

CRIMINAL LEGAL BASIS FOR AN EXPEDITED TRIAL PROCEDURE PROVIDED BY THE CHAPTER 40 OF THE RUSSIAN CRIMINAL PROCEDURE CODE

Alexandra V. Boyarskaya

Dostoevsky Omsk State University, Omsk, Russia

Article info

Received –

2020 October 19

Accepted –

2021 April 15

Available online –

2021 June 25

Keywords

Expedited trial, the consent of the accused with the charge, criminal procedure form, differentiation of criminal proceedings, simplification of criminal proceedings, criminal legal basis for an expedited trial, categories of crimes, the public danger of the act, the degree of public danger

The subject of study is the criminal-legal basis for an expedited procedure for adopting a court ruling when the accused person agrees with the charge. These issues are relevant, since in July 2020 the substantive legal basis of the expedited procedure in Russia was changed and now this procedure can only be applied in criminal cases of small and medium gravity.

The aim of this work is to study the substantive legal basis of an expedited procedure of litigation from the point of view of the changes were made to it. The author expresses the thesis that the legislators did not quite reasonably link criminal-legal grounds of the expedited procedure with the system of categories of crimes.

The methodology. The author used general scientific methods (dialectical, historical, methods of formal logic, system analysis) as well as method of formal legal interpretation of Russian Criminal Code and judicial decisions of Russian courts.

The main results, scope of application. The criminal and legal basis of certain criminal procedure is a package of criminal law standards, for the implementation of which a certain criminal and procedural form is intended. The parameters of the substantive basis of criminal proceedings are set with the signs that shall be indicated in the Code of Criminal Procedure and may change. It directly refers to the expedited procedure for adopting a court ruling, by Chapter 40 of the Russian Criminal Procedure Code. Initially, it was assumed that the application of this procedure is permissible in criminal cases concerning crimes the punishment for which does not exceed 5 years imprisonment in accordance with the Russian Criminal Code. The expedited court proceedings began to be applied in criminal cases concerning crimes, the punishment for which does not exceed 10 years imprisonment in accordance with the Russian Criminal Code, since 2003. The Russian Supreme Court made an attempt to reduce the application of court proceedings provided by Chapter 40 of the Russian Criminal Procedure Code in 2019. It turned out to be successful. Legislators have changed the basic criterion that determines the substantive basis for an expedited procedure for adopting a court ruling. Now the system of categories of crimes is this basis. The system of categories of crimes presented in Article 15 of the Russian Criminal Code is not stable enough and is based on a set of provisions of this Code, but the sanctions for many crimes are not scientifically and practically grounded in this Code. In addition, the classification of crimes enshrined in Article 15 of the Russian Criminal Code is based on such a criterion as the nature and degree of public danger of the crime. These categories are among the most complex in the science of criminal law.

Conclusions. The use of categories of crimes as a criterion for determining the criminal legal basis of the expedited procedure for making a court decision significantly complicates the application of the expedited procedure.

1. The problem statement

The object of research in this article is the criminal-legal grounds of a special procedure for making a court decision with the consent of the accused with the charge brought against him. The subject of the study is the normative (i.e. directly fixed in the criminal procedure legislation) criteria by which the legislator determines the criminal-legal basis of a special procedure for judicial proceedings. At the same time, we note that in this work, we use the concepts of "material-legal basis" and "criminal-legal basis" as synonyms. Also, such categories as "criminal-legal grounds" and "criminal-legal basis" of a certain procedure are considered interchangeably.

I would like to start the relevant discussion by referring to the statement of Professor M. S. Strogovich: "The main thesis defended by the supporters of differentiation is the maximum simplification of the procedural order in simple and clear cases. This should mainly apply to cases of crimes that do not entail heavy criminal penalties. But here the authors do not have clarity, and sometimes they allow simplification of the procedural form in cases of crimes that entail imprisonment for significant periods, as long as the circumstances are clear, the guilt of a certain person is not in doubt" [1, p.50].

Since the time when the corresponding idea was formulated, almost fifty years have passed, but there is still no certainty about the question of what criminal cases, with what essential properties, it is possible to simplify criminal proceedings. To the full extent, this statement refers to the special procedure for making a court decision when the accused agrees with the charge brought against him. Initially, it was assumed that the application of the appropriate procedure is permissible in criminal cases of crimes for which, according to the Criminal Code of the Russian Federation, the penalty does not exceed 5 years of imprisonment.

After the adoption in 2003 of Federal Law No. 92-FZ of 04.07.2003 "On Amendments and additions to the Criminal Procedure Code of the Russian Federation" the analyzed court proceedings were applied in criminal cases of

crimes for which the penalty established by the Criminal Code of the Russian Federation does not exceed 10 years of imprisonment.

Already in 2006, the Supreme Court of the Russian Federation took the initiative to change the provisions of Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation in order to limit the material and legal basis of a special procedure for making a court decision to crimes of small and medium gravity. At that time, the relevant proposal was not supported. In 2019, the Supreme Court of the Russian Federation again made an attempt to reduce the use of judicial proceedings provided for in Chapter 40 of the Criminal Procedure Code of the Russian Federation, and it was successful. Based on the draft law No. 690652-7 by the State Duma on 07.07.2020. The final version of the Federal Law "On Amendments to Articles 314 and 316 of the Criminal Procedure Code of the Russian Federation" was adopted . On 20.07.2020, the corresponding regulatory act was signed by the President of the Russian Federation and published for general information.

It should be noted that quite a lot of authors have addressed the issue under discussion. Thus, T. V. Trubnikova consistently defends the position that, ideally, simplified judicial proceedings should be applied in criminal cases of minor crimes. It is already undesirable to use it in criminal cases of moderate crimes. The implementation of the relevant procedure in cases of serious and especially serious crimes should be prohibited [2, p. 136]. This point of view was shared by Professor Yu.K. Yakimovich [3, p. 106].

O.V. Kachalova convincingly justifies a similar position that, as a general rule, accelerated judicial proceedings should be applied in criminal cases of crimes of small and medium gravity [4, p. 43].

Such authors as M.K. Sviridov, A.V. Piyuk in their joint work emphasize that "the question of the categories of crimes, the consideration of cases on charges of which it is possible to make in a special order, will not be so fundamental, since ... the main thing in legal proceedings is the proof of the crime and the justice of the punishment [5, p. 229]. At the same time, A.V. Piyuk clarifies that the sentence limit of ten years of imprisonment is not a factor that can

restrain the critical growth in the number of cases considered in a special order [6, p.194].

Based on the presented positions of researchers, we point out that the considered legislative novelty as a whole deserves support. However, the content of the Federal Law, in which it is enshrined, can raise certain questions.

2. The substantive criterion of differentiation of the criminal process

The key idea for the analyzed Federal Law is to link the criminal-legal basis of a special procedure for making a court decision with the system of categories of crimes. At the same time, it is important to understand that the maximum sentence of imprisonment provided for by the criminal law for certain crimes, mentioned earlier in Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation, and the categories of crimes are different signs that can be taken as a basis for the normative consolidation of the range of acts, concerning which a special procedure for judicial proceedings can be applied. Accordingly, the use of these non-matching criteria in establishing the material and legal basis of a special order will give different results.

It should be particularly noted that the arguments about the criminal-legal basis of judicial proceedings provided for in Chapter 40 of the Code of Criminal Procedure should be based on the provisions on the criteria or grounds for differentiation presented in the theory of criminal procedure. At the same time, the key issue is the relationship between the material and legal basis of a certain criminal procedure and the criteria or grounds for differentiating the criminal procedure form as a whole, designated as material or criminal law. Let us consider this problem by referring to the works of authors who gave a general description of crimes, when accusing a person of committing which it is possible to apply simplified procedures.

P.S. Elkind, discussing the criteria for the enhancement of differentiation, is also generally wary of this phenomenon says about "less" public danger of the act [7, p. 71].

V.D. Arsenyev mentions cases of crimes that do not pose a great public danger [8, p. 63].

A. Gulyaev makes the differentiation

dependent on the nature and degree of public danger of the crime [9, p.65].

Yakub M. L. clarifies that "the subject of criminal proceedings can be a case of any criminal acts that differ significantly from each other in terms of the degree of public danger, legal properties and the nature of the actual circumstances. One procedure is necessary for cases in which the death penalty and other serious penalties can be applied, or for cases of greater complexity, another, simpler procedure – for cases of less dangerous crimes and not so complex, the third-for cases of minor crimes [10, p. 12].

In a later work, the author allows for the possibility to extend the simplified procedure, not involving the stage of preliminary investigation on the case of crimes, the punishment for which is not more than one year of imprisonment [11, p. 67].

P. Pashkevich notes that the simplified procedure can be applied in cases of obvious, the obvious crimes that do not pose great danger to society [12, p. 55].

M. K. Sviridov points out as the material grounds for differentiation the type and measure of punishment that can be applied to the defendant, as well as the special social danger of the accused, since the application of a more serious punishment requires a more complex procedure for discussing the issue of it [13, p.242].

Yu. K. Yakimovich in this case uses the term "criminal-legal (material) basis of differentiation" of criminal proceedings, explaining that "simplified proceedings should not be carried out in cases of crimes with a relatively high degree of public danger" [14, p.180].

T. V. Trubnikova, analyzing the criteria and grounds for differentiation of the criminal process, speaks about the degree of public danger of the act as a criterion of differentiation [15, p. 101]. At the same time, T. V. Trubnikova, using the example of the positions of such authors as M. K. Sviridov, M. L. Yakub, demonstrates that in the case of interest to us, different scientists, having in mind the same criterion of differentiation, reveal it in a peculiar way, using different features [15, p.101].

Indeed, the study of the distinctive features of criminal cases, concerning which differentiation is possible in the form of simplification of the criminal

procedure form, has a fairly long history, while most researchers, touching on the relevant issues, designated the analyzed properties in a similar way, but from their own specific positions.

Defining the same phenomenon in our days, I. S. Dikarev calls it an objective factor of differentiation in the form of the severity of the crime, determined by the severity of the punishment following its commission [16, p. 19].

A.V. Piyuk speaks about insignificant (by the standards of a particular society and state) cases in which procedures are applied, when using which a criminal case does not go to court at all, or goes to a judge for a kind of control over the legality of its termination on the basis of agreements reached by the parties [6, p.102].

O. V. Kachalova points out that the analysis of the peculiarities of the legal regulation of simplified criminal procedure proceedings in foreign countries allows us to conclude that its application is allowed only in cases of crimes that do not pose a great public danger. The greatest simplification of the criminal procedure form is possible "in criminal cases of minor crimes committed in conditions of evidence" [17, p. 32-33].

As we can see, in the scientific literature, the criteria or grounds for differentiation in the direction of its simplification in the Russian Federation and foreign countries are usually disclosed by researchers through the terms "insignificant", "minor crimes", "not representing a great public danger", "not involving heavy criminal penalties". The obvious uncertainty of the corresponding categories, noted by Professor P. S. Elkind [7, p. 71-74], many authors try to compensate by indicating the terms and amounts of punishment following the commission of crimes, or by linking them to a certain category of crimes. Such phrases as "the nature and degree of public danger of the act", "the degree of public danger of the act" and "the gravity of the crime" are also used. The latter speak about the same properties of crimes that make it permissible to apply simplified procedures in criminal cases, only directly refer to the relevant problems in the field of criminal law.

Let us clarify that, projecting the presented arguments on the current criminal legislation, we

can come to the conclusion that it is permissible to use most of the selected terms and methods of specifying the material criterion of differentiation, which give a similar result. Of course, taking into account the fact that in our time, the differentiation of criminal proceedings is evaluated more positively and its scope is thought of as broader.

We will only make a reservation concerning the term "insignificance", which in the current Criminal Code of the Russian Federation is disclosed in Part 2 of Article 14, which states that an action (inaction) is not a crime, although formally containing signs of an act provided for by the Criminal Code of the Russian Federation, but due to its insignificance does not pose a public danger. That is, in accordance with the provisions of the Criminal Code of the Russian Federation, a minor act is not a crime and does not require differentiation of the criminal procedure form for this reason.

We will further point out that some authors in their research have tried to establish a connection between the various characteristics used in describing the criteria for differentiation. So, Yu. K. Yakimovich, arguing with Professor M. K. Sviridov, pointed out the following: "The punishment ... reflects the degree of public danger of the crime for which this punishment is provided. Therefore, there is no need to use the type and measure of possible punishment as a criminal-legal basis for differentiation: these signs are secondary and depend on the degree of public danger of the crime" [14, p.179-180].

T. V. Trubnikova, noting the variability and multidimensional nature of the prepared differentiation criterion, suggests that "the insignificance of the crime, the small degree of its public danger, cause the need for simplified and accelerated procedures for its investigation and consideration, i.e., are a prerequisite for the application of simplified production. The crimes that follow from a small public danger are not too serious, the type and measure of punishment established for it by law, make it possible, permissible to apply simplified criminal procedure.... That is, the impossibility of imposing a severe penalty is the basis for the application of simplified ... proceedings in criminal proceedings" [15, p. 101].

Turning to the interpretation of the terms

"premise" and "basis", we will point out that a premise is understood as "that which is a condition of another". The "condition", in turn, is "that on which something else (conditioned) depends, which makes possible the existence of a thing, a state, a process". A "ground" is "a judgment or idea from the validity of which the validity of another judgment or idea (consequence) necessarily follows".

Thus, agreeing with T. V. Trubnikova's interpretation of the grounds for applying simplified production, we note that the establishment of its prerequisites, in our opinion, should remain in the realm of the possible, probable, but not necessary. After all, if individual norms of the criminal law and specific elements of crimes dictated a strictly defined way of differentiating the criminal procedure form, the legislator would not be able to so significantly change the material and legal basis of the same special procedure for making a court decision with the consent of the accused with the charge brought against him. And its properties would not be so debatable.

Summing up the above, we formulate that under the material criterion of differentiation for the purposes of this work, we understand the properties of crimes enshrined in the Special Part of the Criminal Code of the Russian Federation, in criminal cases in respect of which it is conceivable to apply simplified procedures.

With the help of the material criterion of differentiation, we get only a relatively certain set of criminal law norms, in relation to which the legislators can decide to include them in the material legal basis of a specific simplified procedure.

3. The problem of the material and legal basis of a special procedure for making a court decision with the consent of the accused with the charge brought against him

Next, let us turn to the statement of Professor Yu. K. According to Yakimovich, giving it in its full form, since it is the key to this article: "Guided by the substantive basis of differentiation – the degree of public danger of a crime, the legislator must establish different procedural forms

for certain categories of cases. At the same time, however, the specified basis in the law itself should be specified: it is necessary to formulate clear criteria that should guide law enforcement officers when "choosing" the procedural order of production in each specific case. As such a criterion, you can use both the type and the measure of punishment (for example, simplified proceedings are applied only in cases where the possible punishment does not exceed one year of imprisonment), and certain properties of the subject who committed a socially dangerous act (recidivist, especially dangerous recidivist), and other signs.

However, a different approach seems more correct: depending on the degree of public danger, all criminally punishable acts should be divided into certain groups and a certain procedure for production should be provided for each (or several)" [14, p.181].

The presented quotation is significant because it demonstrates the difference between the criteria (grounds) for differentiating criminal proceedings and the substantive basis of a particular procedure. The material and procedural criteria of differentiation allow us to determine in general terms the properties of criminal cases, with respect to which the differentiation of criminal proceedings is possible. In this case, the material criteria for differentiation should distinguish groups of crimes, the law enforcement process in respect of which allows differentiation.

Whereas the material and legal basis of a particular procedure is a system of criminal law norms, for the implementation of which a certain criminal procedure form is intended. The corresponding system of norms is formed with the help of signs that must be specified in the law and may change.

For example, for a special procedure for making a court decision, previously such a feature was the maximum sentence of imprisonment provided for by the Criminal Code of the Russian Federation. Now it is the category of crimes.

Is such a replacement justified? For example, such an author as O. V. Kachalova considers it correct [4, p. 155]. Let's try to formulate our own position on this issue.

As mentioned earlier, Yu. K. Yakimovich

expressed the idea that a certain classification of crimes should be presented in the criminal law, which can become the basis for the differentiation of criminal proceedings.

At the same time, T. V. Trubnikova in her work, written already during the period of the current Criminal Code of the Russian Federation, notes that the positive side of the current criminal legislation can be considered the consolidation of a system of categories of crimes associated with the maximum amount of punishment in the form of imprisonment established for committing certain socially dangerous acts [15, p.99]. At the same time, T. V. Trubnikova considers the reference to the fact that the amount of punishment specified in the law may not correspond to the public danger of the act unfounded [15, p.100].

Indeed, we can say that the appearance of a system of categories of crimes in the current Criminal Code of the Russian Federation was an important step in the development of criminal legislation. Professor N. F. Kuznetsova pointed out that the categorization of crimes is addressed primarily to the legislator, "obliging him to take into account the classification of crimes in the construction of criminal law institutions and norms" [18, p. 287]. However, it also has a criminal-procedural significance, which was mentioned, for example, by A. A. Piontkovsky, pointing out that the division of crimes in bourgeois criminal legislation is used to simplify the criminal process [19, p. 54].

Currently, it is used for similar purposes in our country. At the same time, it is necessary to make a certain reservation. When discussing the special procedure for making a court decision, many authors have long used a system of categories of crimes to describe its features. But only now the legally fixed classification of crimes can be considered not just as a means of analysis, but as a normative criterion used to determine the substantive basis of a special order of judicial proceedings.

Currently, it is used for similar purposes in our country. At the same time, it is necessary to make a certain reservation. When discussing the special procedure for making a court decision, many authors have long used a system of categories of crimes to describe its features. But

only now the legally fixed classification of crimes can be considered not just as a means of analysis, but as a normative criterion used to determine the substantive basis of a special order of judicial proceedings.

This is, in many ways, an innovation, since, turning to the system of simplified judicial proceedings of the criminal process of Russia, you can see that most often when describing the criminal legal basis of simplified procedures, legislators use a method in the form of a simple list of the elements of crimes in criminal cases in respect of which it is possible to use one or another criminal procedure form. For example, an inquiry in an abbreviated form, the production of criminal cases of private prosecution.

When using the provisions of Article 15 of the Criminal Code of the Russian Federation as a normative criterion for determining the material and legal basis of a special order, we would like to count on the fact that the categorization of crimes given in the criminal legislation is properly objective, generally recognized and stable. However, referring to the specified norm, it can be seen that it has been repeatedly amended, the validity of the classification of crimes presented in it may be questioned, which will be proved later.

Thus, the system of categories of crimes, taken in the rank of the criterion provided for by the criminal procedure legislation, which establishes the parameters of the material and legal basis of a special procedure for making a court decision, is characterized by a number of problematic points. Let's look at them in more detail.

4. Shortcomings of the system of categories of crimes as the basis for determining the criminal-legal basis of judicial proceedings provided in Chapter 40 of the Code of Criminal Procedure of the Russian Federation

4.1. The system of categories of crimes is unstable

Referring to the federal laws that amended Article 15 of the Criminal Code of the Russian Federation, you can see that the analyzed norm is not as stable and permanent as we would like. It has repeatedly undergone significant changes, the last of which was implemented only in the summer of 2019.

How has the classification of socially dangerous acts fixed in the legislation in terms of crimes of small and medium gravity, as well as serious crimes, changed over time?

The original version of the Criminal Code of the Russian Federation of 1996 stated that crimes of minor gravity are recognized as intentional and careless acts, for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed two years of imprisonment.

The crimes of moderate gravity were intentional and negligent acts, for which the maximum penalty established by law does not exceed five years of imprisonment.

Serious crimes – intentional and negligent acts that allow for a penalty not exceeding ten years of imprisonment.

Federal Law No. 25-FZ of 09.03.2001 already introduces changes to the system of categories of crimes.

First, crimes of moderate gravity are recognized as intentional acts for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed five years of imprisonment, and careless acts for which the maximum penalty exceeds two years of imprisonment. Secondly, it excludes the classification of careless crimes as serious in their category.

Federal Law No. 420-FZ of 07.12.2011 makes three significant adjustments to Article 15 of the Criminal Code of the Russian Federation.

First, crimes of minor gravity now include intentional and careless acts, for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed three years in prison.

Secondly, crimes of moderate gravity are recognized as intentional acts for which the maximum penalty does not exceed five years of imprisonment, and careless acts for which the maximum penalty provided for by the criminal law exceeds three years of imprisonment.

Third, the court is given the opportunity to change the category of crimes, which gives rise to such a phenomenon as "judicial categorization of crimes" [20, p.43].

Currently, after the adoption and entry into force of Federal Law No. 146-FZ of 17.06.2019, intentional and negligent acts are recognized as crimes of minor gravity, for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed three years of imprisonment.

Crimes of moderate gravity are intentional acts for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed five years of imprisonment, and careless acts for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed ten years of imprisonment.

Serious crimes include intentional acts for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed ten years of imprisonment, and careless acts for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed fifteen years of imprisonment.

As we can see, the legislators cannot decide, first, on the upper limit of the punishability of crimes that belong to the categories of interest to us. Secondly, the classification and assessment of the nature and degree of public danger of careless crimes is a problematic issue. Third, the category of crimes becomes not an absolute value, but a relative one, depending not only on the requirements of the law, but also on the discretion of the law enforcement officer. Fourth, the legislators are returning to the previously rejected decision on the possibility of classifying careless crimes as serious crimes, which indicates the lack of a unified systematic approach to the formation of types of crimes in the criminal law.

At the same time, the factor of instability of the system of categories of crimes inevitably generates instability of the criminal-legal basis of a special procedure for making a court decision. And to date, this has already taken place. Thus, Federal Law No. 146-FZ of 17.06.2019 removed reckless serious crimes beyond the scope of Chapter 40 of the Criminal Procedure Code of the Russian Federation, the penalties for which exceeded ten years of imprisonment, in particular, provided for in Part 2.1, 4 of Article 263, Part 4, 6 of Article 264 of the Criminal Code of the Russian Federation.

That is, the latest changes made to Article 15 of the Criminal Code of the Russian Federation, being projected on the material and legal basis of a special order of judicial proceedings of the same time period, allowed us to say that they are all crimes of small and medium gravity, all serious intentional crimes, and only those careless serious crimes, the penalty for which, established by the Criminal Code of the Russian Federation, does not exceed ten years of imprisonment. The amendments introduced by Federal Law No. 146-FZ of 17.06.2019 led to a temporary misalignment of the boundaries of the criminal legal basis of a special order and the system of categories of crimes. At the moment, this discrepancy has been eliminated, and the judicial proceedings provided for in Chapter 40 of the Criminal Procedure Code of the Russian Federation apply only to crimes of small and medium gravity. And the system of categories of crimes is transformed from a means of analyzing the material and legal basis of a special order into a direct normative criterion that sets its parameters.

However, there is a possibility that the current classification of crimes is not final. For example, the analyzed article of the criminal law may be supplemented with the category of criminal misdemeanor. The Supreme Court of the Russian Federation even took concrete steps to ensure the inclusion of this concept in Article 15 of the Criminal Code of the Russian Federation: for this purpose, in December 2018, the State Duma introduced draft law No. 612292-7, according to which criminal offenses were proposed to be understood as criminal acts for which no penalty of imprisonment is provided.

It seems that the consequences of the introduction of this category for the further differentiation of criminal proceedings are difficult to predict. Its consolidation in the criminal law may require a radical restructuring of the system of simplified proceedings of the criminal process of Russia, which draws the attention of O. V. Kachalova [17, p. 32], Yu. A. Timoshenko [21, p. 113], V. N. Sizov [22, p.20].

At the same time, in the theory of criminal law, there is no consensus on what should constitute a criminal offense, whether it should be

included in the system of categories of crimes or singled out as a separate type of illegal acts, it is not clear what the ratio of misdemeanors and administrative offenses should be [23, 24, 25, 26].

The position is also expressed that "it is the punishment imposed by the court, and not the punishment provided for by the legislator in the sanction, that is the measure of the public danger of a particular criminal act and the person who committed it. In this regard, two persons who are sentenced to the same penalties, not related to deprivation of liberty, should not be placed in an unequal position just because the sanction of the criminal law norm describing the act of one of them indicates deprivation of liberty, and the sanction of the norm describing the act of the other does not" [25, p.114].

The probability of including the concept of a criminal offense in one form or another in the Criminal Code of the Russian Federation is quite high. The reason for this is the possibility of achieving greater procedural savings and optimizing the workload of judges at the expense of the corresponding legislative decision, which Professor V. L. Golovko reasonably pointed out as the main idea of the corresponding draft law of the Supreme Court of the Russian Federation [27, p.134-135].

The adoption of the Federal Law "On Amendments to Articles 314 and 316 of the Criminal Procedure Code of the Russian Federation" will inevitably lead to an increase in the costs of criminal proceedings, therefore, it is expected that the legislator will appeal to proposals that can compensate for this circumstance.

The adoption of the Federal Law "On Amendments to Articles 314 and 316 of the Criminal Procedure Code of the Russian Federation" will inevitably lead to an increase in the costs of criminal proceedings, therefore, it is expected that the legislator will appeal to proposals that can compensate for this circumstance.

We also note that the idea of introducing the category of criminal offenses into the criminal law has been discussed for a long time.

It is no longer necessary to speak about the unity of the criminal procedure form and its self-sufficient significance at the present time. Nevertheless, the differentiation of criminal

proceedings should be placed in a certain scientifically based framework. While the possible formation of the institution of criminal misconduct can give it a new impetus and a new direction. Although it would be relevant to eliminate the systemic contradictions and gaps characteristic of the existing system of crimes and criminal procedure procedures, instead of introducing new novels, by ensuring that the domestic criminal justice system, as Professor V. A. Azarov correctly pointed out, corresponds to the historically formed canons [28, p.49].

4.2. Sanctions of certain articles of the Special Part of the Criminal Code of the Russian Federation may not be fully scientifically and practically justified

Turning to the classics of legal science, we note that Professor N. D. Durmanov pointed out: "Soviet legislation, including criminal law, is based on a genuine science – the Marxist-Leninist doctrine of society, which gives it the opportunity to accurately determine the danger of certain acts and the degree of this danger" [29, p.131].

The modern legislator cannot be sure of such a high assessment of the results of their activities on the part of scientists. For example, Yulia Tymoshenko justifiably notes that "the sanctions of many articles of the criminal law are far from perfect. Since the introduction of the Criminal Code of the Russian Federation, they have been subjected to numerous changes, which often had a "template" character, were often associated with the introduction of the type of punishment, the upper and lower limits were revised. At the same time, the effectiveness of applying a particular type of punishment for a committed crime was not always predicted, and criminological data on persons committing specific crimes were not taken into account" [21, p.113-114].

These quotations indicate the deepest systemic contradictions in the field of criminal law concerning the processes of criminalization and penalization, which have been formed for quite a long time. So, even Professor P. S. Elkind pointed out that "the punishment provided for by law for a particular crime does not always characterize the

degree of public danger of a particular criminal manifestation" [7, p.74].

But if we proceed from the fact that we question the logical and objective nature of the sanctions of the articles of the Special Part of the Criminal Code of the Russian Federation, then, consequently, it will be controversial to classify individual crimes in the category specified in the law. This, in turn, leads to doubts about the correctness of determining the range of criminal acts in respect of which a special procedure for making a court decision is possible.

In the theory of criminal procedure, the point of view is expressed that the severity of the crime is an objective property that dictates the differentiation of criminal proceedings. As pointed out by I. S. Dikarev, "the severity of a crime determines the severity of the punishment applied for its commission. The stricter the criminal liability, the more efforts should be made to prevent investigative and judicial errors that can lead to the conviction of an innocent person" [16, p.19].

While generally agreeing with the author's position, we note only that the gravity of the crime is determined by the nature and degree of public danger of the act. Public danger, which is objective in nature [18, p. 267; 33, p. 274], is objective-subjective in its content, since it also depends on the subjective properties of the act [18, p.268]. In addition, it is historically variable [29, p. 110], and also becomes a sign of a crime only after a (subjective) assessment of it by the legislator [18, p.267-268]. For this reason, it seems that the severity of the crime, reflected in the punishment provided for by law, is an objective-subjective property, and, therefore, cannot determine the formation of a differentiation factor of an exclusively objective nature. The specified phenomenon will also have an objective-subjective nature.

Therefore, for a more clear and scientifically sound establishment of the material and legal basis of a special procedure for making a court decision, it is necessary to carry out work of a "preparatory" nature: such work should be a check with bringing into a logical, systematic form of sanctions the norms of the Special Part of the Criminal Code of the Russian Federation, first of all, fixing the elements of crimes of small and medium gravity, for their

compliance with the nature and degree of public danger of the corresponding crimes.

In the analyzed situation, the problems inherent in the criminal law of the Russian Federation inevitably become problems of criminal procedure law, since the substantive legal bases of differentiated procedures are the most important point of contact between substantive and procedural criminal law. And it is necessary to solve these controversial issues together, taking into account the deepest systemic links between the relevant branches of law.

4.3. The normative criterion determining the parameters of the criminal-legal basis of Chapter 40 of the Code of Criminal Procedure of the Russian Federation is becoming more complex

The basis on which the classification of crimes given in Article 15 of the Criminal Code of the Russian Federation is based is internally complex. In itself, public danger is one of the most multifaceted concepts in the theory of criminal law. At the first approximation, it can be interpreted as the harmfulness of the act, its ability to harm public relations protected by criminal law [29, p. 96-97, p. 160; 18, p.266; 33, p. 14]. Public danger is revealed through indicators of its nature and degree. The question of what signs affect their establishment is no less problematic in the framework of criminal law than the question of the essence of public danger as a sign of a crime [34; 35, p. 242-243; 36, p.112-116].

Let us pay attention to the fact that the public danger of an act, taken in the historical aspect as a material sign of a crime, is not perceived positively by all authors. The point of view is expressed that, being opposed to the formal concept of crime, its material definition in the Soviet period of time allowed to justify the use of the institution of analogy of the criminal law, normatively fixed in the Criminal Code of the RSFSR in 1926, contradicted the principle of legality, serving as a prerequisite for expanding the limits of the punitive power of the state [33, p. 14-15; 37, p. 70].

It turns out that the legislators, defining the criminal-legal basis of a special procedure for making a court decision with the help of a system

of categories of crimes, reveal one complex phenomenon through an even more multifaceted and problematic one, which is also burdened with an ambiguous history – the social danger of the act.

However, despite the abstract nature of the stated classification criterion, in fact, the categories of crimes are distinguished depending on the maximum sentence of imprisonment and the form of guilt. At the same time, it is the term of imprisonment provided for by law that is called an "indicator" of the public danger of an act [35, p.238].

Considering further, we note that by introducing a new criterion that determines the parameters of the criminal-legal basis of a special procedure for making a court decision, one cannot ignore such a factor that decisively affects the differentiation of criminal proceedings as the not too serious nature of the consequences of applying a certain procedural form for the person who committed the crime [15, p. 113].

As follows from the above, the characteristics of crimes for which it is possible to apply a special procedure of judicial proceedings or other simplified proceedings are defined in different ways. Very accurately, this circumstance was reflected by Professor P. S. Elkind in a work back in 1976.

As we can see, when determining the material basis of differentiation and, accordingly, the resulting criminal-legal basis of a special procedure for making a court decision, the emphasis can be placed on the properties of the harmfulness of the act itself, allowing it to be attributed to a certain classification group, or the criminal-legal consequences of its commission provided for by law. This trend was illustrated in his study by A.V. Piyuk, analyzing the works of M. L. Yakub and M. K. Sviridov of the 80s [6, pp. 154-155]. At the same time, in both cases, when establishing the boundaries of the material and legal basis of the analyzed procedure, a share of subjectivism is inevitable.

If we turn to Article 15 of the Criminal Code of the Russian Federation, we can see that crimes combined in one category, i.e. similar in nature and degree of public danger, can be punished in different ways. In itself, the classification of crimes presented in this norm is controversial and internally contradictory, which is largely due to the complex

and ambiguous nature of the classification criterion taken as a basis for its construction. And now all the problems associated with the allocation of types of crimes in the criminal law will even more actively affect the scope of criminal proceedings.

If you turn to Article 15 of the Criminal Code of the Russian Federation, you can see that the crimes combined in one category, i.e. similar in nature and degree of public danger, can be punished in different ways. In itself, the classification of crimes presented in this norm is controversial and internally contradictory, which is largely due to the complex and ambiguous nature of the classification criterion taken as a basis for its construction. And now all the problems associated with the allocation of types of crimes in the criminal law will even more actively affect the scope of criminal proceedings.

For example, crimes of moderate gravity are recognized as intentional acts for which the maximum penalty does not exceed five years of imprisonment, and careless acts for which the maximum penalty provided for by the Criminal Code of the Russian Federation does not exceed ten years of imprisonment. That is, the crimes assigned by the legislator to one category imply a difference in the maximum penalty of five years in prison. At the same time, in theory, the division of crimes in accordance with the sanction should assume the result in the form of a clear separation of one group of crimes from another [38, p. 11]. The achievement of this goal is currently questionable, since the boundaries of such groups of crimes as crimes of small and medium gravity, serious crimes, are becoming increasingly unstable and heterogeneous.

Let us draw attention to the fact that the upper limit of the punishability of medium-gravity crimes is not uniform, but differentiated for crimes committed with intent and through negligence. As such, it now acts for the purposes of Chapter 40 of the Code of Criminal Procedure of the Russian Federation. Although earlier, the upper limit of the punishability of acts with respect to which a special order can be applied was formulated in Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation as general, being set at the controversial level of ten years of imprisonment.

It turns out that if the possibility of applying a simplified procedure to a specific crime can be set by two different factors: the harmfulness of the socially dangerous act itself and the classification group to which it is attributed, or the legal consequences of its commission, then when adopting Federal Law No. 224-FZ of 20.07.2020 "On Amendments to Articles 314 and 316 of the Criminal Procedure Code of the Russian Federation", when establishing a regulatory criterion that determines the criminal legal basis of a special order, the emphasis was shifted from the legal consequences of committing a criminal act to the properties of the social danger of the crime, which allow it to be attributed to a certain type.

At the same time, the difference of five years in the maximum penalty in the form of imprisonment established for crimes of one classification group, even taking into account the application of the provisions of Part 5 of Article 62 of the Criminal Code of the Russian Federation, for Chapter 40 of the Criminal Code of the Russian Federation is excessive. It would be more correct to apply the special procedure of judicial proceedings provided for in Chapter 40 of the Criminal Procedure Code of the Russian Federation in criminal cases of crimes for which the penalty provided for in the Criminal Code of the Russian Federation does not exceed five years of imprisonment, that is, to return to the early version of Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation.

We also note that, despite the great importance of the system of categories of crimes, it is not necessary that the differentiation of the criminal process directly depends on it, if the classification of socially dangerous acts given in Article 15 of the Criminal Code of the Russian Federation is controversial and contradictory. For example, such an author as N. V. Karepanov comes to the same conclusion, only in the field of criminology [39, p.164].

5. Conclusions

Summing up the above, we indicate the following:

1. The material criterion (basis) of differentiation can be understood as the properties of crimes in criminal cases in respect of which the

application of simplified procedures is conceivable.

The corresponding properties, using various terms, reflect the relatively low degree of public danger of certain criminal acts.

With the help of the material criterion of differentiation, we obtain a relatively specific set of criminal law norms, in relation to which the legislators can decide to refer them to the material and legal basis of a specific simplified criminal procedure.

2. The criteria or grounds for differentiation allow us to generally determine the characteristics of criminal cases, with respect to which the differentiation of the criminal process is potentially possible. Whereas the material and legal basis of a particular procedure is a system of criminal law norms, for the implementation of which a certain criminal procedure form is directly intended. The specified system of norms is formed by means of the signs which are specified in the law and can change over time.

For example, for a special procedure for making a court decision, previously such a feature was the maximum term of punishment in the form of imprisonment. Now it is the category of crimes.

3. At present, in accordance with Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation, only the norms establishing criminal liability for crimes of small and medium gravity apply to the substantive legal basis of a special procedure for judicial proceedings with the consent of the accused with the charge brought against him. Evaluating the idea of reducing the criminal-legal basis of a special order as a whole positively, it should be understood that Federal Law No. 224-FZ of 20.07.2020 "On Amendments to Articles 314 and 316 of the Criminal Procedure Code of the Russian Federation" is aimed at replacing the normative criterion defining the range of criminal-legal norms for the application of which the procedure provided for in Chapter 40 of the Code of Criminal Procedure of the Russian Federation is designed. The emphasis is now shifted to the characteristics of the harmfulness of the act itself, in comparison with the factor of its punishability.

4. When using the classification of crimes contained in Article 15 of the Criminal Code of the

Russian Federation as a basis for outlining the criminal legal basis of a special order, we would like to count on the fact that the categorization of crimes given in the criminal legislation is duly objective, generally recognized and permanent. However, referring to this article, you can see that it has been repeatedly amended, the validity of the classification of crimes presented in it may be questioned.

Thus, the system of categories of crimes, taken in the rank of a normative criterion that sets the parameters of the criminal-legal basis of a special procedure for making a court decision, is characterized by a number of problematic points.

5. The most significant of them is that the system of categories of crimes is unstable, it has repeatedly undergone significant changes, the last of which was implemented only in the summer of 2019. And, most likely, it will be further reformed: it is quite likely that the concept of criminal misconduct will be included in Article 15 of the Criminal Code of the Russian Federation. The introduction of this category can give a new impetus to the differentiation of criminal proceedings in the direction of its simplification and lead to the restructuring of the existing system of criminal procedure proceedings.

6. In addition, the sanctions of certain articles of the Special Part of the Criminal Code of the Russian Federation may not be completely scientifically and practically justified, while they act as a prerequisite for classifying a criminal act as a certain category of crimes.

Therefore, for a more clear and scientifically based establishment of the criminal-legal basis of a special procedure for making a court decision, it is necessary to carry out work of a "preparatory" nature: such work should be brought into a logical and consistent form of sanctions of the norms of the Special Part of the Criminal Code of the Russian Federation, first of all, on crimes of small and medium gravity.

7. The normative criterion taken as the basis for determining the criminal-legal basis of Chapter 40 of the Code of Criminal Procedure of the Russian Federation is becoming more complex.

The basis on which the classification of crimes given in Article 15 of the Criminal Code of the Russian Federation is based is complex. The category

of crime is determined by the nature and degree of public danger of the act. Public danger is one of the most multifaceted concepts in the theory of criminal law. It turns out that the legislators, defining the criminal-legal basis of a special procedure for making a court decision with the help of a system of categories of crimes, reveal one complex phenomenon through another, even more problematic, moreover, burdened with an ambiguous history of its formation – the social danger of the act.

The system of categories of crimes presented in Article 15 of the Criminal Code of the Russian Federation, based on such a complex criterion, is also controversial and internally contradictory. This can be illustrated by referring to a group of crimes of moderate severity, which is obviously internally heterogeneous. The difference of five years in the maximum penalty in the form of imprisonment established for crimes of one classification group, even taking into account the application of the provisions of Part 5 of Article 62 of the Criminal Code of the Russian Federation, for the purposes of judicial proceedings provided for in Chapter 40 of the Criminal Code of the Russian Federation, is excessive.

8. Returning to the beginning of this article and the statement of Professor M. S. Strogovich, we can say that over time, the situation with the criteria for differentiating criminal proceedings remains just as complex and controversial. Even the criteria for simplifying criminal proceedings, designated as objective, allow subjectivism, they are not specific enough and historically variable.

While generally supporting the idea of reducing the criminal-legal basis of a special procedure for making a court decision, it is necessary to pay attention to the fact that there are still questions about its normative implementation. It seems that the changes made to Article 314 of the Criminal Procedure Code of the Russian Federation make the criminal-legal basis of a special order more acceptable in its limits, but less stable.

We believe that it would be correct to apply the analyzed procedure in criminal cases of crimes for which the penalty provided for by

the Criminal Code of the Russian Federation does not exceed five years of imprisonment. That is, to return to the early version of Part 1 of Article 314 of the Criminal Procedure Code of the Russian Federation.

REFERENCES

1. Strogovich M. About the uniform form of criminal proceedings and the limits of its differentiation. *Sotsialisticheskaya zakonnost'*, 1974, no. 9, pp. 50–53. (In Russ.).
2. Trubnikova T.V. Limitations to criminal procedure simplification. *Aktual'nye problemy rossiiskogo prava*, 2015, no. 12, pp. 131–139. DOI: 10.17803/1994-1471.2015.61.12.131-139. (In Russ.).
3. Yakimovich Yu.K. Differentiation of criminal proceedings should have reasonable limits and not lead to simplification. *Vestnik Tomskogo gosudarstvennogo universiteta. Pravo = Tomsk State University Journal of Law*, 2014, no. 2, pp. 105–110. (In Russ.).
4. Kachalova O.V. Expedited proceedings in the Russian criminal process. Doct. Diss. Moscow, 2016. 482 p. (In Russ.).
5. Sviridov M.K., Piyuk A.V. Theoretical foundations of simplifying the forms of settlement of criminal cases by the court in the Russian Federation. Tomsk, TSU Publishing House, 2019. 348 p. (In Russ.).
6. Piyuk A.V. Theoretical foundations of simplifying the forms of settlement of criminal cases by the court in the Russian Federation: typological aspect. Doct. Diss. Tomsk, 2017. 469 p. (In Russ.).
7. Elkind P.S. Aims and means of achieving them in the Soviet criminal procedure law. Leningrad, Publishing house of the Leningrad University. 1976. 143 p. (In Russ.).
8. Arseniev V. Simplification is not equivalent to simplicity. *Sotsialisticheskaya zakonnost*, 1975, no. 3, pp. 63–64. (In Russ.).
9. Gulyaev A. Unified order implies differentiation. *Sotsialisticheskaya zakonnost*, 1975, no. 3, pp. 64–65. (In Russ.).
10. Yakub M.L. On the improvement of criminal procedure legislation. *Vestnik Moskovskogo Universiteta. Seriya 10. Pravo = Moscow University Law Bulletin*, 1964, no. 2, pp. 11–19. (In Russ.).
11. Yakub M. The procedure for criminal proceedings should be differentiated. *Sotsialisticheskaya zakonnost*, 1975, no. 1, pp. 66–67. (In Russ.).
12. Pashkevich P. Procedural forms of criminal proceedings need to be differentiated. *Sotsialisticheskaya zakonnost*, 1974, no. 9, pp. 54–56. (In Russ.).
13. Sviridov M.K. On the essence and grounds of differentiation of the criminal procedure, in: Volovich V.F. (ed.). *Aktualnyye voprosy gosudarstva i prava v period sovershenstvovaniya sotsialisticheskogo obshchestva*. Tomsk, Tomas State University Publ., 1987. P. 241–242. (In Russ.).
14. Yakimovich Yu.K. The structure of the criminal process: the system of stages and the system of proceedings. Basic and additional proceedings. Selected works. St. Petersburg, Yuridicheskii tsentr-Press Publ., 2011. 772 p. (In Russ.).
15. Trubnikova T.V. Theoretical foundations of simplified court proceedings. Tomsk, Publishing house of Tomsk University, 1999. 132 p. (In Russ.).
16. Dikarev I.S. Differentiation of the criminal procedural form and the factors determining it. *Rossiiskaya yustitsiya = Russian Justitia*, 2013, no. 12, pp. 18–21. (In Russ.).
17. Kachalova O.V. Rationalization of criminal proceedings: the requirements of the time. *Sud'ya*, 2017, no. 4, pp. 29–33. (In Russ.).
18. Korobeev A.I. (ed.). Complete course of criminal law. Vol.I. Crime and Punishment. St. Petersburg, Yuridicheskii tsentr-Press Publ., 2008. 1133 p. (In Russ.).
19. Piontkovsky A.A. The course of Soviet criminal law. Common part. Vol. II. A crime. Moscow, Nauka Publ., 1970. 516 p. (In Russ.).
20. Smirnov A.M. New functions of courts arising by virtue of Part 6 Article 15 of the Criminal Code of the Russian Federation. *Rossiiskii sud'ya = Russian Judge*, 2019, no. 12, pp. 42–45. (In Russ.).
21. Timoshenko Yu.A. Criminal Offense: way of interindustry rapprochement or differentiation of criminal liability? *Ugolovnoe pravo*, 2017, no. 4, pp. 112–115. (In Russ.).
22. Sizova V.N. Some aspects of the need to fix the category of «criminal offense» in Russian criminal law. *Rossiiskaya yustitsiya = Russian Justitia*, 2020, no. 3, pp. 19–22. (In Russ.).
23. Kadnikov N.G. Categorization of crimes depending on their weight as a basis of creation of many institutes of the General Part of Criminal Law. *Ugolovnoe pravo*, 2017, no. 4, pp. 59–61. DOI: 10.24411/2073-0454-2018-10025. (In Russ.).

24. Naumov A.V. Criminal misdemeanor as a minor crime. *Ugolovnoe pravo*, 2017, no. 4, pp. 93–97. (In Russ.).
25. Tkachev I.O. The Russian Federation Supreme Court's legal initiative on criminal minor offences: a critical look. *Rossiiskii yuridicheskii zhurnal = Russian juridical journal*, 2018, no. 6, pp. 108–116. (In Russ.).
26. Paliy V.V. Crime and misconduct: problems of correlation. *Lex russica*, 2017, no. 7, pp. 112–124. DOI: 10.17803/1729-5920.2017.128.7.112-124. (In Russ.).
27. Golovko L.V. Criminal misdemeanor Bill: imaginary meanings and real background. *Zakon*, 2018, no. 1, pp. 127–136. (In Russ.).
28. Azarov V.A. Destructive factors of the development strategy of the criminal procedure legislation of Russia. *Vestnik Tomskogo gosudarstvennogo universiteta. Pravo = Tomsk State University Journal of Law*, 2019, no. 33, pp. 49–59. DOI: 10.17223/22253513/33/5. (In Russ.).
29. Durmanov N.D. Crime concept. Moscow, Publishing house of the USSR Academy of Sciences, 1948. 311 p. (In Russ.).
30. Buranov G.K. Adequate retribution or penalized insanity? *Transportnoe pravo*, 2019, no. 4, pp. 19–23. (In Russ.).
31. Kashepov V.P.(ed). Criminalization and decriminalization as forms of transformation of criminal legislation. Moscow, IZiSP Publ., KONTRAKT Publ., 2018. 280 p. (In Russ.).
32. Naumov A.V. Russian criminal law. Course of lectures. Vol. 1. A common part. Moscow, Wolters Kluwer, 2008. 736 p. (In Russ.).
33. Alakaev A.M. The concept of crime (forms and types). Cand. Diss. Thesis. Moscow, 1992. 24 p. (In Russ.).
34. Voronin V.N. Individualization of punishment taking into account the nature and degree of public danger. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2016, no. 11, pp. 113–122. DOI: 10.12737/22199. (In Russ.).
35. Kadnikov N.G. Classification of crimes in the criminal law of Russia. Doct. Diss. Moscow, 2000. 349 p. (In Russ.).
36. Nepomnyashaya T.V. The courts' consideration of general principles of imposition of punishment when choosing a sentence. *Lex russica*, 2017, no. 12, pp. 110–123. (In Russ.).
37. Ponyatovskaya T.G. Conceptual foundations of criminal law in Russia: history and modernity. Izhevsk, Publishing house of Udmurt University, 1994. 140 p. (In Russ.).
38. Ongarbaev E.A. Classification of crimes and its criminal-legal significance Cand. Diss. Thesis. Moscow, 1990. 21 p. (In Russ.).
39. Karepanov N.V. The influence of the paradigm of forensic science on law enforcement. *Pravoprimerenie = Law enforcement review*, 2020, vol. 4, no. 3, pp. 158–167. DOI: 10.24147/2542-1514.2020.4(3).158-167. (In Russ.).

INFORMATION ABOUT AUTHOR

Alexandra V. Boyarskaya – PhD in Law, Associate Professor, Department of Criminal Law and Criminology
Dostoevsky Omsk State University
55a, Mira pr., Omsk, 644077, Russia E-mail: ba.omsu@gmail.com
RSCI SPIN-code: 6139-3134; AuthorID: 790893

BIBLIOGRAPHIC DESCRIPTION

Boyarskaya A.V. Criminal legal basis for an expedited trial procedure provided by the chapter 40 of the Russian Criminal Procedure Code. *Pravoprimerenie = Law Enforcement Review*, 2021, vol. 5, no. 2, pp. 192–208. DOI: 10.52468/2542-1514.2021.5(2).192-208. (In Russ.).