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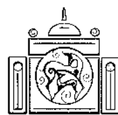

უნივერსიტეტის
გამომცემლობა

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# Criminal Aspects of Minor Significance of an Act

*Legislation of Georgia does not provide for the definition of minor significance of an act and neither establishes the criteria of its assessment that gives the opportunity of the broad interpretation and in each concrete case the decision of the issue of the criminal punishability of the act significantly becomes depending on the individual assessment of the adjudicator. It can be said that the 2nd part of the 7th article of the criminal code of Georgia does not appertain to that part of the criminal norms which with a proper precision are defined by the judicial practice. On the assumption of the norm content, the bounds of assessment are so broad, that, during decision of the issue of the criminal punishability of one and the same act, it is possible different courts come to different conclusions. The mentioned more presents the necessity of the legal analysis of the norm.*

*In this thesis are analyzed the essence of the 2nd part of the 7th article of the criminal code of Georgia, its central objective and purpose, legal consequences of its application, is presented the influence of harm/danger of harm caused by the act upon application of the mentioned norm. Are also examined the circumstances to be taken into consideration during definition of minor significance of the act, that to some extent reduces equivocation of the concept.*

***Key words:*** *Crime, Act, Harm, Minor Significance.*

## 1. Introduction

According to the 2nd part of the 7th article of the Criminal Code of Georgia (hereinafter "CCG"), An act that, although formally containing the signs of an act provided for by this Code, has not caused, due to its insignificance, such harm or has not created the risk of such harm that would require criminal prosecution of its perpetrator shall not be deemed a crime. Mentioned norm is the constituent part of the concept of the crime provided for by the 1st part of the same article. During determination of the concrete act as the crime it is necessary to establish the identity between the signs of the act provided for by the criminal law and the signs of the committed act.[1] Though, such identity alone, itself, does not condition the criminal responsibility. The goal of legislation is not punishability of any formal conformity towards the composition of the act described in the special part of the criminal code. Only the criminally significant, relevant act can become the grounds for the criminal responsibility that is clearly expressed in the 2nd part of the 7th article of CCG. It can be said that the acts of minor significance cannot achieve the level of criminal relevancy.[2] Non-existence of

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[1] *Natchkebia G.,* Concept of a Crime, in: Criminal Law, Genaral Part, *Natchkebia G., Todua N. (Eds.),* 2nd Vol., Tbilisi, 2016, 105 (in Georgian).

[2] *Turava M.,* Criminal Law, General Part I, Doctrine of Crime, Tbilisi, 2011, 58 (in Georgian).

harm/danger of harm caused by minor significance of the act conditions putting of the 2nd part of the 7th article of CCG into motion.

Legislation of Georgia does not provide for the definition of minor significance of an act and neither establishes the proper criteria determining it, due to this, the mentioned issue repeatedly became the matter of dispute in the course of adjudication. Besides, application of the 2nd part of the 7th article of CCG only with indication to insignificant harm/danger of harm is problem-causing. With consideration of the practical purpose of the mentioned norm, a particular significance is conferred to its correct and uniform interpretation. For ensuring of achievement of this goal, this thesis serves to presentation of the fundamental essence of the 2nd part of the 7th article of CCG, its objectives and purpose, legal consequences, preconditions of determination of noncriminal nature of the act, also the circumstances to be taken into consideration during assessment of minor significance of the act and analysis of their content, that, to some extent, will reduce equivocation of the concept and the difficulties existing from the standpoint of definition and application of the norm.

## 2. Objective of Exclusion of the Criminal Nature of the Act Due to Minor Significance

### 2.1. Criminal Law as *Ultima Ratio*

*Ultima Ratio* principle historically is related to the so called "fragmentary" nature of the criminal law that implies the necessity of limitation of the punishable acts.[3] The principle also has a so called "preventive" interpretation and for the purpose of prevention of the crime implies application of the criminal law as the last resort.[4] Criminal law is the last resort of observation of the social order. Priority of application of other more lenient means by the state ensues from the principle of proportionality,[5] which prohibits achievement of the legitimate objective at the expense of superfluous limitation of human right.[6] Task of the criminal law is only the struggle against the socially dangerous acts. Superfluous social danger of the act is the grounds for its criminalization.[7] Mainly which value must be observed by the criminal law is defined by the official policy of the state.[8] "In the state based on Rule of Law criminalisation of acts and setting punishment for it is successful only if it is used as *Ultima Ratio*."[9] One of the important conditions of ensuring success in this process is qualifying by the law as the crime only an act which entails serious risks neutralisation of which and protection of

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[3] *Melander S.,* Ultima Ratio in European Criminal Law, Onati Sicio-Legal Series, Vol. 3, № 1, 2013, 49.

[4] *Husak D.,* Applying Ultima Ratio: A Skeptical Assessment, Ohio State Journal of Criminal Law, Vol. 2, №2, 2005, 536.

[5] *Turava M.,* Criminal Law, Review of General Part, 9th Vol., Tbilisi, 2013, 17 (in Georgian).

[6] Decision № 3 /1/512 of 26 June, 2012 of the Constitutional Court of Georgia – „The Citizen of Denmark Heike Cronqvist versus the Parlament of Georgia", II-60.

[7] *Turava M.,* Criminal Law, Review of General Part, 9th Vol., Tbilisi, 2013, 17 (in Georgian); Decision № 1/13/732 of 30 November, 2017 of the Constitutional Court of Georgia – „The Citizen of Georgia Givi Shanidze versus the Parlament of Georgia", II-46.

[8] *Natchkebia G.,* General Part of Criminal Law, Tbilisi, 2015, 111 (in Georgian).

[9] Decision № 1/1/592 of 13 February, 2015 of the Constitutional Court of Georgia – „The Citizen of Georgia Beka Tsikarishvili versus the Parlament of Georgia", II-37.

society and people from which are objectively within the scope of criminal law.[10] Definition of condemnation of the act on the one part depends whether which values and interests were abased or endangered and on the other part did or not the act cause harm or did or not create danger of such harm[11].

If the act, the signs of which are proportionate to the signs of the act provided for by the criminal law, has minor significance, then, according to the 2nd part of the 7th article of CCG, this proportion is formal and accordingly the act will not be considered as the crime.[12] On the assumption of the above mentioned discussion, in this case, the degree of the social danger of the act is so low that putting of the criminal repressive mechanism for the similar act into motion contradicts *Ultima Ratio* principle. During recognition of any act as the crime the legislator takes into consideration the nature determining danger of such acts, though, it is impossible the degree of danger of such act, in the given concrete case, not to achieve that minimum that is required for the criminal responsibility of its committer.[13] Humans must be protected against the criminal condemnation, except the case when they committed such act, the responsibility for which is inevitable.[14] The 2nd part of the 7th article of CCG serves to this objective and protects a person against the criminal prosecution when the necessity of this does not exist.

## 2.2. Economic Analysis of Law

Economic analysis of law is too important for economic conduction of the criminal policy[15] and it is the constituent part of the state's criminal policy.[16] Resource of the state is not sufficient for implementation of the criminal prosecution on the fact of all crimes. For the purpose of the effective use of the limited resources are defined the priority directions of the criminal policy which on the part of investigation and prosecution authorities require a particular attention and response.[17] Besides the expense required for implementation of the prosecution, the economic analysis of the law is also interested in the expense incurred for execution of the legal sanctions.[18] It costs a lot for the state to apply the punishment.[19] Correct and intelligent use of the state resources is a necessary condition of the country's development.[20]

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[10] Ibid.

[11] *Nils J.,* Criminalization as Last Resort (Ultima Ratio), Ohio State Journal of Criminal Law, Vol. 2, № 2, 2005, 527.

[12] *Natchkebia G.,* Concept of a Crime, in: Criminal Law, Genaral Part, *Natchkebia G., Todua N. (Eds.),* 2nd Vol., Tbilisi, 2016, 105 (in Georgian).

[13] *Natchkebia G.,* General Part of Criminal Law, Tbilisi, 2007, 56 (in Georgian).

[14] *Feinberg J.,* The Moral Limits of the Criminal Law, Vol. 3: Harm to Self, Oxford University Press, 1989, 54.

[15] *Shalikashvili M., Mikanadze G., Khasia M.,* Law of Corrections, Tbilisi, 2014, 34 (in Georgian).

[16] *Shalikashvili M.,* Criminology, 3rd Vol., Tbilisi, 2017, 207 (in Georgian).

[17] Decree № 181 of 8 October, 2010 of the Minister of Justice of Georgia about the Adoption of General Guiding Principles of Criminal Law policy, LHG, 130, 11/10/2010.

[18] *Khubua G.,* Theory of Law, Tbilisi, 2004, 111 (in Georgian).

[19] *Gamkrelidze O.,* Problems of Criminal Law, 3rd Vol., Tbilisi, 2013, 111 (in Georgian).

[20] *Shalikashvili M.,* Criminology, 2nd Vol., Tbilisi, 2011, 254 (in Georgian).

Exclusion of the crime due to minor significance of the act is justified criminally and politically and sets as the purpose the use of limited resources of the state only for struggle against the socially dangerous acts.

## 3. Minor Significance of an Act as the Opportunity to Implement Decriminalization by the Common Court

Decriminalization of the act, as a rule, appertains only to the exclusive authority of the legislative authority. Though, sometimes this function is successfully combined by the constitutional court as well, which presents itself in the role of so called "negative legislator".[21] As the example of this we can examine the decision by which imposition of the criminal responsibility for illegal use of marijuana was declared unconstitutional.[22] As concerns the opportunity of implementation of decriminalization of an act by the common courts, the mentioned, as opposed to the constitutional court, of course does not ensue from the jurisdiction of the common court. Though, on the assumption of the 2nd part of the 7th article of CCG, the legislator gives the judge the right of decriminalization of the act.[23] Mentioned norm, with consideration of its legal nature and legal consequences, is that rare, it can be said the only exceptional case when the legislator implements delegation of his own exclusive authorities to the adjudicator and confers the opportunity of implementation of decriminalization of the act on him. It must be taken into consideration that the court is authorized to make the act, not generally provided for by the special part of CCG, lose the criminal significance, but only the act committed by the concrete person towards the same person.[24] Thus, we can call the case provided for by the 2nd part of the 7th article of CCG, the factual decriminalization at the individual level. It is decriminalization of a one-time nature only as concerns the concrete act and is related to the challenge of the appropriate legal consequences only towards the concrete individually defined person.

## 4. Legal Consequences of Application of the 2nd Part of the 7th Article of CCG

The 2nd part of the 7th article of CCG is not the material legal circumstance excluding the criminal responsibility or the procedural legal circumstance impeding the prosecution, but excludes the composition of the act, that is to say, the act provided for by the criminal code does not exist. It should be noted that in Germany a minor significance of the act excludes not the composition of the

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21 *Todua N.,* Issues of Criminalization-Decriminalization in Georgian Criminal Legislation, in: Liberalization Trends of Criminal Law Legislation in Georgia, *Todua N. (Ed.),* Tbilisi, 2016, 105 (in Georgian).

22 Decision № 1/13/732 of 30 November, 2017 of the Constitutional Court of Georgia – „The Citizen of Georgia Givi Shanidze versus the Parlament of Georgia".

23 *Todua N.,* Issues of Criminalization-Decriminalization in Georgian Criminal Legislation, in: Liberalization Trends of Criminal Law Legislation in Georgia, *Todua N. (Ed.),* Tbilisi, 2016, 105 (in Georgian); *Mtchedlishvili-Herdikh K.,* Criminal Law, General Part II, Certain Forms of Criminal Conduct (Preparation and Attempt of a crime, Complicity in a crime, Competition), Tbilisi, 2011, 26-27 (in Georgian).

24 *Todua N.,* Issues of Criminalization-Decriminalization in Georgian Criminal Legislation, in: Liberalization Trends of Criminal Law Legislation in Georgia, *Todua N. (Ed.),* Tbilisi, 2016, 106 (in Georgian).

act, but is the grounds for refusal of initiation or termination of prosecution.[25] Minor significance of the act in the legislation of Georgia is not the procedural legal, but is the material legal problem.[26] Consequently, during existence of the conditions provided for by the 2nd part of the 7th article, according to the subparagraph "A" of the first clause of the article 105 of the code of criminal procedure of Georgia (hereinafter "CCPG"), at the stage of investigation, the public prosecutor is obliged to terminate/not to initiate the criminal prosecution.[27] At the stage of examination of the case at the court CCPG does not provide for the opportunity to terminate the prosecution by the judge on the mentioned grounds. Accordingly, despite existence of the act provided for by the criminal law, examination of the case must be continued and must be passed the verdict of not guilty. Though, there also exists the different consideration that is related to expediency of termination of the accused person's criminal prosecution by the motive that passing of the verdict of not guilty might exert a negative influence upon the society's feeling for law and order and similar acts be perceived as permitted.[28]

It must be taken into consideration that termination of prosecution at the stage of investigation due to the minor significance of the act the court sometimes examines [29] in the way of discretionary authority of the public prosecutor that presents the minor significance of the act as the procedural legal problem and does not conform to the content of the 2nd part of the 7th article, neither ensues from the criminal procedure legislation. In particular the necessary precondition of application of the discretionary authority is existence of the criminal action when the public prosecutor with consideration of evidential and public interest test (so called "full test") makes decision on initiation or termination of the prosecution.[30] Minor significance of the act excludes composition of the act that in its turn means non-existence of the criminal act; in time of this, the public prosecutor will not be able to act within the frames of the discretionary authority.

## 5. Preconditions of Determination of Non-Criminal Nature of the Act

The 2nd part of the 7th article of CCG determines two main cumulative preconditions for exclusion of the criminal nature of the act. The first is insignificant nature of harm or danger of harm and the second is minor significance of the act itself. By the adjudicator in the first place must be assessed the inflicted harm or danger of harm. In case the harm/danger of harm caused by the act is significant, then discussion of minor significance of the act is legally irrelevant, as harm itself justifies

[25] *Turava M.,* Criminal Law, Review of General Part, 9th Vol., Tbilisi, 2013, 72 (in Georgian).

[26] Ibid.

[27] *Goradze G. (Ed.),* Comments on the Criminal Procedure Code of Georgia, Tbilisi, 2015, 337 (in Georgian).

[28] Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 1 August, 2018, № 154AP-18, Different Opinion of Judge Nino Gvenetadze.

[29] Criminal Cases Panel of Tbilisi City Court, Judgment of 21 November, 2014, № 1/5537-14; Criminal Cases Panel of Tbilisi City Court, Judgment of 30 December, 2015, № 1/5598-15.

[30] See Decree № 181 of 8 October, 2010 of the Minister of Justice of Georgia about the Adoption of General Guiding Principles of Criminal Law policy, LHG, 130, 11/10/2010; *Goradze G. (Ed.),* Comments on the Criminal Procedure Code of Georgia, Tb., 2015,346; *Tumanishvili, G.,* Criminal Procedure law, General Part, Tbilisi, 2014, 70-71 (in Georgian).

imposition of the criminal responsibility with consideration that the act inflicting a significant harm cannot be assessed as the act of minor significance. Accordingly, assessment of minor significance becomes required only in case the inflicted harm or danger of harm is of insignificant nature, though, the latter of course does not condition a minor significance of the act. Existence of harm excludes the opportunity of application of the 2nd part of the 7th article of CCG, though its non-existence does not indicate the necessity of application of the norm. Difficulties existing in the course of adjudication are related to the mentioned issue. For illustration, the sentence passed by Tbilisi city court on one of the cases, which concerned the fact of seizing the sum of money in the amount of 3 GEL from quick payment machine by the minor, secretly, using the metal item, for the purpose of misappropriation, will suit. In the examinable case the first instance court, without assessing the nature of the committed act, considered it as minor significance with consideration that it did not inflict any significant harm or did not create danger of such harm.[31] Insignificant nature of the inflicted harm is one of the grounds[32] for inexpediency of the criminal prosecution within the frames of the discretionary authority and not a self-sufficient circumstance defining a non-criminal nature of the act.

### 5.1. Harm

Traditional starting point of discussion of criminalization is the “harm Principle”.[33] John Stuart Mill, as the only purpose for which it is possible to apply by the state of the power towards this or that member of the society against his wish, examines[34] avoiding of harm for others. Here is considered harm or danger of harm inflicted as to private individuals, so to the state.[35] Principle of harm gives advantage to the individual freedom and for justification of application of compulsion on the state’s part it does not consider cases of inflicting harm to itself.[36] Though, as opposed to this position, some philosophers also consider the prevention of inflicting harm to itself as the legitimate reason of criminalization that more broadens Mill’s principle of harm and also contains the idea of paternalism.[37] For justifying the criminalization of this or that act the legislator stands in front of the significant task in order to substantiate the nature of the act harmful for the society, though, harm of any kind and amount cannot justify the purposes of criminalization. Harm, in its turn, can be different:

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[31] Criminal Cases Panel of Tbilisi City Court, Judgment of 30 December, 2015, № 1/5598-15.

[32] See Decree № 181 of 8 October, 2010 of the Minister of Justice of Georgia about the Adoption of General Guiding Principles of Criminal Law policy, LHG, 130, 11/10/2010.

[33] *Ashworth A., Horder J.,* Criminalization, Principles of Criminal Law, 7thed., Oxford University Press, 2013, 6 of 22;*Tadros V.,* Wrongdoing and Motivation, in: Philosophical Foundations of Criminal Law, *Duff R. A., Green S. P. (Eds.)*, Oxford University Press, Oxford, 207.

[34] *Mill J. S.,* On Liberty, Utilitarianism and Other Essays, *Philp M., Rosen F. (Eds),* Oxford University Press, Oxford, 2015, 106; *Ohlin J. D.,* Criminal Law: Doctrine, Application, and Practice, New York, 2016, 22; *Petersen Th. S.,* Why Criminalize? New Perspectives on Normative Principles of Criminalization, Roskilde, 2020, 17.

[35] *Wilson W.,* Criminal Law, 6th ed., Pearson Education Limited, 2017, 36.

[36] Ibid, 35.

[37] *Petersen Th. S.,* Why Criminalize? New Perspectives on Normative Principles of Criminalization, Roskilde, 2020, 18.

direct, far and secondary.[38] In some cases the legislator himself determines the amount of the initial harm for the criminal responsibility. For example, damage or destruction of somebody else's thing provided for by the article 187 of CCG is a crime only in case the cost of the thing exceeds 150 GEL. In this case the legislator excludes the composition of the act only with consideration of the amount of harm, without assessing the significance of the act. In particular, it is possible harm does not exceed 150 GEL, but the act itself, with consideration of its nature at all is not insignificant. As opposed to the consideration expressed in the legal literature,[39] this example is not a minor significance of the act given in the text of composition provided for by the special part of the code.

Does or not the inflicted harm achieve the limit required for imposition of the criminal responsibility must be assessed in each concrete case, with consideration of the circumstances of the case, including, the position of the injured person himself also should be mentioned, how significant is damage inflicted to him.[40] With consideration of the injured person and economic conditions existing by that time, the Supreme Court of Georgia on one of the cases did not consider the material damage in the amount of 13 GEL and 20 tetri to be insignificant.[41] Also, based on the the injured person's explanation the court considered that damage inflicted in the amount of 7 GEL could not justify imposition of the criminal responsibility.[42]

It must be taken into consideration that in the concept of harm provided for by the 2nd part of the 7th article is not implied the material damage alone and it can be expressed as in material, so in non-material form.[43] Only the material explanation of "harm" would groundlessly restrict the limits of application of this norm, besides to the detriment of the accused persons.[44] Besides, it must be taken into consideration that mentioned norm, as opposed to the principle of harm, does not consider only harm/danger of harm inflicted to others.

### 5.2. Minor Significance of the Act

According to the Soviet criminal legislation the minor significance of the act conditioned exclusion of the social danger.[45] Socially dangerous nature is the principal criterion for decision of the issue whether is or not necessary to declare the act as the crime. Accordingly, if the judge is convinced that the act provided for by the criminal law in the concrete conditions does not contain a social

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38 *Simester S. P., Hirsch VonA.,* Crimes, Harms and Wrongs, On the Principles of Criminalization, Oxford, Portland, Oregon, 2011, 44-47.

39 Comp. *Turava M.,* Criminal Law, General Part I, Doctrine of Crime, Tbilisi, 2011, 61 (in Georgian).

40 Criminal Cases Chamber of Tbilisi Appeal Court, Judgment of 23 March, 2016, № 1/B-165-16.

41 Criminal Cases Chamber of the Supreme Court of Georgia, Judgment of 16 March, 2009, № 867AP.

42 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 8 February, 2005 № 425-1P.

43 Criminal Cases Chamber of Tbilisi Appeal Court, Judgment of 23 March, 2016, № 1/B-165-16; Criminal Cases Chamber of the Supreme Court of Georgia, Judgment of 7 March, 2017 № 556AP-16; Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 22 February, 2018, № 510AP-17.

44 Criminal Cases Chamber of Tbilisi Appeal Court, Judgment of 23 March, 2016, № 1/B-165-16.

45 *Turava M.,* Criminal Law, General Part I, Doctrine of Crime, Tbilisi, 2011, 62 (in Georgian); *Tsereteli T.,* Problems of Criminal Law, 4th Vol., Tbilsi, 2010, 62 (in Georgian).

danger, he has no right to consider such act as the crime.[46] Social danger is the objective social and political quality of every crime.[47] It is a material sign of the crime and is a broader concept than a crime.[48]

Harm considerably conditions the exclusion of the criminal nature of the act, though it should be noted that it is possible the harm, directly inflicted in the issue of the crime, does not exceed 1 tetri, though, the act still will not be considered as having a minor significance. From this standpoint, attention must be paid to the nature of the act and unlawful will expressed in it, and not only to the mathematical representation of harm.[49] Though, as opposed to the harm that is comparatively easy to determine, assessment of minor significance of the act is a problem-causing issue and the court practice as well makes it obvious.

## 6. Circumstances to be Taken into Consideration when Determining the Minor Significance of an Act

### 6.1. Intention of Infliction of Insignificant Harm

Assessment of minor significance of the act to the great extent depends on the intention of the person committing the act. In particular, infliction of what harm he set as the purpose at the moment of committing the act. The court of appeal, on the case which concerned the fact of misappropriation of 3 GEL from the quick payment machine, explained that the convict person was subjectively driven generally by the intention of seizing somebody else's thing and not concretely of 3 GEL. By explanation of the chamber, during application of the 2nd part of the 7th article of CCG it must be established whether was or not the intention of the guilty person directed to committing the act of such minor significance which inflicts insignificant harm (or creates danger of such harm) to good observed by the law.[50] Also interesting is one of the decisions of the Supreme Court, which clarifies that the accused person, for the purpose of misappropriation, secretly seized by the injured person's purse at the cost of 25 GEL, which contained the sum in the amount of 10 GEL.[51] As opposed to the first instance court the Court of Appeal did not consider enough only the assessment of the actually inflicted damage, as intention of the accused person was not only seizing 10 GEL. He did not know and even could not know what sum was placed in the purse of the injured person. He was driven by the intention of seizing somebody else's thing and not concretely the definite sum that does not present the act as having a minor significance. Thus, existence of wish to inflict a minor harm has the decisive importance from the very beginning.[52] As an example of the mentioned we can examine the case from the practice of the Supreme Court. The person was adjudged guilty for misappropriation of three

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46 *Tsereteli T.,* Problems of Criminal Law, 1st Vol., Tbilisi, 2007, 49-50 (in Georgian).
47 *Gamkrelidze O.,* Problems of Criminal Law, 1st Vol., Tbilisi, 2011, 66 (in Georgian).
48 *Surguladze L.,* Criminal Law (Crime), Tbilisi, 1997, 48 (in Georgian).
49 Criminal Cases Chamber of Tbilisi Appeal Court, Judgment of 23 March, 2016, № 1/B-165-16.
50 Ibid.
51 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 17 July, 2017, № 164AP-17.
52 *Tsereteli T.,* Problems of Criminal Law, 4th Vol., Tbilisi, 2010, 75 (in Georgian).

aluminium pans from the yard of the neighbour's dwelling house, which he sold on the market for 3 GEL. With consideration of the cost of the seized things the Cassation Chamber assessed the act as having a minor significance.[53] As it is obvious from the circumstances of the case the accused person from the very beginning was driven by the intention of infliction of insignificant harm to the injured person that is one of the grounds for assessment of the act as having a minor significance. As opposed to this, there was the case in the court practice when misappropriation of 5 litres of petrol from the luggage boot was not considered by the court as having a minor significance,[54] despite the fact that the person was driven by intention of inflicting such insignificant harm and his act did not establish any danger on the other part.

It is clear that the 2nd part of the 7th article of CCG cannot be applied if the guilty person's intention was directed to inflicting of large amount of harm, but this goal failed to be achieved owing to reasons beyond the guilty person's control.[55] Harm only in that case defines a minor significance of the act when the person had intention of infliction of such insignificant harm from the very beginning.

### 6.2. The Modus Operandi and the Means of the Act

Under one of the criteria defining the minor significance of the act are examined the modus operandi and means of its committing that in its turn presents illegal will revealed in the act. It is important to assess the firmness of the expressed will. In particular, which obstacles a human overcame during fulfilment of the volitional act and what results did he receive.[56] The modus operandi of committing the act can also help us to establish the person's real intention.[57]

In the above examined example which concerned seizing the sum in the amount of 3 GEL from quick payment machine, the Court of Appeal explained that the convict in advance created the conditions appropriate for seizing the sum. In particular, he used a piece of paper and a thin iron stick. Also, after driving the paper into the section for transferring the coins, he for several minutes moved away from that place in order the citizens would transfer the sum and only after a certain period he returned to seize it. By explanation of the chamber, the act by means of the special subject, by in advance considered intention, is not the act of minor significance.[58] During discussion of the way and means of committing the act, the sentence of Tbilisi city court is also interesting, which clarifies that the accused person, for the purpose of seizing the alcoholic beverage, by means of the asphalt piece broke the shop pane and seized from the counter a bottle of vodka at the cost of 15 GEL. In the examinable case the first instance court assessed the act as having a minor significance with consideration that the accused person from the very beginning did not have the intention of causing

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53 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 13 January, 2005, № 386-AP.
54 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 24 March, 2008, № 1848-AP.
55 *Natchkebia G.,* General Part of Criminal Law, Tbilisi, 2007, 56 (in Georgian).
56 *Dvalidze I.,* General Part of Criminal Law, Punishment and Other Criminal Effects of Crime, Tbilisi, 2013, 89-90 (in Georgian).
57 Ibid, 95.
58 Criminal Cases Chamber of Tbilisi Appeal Court, Judgment of 23 March, 2016, № 1/B-165-16.

more harm[59]. Despite this, shall be taken into consideration the nature of the act itself, the way of its implementation that was expressed in breaking the shop pane by the asphalt piece. Such act is characterized by the superfluous social danger, as the person, for seizing the desired thing, is ready to overcome any resistance. In this case, during assessment of the criminal nature of the act, a minor cost of the seized thing and intention of inflicting the insignificant harm become irrelevant. The issue would have been decided in a different way if the person would not have to overcome resistance and had taken the desired thing from the open shop window. The nature of the act and the way of its committing was the crucial factor for the Court of Appeal and explained that penetration by the person, being under alcoholic beverage influence, in the storage by the way of breaking the pane with the asphalt piece and seizing vodka, is not the act having minor significance.[60] Discussion of the Court of Appeal was also shared by the Supreme Court.[61] The nature of the act, danger, the way of its committing and the person's firm illegal will, must be having a minor significance.[62]

As opposed to the abovementioned example, as having a minor significance was assessed the attempt of secret seizing of a box of cigarettes, for the purpose of misappropriation, out of the injured person's motor car, who had the panes down. By explanation of the court, the criminal responsibility is conditioned by the fact that its ground is the crime and not any condemnable act. In the given case the court, having assessed the evidences submitted on the case, danger of the act, the object of encroachment, the stage of implementation of encroachment, the cost of the thing to be seized and came to the conclusion that the act committed by the accused person did not create such danger due to which it would be necessary to impose a criminal responsibility on him. Accordingly, the accused person was adjudged not guilty.[63] In the given case the circumstance that the accused person practically did not overcome any obstacle and he attempted to seize a thing of a small cost placed in the available space, is one of the most important circumstances that excludes a socially dangerous nature of the act.

### 6.3. Place of Commission of the Act

Place of committing the act independently does not condition a minor significance of the act, but might be taken into consideration during assessment of the intention of inflicting insignificant harm and nature of the act. As the example of this we can examine seizing of the bag at the cost 15 GEL left at the place of public gathering without attention, which contained only 7 GEL and mobile telephone charger at the cost of 15 GEL.[64] The fact of leaving the things at the unprotected place without attention enables to foresee that the bag would not contain the sum of a large amount. Accordingly, it is possible the accused person did not have the intention to inflict a significant harm. Besides, the seized thing was easily available for the accused person and any additional effort to seize

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59 Criminal Cases Panel of Tbilisi City Court, Judgment of 18 November, 2015, № 1/4597-15.
60 Criminal Cases Chamber of Tbilisi Appeal Court, Judgment of 22 August, 2016, № 1/B-66-16.
61 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 1 August, 2018, № 154AP-18.
62 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 24 April, 2020, № 844AP-19.
63 Criminal Cases Panel of Tbilisi City Court, Judgment of 21 November, 2014, № 1/5537-14.
64 Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 8 February, 2005 № 425-1P.

it was not necessary for him. In case the person commits the act in the protected territory, the extent of danger of the act also grows. For example, if thieving took place by illegal penetration to the apartment, storage or parking, such act will not be able to be assessed as having a minor significance, though, it is committed for the purpose of misappropriation of the thing with insignificant cost. Penetration to the protected territory is related to certain efforts, the person has to overcome certain kind of resistance to achieve the desired purpose that increases the extent of illegal will revealed in the act. One of the decisions of the Supreme Court of Georgia clarifies that the Court of Appeal considered to be the act a minor significance a penetration to the basement with in advance prepared keys and relied on the circumstance that the accused person had time to seize only three jars[65] that with consideration of the above mentioned discussion does not deserve support.

### 6.4. Behaviour Revealed in the Act

For assessment of minor significance of the act, one of the factors is the nature of behaviour revealed in the act itself, extent of its danger. From this standpoint, is interesting the case from the court practice which clarifies that the accused person, being drunk, demanded from the shop assistant to give him beer for free, after being refused, he threatened her and as a result of breaking the pane captured beer at the cost of 2 GEL and 30 tetri.[66] By the Court of Appeal was passed the condemnatory sentence, which was left changeless by the Supreme Court. In the examinable case a minor significance of the inflicted harm is not the matter of dispute, though the nature of the act itself, behaviour revealed in it, must be taken into consideration. Mentioned is important as far as it is the outward form of revelation of the human's free volitional act. Cassation court focused its attention on the social danger of the act that was expressed in the evident seizing of the thing, psychological influence and threatening of the injured person. With consideration of the behaviour revealed by the accused person it is impossible to affirm that the act has a minor significance. In such time the amount of the actually inflicted harm will not be able to exert influence upon the issue of considering the act to be crime, despite that the guilty person's intention from the very beginning was directed to infliction of harm of a minor significance. When behaviour revealed in the act contains danger, the intention to inflict harm of minor significance becomes irrelevant.

### 6.5. Jointly Committed Act

Special part of CCG, as concerns not one criminal action, provides for jointly committed acts as the aggravating circumstance. Commitment of the act by two or more perpetrators contains much more danger, as creates a high probability of carrying the crime into effect. Besides, from the part of the potential injured person the possibility of suppression of encroachment reduces. Accordingly, in case of a joint act the risk of encroachment of legal good is considerably high. Cassation court in one

[65] Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 20 March, 2006 № 329-AP.
[66] Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 11 October, 2005 №339-AP.

of the decisions, during assessment of minor significance of the act focuses its attention on a joint nature of the act.[67]

### 6.6. Object of Encroachment

The object of encroachment in rare cases can turn out to be one of the criteria of assessment of minor significance. On one of the cases existing in practice of the Supreme Court of Georgia which concerned secret seizing of coffee at the cost of 19 GEL in the shop by the persons in the past convicted for thieving, the Cassation Chamber focused its attention on the purpose of the captured thing and explained that one jar of coffee could not be considered as the necessary product for vital conditions of a human. By taking into consideration of this and other circumstances, the act was not considered as having a minor significance.[68] Priority of protection of this or that legal good for the state must be also taken into consideration. In general, the changeability of the society's development also exerts influence upon explanation of the norm.[69] For example, on the assumption of the increased interest of proper ensuring of justice, the actions directed against the judicial authority might not be assessed as having a minor significance. The more is the social value of the object, the less opportunity of criminal result is enough for substantiation of the social danger of the act.[70]

### 6.7. Motive of Committing the Act

The motive of committing the crime, when it certainly establishes the danger of the act and increases the extent of injustice, might exert influence upon assessment of insignificance of the act. For example, having minor significance cannot be assessed the act committed by discriminative motive. Determination of motive also has a decisive meaning in such cases when the object of encroachment exerts influence upon assessment of minor significance of the act. For example, if a person, having grave economic conditions, seizes an insignificant amount of foodstuff, only the fact of seizing the product required for vital conditions of a human, will not be able to be decisive for assessment of minor significance of the act, if it is not confirmed that intention of committing thieving was conditioned exactly by the grave economic conditions.[71]

### 6.8. Personal Features, Prior History, Record of Conviction

Criminal law is the law of act and not the law of person.[72] As a rule, the circumstances which define the extent of danger of the subject's social danger are taken into consideration during

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[67] Criminal Cases Chamber of the Supreme Court of Georgia, Judgment of 7 March, 2017 № 556AP-16.
[68] Ibid.
[69] *Bohlander M.,* Principles of German Criminal Law, Oxford, Portland, Oregon, 2009, 18.
[69] *Tsereteli T.,* Problems of Criminal Law, Vol. IV, Tbilisi, 2010, 78 (in Georgian).
[70] Ibid, 78.
[71] *Dvalidze I.,* General Part of Criminal Law, Punishment and Other Criminal Effects of Crime, Tbilisi, 2013, 83 (in Georgian).
[72] *Turava M.,* Criminal Law, Review of General Part, 9th Vol., Tbilisi, 2013, 350 (in Georgian).

exemption from responsibility and punishment.[73] Social danger is the objective quality of the act and its existence or non-existence cannot depend on negative or positive qualities of the act.[74] Though, in separate cases, personality features as well might exert influence upon assessment of minor significance of the act. Together with danger of the act, large importance is also conferred to the social danger of the person committing it.[75] Accordingly, conviction of the person must be taken into consideration.[76] In the above examined example, which concerned the fact of seizing coffee at the cost of 19 GEL by the persons convicted in the past for thieving, the Supreme Court during discussion of the expediency of application of the 2nd part of the7th article of CCG, significantly relied on the personalities of the offenders and their prior history, convictions. In particular, by explanation of the Cassation chamber, despite preferential terms spread in the past and application of the conditional sentence, the convicts failed to draw appropriate conclusions, were not pierced by the proper respect before the law and again committed crime in the aggravating circumstances,[77] due to which the act committed by them was not considered as having a minor significance.

## 7. Conclusion

Issues examined in the thesis clearly present the difficulties existing from the standpoint of explanation and application of the 2nd part of the 7th article of CCG. On the assumption that exclusion of the criminal nature of the act due to minor significance, on the one part protects the person against unjustified intervention in his right and on the other part serves to the rational use of the state resources, a correct and uniform interpretation of the mentioned norm has a particular meaning in the course of adjudication. As the existing practice brings to light, equivocation of minor significance of the act is examined as one of the important problems. Besides, application of the 2nd part of the 7th article of CCG is a problem-causing only with indication to insignificant harm/danger of harm. In the issue of research it can be said that existence of significant harm/danger of harm excludes opportunity to apply the 2nd part of the 7th article of CCG. Though, its insignificant nature of course does not condition a minor significance of the act and does not indicate the necessity of application of the norm. Insignificant harm, together with other circumstances, defines a minor significance of the act only in case the person from the very beginning set as the purpose infliction of such minor harm. In the issue of analysis of the court practice, in the thesis are singled out several circumstances to be taken into consideration which might exert influence upon determination of minor significance of the act. In particular, are taken into consideration the committer's intention of infliction of harm, the way, means, motive and place of committing the act, nature of behaviour revealed in the act, extent of its danger, group nature of the act, the object of encroachment, personality features and past life. Necessity to take each of them into consideration depends on the individual circumstances of the case. Besides, it is

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[73] *Tsereteli T.,* Problems of Criminal Law, 4th Vol., Tbilisi, 2010, 78 (in Georgian).

[74] *Gamkrelidze O.,* Problems of Criminal Law, 1st Vol., Tbilisi, 2011, 81 (in Georgian).

[75] Criminal Cases Chamber of the Supreme Court of Georgia, Ruling of 1 August, 2018, № 154AP-18, Different Opinion of Judge Nino Gvenetadze.

[76] *Goradze G. (Ed.),* Comments on the Criminal Procedure Code of Georgia, Tbilisi, 2015, 337 (in Georgian).

[77] Criminal Cases Chamber of the Supreme Court of Georgia, Judgment of 7 March, 2017 № 556AP-16.

important to assess them in totality, in the united context and not independently. For determination of minor significance of the act the identification of circumstances to be taken into consideration and analysis of their content confers more objectivity on the concept of minor significance and reduces the problem of equivocation that in its turn ensures a uniform explanation and application of the norm and serves to fulfilment of requirements of the principle of legal safety.

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