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PUBLIC DANGER OF CRIME: THE CONCEPT AND CRITERIA OF VERIFICATION**

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The subject. The article reveals theoretical, lexical and logical approaches to determining the essence of the public danger of crime.

The purpose of the article is to confirm or dispute hypothesis that the public danger of crime as a legal or theoretical construction represents the possibility of negative changes in society; public danger is an exclusive social feature of criminal acts. The authors also aim to develop a system of verifiable criteria for public danger.

The methodology of the research is an objective assessment of the public danger as legal category. It is performed selecting a system of verified factors of public danger on the basis of analysis and synthesis, induction and deduction, interpretation of legal literature.

The main results, scope of application. The meaning of the legal definition of a crime contains the purpose of preventing possible harm to society stipulated in the criminal law. This fact is due to the preventive task (part 1 of article 2 of the Russian Criminal Code). The public danger of crime as a phenomenon of objective reality is meaningless, since the crime is the negative changes and harm that has occurred. The social danger of crime creates a shock to the foundations of society, undermines the conditions of its existence. Other ("non-criminal") offenses that contradict the established law and order in the state do not threaten the basic system of social values. Intersectoral differentiation of legal responsibility should have transitivity, which includes a rule: the degree of repression of coercive measures within various branches of law meets the rules of hierarchy. Mandatory signs of public danger of a crime are that the act: 1) affects significant social relations that need criminal legal protection from causing harm to them by socially dangerous behavior; 2) has a harmful potential that is fraught with causing significant harm or creating a threat of causing such harm to the object of criminal legal protection; 3) results in socially dangerous consequences; 4) is characterized by the guilty attitude of the subject to the deed, expressed in the form of intent or carelessness. Optional criteria of public danger of act are: the characteristics of the crime and characteristics of victim; method of committing a crime; the time, place, atmosphere, instruments and means of committing the crime; the motive; the object of the crime; special characteristics of the perpetrator. The quantitative indicators (size, severity, or other value) of the subject of the offense and its socially dangerous consequences, as well as the repetition of the act and the presence of a special recidivism of crimes should not be used as criteria for public danger of behavior.

Conclusions. Public danger is a social feature exclusively of criminal acts (crimes and potential criminal misdemeanors); all other types of offenses are harmful to the interests of society, but they do not pose a danger to it. To exclude competition between criminal and administrative responsibility, it is necessary to take into account the public danger of the crime on the basis of verifiable factors.

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1. Public danger in criminal law: theoretical approaches (introduction)

Public danger still falls into the category of criminal law that is the subject of the most intense debate with a view range from unconditional approval and acceptance to crucial disapproval and demands to abandon this category [1, p. 23]. In fact, you can see radically different views just by looking at the titles of some recent scientific works [2; 3; 4].

Public danger in the penal sense is usually associated with a crime feature (the most common position in Russian doctrine not only in criminal law but also in other disciplines), with the basis for the acts criminalization and further on, already using these links, with the characteristics of delinquency. As N.F. Kuznetsova wrote: "The public danger of crime is a historically variable category. The change is due to the economic and social development in a society. It is therefore more methodologically correct to consider that public danger changes falls into the delinquency category not in the concept of a crime section" [5, p. 248].

Foreign doctrine if not totally denies public danger as a feature of a crime gives it significance that is far more modest. For example, S. Shapiro having identified potential and motives for committing crimes in various social strata determines their differences. It was his understanding that there is no need to reflect the material element of a crime - public danger in the definition of the crime concept [6]. Other foreign authors share the view [7; 8; 9].

Numerous Russian scientists advocate the identification of public danger as a feature of a crime. In this regard, there is a wide variety of understandings of the public danger nature in criminal law science:

- the public danger of a criminal act is generated by the direct harm to public relations, or the possibility of causing the appropriate harm (A.A. Piontkovsky) [10, p. 157];

- public danger is the capacity of a criminal act to cause significant harm to objects protected by criminal law (A.V. Naumov) [11, p. 118];

- public danger is harm committed by a

person obliged to refrain from causing it, reflecting the maliciousness of the perpetrator and creating the danger of committing new harm to objects under criminal law protection (B.T. Razgildiev) [12, p. 65];

- public danger is an essential social attribute expressed in the focusing of a socially dangerous act on causing significant harm to the public relations protected by criminal law (V.V. Maltsev) [13, p. 185].

Being an element of a criminal offence public danger is endowed with a diverse content in Russian criminal law theory [14, p. 234; 15, p. 22; 16] and has functions [2; 4; 17; 18] that complicates any attempts to interpret this category and establish its features. It is resulted in the lack of certainty regarding the social danger of the act, in the law enforcement difficulty (especially while assessing the minority of the act or the distinction between criminal and administrative offenses), permanent discussion on the pages of research on practically any criminal law issues: from criminalization [19, p. 203; 20, p. 102; 21, p. 5] to the use of benchmark approach [22; 23, p. 271; 24, p. 8] when constructing corpus delicti.

It would be safe to say that the problem has not yet been solved in criminal law science. Any scientific approach on the understanding of public danger in the legal literature has been subject to frequent criticism.

On the one hand, there is nothing difficult in public danger understanding. Any individual of sound mind who has reached the age of criminal responsibility must have the capacity to realize the public danger of crimes and refrain from committing them. Otherwise, if a person due to age or mental disorder (dementia) does not have this capacity, his criminal liability is eliminated. Cesare Beccaria also wrote: "... the true measure of crimes is the harm they cause to society. This is one of those obvious truths that no quadrants or telescopes are required to discover and is available to any average mind. But by a strange coincidence, this kind of truth has always and among all nations been clearly recognized only by a few thinking people" [25, p. 98].

On the other hand, public danger is the most

complicated characteristic of a crime. As A.E. Zhalinsky stated, criminal law science does not have information about the real danger of various behavior types or the isolated acts that form it. The experience of declaring as crimes speculation, homosexuality, sole proprietorship and other phenomena considers important to address this lacuna. [26, p. 124].

Given that it is this characteristic of an act which is recognized in criminal law as the main *criterion* (here is a conditional term that sums up all possible meanings) of a crime, and it is used in criminal law to differentiate offences (art. 14(para.2), art. 15 of the Criminal Code of the Russian Federation) and criminal liability (e.g., Art. 75 of the Criminal Code of the Russian Federation), we will have crafted our own attitude to this issue, identifying the key conceptual underpinnings of our deliberations.

2. Public danger: lexical and logical review

Oddly enough, the superficial explanation of the public danger nature, derived from the two terms of its denotation, little analyzed in modern science at least (this approach has only been met twice [27]). However, bypassing the original concept of the "public danger" without tying it to crime, criminalization, or delinquency should be vehemently wrong, because once, considering the name of this category, scientists were explicitly based on the meaning of the terms by which it could be defined while searching for the main characteristic.

Therefore, public danger has two-word composition, either of great importance: the word "danger" represents the main quality of the research category; the word "public" sets the boundaries of this quality eliminating its broad understanding.

Wikipedia, in describing the concept of danger, refers to the certain definition of V.M. Zaplatinsky: "Danger is the possibility of circumstances where matter, field, energy, information or combination of the above can thus affect a complex system, leading to its deterioration or inability to function and develop" [28]. According to Ushakov's dictionary, danger is a possibility, a threat of disaster, catastrophe,

something undesirable¹; according to Efremova, danger is the possibility of something hazardous, misfortune, harm²; according to Ozhegov - a possibility of a threat of something very bad, misfortune³. Similar meanings of the word "danger" are given in other sources (sometimes referring to the adjective "dangerous" sometimes, as according to Dahl, one can understand the meaning only by the antonym "safe").

The term "public" in an annex to the term "danger" means, in full conformity with those dictionaries – relevant to society, correlated with the interests of society although generated by society belonging to the society as a whole, etc.

One may pertinently ask how to understand the term "society", what limits applied to this understanding. And if society is a network that represents the sum total of people and the relations between them (according to Marx this is society in general) which is basically undeniable (we do not consider certain aspects and individual positions to be aware), then there are few established agreements among researchers regarding the volume (scale) of this society, the purpose of the origin and existence. The population of a state, a city must be a society. Are two people a society? Moreover, if they are related? If people share some work, study, some other activity or are in the same place (e.g. in a hospital)? If, on the other hand, there is nothing in common except sharing the same place, is it a society?

All these questions are by no means strange or unnecessary if we remember that we are talking about the *public* danger associated with crime. Who is it for? For example, a husband beats up his wife. Parents abuse their child. People illegally keep inherited from their parents weapons. Alternatively, - even - one person steals from another. Is there a

¹ See: TOLKSLOVAR.RU Dictionary of the Russian Language {Electronic resource} URL: <http://tolkslovar.ru/o4625.html> (date of access 02.07.2020).

² See: TOLKSLOVAR.RU. Dictionary of the Russian Language {Electronic resource} URL: <http://tolkslovar.ru/o4625.html> (date of access 02.07.2020).

³ See: GLOSUM [Electronic resource]. URL: <https://glosum.ru/Значение-слова-Опасность> (date of access 02.07.2020).

public danger here? Do all of these and a million other situations cause harm to society and not to a specific person? Is there public hazard when an act is only conceived or implemented?

The doubts expressed have led to “eternal” issues in criminal law: why did the state assume the role of an arbiter in assessing human behavior? Especially since no living person has ever given it that right. Where does private interest end and public interest begin? Why can't the victim himself decide when and how to respond to an infringe by others upon his interests? Why it was largely excluded from the mechanism of criminal law regulation? One could go on.

All those issues should be brought into focus. Yu.E. Pudovochkin is entirely correct, observing: “... understanding of what constitutes a culpable, socially dangerous act prohibited by criminal law under threat of punishment is absent in modern science, it has yet to be formed” [29, p. five]. And then, drawing an analogy with the scientific knowledge in the second half of the 19th century, when “against the backdrop of the positivist methodology development, advances in statistics, sociology, anthropology, and others, social and exact sciences have become so grossly deficient with the knowledge of the crime formed in the depths of classical criminal law that it has become almost palpable”. Yu.E. Pudovochkin states exactly what we have written above, coming to the “eternal” issues in criminal law: “... a substantive and spirited debate about the understanding of a crime was raised at that time *to the level of discussion of the subject and methods of criminal law* ...” [29, p. 6] (emphasis added – N.L.).

Yu.E. Pudovochkin sees a solution to the problem of the concept of crime through the development of a full-fledged scientific theory of criminalization, the foundations of which are now in the early stages [29, p. 6]. While wholeheartedly supporting him in the need to develop the theory of criminalization (only, along with the entire criminal policy), at the same time we think that even as an integrated scientific knowledge it is not the agenda that could be managed only through criminal policy.

Any policy including criminal is the art of compromise. There must be trade-offs between
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the interests of society and the state, an individual and community understood as the totality of human beings, united or not; balance between divergent interests and political considerations; and so on. However, is there at least room for compromise in the concept of crime? It is obvious that the most serious consequences we are currently facing, when the Russian criminal law is “falling apart” from the number of pseudo- and sub-crimes...

This process will continue since the notorious legislator now and in the future keeps ignoring all scientific research on what should be at the root of the criminal and punishable, even with the creation of brilliant new theory of criminalization or crime... Until society and the state change ... That, however, should be far from the lack of any meaningful activity in anticipation of changes.

Crime and the state's response to it by way of punishment or other criminal law measures are the principal components of criminal law worldwide. Since all states provide the most severe (sometimes rather cruel) enforcement (nothing is more effective, unfortunately; at least not yet), so it is essential to rely on some objective reality in understanding the crime that is bound to demonstrate the need for a rigorous government evaluation with no ambiguity. Currently, this category is precisely the public danger that, however, would not do away with the need to settle the situation regarding the proper understanding of it.

Going back to the interpretation of the concept of “society”, it should be assumed that it, to a certain extent, opposes the concept of the state as a large-scale organization engaged in establishing and maintaining public order among people living or residing in the state. To accomplish these tasks, the state uses a power expressed in enforcement. Therefore, the state is often defined by the concept of the social political organization. Unlike the state, society is only a social organization of people, not based on enforcement, and in many cases - not even an organization, but just a community, a commonality of people.

Presumably, one need to acknowledge that in the penal sense, society is understood as broadly as possible: both as an association for any interests, and as a mechanical integration of the population at any scale; both as a set of an infinite number of

people, and as a union of two people for completely non-public purposes for example for love. It is from that perspective society and individual stand apart. V.S. Prokhorov precisely states: "Crime is a conflict between a person and society. Society is represented in this conflict by public relations" [30, p. 79].

Therefore, as soon as the interests of one person (we will conditionally call him a criminal) infringe or adversely affect the interests of another, public danger can be reported.

Thus, a public danger can be viewed as an opportunity for adverse changes in society, the potential for harmful consequences or, on the contrary, as socially produced possibility of negative changes or the potential for a negative spillover effect on members and non-members, for states, for natural objects, for the peace and security of humankind, etc.

The main conclusion at this stage: 1) danger is always associated with adverse changes or consequences from mere undesirables to extreme negativity - disaster; 2) these effects (changes) have not been realized, they are only expected as an opportunity or a threat. S.A. Markuntsov: "the linguistic analysis of the term "danger" excludes from its content the acknowledgement of the harm suffered, emphasizing the potentiality, the possibility of causing harm to public relations ... public danger is used by the legislator mainly to characterize the act, that is, the act or omission of a person and not the offence as a whole ... This can be inferred from the concept of crime in Art. 14 of the Criminal Code of the Russian Federation. The phrase "public danger of a crime" is not applicable in legislation" [27, p. 335]. Nevertheless, the realization of the danger will worsen the existing state of the phenomenon, process, object, etc. (society), or even completely cease to exist. The traditional understanding of public danger, by the same logic we use the concepts of "criminal law", "environmental crimes", etc., related to the first common meaning of public danger - danger to society.

This understanding of danger shows that the term chosen once for the essential characteristics of a crime (delinquency) is indeed precise, although with one significant reservation:

only for acts that have not yet been committed as well as for the legislative and theoretical concept of crime. In the same case, if the offence is committed society has already been jeopardized; it remained beyond the act, and the latter is the result of the danger realized, i.e. those adverse changes or effects, or harm or damage, which may have been caused by.

Interestingly, even the authors who do not make a difference with regard to public danger between the legal definition of crime and crime as a fact of reality, have the intuition that it is. Thus, V.S. Prokhorov writes: "In the definition of a crime, public danger is its characteristic; in a crime as a social phenomenon is inherent in its quality" [30, p. 78].

Hence, the social danger of a crime as a legislative or theoretical structure is the potential of adverse changes, effects defined in the criminal law itself, and in this sense, the crime is dangerous. However, in this case we are already proceeding from the fact that the act has been criminalized. It is another matter to determine when a socially dangerous act must be recognized as criminal. The social repercussions of a crime as a fact of reality are meaningless, since the crime here is the very negative change, the damage, the consequences of various kinds, etc. Because a crime as a fact of reality has no danger, in any rate, the one already implemented in it. Though, perhaps if an offence has been made, it is already incorrectly named as an offence, a reference should be made, for example, to the crime committed or the consequences of a crime. Having come to almost the same conclusion, S.A. Markuntsov suggests excluding public danger from scientific circulation or replacing it with the term "harmfulness".

Thereby, a crime as a theoretical or legislative construct contains a feature of public danger since the act is linked to the possibility of harm to society. In this sense, the meaning of the legislative concept of a crime aims at prevention of possible consequences described in the criminal law. The definition of the offence fulfils the preventive role referred to in Art. 2, para.1 of the Criminal Code of the Russian Federation (crime prevention).

The proposed understanding of public danger is consistent with the reasoning given, for example, by S.A. Bochkarev, noting that danger is

“something not manifested, but implied. If the conclusion of the harm is drawn directly or indirectly from experience, has a practical basis then the conclusion about the danger proceeds from the assumption at the level of reason, sensation at the level of the psyche, together they provide some insight into the human being” [31]. Just put the accents differently: experience, i.e., the harm done, is the basis for the act to be recognized as socially dangerous for the future. The experience is sufficient to make people, society, the state fear repetition; accordingly, by prohibiting certain conduct, the state considers it hazardous enough to prevent this danger from being repeated (the hope turns out to be illusory, but in many cases the ban still works). Actually, S.A. Bochkarev further in the same review clearly points: “Danger belongs to law, since it is rooted in the ontology of human existence, society and the world.” Then: “Danger refers to being human because it is related to the instinctual survival patterns: danger is intellectual and instinct is a volitional moment in human activity. When danger strikes, according to sociologist P.A. Sorokin, then instinct begins to work. Complementing each other, together they are responsible for the preservation of life, individual and public capacity for action” [31].

3. Non-exclusive objective significance of public danger and its recognition in the legal responsibility differentiation

Whether a public danger belongs only to a crime, or whether it applies to other phenomena, is treated differently in law.

It is not uncommon for the presence of public danger to make difference between a crime and an administrative offense by denying it to the latter (although in full conformity with the letter of the law - art.2.1, para.1 of the Administrative Code of the Russian Federation (an administrative offense is recognized as an illegal, guilty action (omission) of an individual or legal entity, for which this Code or the laws of the constituent entities of the Russian Federation on administrative offenses established administrative responsibility), public danger not being mentioned) alleging that the administrative offense was only harmful.

However, another view stated that all
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offenses have a public danger; the difference is only in its degree. N.F. Kuznetsova wrote: “... the concept of public danger is considered a universal concept that characterizes all offenses. ... Specifics of public danger of crimes in its nature and degree” [5, p. 247].

The thrust of the many substantive and fair remarks made regarding the fact that non-offensive acts can also have public danger under the semantic meaning of the term “public danger”. Indeed, assault by insane person and young children has the possibility of negative developments including the adverse effects infliction (it is often discussed that a jealous child can cause death to newly born brother or sister). Practicing lawyers interviewed within the framework of the sociological study⁴ share this understanding of public danger seeing it in the acts of the insane (86.2%) and minors (80%).

The acts of mentally disabled persons are considered dangerous to society in foreign criminal law. Thus, the German scientist A. Dessecker notes that the legislators of Austria, Belgium, Switzerland and Germany, providing for the possibility of imposing penal measures on such persons in extreme cases (pre-trial detention and confinement in a psychiatric hospital), focus these measures solely on the prevention of serious future crimes [32]. English author E.Baker in relation to the criminal jurisdiction of Great Britain states the same [33].

What is more, in an objective sense, even acts that are socially beneficial such as those committed in a state of self-defense or necessity, etc., have social danger.

Hence, the public danger of an act in its objective meaning as a characteristic of causing harm or the ability to cause it does not allow for a distinction between various types of legal liability indispensable for the state's response to an injurious act. We will therefore resort to the mediation theory (when positions of different content cannot be reconciled since they all have valid reasons to prove their innocence, one should agree to go further) regarding public danger as more productive in meeting the challenges of differentiated responsibility.

⁴ A total of 130 respondents were interviewed in various fields of jurisprudence

Join the predominant scientific position that public danger is a social characteristic of criminal acts only (felonies and misdemeanors (stipulate that many acts that are in fact criminal offenses are now contained in administrative legislation but awareness of the need to transpose them in criminal law together with the criminal offenses' category allocation – gradually extends to the level of the judiciary and power structures); all other offenses are harmful to the public interests as a result of their consequences.

Any violations of the Russian law norms have a sign of social harm because they are in conflict with and are harmful to the particular public interests. When harmful behavior reaches the level of public danger - "critical threshold" [34, p. 113] it passes into a different qualitative state which is characteristic of a felony or a misdemeanor.

Public danger of an act implies that it shakes the social foundations, undermines the conditions for its existence. This does not necessarily mean that a public hazardous act harms society as a whole, the entire system of social relations [5, p. 237]. A specific person, organization, a separate sphere of public relations can be subjected to a direct harmful effect but by its nature and significance, this harm goes beyond individual (private) or niche interests, endangering the existing social system, society as a whole. It is the social danger of a crime and a misdemeanor that dictates the fact that a person is recognized as having committed these acts and is sentenced to punishment on behalf of the entire society and the state ("in the name of the Russian Federation"). There is no public danger in disciplinary, tort, administrative and other "non-criminal" offenses. Violating the legal state established order ("external order") they only cause a "public nuisance" that does not threaten the general deep interests of society" [35, p. 24] the basic system of social values. L.S. Yavich noted that a misdemeanor between lawful behavior and crime is "Illegal, socially unacceptable - asocial, is on the verge of violating the very existence of society but balances on the brink" [36, p. 175]. Responsibility for offenses is determined not on behalf of the state but on behalf of the authorized state body.

Therefore, it is the public danger that

distinguishes felonies and misdemeanors among other offenses, emphasizes their qualitative originality and gives autonomy to criminal law. As for all other ("non-criminal") offenses that are hazardous below the level of public danger they do not share the nature and / or degree of public harm but the nature of public relations governed by the violated rule of law that in turn determines their social and legal specificities as phenomena of a different essential order. "All these types of offenses infringe upon different, more or less isolated aspects of the rule of law and distinguished from each other in certain specific material features and characteristics." [37, p. 162].

The issue of responsibility' non-transitivity should be briefly addressed here. Transitivity refers to the state of inter-sectoral differentiation of responsibilities where the degree of enforcement measures repression within various sectors complies with the hierarchical rules.

Back in the middle of the last century, scholars emphasized that "the boundaries between crimes and administrative offenses are extremely conditional and mobile since as often as the socio-political situation changes, certain offenses previously classified as crimes can be attributed to administrative offenses, and vice versa" [38, p. 65]. Contemporary researchers have reached the same conclusion: the division of social deviations into crimes and administrative offenses is often ephemeral that is confirmed by both modern law enforcement practice and experience worldwide. The Administrative Offenses Code and the Criminal Code contain about a hundred of this "border" corpus delicti [39]. Sanctions in various branches of law should be related to each other according to the hierarchical rules [40]. As a result, for individuals there should be no penalties in administrative law equal to or greater than for similar acts under criminal liability.

Sometimes the non-transitivity of legal responsibility arises in the context of life-changing processes. By the 21st century, the position was that criminal law should protect relationships based on the most important, irreparable or very difficult to restore benefits and values. The danger of crime often lies in the loss of irreplaceable resources by society or its members. Significant scientific, social and technological development change values, set

different emphases. Due to current medical advancement, negligent infliction of minor or moderate bodily harm has been decriminalized and civil law deals with such cases. On the other hand, the neural networks attack that underlie artificial intelligence should now be tightened: at this point, it is much closer to a personal attack than to "inanimate" cybercrimes. The corpus delicti of illegal modification of deep learning networks must be qualified since such effects are akin to health injury and are irreparable in contrast to restoring from a backup copy of the account destroyed by a hacker. Such crimes also require certain special skills - they are much more difficult to commit than to delete a photo from a neighbor's laptop, for example. Today, the possibilities of criminal law protection in this matter are significantly inferior even to the potential of civil law.

To break the vicious circle of responsibility type's competition we are in urgent need of stringent rules and key identification of each responsibility type, after all, non-transitivity occurs where the distinguishing features are not properly based. K.V. Simons writes: "perhaps criminal law should apply whenever tort liability is an ineffective deterrent (for example, when the defendant is poor and therefore difficult to restrain by threat of a lawsuit)", although he admits that "this prescription may lead to the serious criminal sanctions for relatively minor forms of antisocial behavior" [41].

The foregoing points to the different social nature of each offense type. The social nature of crimes and criminal offenses, their key characteristic is public danger. Public danger is a special feature that distinguishes crimes and criminal misdemeanors among other offenses, emphasizing their qualitative originality and giving autonomy to criminal law. This perception of public danger is also the basis for most legal practitioners (90.8%).

4. Verified objectification benchmarks (criteria) of the social repercussions of a crime for the implementation of inter-sectoral differentiation of contemporary criminal and administrative responsibility

It is about the differentiation of criminal and administrative responsibility in pre-implementation of the criminal offense concept

into the criminal law. The question is which provisions should classify an act as an administrative offense or a crime, and possibly further - a criminal offense? What is worth considering? Through our ongoing process of developing the topic for several years with reference to the previous sociological research, we have created a system of public danger criteria for making it possible to classify a harmful act as a crime and, conversely, in the absence of such, eliminate the possibility of its classification as a crime.

Criteria of social repercussions of the crime allowing felonies and administrative offenses differentiation can be mandatory and optional.

Mandatory public danger of a crime criteria are as follows:

1. The act affects significant public relations that need to be protected under criminal law from being harmed by socially dangerous behavior.

The special value of certain public relations is primarily indicated by the content of the Basic Law of the Russian Federation considering that criminal law theory is concerned with relationships that ensure the human civil rights and freedoms (Ch. 2). In the light of the above, the correct approach seems to be of A.E. Zhalinsky, who, unlike most scholars, found it sufficient to recognize as publicly hazardous "the infliction and the possibility of causing irreparable substantial harm to any constitutional values", i.e. all legal benefits with constitutional rank [42], and not only constitutional civil rights and freedoms.

In addition to the Constitution of the Russian Federation, the content of major policy documents (the National Security Strategy of the Russian Federation, the Strategy of the State Anti-Drug Policy, etc.) contributes to the identification of socially significant objects in need of protection under criminal law, where the security of the state, the economy, public health, environment and other public relations recognized as a priority.

Administrative law regulates social relations in the field of executive and administrative activities of government bodies and these relations should be under this branch of law protection. Consequently, one must recognize the object of administrative offenses as *the legal order established* in the field of ecology, economics, electoral process, ensuring human and civil rights and freedoms, etc.

2. *The act has the potential to cause substantial harm (by the threat of such harm) to the object of criminal law protection.*

3. *The commission of an act produces socially dangerous consequences.*

These consequences can vary in content (property, physical, organizational and other), which determines the nature of the public danger of a misdemeanor (criminal offense). In all cases, socially dangerous consequences should be recognized in the form of harm to human life and health, destruction and damage to property of others, assets disposal from legal or other owner.

According to the overall perception among scientists, the first three criteria identified play a leading role in public danger formation. We fully share these views because we believe that the specificity of socially dangerous behavior is expressed in the objective and external characteristics of encroachment they are, generally, in the core of public danger.

Most frequently, a publicly hazardous act and socially dangerous consequences are inextricably linked: consequences dangerous for society occur precisely because of the socially dangerous nature of the act being committed (for example, harm to human health because of violent actions). However, there may be situations where the act as such does not constitute a danger to society being expressed only in violation of the formal rules of conduct, the established legal order but the result is dangerous to the public due to the person's careless attitude.

4. *An act is characterized by the guilty party's attitude to the act, expressed as intent or negligence.*

Guilt, along with the objective characteristics highlighted, is the core of public danger of encroachment; with the lack of guilty conduct, we cannot ascertain public danger. The definitions of direct and indirect intent, frivolity and negligence, enshrined in Articles 25 and 26 of the Criminal Code of the Russian Federation, presuppose that, in carrying out a behavioral act, the subject perceives this act itself and / or its possible consequences (in the case of negligence must and can perceive) as socially dangerous. Hence, this subjective criterion, expressing the antisocial of the subject's internal attitudes is

directly involved in the public danger formation.

Optional criteria of public danger (the very meaning of the word "optional" ("given to one's own choice, non-obligatory") testifies the discretionary legislator's usage of these criteria with the essence of a particular act and its inherent specificity in mind):

- *characteristics of the subject matter of the crime and the victim of the crime.* These objective circumstances reveal the public danger of actions (omission) committed and facilitate the object of the encroachment identification;

- *the modus operandi.* Undoubtedly, such methods as violence (physical and mental), especially its extreme manifestations (sadism, special cruelty, abuse, torture, ill-treatment) testify to the public danger of an act; deception (including documentary); bribe; methods causing a public hazard (generally dangerous methods: explosion, arson, etc.);

- *time, scene, setting, tools and means of committing a crime.* These signs are linked closely to the characteristics of specific types of acts;

- *the motive of the crime.* In all cases, such sinister motives of the subject as mercenary, hooligan, extremist, revenge for the lawful actions of others are evidence of the socially dangerous orientation of the encroachment;

- *the purpose of the crime.* There is an obvious antisocial selfish purpose, the purpose of human exploitation, of marketing restricted or prohibited items, obstructing others in their legitimate pursuits;

- *features of the perpetrator of a crime.* In particular, these are the special characteristics of the perpetrator of a crime as official capacity or powers, age, occupation, etc.

The objective-subjective content of the public danger of the crime is generally supported by the opinion of legal practitioners. Thus, about half of the respondents agree that the nature of public danger as the material essence of a crime is based on both objective and subjective signs of *corpus delicti* (42.3%). The importance of the factors that determine the degree of social danger of a crime has given priority to criminal consequences (86%), the *modus operandi* (50%), forms and types of guilt (31.3%).

Should not act as criteria for social danger of

behavior:

- quantitative indicators (size, severity, other value) of the encroachment object and its socially dangerous consequences. They can only be used as a means of intra-sectoral differentiation of criminal responsibility within the framework of the crime categorization and allocation;

- repetition of the act and the special recidivism of crimes. This approach is due to our principled position that the public danger of the actor affects only the individual degree of danger of the crime committed. It does not define the nature and public danger profile of a crime, since the personality parameters do not characterize the encroachment itself, its essence.

In view of the above, we may conclude that one of the stages in the modern legislation development of the protection of the individual, society and the state from deviant behavior should be a clear description of the corpus delicti of criminal and other types of offenses. Concerning administrative and criminal offenses, we suggest that the distinction between the act as the objective side of the corpus delicti of criminal offense / crime is worth making because they cannot match. Only those torts that have no analogues among criminal offenses and crimes should be classified as administrative offenses. Better to eliminate the established practice of indicating in the dispositions of the Administrative Offenses Code and the Criminal Code of the Russian Federation similar signs of acts and avoid highlighting the harmful consequences of such an act as a distinguishing feature of a crime.

5. Conclusions.

The lexical and logical approaches to public danger research have revealed that it is only relevant in connection to the legislative or theoretical construction of a crime. In this regard, it represents the possibility of negative changes (effects, harm) in public (society), and the very legislative concept of a crime is aimed at preventing the said harm and is due to its preventive task (art.2, para.1 of the Criminal Code of the Russian Federation). As for the public danger of a crime as a fact of reality, it makes no sense, because a crime is the negative change and the resulting harm.

Public danger is a social characteristic of
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criminal acts (felonies and potentially criminal offenses); all other offenses are harmful to the public interests but they are not socially dangerous. Public danger of crime implies that it shakes the fabric of society, undermines the conditions for its existence. In this case, a specific person, organization, a separate sphere of social relations can be exposed to direct harmful effects but by its nature and significance, this harm goes beyond individual (private) or niche social interests endangering the existing social order, society as a whole. Disciplinary, civil, administrative and other "non-criminal" offenses, conflicting the established in the state legal order (i.e. external order) do not threaten the basic system of social values.

It is the public danger that identifies felonies and potentially criminal offenses among other offenses, emphasizes their qualitative specificities and gives autonomy to criminal law as a branch of law. All other types of offences are divided not by essence and / or degree of social harm but by the nature of public relations regulated under the violated rule of law that in turn predetermines their social and legal specificity as phenomena of a different essential order.

Cross-sectoral differentiation of legal responsibility should be transitive, which implies that the degree of enforcement measures repressiveness within various branches of law meets the rules of hierarchy. Non-transitivity of legal responsibility arises in the context of changes in society. According to legal doctrine, criminal law should protect relationships based on the most important, irreparable or very difficult to restore benefits and values. The danger of crime often lies in the loss of irreplaceable resources by society or its members. Scientific, technology, and social advancement changes values, set different emphases, which necessitates constant monitoring of the differentiation basis for public legal responsibility. Moreover, the non-transitivity of criminal and administrative liability is often a consequence of the ephemeral nature of the basis of the social deviations' division into crimes and administrative offenses. Strict rules and the establishment of a key feature for each liability type are required to break the vicious circle of criminal and administrative liability competition. Public danger is the key differentiation of criminal and

administrative responsibility, and stringent rules are to identify and address verified factors - criteria of public danger.

The system of factors (criteria) objectifying the social danger of a crime includes mandatory and optional signs. Mandatory signs of a public danger are that the act: 1) affects significant social relations in need of criminal protection from harm caused by socially dangerous behavior; 2) has a potentially significant harmful effect or a threat of such harm to a person under criminal law protection; 3) results in socially dangerous consequences; 4) is characterized by the subject's guilty attitude to the deed, expressed in the form of intent or negligence. The special social value of certain public relations is primarily pointed out by the content of the Basic Law of the Russian Federation as well as important policy documents of the state where the priority is to ensure the constitutional human and civil rights and freedoms, the security of the state, the economy, public health, the environment and other public relations. The given objects must be under criminal law protection. The legal order is to be recognized as the subject of administrative offense in the field of ecology, economics, electoral process, ensuring human and civil rights and freedoms, etc. In all cases, socially dangerous consequences must be identified as harm to human life and health, destruction and damage of property, disposal of property from the possession of the owner.

Optional criteria for public danger are the characteristics of the subject of the crime and the victim of the crime; the *modus operandi*; time, scene, setting, instruments and means of committing a crime; motive of the crime; the purpose of the crime; special features of the crime subject. The social danger of an act, for example, is always evidenced by violence, deception, bribery, acts causing public hazard. There is an explicit antisocial motive in a selfishness, in the purposes of human exploitation, of marketing restricted or prohibited items, obstructing the legitimate activities of others.

The criteria for social danger of behavior shall not be: 1) quantitative indicators (size, severity, etc.) of the subject of the offence and its socially dangerous consequences; 2) the repetition of the commission and special

recidivism. The former can only be used as a means of intra-sectoral criminal responsibility differentiation. The second, reflecting the public danger of the perpetrator not the encroachment itself may not be taken into account by the legislator when carrying out the inter-sectoral legal responsibility differentiation and should only contribute to the individualization of responsibility by the law enforcement officer.

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