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FORMATION OF A DOCTRINAL APPROACH TO PUBLIC DANGER AS A SIGN OF CRIMES AND ADMINISTRATIVE OFFENSES

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The subject of the study is the current norms of administrative and criminal legislation, covering and providing an understanding of such a feature as a public danger.
The purpose of the scientific article is to, based on an analysis of the concept and essence of public danger, offer scientifically based conclusions related to the understanding of whether acts should be differentiated on the grounds of "nuisance" and "danger" into administrative offenses and crimes. The achievement of the formulated goal was made possible by solving the following scientific problems: defining the concept and essence of the social danger of an act; disclosure of the content of concepts of the nature and degree of social danger of an act, clarification of their criminal legal and social functions; clarification of the influence of public danger on the criminalization of an act and the categorization of crimes.
The methodological basis was the universal principles of scientific knowledge: objectivity, the relationship of phenomena and their characteristics, the unity of theory and practice. In solving the identified problems, the work also used other general scientific and special scientific methods of cognition, successfully tested by legal doctrine, including analysis and synthesis, deduction and induction.
This article analyzes its concept as distinguishing an administrative offense from a crime. The essence and criteria for forming the degree of public danger are determined. Conditions are established that influence the formation of this characteristic for certain types of administrative offenses. The relationship between social danger and its degree in case of recidivism, preparation or attempted crime, and statute of limitations is analyzed.

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1. The social harmfulness of an administrative delict

Another round of discussion regarding the criterion of "public danger" as a sign peculiar exclusively to crimes is associated with the opinion expressed in the literature that both administrative offenses and crimes are dangerous in their manifestation. This position is presented in contrast to the existing opinions that an offense should be assessed solely from the perspective of a socially harmful act that does not possess danger.

To resolve the controversial issue, first of all, it is necessary to determine the importance of public danger, harmfulness and conditions of their manifestation.

In favor of the fact that an offense is socially harmful, and a crime is a socially dangerous act, D.N. Bakhrah expressed his opinion, determining that the antisocial nature of crimes is so great that they are recognized as socially dangerous. And the degree of harmfulness of most administrative offenses is low, they are not socially dangerous [1, p. 545].

There are ideas that an offense is an act aimed at causing harm, however, due to their characteristics they are socially harmful and cause, most often, insignificant harm to the subject, society, the state or endanger its infliction [2, p. 55].

V.P. Alekhine and D.M. Korzhov noted that an administrative offense has the potential to spread. It is not isolated but massive. It follows that offenses are harmful by their typical prevalence, which destroy the usual way of society [3, p. 62].

Currently, the modern science of criminal law has not proposed a universal approach to determining the nature of public danger.

We believe that in order to determine the essence of the concept, not only scientific ideas should be taken into account, but also the legal use of this criterion, which will allow us to come to a number of reasoned conclusions about what should be understood as a public danger, and whether it is characteristic exclusively for crimes.

2. The essence and criteria for the formation of the degree of public danger

The basis of certain norms of the Criminal Code of the Russian Federation (henceforth – the CC RF) is the category in question. The legislator considers public danger to be signs of a crime in accordance with Part 1 of Article 14 of the CC RF. At the same time, there is no similar or synonymous feature in the Code of the Russian Federation on Administrative Offenses. This indirectly indicates the main difference between a crime and an administrative delict. The complete absence of such a feature also defines the main problem in understanding whether it is possible to consider an administrative tort dangerous or harmful. This was mentioned by A.B. Agapov, pointing out that administrative offenses (misdemeanors) differ from crimes provided for by the CC RF as a sign of public danger [4, p. 1597]. This understanding is shared by A.M. Nikolaeva, who noted in her work that public danger remains one of the most important distinguishing features of a crime from other offenses [5, p. 162].

P.A. Fefelov believed that the public danger of a criminal act is revealed through a "social precedent", in other words, the danger in the threat of repetition of criminal behavior [6, pp. 8–9].

Continuing the analysis of the concept through the study of criminal law norms, we note that in accordance with part 1 of Article 15 of the Criminal Code of the Russian Federation, public danger has a character and degree, which allows us to subdivide crimes into minor, moderate, serious crimes and especially serious. Part 6 of the same norm indicates that "... if there is mitigating circumstances and, in the absence of aggravating circumstances, change the category of the crime to a less serious one, but not more than one". This allows us to conclude that the degree of public danger directly depends not only on the danger of the consequences for protected public relations, but also on mitigating circumstances.

At the same time, the provisions of Part 5 of Article 18 of the CC RF fix that recidivism entails a more severe punishment, which means that an intentional crime has a greater degree of public

danger if the person who committed it has a criminal record for a previously committed intentional crime. B.V. Volzhenkin expressed his opinion in favour of such an assessment of the degree of public danger of repeated crimes, pointing out that after the commission of a crime, as a rule, there is a real possibility of committing a new crime by the same person, which is the social danger of the criminal, especially indicative of the persistence of antisocial, criminal motives are the repeated commission of a crime by an individual and recidivism [7, p. 95].

A.N. Soloviov under public dangerous behavior was proposed to understand actions that caused significant harm or created a threat of causing such harm to criminally protected social objects [8, p. 14].

However, under this condition it would be more reasonable to say that it was not the repeated act itself that became more dangerous, but the behavior of the person who committed it.

3. Analysis of law enforcement practice

Analyzing the existing approaches of the presented branches of law, it may be noted that law enforcement practice casts doubt on the unambiguity of these approaches and on the assessment of the severity of the crime in combination with socially dangerous consequences.

According to the materials of Criminal Case No. 1-396/2021, the accused person was convicted under part 1 of Article 161 of the CC RF by a judge of the Leninsky District Court of Tomsk. The criminal act consisted in taking possession of property (food) in an open manner with a total value of 646 rubles[1].

In comparison with this composition, it is necessary to consider acts whose purpose was a similar desire to take possession of someone else's property, however, implemented in a secret way. Thus, according to Verdict No. 1-331/2023 of September 29, 2023, handed down by the judge of the Frunzensky District Court of Yaroslavl in Criminal Case No. 1-331/2023, it was established that property (food) was stolen from the store`s trading floor for a total amount of 5,791 rubles 17 kopecks. The act was qualified under Part 1 of Article 158 of the Criminal Code of the Russian Federation.

Despite the fact that almost identical actions aimed at seizing other people`s property (food) were committed, the method of commission indicates that open theft is more dangerous than secret. At the same time, in both presented situations, the chosen method does not affect the occurrence of dangerous negative consequences, but the amount of actual damage in this matter goes into the background, and as a conclusion, it does not affect the degree of danger.

Judicial practice shows that the method of commission determines the degree of danger of the act, despite the absence of actually severe negative consequences. This means that the mechanism of the committed act is considered dangerous, and not the public harm from the consequences that have occurred.

Another example of this is Sentence No. 1-473/2018 1-68/2019 dated February 4, 2019, issued by the judge of the Moscow District Court of Kazan in Criminal Case No. 1-473/2018. The accused, for selfish reasons, with intent aimed at stealing someone else`s property, secretly committed the theft of a bag. The stolen property was estimated at a total of 54,400 rubles, which was significant damage to the victim. The actions of the guilty person were qualified according to paragraph “c” of Part 2 of Article 158 of the CC RF[2].

At the same time, the guilty person at the time of the theft did not realize exactly what amount he would be able to take possession of, having only selfish intent. In the case of damage of less than 2,500 rubles, the act would be deprived of a sign of public danger, since it would be an administrative offense.

This also allows us to conclude that the absence of dangerous consequences for the victim is not decisive, because the presence of public danger and its degree depend on the act itself, since it is

[1] Judicial and Regulatory Acts of the Russian Federation. URL: https://sudact.ru/regular/doc/eDxw3By0KKYE/ (request data: 27.03.2024).

[2] Judicial and Regulatory Acts of the Russian Federation. URL: https://sudact.ru/regular/doc/inuhf82SEXbV/ (request data: 27.03.2024).

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primary.

In simple words, V.M. Kogan outlined this position – "public danger is contained in the designation, as it were. If it is designated in the law as a crime, it means it is socially dangerous" [9, p. 77].

4. Public danger as a single sign of an offense

A comparative analysis of law enforcement practice makes it possible to question the recognition of a delict as exclusively socially harmful.

In some cases, the legislator determined that a repeated similar administrative offense acquires the considered sign – a public danger.

We are talking about Article 6.1.1 of the Code of the Russian Federation on Administrative Offenses, Article 7.27 of the Code of the Russian Federation on Administrative Offenses, etc. This allows us to determine the condition affecting the formation of public danger, but in the context of administrative legislation. A person subjected to administrative punishment before the expiration of one year may be criminally liable for committing a similar administrative offense (Part 2.1 of Article 14.16 of the Administrative Code of the Russian Federation). In other words, public danger depends on the frequency of committing an administrative offense, but only in some cases.

A.G. Bezverkhov points out that administrative prejudice appeared as one of the repressive legal instruments, a means of criminalizing acts [10, p. 41].

At the same time, there are opponents of this approach.

Thus, A.N. Tarbagaev argues that a repeated administrative offense cannot form a new quality and develop into a crime, that is, change the nature and degree of public danger, and only a crime can be the basis of criminal liability [11, p. 66].

Also the main argument of opponents of administrative prejudice is that the recognition of offenses as criminal and criminally punishable acts by virtue of their repetition contradicts the principle of criminal law, according to which only such a socially dangerous act is considered a crime, which in itself contains all the signs of a crime, regardless of other circumstances, in particular whether the person was it was subjected to administrative and legal measures for a previously committed offense [12, p. 71].

It is possible to judge the disputability of existing ideas by the example of an administrative offense provided for in Article 6.1.1 of the Code of the Russian Federation on Administrative Offenses.

The Code of the Russian Federation on Administrative Offenses does not contain such a sign as public danger or harmfulness. However, in a special case related to Article 6.1.1 of the Code of the Russian Federation on Administrative Offenses, this circumstance can be questioned. This is explained by the fact that repeated beatings can be qualified under Article 116.1 of the CC RF. At the same time, the Code of the Russian Federation on Administrative Offenses contains Part 2 of Article 4.3 an indication that the repeated commission of an administrative offense, namely during the period when a person is considered to have been subjected to administrative punishment, acts as an aggravating circumstance, however, in situations involving beatings, the legislator prefers that this act be classified as criminal.

In other words, the given example clearly indicates that the administrative-legal norm in question is "special" along with other offenses, the repetition of which is regulated by Article 4.3 of the Code of the Russian Federation on Administrative Offenses.

The presented positions may indicate that beatings as an administrative tort can be considered as an act with a potential public danger.

In addition, the legal structure of the composition of administrative offenses and criminal offenses often does not make it possible to qualify the act as administrative or criminal until all the circumstances are clarified, which is quite vividly confirmed by the example associated with the infliction of beatings. Until the moment of establishing the presence or absence of harm caused to the victim`s health, the beatings actually have an indefinite degree of danger, which means, based on the example given, the act is primary.

It was mentioned earlier that beatings are a crime only if a person is considered to have been

punished, it follows that until the timing of bringing a person to justice is clarified, the act again has an indefinite degree of danger.

So, it makes sense to say that this type of offense has a sign of social danger.

It is impossible to ignore the fact that there are opinions that individual offenses, also inherently, have a public danger. These include the statement that "the analysis of individual administrative offenses in the areas of trafficking in weapons, narcotic drugs and psychotropic substances, as well as in the field of public morality, allows us to conclude that some of them have the quality of public danger" [13, p. 319].

Such an approach can complicate the understanding of public danger and its boundaries, which leads to a mixture of criminal and administrative responsibility, and also calls into question the validity of the absence of this criterion for an administrative offense.

Is it possible to say that there are certain levels of public danger, and in the context of administrative legislation it is lower?

In support of the proposed conclusion, attention should be paid to the opinion expressed by L.L. Popov, who points out that "for administrative offenses, it is the public danger that is inherent, as a material sign of any offense... the only feature of such a sign is the degree of public danger, which differs by types of offenses..." [14, p. 33].

A.I. Martsev defined a different gradation, pointing out that a high degree of harmfulness generates a new quality – social danger, as lying, however, beyond social harmfulness as such, since harmfulness itself is only a prerequisite for the appearance of public danger [15, p. 155].

This kind of uncertainty indicates that the institution of administrative prejudice in domestic criminal legislation is not a completely justified step, and the mechanism for its implementation has not been developed. In fact, as was rightly noted, it contradicts the main principle of criminal prosecution. The presence of compositions with administrative prejudice in criminal legislation leads to a confusion of ideas about the essence of crimes and administrative offenses.

The legislator also determined that public danger depends on the timing of prosecution, as indicated by the CC RF, which contains a rule establishing the statute of limitations (Article 78) of criminal prosecution. They actually indicate that after a period of time established by the CC RF, the act can be considered not dangerous. At the same time, before the expiration of the specified period, the degree of danger does not actually decrease, but simply ceases to exist in fact.

In fairness, it should be mentioned that there are separate formulations of the statute of limitations, which do not apply (Articles 205, 205.1, 205.3, etc.). But even here there is no clear system according to which crimes belonging to the same category are endowed with varying degrees of danger.

So, for example, Article 205 of the Criminal Code of the Russian Federation is attributed to this exception according to Part 5 of Article 78 of the CC RF. At the same time, the crime provided for in Part 1 of Article 205 of the CC RF in accordance with Article 15 of the CC RF is particularly grave. This means that in accordance with paragraph "d", part 1 of Article 78 of the CC RF, it should be considered that a person is exempt from criminal liability if 15 years have passed since the commission of a particularly serious crime. This can only indicate that the categories of crimes defined by the Criminal Code of the Russian Federation do not fully cover the degree of public danger, which varies, and at the same time is an abstract concept.

N.N. Voplenko also points out that the concept of "public danger" is excessively vague, not specific, as they say "rubber" and an evaluation term [16, p. 11].

The lack of legal regulation of this criterion, the boundaries of its extent, only complicates the understanding of the considered attribute of the crime.

V.A. Khokhlov noted that it was not possible to find any clear criterion that would exist objectively over all the years of research on the border zone between crimes and misdemeanors. The terms "character", "public danger", "significance" used to qualify a criminal act are undoubtedly subjective in the sense that they represent only a reaction of the political authorities to the relevance of the relevant violations [17, p.

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33].

V.E. Zherebkin also rightly notes that the very concept of public danger has no signs, the legislator did not give it a definition that would allow it to strictly identify the signs of public danger and its boundaries, and therefore it is unclear what is meant by public danger [18, p. 144].

The complexity of defining the concept of the considered feature is also in the fact that crimes in their comparison are not always equally dangerous in their essence, although they may have the same degree of danger, while their characteristic socially dangerous consequences may be absent.

Such a situation contradicts the legislation, which defines that "the degree of public danger of a crime is determined by the court depending on the specific circumstances of the deed, in particular on the nature and size of the consequences that have occurred"[3].

We are talking about crimes that were suppressed at the stage of preparation or attempt. In fact, in such situations, harm to public relations has not been caused, however, the act in its essence still does not lose public danger.

An example of this is the existing law enforcement practice, indicating the circumstances in which an act that does not have primary signs indicating a public danger, did not entail any harmful consequences, and was not actually brought to the final result acquires the status of a crime.

According to Sentence No. 1-321/2023 of November 3, 2023, issued by the judge of the Sovetsky District Court of Novosibirsk in Criminal Case No. 1-321/2023, the person was found guilty of attempted petty theft, while being subjected to administrative punishment under Part 2 of Article 7.27 of the Code of the Russian Federation on Administrative Offenses[4]. At the same time, subject to the expiration of the period for bringing to administrative responsibility for a previously committed offense for at least a day, the fact under investigation cannot be recognized as illegal, since administrative legislation does not provide for an attempt to commit an offense.

The given example shows that the existing line between crime, tort and non-illegal act is so thin that in fact the result of the assessment of the act is not the public danger of the act, not the harm caused to legal relations, but the conditions established by legislation for the application of the norm. At the same time, the suppression of an act at the stage of preparation can be regarded as a crime, but on condition that it was planned to commit a serious or especially serious crime (part 2 of Article 30 of the CC RF). This is an additional evidence that such a sign of crime as a public danger is unstable.

The question arises about the expediency of using this feature when distinguishing between a crime and an administrative offense.

Scientific ideas about the essence of an administrative offense indicate that a tort has such a feature as harmfulness, which is essentially equivalent to the concept of danger.

As a confirmation of this conclusion, attention should be paid to the meaning of the word "danger" itself. So, danger is understood as the presence in someone of the ability, the ability to cause harm, misfortune[5].

Earlier, we pointed out that the danger can be characterized as the potential for harm to various protected administrative and legal relations [19, p. 31].

Another interpretation of the word is "the possibility of causing material damage, physical or moral harm"[6].

Yu.P. Shevchenko and I.A. Kositsin point out that an administrative offense and a criminal offense are phenomena of the same order, and the

[3] Ruling of the Plenary Session of the Supreme Court of the Russian Federation dated December 22, 2015 No. 58 "On the Practice of Assigning Criminal Punishment by the Courts of the Russian Federation". Rossiyskaya Gazeta. 2015. № 295.

[4] Judicial and Regulatory Acts of the Russian Federation. URL: https://sudact.ru/regular/doc/ghUBmZIUXyWv/ (request data: 27.03.2024).

[5] Russian Spelling Dictionary edited by V.V. Lopatin and O.E. Ivanova. URL: https://gramota.ru/poisk?query (request data: 20.03.2024).

[6] A Large Explanatory Dictionary of the Russian Language by Kuznetsov S.A. URL: https://gramota.ru/biblioteka/slovari/bolshoj-tolkovyj-slovar (request data: 20.03.2024).

terms “crime” and “offense” are synonymous [20, p. 43].

L.V. Koval analyzes the nature of legal relations and rightly notes that it is wrong to separate and consider separately such signs as “public danger” and “harmfulness” of “administrative offenses”. In other words, every illegal action carries danger and actual damage [14, p. 33].

A.-B.S. Ondar points to a uniform understanding of danger and harmfulness believing that public danger should be understood as the ability of an act to harm public relations or put them at risk of causing such harm. A sign of public danger of an act is considered to be its harmfulness, the ability to cause harm [21, p. 87].

G.A. Kuzmicheva and L.A. Kalinina note that it is necessary to recognize both crimes and administrative offenses as socially dangerous, but to distinguish them it is necessary to take into account the degree of public danger, which is expressed in the presence or absence of serious consequences, the amount of damage actually caused, the method and place of commission [22, p. 103].

At the same time, there are author's positions that allow to characterize and distinguish the criteria of public danger and harm under consideration to a certain extent. Thus, A.G. Antonov has noted that the category of harm differs from the category of danger. Harm is a phenomenon that has taken place, in essence, and danger is the likelihood of harm in the future. Danger is a one order concept of the category “threat” [23, p. 126].

N.F. Kuznetsova expressed the idea that public danger is expressed not only in causing harm, but also in creating a threat of harm to those values that are protected by criminal law [24, p. 97].

The information above fully allows us to note that from the standpoint of the implemented encroachment on the interests of the individual, society and the state, an administrative tort causes harm to public relations, which in turn allows us to talk about its public danger. At the same time, the gradation of public danger, fixed by the Criminal Code of the Russian Federation, completely distinguishes a crime from an offense. Taking into account the presented variety of scientific approaches and law enforcement practice, there is a need to re-evaluate the concepts that define the essence of a crime and an administrative offense.

5. Conclusion

Thus, an administrative tort should also be considered from the position that the act encroaches on public relations, causing harm to them, and therefore carries a public danger.

A.I. Murzinov followed a similar approach, pointing out that all offenses have a public danger. This is confirmed by the generic similarity of belonging of the considered illegal acts to the category of “offense” [25, p. 9].

However, the gradation of the degree of public danger presented in the Criminal Code of the Russian Federation makes it possible to distinguish an offense from a crime.

A meaningful analysis of the norms of criminal and administrative legislation, and evidence-based approaches allows us to draw a number of reasoned conclusions regarding the conditions affecting the formation of public danger and the definition of its essence.

1. The presence or absence of a public danger is determined by the fact of the commission of a specific illegal act. This is influenced by the legislation in which the relevant norm is enshrined.

2. Individual administrative offenses may acquire a sign of public danger without initially possessing it.

3. Public danger as a sign of an unlawful act does not have permanence due to its dependence on recidivism, aggravating and mitigating circumstances, as well as the statute of limitations.

4. The approach to determining the degree of danger currently enshrined in legislation is not universal due to the impossibility of its application to certain types of crimes. For example, Part 1 of Article 205 of the Criminal Code of the Russian Federation does not have a statute of limitations, unlike other crimes (Part 1 of Article 105 of the CC RF, part 3 of Article 131 of the CC RF) also classified as particularly serious.

In our opinion, the presented criterion, due to its subjectivity and abstraction, should be

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considered an integral feature for both an administrative offense and a crime. In other words, the exclusion of the considered feature from the norms of legislation will contribute to the formation of a uniform approach to the definition and understanding of the essence of public danger as a characteristic feature of all illegal acts.

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