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Petty Offense (Part 2 of Art. 14 of the Criminal Code) and Administrative Responsibility

Vadim V. Pitetski* and Andrey A. Kondrashov
Siberian Federal University
79 Svobodny, Krasnoyarsk, 660041 Russia [1]

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The article deals with the peculiarities of petty offenses (Part 2 of Art. 14 of the Criminal Code) as a special penal institution, as well as the legal consequences of his acting. The possibility of involvement of other types of liability for recognition the act de minimis. Particular attention is paid to administrative responsibility.

Keywords: petty offense, the legal effect, the ratio of norms, administrative responsibility.

One manifestation of the flexibility of the criminal law is strengthen the rule of insignificance act. In accordance with Part 2 of Art. 14 of the Criminal Code: "is not a crime action (inaction), although formally containing signs of any offense under this Code, but because of little significance do not pose danger to society." This provision specifies the definition of the crime provided for in Part 1 of Art. 14 of the Criminal Code. Its means that only those acts which cause or threaten substantial harm in the fact that crime can be recognized. The legislator takes into account (most likely) the nature and degree of public danger, by establishing criminal prohibition of certain acts by a description in the Special Part of the Criminal Code offenses, their model. However, individual acts by virtue of their individual characteristics, in the absence or the possibility of causing substantial harm to protected public relations, may not possess the property of public danger, and therefore can not be a crime.

For the recognition of de minims act requires several conditions. First, the act committed must contain all formal elements of a crime (corpus delicti), under criminal law. If the committed act miss at least one feature that is, necessary for recognition of the criminality, it is considered to be not insignificant, but non-criminal because of the lack of a criminal wrongfulness (prohibition by the criminal law).

Secondly, the petty offense, which contains all the formal elements of a crime, should not cause significant harm, or contain a threat of such attack, that is, there should be no sign of danger to society. These acts are either not cause any harm or cause, at the injury obviously is not essential and can not be considered as a criminal.

Due to the fact that the term "insignificance" is an estimate, this circumstance – the absence

* Corresponding author E-mail address: Pitetski@list.ru

of a socially dangerous the act, is a question of fact and set in the enforcement process (by investigator, prosecutor or court), taking into account all the circumstances of the case (the object of abuse, ways of committing the act, effect hat been occurred, the role of accessory, etc.). We should agree with the opinion that, assessing the insignificance must be based on factual, objective facts of the case, that describes the act itself (the way the crime, his motive, purpose, degree of guilt of the person, etc.). In paragraph 21 of Resolution of the Plenum of the Supreme Court on March 24, 2005 № 5 "On some issues arising from the courts in applying the Code of the Russian Federation on Administrative Violations" is stated that "such circumstances as, for example, the personality and the financial situation of involved responsible person, voluntary elimination of the consequences of crime, compensation for damages are not the circumstances that characterize the insignificance of the offense."

And, thirdly, basing on the principle of guilt, while finding the acts de minimis, it is necessary that intent of a person must be directed specifically to cause unimportant (insignificant) damage. If the intent of the person directed to causing significant harm (a socially dangerous act), but he count reach it for any reasons beyond the person, so the act cannot be regarded as a petty offence acts of men are evaluated primarily on the state of mind . In this case, the deed is recognized as unfinished crime in the form of preparation (part 1 of article. 30 of the Criminal Code), or attempt to commit a crime (Part 2 of Art. 30 of the Criminal Code). From here you can make an important conclusion: in cases where the basis for the criminalization of acts is the occurrence of certain significant consequences, and assessment of acts depends solely on the effects of stepped or not – for example, indirect intent or negligence caused by the person it is impossible to talk about the insignificance act, because in the non-occurrence these consequences of his actions would not be criminal (because of the lack of formal evidence of a crime). Upon occurrence of the significant effects necessary for qualifications, the act should be recognized as socially dangerous, that is, it can not be considered as insignificant.

In accordance with the statutory definition of petty offense it is not criminal and does not entail penal consequences. If the act considers to be insignificant, bringing actions against somebody under part 1 of article. 24 of the Code shall be denied. If the case has been already filed, it must be dismissed for lack of corpus delicti. However, it should be noted that there is no unified opinion about with respect to understanding the legal nature and consequences of recognizing an act de minimis. As a rule, the criminal law literature indicates that the insignificance implies involvement of other types of legal liability: civil, disciplinary, administrative, and others[1]. As NF Kuznetsov pointed out by: "In most cases specific injury and minor antisocial acts occur in petty offence. But they are not criminal degree, but civil, administrative, disciplinary, immoral.[2]" The view that the insignificance acts may lead to civil and disciplinary liability should be accepted. As rightly notes I Shyshko, regulatory and protective regulations can not collide with each other in a literal sense, because they can not regulate the same social attitudes: the regulatory standards regulate only the positive public relations, and security guards – arising only from the offense. [3]" Therefore, the legal responsibility is not excluded of law, performing regulatory and restorative functions (eg, civil and labor), recognizing the de minims acts.

It is more difficult to resolve the issue of bringing to administrative responsibility. Criminal and administrative law, being by nature conservatory can not be applied simultaneously, in contrast to the ratio of regulatory and enforcement standards. This circumstance imposes certain

requirements to the principles of formulation of the crimes and administrative violations.

Analysis of the criminal and administrative law shows that the legislator has considered this matter differentiated. The most typical and, from our point of view the most is a so relation in which the compositions of crimes and administrative violations could perpetuate some common features, but some signs are different. Specifics of the last material determines the legal nature of the act. For crimes are typical that increase the risk of acts, administrative staff reinforce signs, excluding public danger (v. 2.1 Code of Administrative Offences Code). This ratio is in the theory of education has received the name of a related offenses. Related compounds share some common characteristics for it, but some signs are different, that is one of the related compounds has features missed in the other, and vice versa – the second is a sign that the first has no[4].

As a rule, in the basis of criminalization of conduct is offensive no impact on, their quality or size, which points directly in the criminal law. Thus, the compositions are related article. 12.24 Code of Administrative Offences, which provides for liability for violation of traffic rules or the rules of operation of the vehicle, which caused mild or moderate bodily injury victim, as well as art. 264 of the Criminal Code, which provides the liability for the same act which negligently causing grievous bodily harm or death of humen.

And another signs can be demarcation, for example, the nature of the subject of crime, particularly the motive, scope, etc. Thus, Art. 07.21 Code of Administrative Offences provides responsibility for the destruction of a military identification card, and art. 325 of the Criminal Code allows for the same action with the official documents, stamps or seals, mercenary or other personal interest. Liability for knowingly false expert opinion in court or at a preliminary investigation provides art. 307 of the Criminal Code, if these act were committed in the exercise of state control, the deed is an administrative offense (Art. 19. 26 Code of Administrative Offences Code).

In the formation of other crimes and administrative violations for their differentiation legislator often uses the so-called "negative symptoms" which indicate the absence of any property of deeds (whose presence usually defines its social danger and crime). For example, the intentional destruction or damage of somebody's to property will be recognized as an administrative violation, if it doesn't cause significant harm (Article 7.17 Code of Administrative Offences of the Russian Federation); arbitrariness is not a criminal, if it doesn't involve the infliction of substantial harm to citizens or legal persons (Article 01.19 Code of Administrative Offences Code).

An act that recognizes the de minims, by Part 2 of Art. 14 of the Criminal Code should contain all the features of any of the crime under the Criminal Code, that means that it sould be formally criminally wrongful. Adjacent character of ratio eliminates this formal administrative wrongfulness of the offense, because it will not have the required combination of features. Accordingly, in this case, by Part 1 Article. 24.05 Code of Administrative Offences of the Russian Federation will be absent and the reasons for bringing to administrative responsibility. Thus, in accordance with the current edition of Art. 7.27 Code of Administrative Offences, petty theft is not a criminal, illegal, therefore it can not be considered insignificant by Part 2 of Art. 14 of the Criminal Code. A criminal illegal theft can not be petty under Art. 7.27 Code of Administrative Offences, although it does not exclude the insignificant nature.

Thus, we can conclude that if the ratio of crimes and administrative violations is adjacent, the act of recognition de minims on part 2 of

article. 14 of the Criminal Code can not entail the occurrence of administrative responsibility.

Nevertheless, the situation where the deed will formally contain all the elements of crime and administrative charges, are possible and are reflected in the legislation. We are talking about cases that have received the name of the competition of the rules of law. When competition commits one act, which contains both the signs of two or more legal rules (in our case, criminal and administrative law), while only one of them should be applicated is. For example, in paragraph 8 of Resolution of the Plenum of the Supreme Court on March 12, 2002 № 5 "On judicial practice in cases of theft, extortion and trafficking in arms, ammunition, explosives and explosive devices" (in red. Resolution of the Plenum Supreme Court of the Russian Federation of 06.02.2007 № 7) states that "in cases of violations of the rules of trafficking in weapons and ammunition must be kept in mind that the illegal actions of individuals can simultaneously contain both signs of administrative violation and a crime in connection with which must delimits liabilities gun owners. " In this case we are talking about the competition between part 1 of article. 222 of the Criminal Code and Part 2 of Art. 20.8, Part 2 of Art. 20.12 Code of Administrative Offences.

If competition is completely covered by the offense of one norm, and therefore we can not quality that would violate the principles of legality and justice. If the only one rule can be applicated as subject to competition , arises the question: what to use? And in our case the answer to this question will depend on assessment of the offense as a crime or offense with all the legal consequences!

According to N Pikurova, "criminal wrongfulness absorbs all other types of illegality, and the last lose their legal effect or there in isolation, without merging with each other.[5]" Belov, M indicates that in both codes should be registered prevalence of the principle of the criminal law of the Code of Administrative Offences in the event of a conflict[6]. Such a provision has been enshrined in Art. 10 Administrative Code of the RSFSR: "The administrative responsibility for an offense under this Code will due if these violations by their nature do not entail, criminal responsibility in accordance with the laws." The current administrative law the relevant rule of priority does not contain, however, according to Section 7 Part 1, Art. 24.05 Code of Administrative Offences of the Russian Federation to preclude production of administrative law is the existence of the decision institute criminal proceedings.

The opposite view is also expressed. Thus, in Section 8 orders of Supreme Court from March 12, 2002 № 5 "on judicial practice in cases of theft, extortion and trafficking in arms, ammunition, explosives and explosive devices," states that "in cases where the committed person misdemeanor (eg, violation of rules of storage or carrying of weapons and ammunition, their sales, late registration and re-arms, etc.) also features a criminal offense, the person may be subject only to administrative responsibility. "

According to V Navrotsky, "with" duplication "of responsibility – where the same acts provided in the Criminal Code as a crime in the Code of Administrative Offences of the Russian Federation as an administrative offense, the priority should be given to a law providing less severe measures.[7]" Sometimes is stated the argument about the application of administrative law, that "in the situation of competition must be used the law enacted later than other.[8]" The last statement, in our view is unacceptable, because the individual norms can be taken independently of the adoption of a regulation in general.

It can be concluded that the issue of choosing a rule that can be applied in cases under consideration, has no unique solution. The main argument is the priority rules of one branch of

legislation over another. From our point of view, these discussions are baseless and therefore infinite. Nevertheless, the question of choosing standards to be applied can be resolved positively. It is necessary to distinguish cases in conflict with law (conflict), when the existence of one rule is logically inconsistent with other existing regulations. In these cases, you must apply the rules overcoming the contradictions between the norms that have been developed by the general theory of law: consideration of power regulation, the duration of its adoption, particularity of the subject of legal regulation and competition rules, etc. When contradictions arise, each of them there is legitimate and intended for use in particular situation. Therefore, when competition enforcers should proceed not from the "priority" of one branch of law over another, and not from the rules of conflict resolution, but take into account the rules of overcoming competition. Thus, the question of qualification does not depend on the offense, "general rules of priority, and the specific ratio of norms of different branches of law.

It should be emphasized that during the competition of the crimes and administrative violations we are not talking about full matching of Terms of matched all of their design features (which would indicate complete contradiction to different legal rules). Signs of the competing rules of criminal and administrative law are at different levels of logic synthesis, that is, provide more general or more special cases. If any circumstance qualitative change the harmfulness of the offense (up or down), the legislator take into account this circumstance, by formulating a special rule. The presence of the special circumstance must be considered and while qualifications, if it is fully reflected in the act.

Thus, depending on in which the law (criminal or administrative) contains a special rule that provides for this particular case, the legal nature of the offense will be determined. If the act does not have all the attributes of a particular rule, then the general situation should be applicated.

In the first situation, the general rule is provided in criminal law, recognized as the most typical manifestation of this act, in which it has the danger to society.

Certain varieties of this act may be fixed by administrative law, when some reflected property, which significantly reduces the harm of done and changes its legal nature (the act is not recognized as socially dangerous or criminal). So, overall should be recognized art. 307 of the Criminal Code, which provides for liability for false testimony from a witness or expert opinion or expert testimony, and also obviously incorrect translation in court. Art. 17.09 Code of Administrative Offences provides for liability for those acts in the proceedings of an administrative offense. As part of the judicial proceedings on the administrative law should recognize the latest special in relation to Art. 307 of the Criminal Code, therefore, to be applied.

Art. 214 of the Criminal Code establishes responsibility for the vandalism, that is the desecration of buildings or other structures, property damage of public transport or in other public places. The destruction or damage to payphones kind of vandalism is (Article 13.24 Code of Administrative Offences of the Russian Federation), so when committing the act the administrative responsibility must be advance.

While considering a ratio of norms (the total provided for in the Criminal Code, a special in CAV RF), in our opinion, in the case of recognition an of act of de minimis (Part 2 of Art. 14 of the Criminal Code), bringing to administrative responsibility is excluded. Question of the insignificance legitimately raise when the offense falls only under the general rule, respectively, administrative illegality would be absent. Vandalism in the sense of Art. 307 of

the Criminal Code should not be expressed in damaging of payphones.

Here can exist the converse relationship, when the general rule is provided for in administrative law, and the special in the criminal. The most common will be recognized as a manifestation of an act in which it does not have the danger to society and is not criminal. If any feature of the act substantially increases the danger, then this is reflected in the criminal law and should be considered for qualification. Often, the criminal law imposes liability for the occurrence of serious consequences of negligence as a result of violations of the rules set forth by administrative law. Itself a violation of these rules is punishable under the Code of Administrative Offences. For example, Art. 5.27 Code of Administrative Offences provides for liability for violation of labor protection legislation. This rule should recognize common to all cases of violation of these rules. If the violation of safety rules caused by negligence, infliction of serious bodily injury or death of a person, then the responsibility should be to attack under Art. 143 of the Criminal Code.

We believe that in this ratio of norms the fact of the onset of serious consequences that underlie criminalization, can not testify about the insignificance of act, by its high-risk (Part 2 of Art. 14 of the Criminal Code). Therefore and administrative responsibility, is excluded although all the signs of violation of the rules may occur.

However, special criminal provisions of considered type can be formed in the presence of other circumstances. Thus, in accordance with Art. 152 of the Criminal Code, involving a minor in the systematic use of alcoholic beverages, intoxicating substances will be the kind of engagement, under Art. 10.06 Code of Administrative Offences. Another example, Art. 6.8 Code of Administrative Offences provides for responsibility for the illegal purchase, storage, transportation, manufacturing, processing of narcotic drugs, psychotropic substances or their analogues without the intent to sell (the size of narcotic drugs, psychotropic substances in the disposition is not specified). Special in relation to it, in our opinion, we should recognize pm 1st. 228 of the Criminal Code, which requires the commission of the same actions on a large scale. This ratio of norms of a formal administrative wrongfulness of petty offenses (Part 2 of Art. 14 of the Criminal Code) will take place, therefore, not ruled out the involvement of the variety of liability.

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Малозначительность деяния (ч. 2 ст. 14 УКРФ) и административная ответственность

В.В. Питецкий. А.А. Кондрашов

Статья посвящена особенностям малозначительного деяния (ч. 2 ст. 14 УК РФ) как особого уголовно-правового института, а также правовым последствиям его совершения. Анализируется возможность привлечения к иным видам ответственности при признании деяния малозначительным. Особое внимание уделяется административной ответственности.

Ключевые слова: малозначительное деяние, правовые последствия, соотношение норм, административная ответственность.