In turn, of interest to us is the Criminal Code of Sweden, where the concept of crime is legislated. Thus, articles 1 and 2 of Part 1 of the Swedish Penal Code state that a crime is an act defined by this Code or another law or statute for which, as follows, a penalty is established. Unless otherwise stipulated, an act shall only be regarded as an offence if it is committed intentionally [13]. At the same time, the text of the Penal Code enshrines the rule of non-punishment in cases of little significance, in other words, when the act is of little significance. In particular, such are the criminal acts specified in Part 2 of the Code, Chapter 16, Article 5, Chapter 17, Article 11, Chapter 20, Article 3, Chapter 23, Article 5. In these cases, the legislator directly fixes the absence of punishment for the commission of such acts, provided the case is insignificant. In addition, the Code in question has a norm that states the mitigation of punishment in the event that the crime is minor, in particular in Part 2 of this Code, Chapter 3, Article 3 enshrines: Anyone who inflicts bodily harm, disease or pain on another person or renders him or her incapacitated or in a similar helpless state shall be sentenced for the assault to no more than two years' imprisonment or, if the crime is of a minor nature, to a fine or imprisonment of no more than six months [13]. At the same time, when interpreting the norm on non-application of punishment in case of insignificance of the act, as well as mitigation of punishment, the question of specifying the criteria of insignificance of the act arises, which is open.

It should be noted the similarity in the definition of the concept of crime in the criminal legislation of continental law countries, namely that the definition of crime itself does not indicate the public danger of the act, but only focuses on the terms and amounts of punishment, which serves as the basis for the classification of acts. In this connection, the concept of insignificance of an act cannot take place, as even the concept of crime itself does not imply the element of public danger, which serves as one of the important criteria for distinguishing a criminal act from an insignificant one.

Next, let us continue our consideration of the issue of interest in the criminal legislation of the countries of the Far East, in particular the Criminal Code of the People's Republic of China. Article 13 of the Code sets forth a fairly detailed definition of crime, meaning all acts harmful to state sovereignty, territorial integrity and tranquility, aimed at splitting the state, undermining the power of the people's democratic dictatorship, overthrowing the socialist system, disturbing public and economic order, private or

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collective property of working masses, encroaching on the personal property of citizens, their personal, democratic and other rights, and others. However, an obviously insignificant, non-dangerous act cannot be recognized as a crime [14]. At the heart of this concept is the enshrinement of a direct enumeration of the objects protected by the criminal law for encroachments that are punishable. We turn our attention to the last sentence of this norm, where there is such a wording as "obviously insignificant, non-dangerous act", the identification of which is the basis for the recognition of the act as non-criminal. However, there are no direct references to the criteria of "manifestly" insignificant or non-dangerous act, which again raises questions for law enforcement. In addition, in addition to the lack of criteria of insignificance, there are also no provisions on what is meant by a "non-dangerous" act.

Unlike the People's Republic of China, the Criminal Code of Japan does not enshrine the definition of a crime, as well as the norm of insignificance of the act. However, at the doctrinal level, the concept of crime has still found its place. Thus, the theory of criminal law states that a criminal act should be understood as an act falling under the corpus delicti of a crime, unlawful and entailing liability [15, p.46].

In turn, let's proceed to the countries of the Anglo-Saxon legal family, the distinctive feature of which is the lack of codified legislation. So in the UK the concept of a crime, as well as the insignificance of the act are not enshrined at the legislative level. Despite this, there are judicial and doctrinal definitions describing the concept of crime. One of the variants of the concept of crime is the version proposed by J. F. Stephen, which understands as a crime the actions prohibited by law under penalty [15, p.59]. This concept is the most classic and is used to this day.

However, the legislation of the United States of America in the issue under consideration is similar to the position of Great Britain, as their legislation also does not provide for the concept of insignificance of a deed. However, still the concept of crime is indirectly enshrined only in Article 1-102 of the Model Criminal Code, which defines the crime as conduct unjustifiably and unjustifiably causing substantial harm to the interests of individuals and society or threatening to cause such harm. This definition is universally accepted [15, p.91]. Again we are talking about the infliction of "substantial harm," which in essence has no single interpretation and is subject to determination on a case-by-case basis. Notwithstanding this definition, there is generally no statutory definition of a criminal act as well as a minor act in the United States Code of Criminal Laws, as well as in the criminal codes of several states.

Let's move on to consider the nuances of Muslim law relating to the issue before us. The general feature of the criminal legislation of the countries of Muslim law is the absence of a specifically defined doctrine of crime, as well as the very concept of crime. However, in the doctrine of Muslim law there are some theories on this subject, in particular, according to the first theory, the crime is an act that infringes on the socio-political and other basis of the theocratic state and recognized as illegal by the religious and legal norms. The next theory states that a crime was recognized as a violation of the divine prohibitions and rules, for the commission of which the punishment is provided [16, p.33]. At the same time, it should be noted that the classification of crimes is based on two criteria - the certainty of punishment for this or that act in the Koran and the Sunnah, and the nature of the violated interests and rights. All

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rights and interests are divided into the "rights of Allah" and the rights of individuals. "Allah's rights" represent the interests of religion and faith. That is why an act that poses a heightened religious danger could pose little or no danger to society, such as an attack on Allah's rights such as adultery, drinking alcohol or committing adultery [16, p.45]. In other words, in fact, an act of little public danger can be a criminal offense due to the presence of increased religious danger, for which there was a special type of punishment, tazir, which was intended precisely for the category of minor offenses against the rule of law and the law.

Conclusion

To summarize the foreign practice in the matter under consideration, there is a certain tendency between the criminal legislation of the above countries, which can be differentiated into several groups. Legislation of the first group, which at the legislative level recognizes the act of little significance, as well as excludes liability when establishing the insignificance of the act committed. However, despite the existence of a definition of insignificance, it is still not possible to specify the criteria and conditions of recognition of a deed as insignificant. The next group has the concept of insignificance of a deed (insignificance) and does not exclude responsibility for its commission. At the same time, as in the first group, it does not have any criteria for the identification of insignificance. The last group does not have the concept of insignificance at all, moreover, their concept of a crime is also not legally regulated.

References

1. Criminal Code of the Russian Federation URL:http://www.consultant.ru/document/cons_doc_LAW_10699/43b57d6c014e99070854acf76d1627ac9a184239/
2. Criminal Code of Ukraine URL:https://meget.kiev.ua/kodeks/ugolovniy-kodeks/razdel-3/
3. Criminal Code of Armenia URL:http://www.parliament.am/legislation.php?ID=1349&lang=rus&sel=show#3
4. Criminal Code of the Republic of Belarus URL:https://kodeksy-by.com/ugolovnyj_kodeks_rb/11.htm
5. Criminal Code of Kazakhstan URL:https://online.zakon.kz/Document/?doc_id=31575252&pos=655;-3#pos=655;-3
6. Criminal Code of the Kyrgyz Republic URL:http://cbd.minjust.gov.kg/act/view/ru-ru/111527
7. Criminal Code of the Republic of Tajikistan URL:https://online.zakon.kz/Document/?doc_id=30397325&pos=182;-8#pos=182;-8
8. Criminal Code of Azerbaijan URL:http://continent-online.com/Document/?doc_id=30420353#pos=564;36
9. Moldovan Criminal Code URL:http://continent-online.com/Document/?doc_id=30394923#pos=623;-42
10. Criminal Code of the Federal Republic of Germany URL:https://www.uni-potsdam.de/fileadmin/projects/ls-

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hellmann/Forschungsstelle_Russisches_Recht/Neuauflage_der_kommentierten_StGB-%C3%9Cbersetzung_von_Pavel_Golovnenkov.pdf

11. French Criminal Code URL:https://yurist-online.org/laws/foreign/criminalcode_fr/_doc-5-.pdf
12. Austrian Criminal Code URL:https://www.legislationline.org/download/id/8548/file/Austria_CC_1974_am122019_de.pdf
13. Criminal Code of Sweden URL:http://www.sweden4rus.nu/rus/info/juridisk/ugolovnyj_kodeks_shvecii
14. Criminal Code of the People's Republic of China URL:https://www.mfa.gov.cn/ce/cerus/rus/zfhz/zgflyd/t1330730.htm
15. Aistova L. S., Kraev. D. Yu. Criminal law of foreign countries: textbook - 2nd ed. / revised from the 1st edition by D. Yu. Kraev - St. Petersburg: St. Petersburg Law Institute (branch) of the University of the Prosecutor's Office of the Russian Federation (2020) URL:https://procuror.spb.ru/izdanija/2020_01_02.pdf
16. Turgumbaev M.E. Institute of Crime and Punishment in Muslim Law, 6D Jurisprudence Dissertation for the degree of Doctor of Philosophy (PhD), Almaty (2014) URL:http://www.dslib.net/kriminal-pravo/osnovnye-cherty-musulmanskogo-ugolovnogo-prava.html