

# Criminal Misconduct and Its Role in Interdisciplinary Differentiation of Responsibility

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**Abstract:** The article raises the problem of the content of the category of «criminal misconduct», the idea of which has recently been discussed more and more often at the doctrinal and legislative levels. The study has been conducted with the use of dialectical methods of analysis and synthesis, and also comparative-legal, historic research, method of legal modeling. The objective was to establish logical and formal content of this category, to define positive and negative effects from its inclusion into the text of the Criminal Code of the Russian Federation in the variant it was proposed by the Supreme Court of the Russian Federation. The main tasks of the study are the analysis of the approaches to understanding of category «criminal misconduct», concept of its legislative realization, finding drawbacks of legal constructions, proposed by the Supreme Court of the Russian Federation, prediction of social and political effects of suggested reform. It is noted that the proposed content of criminal misconduct makes it actually grounds for exemption from criminal liability with other criminal measures. It is argued that the best option to implement the idea of criminal misconduct is to enshrine it as an independent criminal category, which would include crimes that are classified as the least dangerous in the current Criminal Code, as well as the most dangerous administrative offences, which have «border» compositions in the criminal law.


## 1 INTRODUCTION


Discussion of the legislative consolidation of criminal misconduct in recent years has once again become an urgent agenda of the doctrine of criminal law. This is primarily due to the implementation of the course to humanize the criminal policy of the state, changing the legal assessment of acts that constitute a crime of small and medium severity. The Supreme Court of the Russian Federation has twice taken a legislative initiative to introduce into criminal law the category of «criminal misdemeanor», which, if implemented, will significantly change the understanding of the essence of the crime, the basis of criminal responsibility, exemption from it. At the same time, thoughtless actions in this part could have far going consequences and are able to create additional problems in realization of criminal liability, destroy theoretical and legal basis of criminal law and to some

extent even reduce effectiveness of criminal and legal security.

Analysis of the latest legislative initiative of the Supreme Court of the Russian Federation, related to the introduction of criminal misconduct in the text of the criminal law, shows that the modern legislator perceives it as a tool to absolve from criminal responsibility persons who first committed a number of crimes of small or moderate severity. At the same time, this way of understanding of criminal misconduct does not match with its historical basis and understanding its content by many scientists.

In the science of criminal law among proponents of the approach to return to the Criminal Code of the Russian Federation the category of «criminal misconduct» prevails the position that it should not have the character of a tool of exemption from criminal responsibility, but to establish a list of the least dangerous acts for which the responsibility

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should be settled by criminal law, but which should not be recognized as crimes. As proponents of this approach, we believe that the category of criminal misconduct should include not only certain least dangerous acts, but also some administrative misconduct, as well as individual civil torts. However, a clear understanding of the criteria for these acts should be included in this category. In addition, their precise understanding is necessary for the implementation of interdisciplinary differentiation of responsibility.

## 2 MATERIALS AND METHODS

General scientific methods of theoretical and legal research were used to solve the problems. In addition, methods such as analysis, synthesis, historical and legal, genetic, comparative-legal, method of legal modeling were used.

## 3 RESULTS AND DISCUSSION

In the science of criminal law, the prevailing approach is that criminal misconduct should be an intermediate position between crimes and administrative misconduct. According to some scholars, the de facto this has already happened: this conclusion stems from the provisions of p.2 Article 15 of the Criminal Code of the Russian Federation, where the category of crimes of minor gravity is enshrined, as well as from the provisions of p. 3, Article 150 of the Criminal Code of the Russian Federation and Article 31 of the Criminal Code of the Russian Federation, which respectively determine the investigation of crimes of minor gravity and the jurisdiction of criminal cases of crimes, the punishment for which does not exceed three years imprisonment (Tsepelev, 2004). This is due to the fact that the measures of criminal and legal influence for the commission of such crimes are minimal, cases are investigated and treated in a simplified manner, the punishment in the form of real imprisonment is practically not appointed. To some extent the boundaries of responsibility for some crimes dissolve and, in particular, for criminals the significance of criminal liability disappears, which in fact can be less strict than, for example, civil law. For example, the civil costs of hooligans on civilian air transport are measured by multimillion-dollar claims, while criminal penalties are usually limited to mandatory, remedial or conditional imprisonment (Chuchaev

A.I., Gracheva Y.V., Malikov S.V. 2020). A similar situation is observed in the area of responsibility for intellectual rights violations (Turkin M.M., Savtsova N.A., Neznamova A.A., Shilovskaya A.L. 2019.).

In view of the foregoing, there is already a problem of establishing clear criteria by which interdisciplinary differentiation of responsibility under the following system could be made:

minor violations involving property liability (civil law);

the most serious offences with a small (from the position of criminal law) public danger (administrative law);

a minor or medium-sized crime (criminal law).

In addition, responsibility for these acts is also differentiated within own branch of law. The problem is exacerbated by the fact that many of the acts provided for by different branches of law are borderline, distinguishing by few insignificant characteristics. Thus, at present, the Criminal Code of the Russian Federation and the Code of Administrative Violations of the Russian Federation contain more than a hundred compositions, which almost completely coincide on objective and subjective grounds and have the same nature of public danger. At the same time, only one of the signs indicates a higher degree (the size of the crime, the means used, the tools, the way it is committed, the size or type of public-hazardous consequences, the signs of the subject of the crime, etc.). These signs, in general, are formal. In particular, drug crimes and related administrative law violations only differ in size of the crime, and in some cases, when it is impossible to define this trait accurately (if, for example, the subject of the crime is a mixture of drugs, psychotropic substances or their analogues), the law enforcement officer is forced to establish special rules for their accounting (in fact, special rules for the separation of administrative and criminal liability).

In some cases, Plenum of the Supreme Court of the Russian Federation considerably widens the content of signs of certain composition of crime with the purpose of establishing these rules. Thus, although, paragraphs «a-g» p.1 Article 256 of the Criminal Code of the Russian Federation are listed as alternative, the absence of major damage (par. «a») even with the use of self-propelled floating vehicle or explosives and chemicals, electric current or other prohibited weapons and methods of mass destruction of water biological resources (par. «b») or in spawning grounds or on migratory routes to them (par. «c»), illegal extraction of water biological resources is considered insignificant.

The situation is exacerbated by the high mobility of some legislative structures. In particular, in the last few years the composition of hooliganism has changed several times (Article 213 of the Criminal Code of the Russian Federation): initially its transformation was associated with a significant humanization of criminal responsibility in this area, while the latest novels are aimed at its significant tightening.

In some cases, the legislator is manifestly inconsistent and transforms the rules in a way that violates the rules of differentiation of criminal responsibility. Thus, administrative responsibility for unskilled theft, fraud, embezzlement and defalcation is established in cases where the value of the stolen does not exceed 2500 rubles. At the same time, the Federal Law of 23.04.2018 No. 111-FL made amendments in Part 1 of Article 1593 of the Criminal Code of the Russian Federation, as well as introduced a new composition of theft (par. «g» p. 3 art. 158 of the Criminal Code of the Russian Federation), namely, a new qualifying feature was introduced - the commission of theft from the bank account, as well as electronic money. Given that this is qualified composition of theft, the amount of stolen does not influence separation of criminal and administrative liability in this case. Meanwhile, fraud committed in almost similar circumstances (e.g., payment in a store by a found bank card for goods worth less than 2500 rubles) does not constitute criminal liability (qualifies under Part 1 or 2 of Article 7.27 of the Russian Federation's Code of Administrative Violations), while clearly actually less dangerous theft with the use of this card (for example, withdrawal of money from the ATM) is a crime under par. «g» part 3 of Article 158 of the Criminal Code of the Russian Federation. Similar problems are common in the sphere of environmental crimes, when more dangerous acts are administratively punishable, while for less dangerous, criminal liability is possible (Pozdnyakova, E., Borenstein, A. 2019.).

Another problem is related to the introduction of administrative prejudgement in the Criminal Code of the Russian Federation, when the re-commission of an administrative offence entails criminal responsibility. This approach «erodes» the criteria of public danger of certain acts, which can simultaneously be administratively punishable and criminal, and the establishment of criminal liability in such cases is actually conditioned by the presence of a special feature of the subject - the fact of his bringing to administrative responsibility. At the same time, this trait is time-limited. Methodologically it is not quite clear how this circumstance changes the

essence of the act itself. In addition, «reverse» process seems doubtful as the expiration of a certain time again makes the act «non-dangerous».

Recognizing, in general, the high preventive potential of administrative prejudgement, scientists have repeatedly written that it has no theoretical justification, introduces problems in the content of other institutions of criminal law (e.g., the institution of circumstances that exclude crime, criminal responsibility, complicity, etc.), destroys the system of «double» prevention, and has evolved from a tool of humanization into a means of increasing repression (the legislator increasingly introduces in the Criminal Code of the Russian Federation compositions with administrative law violations).

The above-mentioned problems of interdisciplinary differentiation of responsibility could be solved by introducing a criminal offence in the Criminal Code of the Russian Federation, which would include those acts that have a high enough public danger, which does not allow to «leave» them in the sphere of administrative or civil law, but insufficient, in order to fully implement those repressive measures that are provided for the commission of crimes.

At the same time, the concept of criminal misconduct, supported by us, has opponents in the scientific environment. Thus, A.M. Smirnov believes that «the inclusion of criminal misconduct in the Criminal Code of the Russian Federation will create a certain threat to the very nature of public danger, as a sign that separates the crime from other offenses, as well as will negatively affect the effectiveness of the mechanism of criminalization of illegal acts» (Smirnov, 2019). We suggest that the problem is not related to the initial «unsuitability» of the idea of criminal misconduct, but to the concept of the ratio of administrative and criminal law, which is implemented in Russian law. The Legislator itself «eroded» the criteria of social danger, making competitive administrative violations and crimes, not thinking about clear criteria for their separation according to their social danger. The measure that we suggest allows to overcome this problem. It requires following certain conditions of legislative establishment for criminal misconduct.

First, the concept, signs and list of criminal misconduct should be enshrined solely in criminal law. Among them should be included crimes from those enshrined in the special part of the current Criminal Code of the Russian Federation, the public danger of which is minimal. This requires a separate criminal and criminological study, which would define the range of such crimes from the point of view

of the law enforcement practice. It is necessary to define the noted list the way that completely excludes having similar compositions of crimes and administrative law violations, distinguished only by degree of their public danger. This model of criminal misconduct does not contradict suggestions of scientists about improvement of the text of the criminal law and could complete basic concepts. (Lopashenko, Kobzeva, Hutov, Dolotov, 2017).

Secondly, criminal misconduct should be defined as a type of criminal offence, not as, for example, its category, grounds for exemption from criminal responsibility or punishment, other criminal-legal measures or other criminal categories. At the same time, the basis of responsibility for criminal misconduct should be the same as for the crime - the presence of all signs of the composition of a particular criminal offense. Other institutions of criminal law - complicity, circumstances, excluding criminality of action etc., can be applied to them. In this regard, we cannot support the position of the Supreme Court of the Russian Federation, which it outlined in the draft Federal Law No. 1112019-7 (ed., introduced in the Russian Federation State Duma of Federal Assembly, the text as of 15.02.2021) «On amending the Criminal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in connection with the introduction of criminal misconduct» where criminal misconduct is defined as a crime of minor gravity committed by a person for the first time (from a special list), for which the Criminal Code of the Russian Federation does not provide for a penalty of imprisonment, for which the perpetrators can be exempt from criminal responsibility with the use of special measures of a criminal-legal nature. Nor can we agree with those authors who propose to define criminal misconduct as an act not related to criminal responsibility and generally rendered outside of criminal law (for example, in a special Code of criminal misconduct or in the Code of Administrative Violations of the Russian Federation).

Thirdly, they should not be punishable by imprisonment, significant property or other restrictions, and criminal records. It may be necessary to introduce new self-imposed punishments in order to realize responsibility for criminal misconduct. This will allow fully to take into account socially diversified aspect of criminal punishments. (Lapshin, Korneev, 2019; Karabanova, 2019).

Determining the criteria for classifying wrongdoing as a criminal offence should pay attention to the nature of the public danger of the act. We believe that the object of encroachment in this

case cannot be public relations related to the protection of human life, peace and security of mankind. Speaking of the degree of public danger of alleged criminal misconduct, it should be noted that it cannot be high. In particular, when it comes to the consequences of such crimes, they should not be associated with causing serious, particularly serious harm to health, death, causing significant property damage or significant harm to citizens, society and state, not to consider special repeating in the composition. (Dyadyun, 2015). Criminal misconduct cannot be committed in a generally dangerous way, with the use of weapons, explosive devices, explosives, explosives or other dangerous weapons.

Meanwhile, influence of given above circumstances and also other factors, for example, purpose, motive and so on on the possibility of referring concrete actions as criminal misconduct, must be studied separately.

## 4 CONCLUSIONS

Thus, criminal misconduct is an important tool for humanizing criminal law, but incorrect approaches to its implementation can create additional difficulties for the law enforcement, violate the established positions of criminal law. Criminal misconduct should be a category in which the least dangerous crimes should be concentrated, as well as the most dangerous administrative offences. At the same time, not all crimes of small or moderate severity should be classified as criminal offences (as stipulated in the bill of the Supreme Court of the Russian Federation), but only those that do not have a high degree of public danger. The purpose of the category should be not to absolve the perpetrators of criminal responsibility, but to apply to them a measure of criminal force that is not related to imprisonment and does not constitute a criminal record.

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