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E-mail: **vest_law@enu.kz**

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Editorial address: 2, K.Satpayev str., of.402, Nur-Sultan, Kazakhstan, 010008
Tel.: +7(7172) 709-500 (ext. 31-457)
E-mail: **vest_law@enu.kz**
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Тел.: +7(7172) 709-500 (вн. 31-457)
E-mail: **vest_law@enu.kz**

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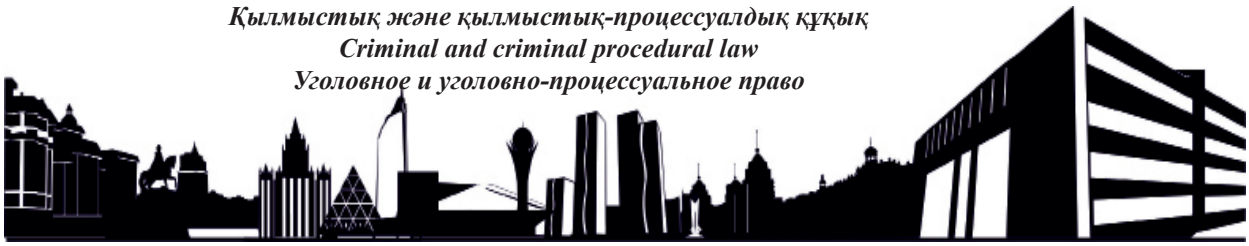
Мазмұны

Contents

Содержание



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G.A. Kuanaliyeva[1], M.B. Muratkhanova[2], D.B. Makhambetsaliyev[3], N.B.Kalkayeva[4]
[1,3]Al-Farabi Kazakh National University, Almaty, Kazakhstan
[2]L.N. Gumilyov Eurasian National University, Nur-Sultan, Kazakhstan
[4]Abai Kazakh National Pedagogical University, Almaty, Kazakhstan
(E-mail: kuanalieva.guldanakz@mail.ru, m.muratkhanova@yandex.ru, mahambetsalievdauren@gmail.com, nesibeli77@mail.ru)

«Crime», «criminal misconduct» and «administrative offense»: similarity and differences

Abstract. The concept of a criminal offence with its obligatory characteristics are, so to speak, the basis of the construction of criminal law, and the build-up will be those circumstances that help society to eradicate crime, through the use of criminal Punishment. It can be said that a criminal offence is the starting point of the entire legal system, that is, from the beginning of its definition to the appropriate decision, on the basis of either mitigating or aggravating circumstances and serving it punishment, which is provided for by the specific sanction of the Special Part of the Criminal Code of the Republic of Kazakhstan.

For the first time in the history of criminal law, the concept of a criminal offence has been enshrined. This novel is one of the main components of the large-scale reform of Kazakhstan's criminal law, which resulted in the adoption of a new Criminal Code, which requires detailed study of the concept of criminal Offences. With the transition to a new model of criminal law, it is important to identify with the most precise and distinctive signs of criminal misconduct and crime, primarily in order to prevent errors in the law of application, misconceptions about these legal categories.

The article considers the separation of the crime from criminal misconduct, as well as criminal misconduct from administrative misconduct. Scientists' views are analyzed on this problem. Examples are given from criminal codes from foreign countries. Problems related to the classification of criminal acts have always been of considerable interest to the legislator and law enforcement of any modern state. This issue has become particularly relevant for our country in connection with the introduction of the concept of «criminal misconduct».

Keywords: criminal law, criminal law, criminal offense, crime, criminal offense, administrative offense, administrative offense, disciplinary offense.

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Introduction. The adoption of the Criminal Code of the Republic of Kazakhstan (CC RK) of July 3, 2014 led to the emergence of many new terms and regulations. In particular, section 2 of the criminal law is called «criminal offences». The term «criminal offence» is a novel for criminal law. In the theories of criminal law to the signs of a criminal offense include:

1) the degree of public danger;
2) illegality;
3) guilty;
4) punishability [1, p.41].

These signs of a criminal offence are peculiar to both the crime and criminal misconduct.

According to Section 1 of Article 10 of the Criminal Code of the Republic of Kazakhstan:

«A criminal infractions shall be divided into crimes and criminal offences depending on the level of social danger and penalty» [2]. Types of criminal offence are divided into: crimes and criminal misconduct. Let us define the definition of a crime and criminal misconduct specified in the criminal law.

According to part 2 of article 10 of the criminal code of the Republic of Kazakhstan: «A socially dangerous act (action or inaction), committed with guilt and prohibited by this Code under the threat of punishment in the form of a fine, corrective labors, community services, restriction of liberty, deprivation of liberty or the death penalty shall be recognized as a crime».

Part 2 of article 10 of the criminal code of the Republic of Kazakhstan reads: «An act (action or inaction), committed with guilt, not presenting a great social danger, caused insignificant damage or created a threat of harm to a person, organization, society or the state, for commission of which a penalty is provided in the form of a fine, corrective labors, community services, arrest, expulsion from the Republic of Kazakhstan of a foreigner or a stateless person, shall be recognized as a criminal offence» [2].

As we see from the above definitions are the main hallmarks of crime and criminal misconduct:

- first, it is the degree of public danger;
- second in terms of punishments.

Criminal misconduct is a fundamentally new type of criminal act, previously not familiar not only to the criminal law of the Republic of Kazakhstan, but also to the criminal law of other post-Soviet states. The idea of introducing criminal misconduct as a criminal offence is to gradually integrate the norms of administrative and sensitive legislation (the Special part of the Code of the Republic of Kazakhstan on administrative offences) into the sphere of criminal legislation as the so-called lower category of criminal acts that do not pose a great public danger. This idea, first, is conditioned by the harmonization of domestic criminal law, oriented to move away from the Soviet model and gradually bring it into line with the classical model of criminal law and continental legislation (Romano-German) right system. This is a natural and timely step of the legislator, meeting the general trends of the reforms in domestic law and creating great potential for building an effective criminal policy, focused on the advanced standards of continental legal system [3, p. 127].

N.F. Kuznetsova, who writes the following, gives the most complete characteristic of socially dangerous acts falling under the analyzed category: «These acts, remaining in general crimes, are as if semi-criminal. The word «criminal» means that it is a criminal act, and the word «misconduct» means that these acts are close to anti-social misconduct - immoral, disciplinary, administrative and civil» [4, c. 149].

Purpose and objectives of the article. Signs and types of criminal offences are studied in accordance with the current criminal legislation. Based on this goal, the differences and similarities of crimes, criminal misdemeanors and administrative offenses are considered.

The introduction of the institute of criminal misconduct gives positive results in the work of law enforcement agencies and judges. The simplified procedure provided by the legislator before the judicial investigation has simplified the work of law enforcement officers to investigate minor crimes, which will allow to direct more resources to the investigation more serious crimes.

Thus, the investigative body draws up a criminal misconduct report against the suspect immediately, if it is established. If there are circumstances of criminal misconduct, data on the perpetrator, his location, the Protocol on criminal misconduct is drawn up within three days.

In the case where an examination or a specialist's opinion is required, a criminal misconduct report is drawn up within 24 hours of receiving the relevant opinion. In a criminal case against several criminal offences, including, in addition to crimes, there is a criminal offence or criminal misconduct, the proceedings are carried out in the form of an inquiry or preliminary investigation.

The head of the body of inquiry, having studied the Protocol and the materials attached to it, agrees on the Protocol, after which all the materials are presented to the suspect for review. Then the case is immediately sent to the Prosecutor for examination, not later than twenty four hours and in cases in which the suspect is detained as article 128 of the Criminal procedure Code of the Republic of Kazakhstan (CCP RK), not later than eight hours shall make an appropriate decision with the direction of its copies to interested parties and directs criminal case to court.

In the case of the arrest of the suspect under article 128 of the Criminal Republic of Kazakhstan, the case of criminal misconduct is sent to the prosecutor no later than thirty-six hours from the date of actual detention [5].

The rational use of resources extends not only to the work of law enforcement agencies, but also will allow to significantly unload and judicial proceedings.

Criminal misconduct cases are to be heard in court within fifteen days of entering court. If the application of the participants of the process is received or the need for further clarification of the circumstances of the case, the period of consideration may be extended, but not more than one month.

Historical review. As you know, the classification of a criminal act originated in French criminal law. The famous three-member classification of crimes stems from the French School of Natural Law of the 18th century. In accordance with it, serious crimes are violations of natural human rights; a medium-sized infringement on the rights of citizens based on a social contract; police torts are simple violations of order [4, p.163]. The first French Penal Code of 1791 divided all criminal acts into crimes, misconduct and violations. The French Penal Code of 1810 divided criminal acts into: (a) crimes (crimes) punishable by grievous bodily and dishonorable punishment; (b) delist punishable by up to 15 francs and imprisonment of up to 5 years; (c) police violations (contraventions), punishable by light police penalties - a fine of up to 15 francs and arrest for up to 5 days. The French Penal Code does not contain the concept of a criminal act, but only confirms the classification of acts in French law by introducing a new criterion for their differentiation - the gravity of the offence [6, p. 49].

Unlike the French Criminal Code, in Swiss criminal law, as in criminal law, many European countries, there is an article according to which socially dangerous acts are divided into two types Article 10 of the Swiss Penal Code also enshrines the two-pronged design of a criminal act. The distinction is made by the severity of the punishment that threatens to commit the act. The offence is a criminal act punishable by more than three years' imprisonment and a misdemeanor is a criminal act punishable by up to three years' imprisonment or a fine [7, p. 75].

Methodological basis of the research. The article uses General and particular methods of scientific research: historical, dialectical, system-structural, comparative- legal , and others. These methods were used within the framework of the studied topic , along with the requirements of the principle of objectivity, versatility, historicism and reliability.

The first difference between criminal offences - from all other offences, is that, unlike administrative and disciplinary, criminal offences are increasingly drifting towards private, private law.

Recently in the criminal law - more and more private-legal began:

a) The number of private prosecution cases is increasing;

b) There are new grounds for a way out of the conflict by reconciling the parties: exemption from criminal liability in connection with reconciliation; Agreement with the victim;

c) The concepts of mediation (mediator - mediator, conciliator), facilitation (facilitator - the one who helps others understand the common purpose in the discussion process, without protecting any of the positions or parties).

Why is this happening? Because the criminal-legal conflict is the most dangerous of legal conflicts, and experts pay the most attention to it, study more deeply the ways of it:

- Settlements and warnings;
- Permissions and conversions.

In a democratic state, any person (as well as any collective entity - an enterprise, a political party, and a public organization) is the subject of all kinds of legal relations and in most cases, he is able to resolve the resulting in because of their implementation, the legal conflict, including in the role of the victim.

The main thing for him is to restore his right in case of violation, to create conditions for this right not to be violated any more, to receive full compensation of material and moral costs - i.e. full satisfaction (satisfaction).

It is clear that in rare cases such satisfaction in an individual or legal person arises from the fact that the offender is only subject to such the purpose of punishment as punishment. These are usually cases of violent and some other crimes, the mandatory feature of which is the victim.

Thus, the share of regulatory and protected public law is decreasing and in fact the public right of protection begins to apply only to legal relations related to:

- Crimes against the international rule of law, the interests of the state and the joint interests of the individual, society and the state;
- Administrative misconduct;
- Disciplinary misconduct.

Only in these cases are legal conflicts directly affecting the State.

The second difference between the crime and criminal offence. The essence of the criminal offence is that in the Soviet tradition it was called and now in many legal systems continues to be called «public danger».

It is known to be defined by:

1) The object of encroachment, as well as the subject of encroachment and the identity of the victim;

2) The severity of the consequences (death of a person, harm to his health, the amount of material damage, etc.), and if the consequences are not provided, then:

Creating a risk of serious consequences;

The danger of the act itself, the manner in which it was committed, the means, weapons used in its commission, or the place or the time of its commission;

3) A form of guilt - the more serious the consequences are, the less we usually talk about the obligatory intent;

4) Properties of the subject. The principle here is this: the higher the requirements for the subject, the wider the range of his responsibilities and rights, the more cases he can be prosecuted compared to the ordinary person - the common subject.

For example, acts of a common entity such as:

- Obstruction of the legitimate activities of public associations;
- Interference in the legal activities of employees' representatives;
- Funding for a political party, etc.

So, the difference between the crime and criminal offence, as a rule - in the degree of public danger (hooliganism - petty hooliganism, causing negligent serious harm to health - causing negligently light harm to health), but sometimes in their nature (disclosure of state secrets - disclosure of accounting or tax secrets).

The main point of singling out the category of criminal misconduct is to quickly resolve the conflict in a simplified procedural manner and to satisfy the interests of all parties to the conflict.

«Based on the analysis of the signs of crime and criminal misconduct, - writes I. Borchashvili - in the issues of criminal offences in practice, the main role will be played by the sign of «punishment». It is on the basis of the types of punishments provided for in the sanctions of the articles of the Special Part of the Penal Code that the affiliation of an act to the number of

crimes or criminal misconduct will be established. Thus, punishment becomes a differentiating, defining sign of crime and criminal misconduct» [3, p.134].

In order to differentiate between criminal offences from administrative offences and crimes, it is necessary, first, to refer to the definitions of criminal offences, administrative offences and crimes that exist in the legislation of our country.

Part three of Article 10 of the Criminal Code of the Republic of Kazakhstan has been given as a criminal offense. It is evident from the definition that a criminal offense has the following characteristics:

Criminal misconduct is found to be a guilty act (action or omission);

Criminal misconduct does not pose a great public danger;

- Criminal misconduct causes minor harm or threatens to cause the same harm to an individual, organization, society or state;

- For the commission of criminal misconduct is punishable by a fine, correctional work, involvement in public works, arrest, which do not entail a criminal record [2].

Thus, the definition of the criminal offense contained in part three of article 10 of the Criminal Code of the Republic of Kazakhstan, indicates signs of public danger, guilt and punishment.

Article 25 of the administrative Code of the Republic of Kazakhstan contains two definitions of an administrative offense: in relation to the action or omission of an individual and in relation to the action or omission of a legal entity. These definitions specify a different number of signs of an administrative offense, depending on who commits it: an individual or a legal entity.

An administrative offence committed by an individual shall have the following characteristics:

- an administrative offence is an unlawful act or omission of an individual;

- an administrative offence is a guilty (intentional or reckless) act or omission of a natural person;

- this Code provides for administrative responsibility for this action or inaction.

An administrative offence committed by a legal entity must have the following characteristics:

- an administrative offence is an illegal action or omission of a legal entity;

- this Code provides for administrative responsibility for this action or inaction [8].

Thus, an administrative offence committed by an individual must have two characteristics: a sign of wrongdoing and a sign of guilt; an administrative offence committed by a legal entity should have only one sign: a sign of wrongdoing.

The definition of a crime, contained in part two of article 10 of the criminal code, contains four mandatory features: public danger, criminal wrongdoing, guilt and punish ability. Moreover, the first sign is called material, and the second-a formal sign of the crime. The third and fourth signs are closely related to the sign of wrongfulness and depend on the presence or absence of this sign: if the sign of wrongfulness is established, it is concluded that there are signs of guilt and punish ability. Conversely, if a person is not found guilty of committing a socially dangerous act, it is concluded that there is no sign of wrongdoing. A socially dangerous act is recognized as punishable only if a specific article of the Special part of the criminal code provides for criminal liability for this act, that is, it be recognized as illegal.

The criminal legislation of a number of foreign countries does not specify public danger as an obligatory feature of a crime in the definition of the crime. In particular, article 1 of the Swedish Penal Code of 1962 defines an offence as follows: «An offence is an act defined in this Code or in another law or statute for which a penalty is prescribed, as indicated below [7, p. 74]. The same definition of the offence is given in the French Criminal Code [6, p. 52.], the Belgian Criminal Code of 1867 [9] and the Israeli Criminal Law Act of 1977 [10]. In the Penal Code of these and a number of other foreign countries, there is a formal element of the crime, i.e. the crime is an act for which criminal responsibility and punishment are established. The same definition exists for a criminal offence in the abovementioned countries, where the concept of a criminal offence exists.

It can be concluded from the analysis of foreign criminal legislation that the signs of illegality and punishment are specified in the criminal legislation of most foreign countries. At the same time, in the definitions of the crime in the Criminal Code of many foreign countries there are no signs of public danger and guilt.

The establishment in the criminal code of our country and a number of other countries (mainly neighboring countries, some Muslim countries) of a sign of public danger as a mandatory sign of a crime should be considered a positive moment, since its absence will lead to a formal approach in the application of criminal legislation, when solving such an important issue as bringing a person to criminal responsibility. Issue as bringing a person to criminal responsibility.

The presence in part 4 of article 10 of the criminal code of the provision that «an action or omission is not a criminal offense, although formally containing signs of an act provided for by a Special part of this Code, but due to its insignificance does not pose a public danger», allows the law enforcement officer not to treat the issue of bringing a person to criminal responsibility formally. According to this rule, a person who has committed an act that formally falls under the criminal code is not liable if the act committed by him is not recognized as socially dangerous. For example, theft of a cell phone worth 500 tenge, 1000(thousand) tenge, theft of a chicken in a rural area.

Such acts are common in everyday life. Formally, these acts entail liability under part 1 of article 187 of the criminal code as a petty theft of someone else's property, committed in a small amount. However, given the low cost of stolen items, in accordance with part 4 of article 10 of the criminal code, these actions are not recognized as criminal offenses.

Of all the signs of crime, the most difficult to understand and determine in practice is the sign of public danger. This attribute plays an important role in distinguishing a crime from a criminal offense and an administrative offense, since a socially dangerous act is recognized as a crime. A criminal offense is an act that does not pose a great public danger and causes minor harm or creates a threat of causing the same harm to an individual, organization, society or the state. An administrative offense is an act that does not have a sign of public danger.

Thus, the crime, criminal offense and administrative offense differ from each other, primarily because of public danger.

The difficulty of establishing whether there is a sign of public danger in an act is because the concept of public danger itself belongs to the evaluation concepts.

Discussion. The theory of criminal law has repeatedly expressed the view that the public danger of a criminal act is the most important feature. Professor N. D. Durmanov, describing the concept of crime, States that this is an action committed by a person under the control of consciousness, and that the main content of the crime is a public danger. Without disclosing the social essence of public danger, the author is limited only to pointing out the circumstances on which it depends (the object, the nature of the action, the situation of the crime, etc.) [11, p. 54].

In many literary sources indicate that the social danger of the criminal act lies in its severity and in its definition of public danger of the emphasis on the infliction of objective harm to the state, organizations, society, personality etc. But this approach to understanding the social danger of the act will be difficult to establish the presence of this feature in the formal structures, when the presence of sign of severity are difficult to establish due to the lack of socially dangerous consequences of the act.

In order to better understand the concept of public danger, it is necessary, first, to distinguish public danger from danger in General. The danger can also come from random (innocent) actions of people. Nevertheless, such phenomena can also not be recognized as socially dangerous, since they are devoid of social essence, socio-political content, and are not related to the conscious activity of people. They can only be considered dangerous, but not socially dangerous.

Establishing the nature of the public danger of a criminal offence is of great practical

importance. It is important in lawmaking, including for criminalizing an act.

In order to facilitate the establishment of a sign of public danger in an act, the current criminal code, in relation to a certain part of the articles, often uses a formal sign – the amount of damage caused by a criminal offense, the income received. This makes it possible to distinguish criminal offenses from each other. Article 3 of the criminal code defines the concepts of «insignificant size», «significant damage», «significant harm», «major damage» or «large size», «especially large damage or large size», and «grave consequences» in relation to many articles. Thus, in most norms of the criminal code, a sign of public danger is associated with the amount of damage caused by a crime or criminal offense, as well as the amount of income received from a criminal offense.

In particular, part one of article 187 of the criminal code provides for liability for petty theft, that is, theft, fraud, misappropriation or embezzlement of other people's property, committed in a small amount. Paragraph 10 of article 3 of the criminal code defines an insignificant amount in relation to article 187 of the criminal code as the value of property belonging to an organization that does not exceed ten monthly calculation indices, or property belonging to an individual that does not exceed two monthly calculation indices established by the legislation of the Republic of Kazakhstan at the time of committing a criminal offense. Thus, theft of other people's property by theft, fraud, embezzlement or embezzlement for the above amounts is considered a criminal offense that does not pose a great public danger. If a person commits a specified criminal offense for a larger amount, the act turns into a crime and will be qualified under article 188, 189 or 190 of the criminal code, that is, it will be recognized as socially dangerous.

Part 1 of Article 202 of the Criminal Code provides for liability for intentional destruction or damage to someone else's property that has caused significant damage.

Paragraph 2 of article 3 of the Criminal Code defines the notions of «significant damage» and «significant amount» in relation to 14 articles of the Special Part of the Criminal Code in the monthly calculation indicators (hereinafter referred to as «MCI») established by the legislation of the Republic of Kazakhstan at the moment of committing a criminal offence. If the damage caused because of a committed criminal offense does not exceed the number of MCI that is set for this type of criminal offense, there will be no criminal offense, since the committed act is not recognized as socially dangerous and therefore illegal. For example, according to part, one of article 202 of the criminal code, intentional destruction or damage to someone else's property is considered a socially dangerous and illegal act if it caused significant damage to the victim. In relation to article 202 of the criminal code, the damage is considered significant if its amount exceeds one hundred monthly calculation indicators.

In relation to part one of article 214 of the criminal code, illegal business, illegal banking or collection activities involving the production, storage, transportation or sale of excisable goods are considered to be committed in significant amounts if the value of the goods exceeds one thousand monthly calculation indices. According to the note to article 153 of the administrative Code, a significant amount is recognized as a number of goods whose value does not exceed one thousand monthly calculation indicators. That is, the recognition of illegal business, illegal banking or collection activities associated with the production, storage, transportation or sale of excisable goods as socially dangerous or not having such a sign depends on the cost of excisable goods: if it exceeds one thousand monthly calculation indicators, criminal liability occurs, if it does not exceed it, administrative responsibility occurs.

In paragraph, 38, 3 The Criminal Code established the concepts of «major damage» and «large size» in relation to 83 articles of the Special Part of the Criminal Code; paragraph three. 3 The Criminal Code established the concepts of «particularly large damage» and «particularly large size» in relation to 33 articles of the Special Part of the Criminal Code. For example, in part of the first art. 214 Of the Criminal Code provides for liability for illegal business, illegal banking

or collection activities without registration, as well as without a license for such activity or in violation of the law of the Republic Kazakhstan is about permits and notices, as well as engaging in prohibited business activities, if these acts have caused major damage to a citizen, organization or state, or involve the extraction of income on a large scale.

According to paragraph 38 of article 3 of the CC with reference to article 214 of the CC, the damage caused to a citizen in the amount exceeding one thousand monthly settlement indicators, or damage caused to the organization or the state in the amount exceeding ten thousand monthly settlement indicators, as well as income, the amount of which exceeds ten thousand monthly settlement indicators, is recognized as large. If the amount of damage or income is less than the above amounts of monthly calculation indicators, in accordance with the note to article 153 of the administrative Code, administrative liability occurs.

Paragraph 4 of article 3 of the criminal code defines the concept of «grave consequences»; paragraph 14 of article 3 of the criminal code defines the concept of «significant harm».

These rules of the criminal code allow you to distinguish a criminal offense from an administrative offense or from acts that cannot be recognized as illegal. In total, in about two hundred criminal offenses contained in a Special part of the criminal code, the question of whether or not there is a sign of public danger of a criminal offense is resolved based on a formal sign – the amount of damage caused or income received. This is approximately one in four of the criminal offences in the Special part of the criminal code.

For the rest of the criminal offences, the question of classifying an offence as socially dangerous or not, depends on the existence of signs of the composition of the criminal offence laid down in the criminal law as mandatory: the object or the subject of encroachment, environment, time, place, method of committing a criminal offence, identity of the offender, etc. For example, depending on the object of the attack, attempted murder is considered a crime, and attempting to slander a person is not a criminal offence under part 4 of Article 4. 24 Criminal Code (this act is not considered illegal, because it is not socially dangerous, taking into account the object of encroachment). Carrying a knife (folding, homemade), which is not recognized as a cold weapon, is not a criminal offence, and carrying a knife, which is recognized as a cold weapon, is a criminal offence (v.1 p. 287 of the Criminal Code).

Article 363 of the Criminal Code provides for the responsibility of assigning to a non-official public servant the authority of an official and for his actions in connection with this, which caused significant harm to the rights and lawful interests of citizens or organizations or the interests of society or the state protected by law. The commission of these acts by a non-public servant does not constitute a sign of public danger and therefore does not entail criminal liability.

The question of which act to be considered a socially dangerous and criminal offence, and which is not for inclusion in the number of criminal offenses, is finally decided by the highest legislative body of our country - the Parliament of the Republic of Kazakhstan in the process criminal law. The process of criminalizing an act or vice versa is the process of excluding criminal responsibility for an act called criminalization and decriminalization of the act.

Criminalization and decriminalization rules have been developed in the science of criminal law. These processes may be justified, and therefore correct, if the rules of criminalization and decriminalization of the act have been taken into account. Often they are not justified enough, erroneous. This has a negative impact on the effectiveness of crime response.

In this regard, we should recall the words of the famous Russian criminologist Y.M. Antonyan: «Of course, crime should be understood only the totality (amount) of crimes committed and nothing else. We should not be embarrassed that some acts disappear from a special part of the criminal code, and others, often unknown before, appear in it. This is inevitable, as people's living conditions change all the time, their views on what should be punished under the criminal law and what should not» [12, p.10].

For example, during the period of the Criminal Code of the Kazakh USSR of 1959, criminal and therefore socially dangerous recognized such actions as buying and reselling at inflated prices of goods (speculation), illegal karate training, illegal release of fuel and lubricants, etc. until recently provided for criminal responsibility for false enterprise (Article 215 of the Criminal Code). Law of the Republic of Kazakhstan of July 3, 2017 No. 84-VI «On making changes and additions to some the legislation of the Republic of Kazakhstan on the improvement of the law enforcement system» from the Criminal Code excluded this article, that is, the Parliament of our country recognized false enterprise as an act that does not have a sign of public danger.

Conclusions and suggestions:

1. A comparison of the definitions of a criminal offence in the criminal code and an administrative offence in the administrative Code indicates that a criminal offense differs from an administrative offence in the following ways.

Firstly, a criminal offence is recognized as unlawful conduct of a person who does not pose a great public danger, that is, possessing signs of a small public danger. Administrative misconduct does not have such a sign. That is, an administrative misdemeanor is an illegal act or inaction of a legal or individual, which is not socially dangerous.

Secondly, a criminal offence is recognized as a committed guilty act (action or omission). When making an administrative the establishment of this attribute (committing an administrative offence intentionally or carelessly) is mandatory, and when an administrative offense is committed by a legal entity, the establishment of this attribute is not required, that is, an illegal but innocent act or omission of a legal entity may be recognized as an administrative offence.

Third, the subject of a criminal offense can only be an individual, and the subject of an administrative offence can be both an individual and a legal entity.

Fourth, criminal misconduct causes minor harm or threatens to cause the same harm to an individual, organization, society or state. For administrative misconduct, this trait is not mandatory, that is, when it is committed causing minor harm to the individual, organization, society or the state is possible, but it is not a mandatory sign.

Administrative misconduct may threaten to cause the same harm to an individual, organization, society or state. At the same time, administrative misconduct is possible that does not create threats of minor harm to the individual, organization, society or the state.

In the fifth, a criminal offence is an act committed only by an individual, and an administrative misdemeanor is recognized as unlawful conduct by both a physical and a legal person.

2. Criminal misconduct differs from a crime by the following features:

1) On the basis of public danger. The crime, as opposed to criminal misconduct, is a socially dangerous act (action or omission), a criminal offence - an act (action or omission) that does not pose a great public danger;

2) there are other, less severe penalties for criminal misconduct than for the commission of a crime;

3) the use of punishment for criminal misconduct does not entail a state of criminal record.

Thus, the main feature distinguishing criminal misconduct from administrative offences and crimes is public danger. Establishing its existence in legislative activity depends on the discretion of the highest legislative body of our country. The nature of the public danger of a crime is determined by the legislator, reflecting it in the sanctions of the criminal law, the types, sizes or limits of punishments.

3. In the analysis of the rules of the Criminal Code, which formulates definitions of criminal misconduct and crimes, the following shortcomings are found. The definition of a crime (v. 2 p. 10 of the Criminal Code) and the definition of criminal misconduct (c.3 p. 10 of the Criminal Code) list the types of punishments that can be imposed for these offences. These lists of punishments are also contained in Art. 40 Criminal Code (Types of Punishments). To prevent repetition, it follows

from part 2 art. 10 The Criminal Code excludes the words: «in the form of fines, correctional work, and restriction of liberty, imprisonment or death penalty», from part 3 of Art. 10 Of the Criminal Code to exclude the words: «in the form of a fine, correctional work, involvement in public works, arrest».

Also in part 3 art. 10 Of the Criminal Code, which defines the concept of criminal misconduct, shows signs of public danger, guilt and punishment; the sign of illegality is not specified, which should be recognized as a disadvantage of the Criminal Code.

To address this shortcoming, we offer the following version of Part 3 art. 10 «Criminal Offences, a guilty act (action or omission) that does not pose a great public danger, has caused minor harm or has created a threat to the person, the organization, society or the state, which is prohibited by this Code under threat of punishment.»

With the transition to a new model of criminal legislation, it is of great importance to determine with the greatest accuracy the characteristic and distinctive features of criminal misconduct and crime, primarily in order to prevent errors in their application, incorrect and ambiguous perception of these legal categories.

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Г.А. Қуаналиева[1], Д.Б. Махамбетсалиев[2], Н.Б.Калкаева[3]
[1,2]Әл-Фараби атындағы Қазақ ұлттық университеті, Алматы, Қазақстан
[3]Абай атындағы Қазақ ұлттық педагогикалық университеті, Алматы, Қазақстан

«Қылмыс», «қылмыстық теріс қылық» және «әкімшілік құқық бұзушылық»: ұқсастығы мен айырмашылықтары

Аңдатпа. Қылмыстық құқық бұзушылық ұғымы мен оның міндетті белгілері қылмыстық құқықтың негізі ірге тасын қалайды, ал қосымша белгісі ретінде қоғамға қылмыстық жазаларды қолдану арқылы қылмыстылықтың азаюына көмектесетін мән-жайлар ретінде қабылданады. Қылмыстық құқық бұзушылық барлық құқықтық жүйенің бастамасы болып табылады, яғни оны анықтағаннан бастап, ол бойынша тиісті шешім шығарылғанға дейін немесе жауаптылықты жеңілдететін не ауырлататын мән-жайлар негізінде және Қазақстан Республикасы Қылмыстық кодексінің Ерекше бөлігі нормаларының нақты санкциясында көзделген нақ сол жазаны өтеу негізінде анықталады деп айтуға болады.

Қазақстан Республикасының қылмыстық құқық тарихында алғаш рет қылмыстық құқық бұзушылық ұғымы бекітілген. Аталған жаңашылдық қазақстандық қылмыстық құқықты ауқымды реформалаудың негізі болып табылады, оның нәтижесінде жаңа Қылмыстық кодекс қабылданды. Осыған байланысты қылмыстық құқық бұзушылық ұғымын егжей-тегжейлі зерттеу қажет. Қылмыстық заңнаманың жаңа үлгісіне көшу, бірінші кезекте құқық қолданудағы қателіктерге жол бермеуге, сондай-ақ қылмыстық теріс қылық пен қылмыстың ерекше белгілерін барынша дәлдікпен анықтауды қажет етеді.

Мақалада қылмысты қылмыстық теріс қылықтан және қылмыстық теріс қылықты әкімшілік құқық бұзушылықтан ажырату қарастырылады . Осы мәселеге қатысты ғалымдардың көзқарастары талданады. Шет елдердің қылмыстық кодекстерінен мысалдар келтіріледі. Қылмыстық іс-әрекеттерді жіктеумен байланысты проблемалар кез келген қазіргі заманғы мемлекеттің заң шығарушы және құқық қолдануында әрқашан елеулі қызығушылық тудырды. Біздің еліміз үшін бұл мәселе «қылмыстық теріс қылық» ұғымының енгізілуіне байланысты да ерекше мәнге ие болды .

Түйін сөздер: қылмыстық құқық, қылмыстық заң, қылмыстық құқық бұзушылық, қылмыс, қылмыстық теріс қылық, әкімшілік құқық бұзушылық, тәртіптік теріс қылық.

Г.А. Куаналиева[1], Д.Б. Махамбетсалиев[2], Н.Б.Калкаева[3]
[1,2]Казахский национальный университет имени аль-Фараби, Алмапы, Казахстан
[3]Казахский национальный педагогический университет имени Абая, Алматы, Казахстан

«Преступление», «уголовный проступок» и «административное правонарушение»: схожесть и различия

Аннотация. Понятие уголовного правонарушения с его обязательными признаками является, так сказать, основой построения уголовного права, а надстройкой будут те обстоятельства, которые помогают обществу искоренять преступность посредством применения уголовного наказания. Можно сказать, что уголовное правонарушение является исходным началом действия всей правовой системы, то есть от начала его определения до вынесения по нему соответствующего решения на основании либо смягчающих, либо отягчающих обстоятельств и отбытия именно того наказания, которое предусмотрено конкретной санкцией нормы Особенной части Уголовного Кодекса Республики Казахстан.

Впервые в истории уголовного права Республики Казахстан закреплено понятие уголовного правонарушения. Данная новелла является одним из основных составляющих масштабного реформирования казахстанского уголовного права, результатом которого стало принятие нового Уголовного кодекса. В связи с этим необходимо детальное исследование понятия уголовного пра-

вонарушения. С переходом на новую модель уголовного законодательства большое значение имеет определение с наибольшей точностью характерных и отличительных признаков уголовного проступка и преступления, в первую очередь с целью недопущения ошибок в правоприменении, неверного и неоднозначного восприятия данных правовых категорий.

В статье рассматривается разграничение преступления от уголовного проступка, а также уголовного проступка от административного проступка. Анализируются взгляды ученых на данную проблему. Приводятся примеры из уголовных кодексов зарубежных стран. Проблемы, связанные с классификацией преступных деяний, всегда представляли значительный интерес для законодателя и правоприменителя любого современного государства. Особую актуальность для нашей страны этот вопрос приобрел и в связи с введением понятия «уголовный проступок».

Ключевые слова: уголовное право, уголовный закон, уголовное правонарушение, преступление, уголовный проступок, административное правонарушение, административный проступок, дисциплинарный проступок.

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Information about authors:

Kuanaliyeva G.A. - PhD of Law, Associate Professor of Department "Customs, Financial and Environmental Law", al-Farabi Kazakh National University, al-Farabi Str.,71, Almaty, Kazakhstan,

Makhambetsaliyev D.B. - 2nd year student of the specialty Law Faculty in al-Farabi Kazakh National University, al-Farabi Str.,71, Almaty, Kazakhstan.

Kalkayeva N.B. - Candidate of Law Sciences, Associated Professor, Abai Kazakh National Pedagogical University, Almaty, Kazakhstan.

Қуаналиева Г.А. - заң ғылымдарының докторы, Әл-Фараби атындағы Қазақ ұлттық университетінің «Кеден, қаржы және экологиялық құқық» кафедрасының профессоры, Әл-Фараби даңғылы 71, Алматы, Қазақстан.

Махамбетсалиев Д.Б. - Әл-Фараби атындағы Қазақ ұлттық университеті Заң факультетінің 2 курс студенті, Әл-Фараби даңғылы 71, Алматы, Қазақстан.

Калкаева Н.Б. - заң ғылымдарының кандидаты, Құқықтану кафедрасының қауымдастырылған профессоры, Тарих және құқық институты, Абай атындағы Қазақ ұлттық педагогикалық университеті, Алматы, Қазақстан.