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SOCIALLY DANGEROUS ACTS AND THEIR LEGAL EFFECTS: GENERAL CHARACTERISTICS

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Abstract

The article analyzes the categories of "social danger", "socially dangerous acts", "wrongfulness", "social harmfulness". The author indicates the criteria for distinguishing a crime from an insignificant act and socially dangerous consequences for determining socially dangerous acts. Reducing the essence of public danger only to causing or creating a threat of harm to public relations leads to a distorted separation of the act, action or inaction, from the person who committed it. An analysis of the current criminal legislation of Russia indicates that the legal consequences of socially dangerous acts that are not criminal are provided only for the acts committed, specified in the Special Part of the Criminal Code of the Russian Federation, in a state of insanity. Other categories of socially dangerous acts, committed by persons who have not reached the age of criminal responsibility, or by virtue of part 3 of article 20 of the Criminal Code of the Russian Federation, criminal law does not cover legal regulation. The conclusion is made that the term “age-related insanity” used in legal literature in relation to part 3 of article 20 of the Criminal Code of the Russian Federation is not entirely successful, since “a lag in mental development that is not related to mental disorder” is not a medical criterion for insanity.

Keywords: Wrongfulness, insanity, socially dangerous act, minor, insignificance, subjects of crime

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1. Introduction

For the very first time, the category "social danger of an act" as a material aspect of the notion of crime was legally adapted in Guiding principles on criminal law in RSFSR in 1919, where it was defined, that violation of the procedure of public relations, protected by the criminal law, action or inaction, dangerous for this system of public relations (Kusnetsova, 1958a) shall be understood by social danger of an act.

In existing criminal law, Criminal Code of Russian Federation from 1996, hereinafter referred to as CC RF, social danger is applied at characteristics of the whole range of legal institutions. In particular, art.6 of CC RF enshrines social danger as a criteria for justice of punishment and other measures of penal character; legal definition of notion of crime, part 1 art.13 CC RF, includes the category observed as a binding attribute; part 2 art.14 of CC RF uses social danger for refinement of "insignificance of act", and art.15 of CC RF – as a criteria for crimes' classification; part 3 art.60 CC RF social danger is addressed as a criteria for definition of individual penalty.

In Soviet literature it was not precisely fairly stated that unlawfulness constitutes legal expression of social danger, therefore any unlawful act is socially dangerous, according to Soviet criminal law (Belyaev & Shargorodsky, 1968). Due to that, one needs to agree with a position of Luneev (2000) who considers, that this approach substitutes a definition unlawfulness with a definition social danger. According to Luneev (2000), "There was no reference to unlawfulness in codes, and there couldn't be, at the presence of institute of analogy, that allowed to bring to justice for an act, not enshrined in CC" (p. 35).

Unlawfulness, as commonly known, represents formally legal indicia of crime, that points on the fact that socially dangerous act is prohibited by criminal law. In accordance with art.14 of CC RF a crime is recognized as culpable socially dangerous act under penalty. One circumstance attracts attention: that existing CC RF points on two separate categories of the notion of crime – unlawfulness and social danger. At that, the legislator waives that there is no reference to social danger of a person, who committed a crime in this definition. In the essence, the tendency of the first criminal law of Soviet state was violated, where along with social danger of an act social danger of a person was stated directly in the text of legislative definition of the notion of crime even though some post-Soviet republics still preserve this tendency.

Social danger is far not certainly defined in the legal literature, which necessitates the detection of its social essence and legal nature. In the Soviet period of history of criminal law, the majority of criminalists were addressing the definitions "social danger of an act" and "socially dangerous consequences" as identical (Kusnetsova, 1958b, p. 60). Kusnetsova (1958b) study found the following:

Criminal consequence is most comprehensively and amply characterising the social danger of any crime. The definition of the act of crime depends on the fact, whether it causes serious harm to one or other interests of socialist society, and to interests of construction of communistic mode.

2. Methods

For the certain time in the theory of criminal law one issue was widely discussed, on which of the definitions is most completely fitting for legislative technique: "social danger of an act" or "harmfulness". At that, certain authors considered that for characteristic of an essence of crime it is necessary to accept

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"social harmfulness" of an act; according to their point of view, one shall speak of social danger only with respect to a criminal (Kusnetsova, 2005). According to authors, "social harmfulness" is more specific concept, most fully meeting the level of harmfulness of a crime. Social danger assumes future potential harm. It is important to understand, that with appearance of harm as a result of an act of perpetrator, harm becomes an objective reality.

The notion "social harmfulness" makes an accent on objective indicia of crime, not fully taking into account a subject, subjective indicia of crime. Besides, it is worth to analyse a criminal act not only when it caused harm, but also at the moment of its commission.

Existing legislation of Russia, part 2 art.14 CC RF, concretizes composition of social danger of an act, stating that an act inaction, formally containing signs of some act provided by criminal law, however due to insignificance, not posing social danger, is not a crime.

A category "social danger", applicable to an act action or inaction as to an indicia of a crime, characterises, according to our opinion, social essence of a crime. However, a problem lies not in the fact that the legislator uses a construction "social danger of an act" at defining social essence of a crime, but in the lack of objective criteria regarding its definition. It is necessary, as it seems, to agree with an opinion, presented in legal literature, on apriority of a definition of social danger in Soviet criminal law (Fefelov, 1992). The apriority in the definition of "social danger of an act" lies in the fact, that the legislator is initially proceeding from the point that an act, for which criminal liability is set, is socially dangerous. Unfortunately, one needs to admit that this problem is still relevant.

Meanwhile, a category "social danger" implements an important function in the mechanism of criminal-legal regulation, in particular, at defining the criteria of separation of a crime from an insignificant act. Harmfulness of an act reflects only objective causing of harm, not taking into account subjective indicia of a crime.

Many authors, at definition of essence of social danger, take into account its dual nature, in the basis of which lies the harm caused or threat of causing harm to criminal protection (Durmanov, 1988). At such definition of an essence of social danger, the accent is put on objective harmfulness of a criminal act. At that, the threat of causing harm is addressed as a form of criminal consequences.

Traditional approach in views on dual nature of social danger in the theory of criminal law has a number of significant deficiencies. In this regard, we are impressed by a position of Novoselov (2001) who places attention on lack of unity in solution of an issue regarding mechanism of causing harm to an object of infringement, since the very nature of opportunity of occurrence of criminal consequences is not always unequivocally characterized: in some cases the treat of causing harm is referred to as a sign of a committed act, and in other – as a form of consequences of crime.

Kozlov (2004) has somehow different position with respect to a nature of social danger in criminal law:

If everything was limited to a harm caused, then for the criminal law retribution would be enough for a criminal. However, Russian criminal law for long time has been speaking not only of retribution, but of correction of a criminal through punishment, which is required for eliminating the threat of future harm. (pp. 705-705).

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However, according to this author, lack of such threat in the future or assumption of its lack drastically changes a position of the legislator – voluntary refusal or effective remorse lead or might lead to non-application of sanctions or exclusion of punishment (Kozlov, 2004).

As we imagine, reducing the essence of social danger only to causing or creating a threat to social relationships leads to distorted break of an act, action or inaction, from a person, who committed it.

Basically, the reaction from the side of supporters of the definition of social danger of only the act that really causes harm, appears understandable to us, since it responds to their image of lack of crime, if the harm is not really caused (Kudryavtsev, 1960).

At causing crime, small deformation of social safety, public order and capability of a state to support them takes place. In other words, some discrimination of public authorities occurs on performance of their functions, on their ability to implement their social role, connected with protection of objects falling within implementation of criminal law (Prohorov, 1984).

The nature of socially dangerous consequences, that can arise as a result of a negligent act of a perpetrator, is a circumstance, necessitating criminal liability. In this regard, the most indicative is a provision part 1 art.247 of CC RF: “Production of prohibited types of hazardous waste transportation, storage, dumping, use or any other treatment of radioactive, bacteriological, chemical substances with violation of the set rules, if these acts created threat of causing significant harm to health of human of environment”.

3. Results

Factors, that influence the essence of social danger of act, in our opinion, are subjective abilities of a person: a) to realize harmful nature of his act, action or inaction, occurrence of consequences, causal link; b) manage own behaviour that assumes a capability to define its specific direction for achievement of goal.

Since every action of a person is defined and concretized by consciousness and its will, a person shall understand the content and meaning of his behaviour and consciously lead it with aim of achieving the set results. In this case, he always has a freedom of choice of his behaviour and is able to take relevant decision. It’s the very ability of a person to realize a nature of consequences of his act, action or inaction, and to consciously manage them that serves as a criteria for definition social danger of an act and its criminal and legal consequences.

From the point of view of objective characteristics, for instance, murder, convicted deliberately, and homicide by negligence and even an accident are no different, in all the above-mentioned cases there are the same negative consequences – death of a person. However, from the point of view of subjective estimations, social danger is different in all the examples.

Division of socially dangerous crime in objective and subjective sides is of a conditional nature, since real nature and degree of social danger of a crime are defined by objective side – by nature and extent of the damage caused, way of action and other indicia, and also by subjective side – degree of awareness of the committed harm, activity of a person, motives and aims of his behaviour. In other words, social danger of an act is defined by complex of objective and subjective circumstances, that characterize committed act (Fefelov, 1992).

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A desire to reach socially dangerous consequences is a type of motives, inherent to intentional crimes. Will without motives and aims cannot be realized. Only revealing of real motives and aims allows to identify, whether a person desired the occurrence of socially dangerous consequences or not (Akushin, 1988).

Definition of social danger of an act by means of its evaluation as meaningful behaviour and determined efforts practically means setting its subjective indicia, inextricably linked to a notion of a person. However, needs to be admitted, that in modern criminal literature, this problem is not actively discussed. In Soviet science of criminal law vase attention was paid to research of a personality of perpetrator, who committed a crime or a personality of a criminal at imposing a penalty by court, even though criminal legislation, existing in that time, for instance, CC RSFSR of 1960 was repeatedly using a definition "social danger of a person". The definition "social danger of a person" itself, as known, hasn't received stable legislative or doctrinal interpretation, and, meanwhile, persons who committed crimes that are not socially dangerous, could be exempted from the punishment under CC RSFSR of 1960, art.50.

If the above-stated law recognized persons who committed crimes which were not socially dangerous, then it is logical to assume existence of a category of persons, that, due to predominantly objective reasons, didn't commit crimes, but posed a social danger. In this regard, art.10 of CC RF from 1925 is rather demonstrative, - it recognized category of persons "posing danger due to their connection with criminal environment or their past actions". With respect to this category of persons, criminal law of that time provides assignment of measures of social protection of regressive nature. One can treat the stated provision positively or negatively, however, undoubtedly, it attracts attention due to its originality of issue setting. At least, criminal law took into consideration not only crimes and those guilty of their commission, but also other categories of persons, posing danger for society.

Subsequently, Soviet criminal law, as commonly known, waived this tradition, staying at classical ideas – crime and punishment and other measures of penal nature for culpable socially dangerous act.

Due to the above-stated, positivist concept of "dangerous state of a person", whose founder is considered to be R. Garofalo, deserves scientific interest; - in his book "Criteria of dangerous state" (1880) he introduced this definition to scientific circulation. Dangerous state of a person, according to the author, is in propensity, inherent to a person, to commission of socially dangerous acts and offences. The idea of dangerous state, underlying positivist doctrine of criminal law, assumed that safety or social protection measures, applied to a criminal, shall aim at overcoming the state of person's danger to society, and in case of impossibility of this aim – localization of socially dangerous inclinations of a person.

This doctrine allowed legal opportunity of application of measures of social protection even in the cases when person has not committed a crime yet, but due to his mentally-psychological and psychical state poses threat for society. In this regard, Prince (1912), one of the founders of this direction, wrote that "transformation in criminal law makes us admit criminal state even where there is no criminal yet and no right of state intervention, where there is no crime and no offence" (p. 43).

It appears, that in modern conditions, the stated theory could be demanded due to problems of social danger of acts of persons, who are not subjects of crimes - insane, under the age of criminal liability, and persons underdeveloped due to age insanity. Socially dangerous behaviour of the stated persons, as commonly known, is not encompassed by criminal theories on socially dangerous act, since their behaviour

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cannot be attributed to a category of conscious or volitional behaviour of an individual. With respect to persons not having reached the age of criminal liability or lagging behind in psychical development, they most often commit not socially dangerous acts, but dangerous acts, that are not always acts of conscious behaviour.

Social danger of an act characterizes a notion of crime, since it represents conscious and volitional behaviour of a person, aimed at achieving a criminal goal. It is quite obvious, that cases, when social danger emanates from a person due to his dangerous psychical, morbid, state or due to other reasons, are not encompassed by this notion. In CC RF, art.99, types of coercive measures of medical nature are provided, that are appointed with respect to various categories of people, who suffer from mental disorders, inter alia, insane ones. The fact that the ground for application of coercive measures, p.2 art.97 CC RF, are the "cases when mental disorders are connected with an opportunity of causing significant harm by the stated persons or with danger for themselves or other persons" deserves attention.

Consequently, legislative criteria for selection by court of the type of coercive measures of medical nature is psychical state of an ill person, defining his danger for himself and for other people, possibility of repeated commission of socially dangerous acts (Kusnetsova & Tuazhkova, 2002). At that, needs to be mentioned, that existing criminal law doesn't provide interpretation for "danger" coming from a person, suffering from a mental disorder. In accordance with art.29 of Law of Russian Federation from 02.07.1992 № 3185-I "About mental help and guarantees of rights of citizens at its provision", the category "danger" is divided into two forms: "direct danger for oneself", auto-aggressive behaviour, or surrounding, hetero-aggressive behaviour. Current CC RF, p.4 art.102, contains a category "specific danger for a person or surrounding", which composition is not unveiled in the text of the mentioned law. In legal literature high, "specific", opportunity, "danger", of commission of acts, falling within a category of serious and particularly serious acts, and also repeated commission of socially dangerous crimes, despite mental treatment, involuntary or forced, is understood as "specific danger" of a person suffering from mental disorders (Spasennikov, 2003).

4. Discussion

In the provided above author's definition of "specific danger" of a person, suffering from mental disorders, the category "social danger of an act" is used, which is not really correct on its own, since an "act", as known, includes in its composition two forms: action or inaction, non-performance of a liability. With reference to the category of persons observed it is hardly fair to refer to an act as to conscious and volitional act of a person. More likely, it can be spoken of such behaviour of a person that is largely attributable to mental disease or other aggressive state. Not coincidentally, apparently, existing national criminal law, art.101 CC RF, enshrining the foundations of application of coercive measures of medical nature, uses respective legal category – "poses danger" or "poses specific danger". One can raise a question on socially dangerous act with respect to persons, suffering from mental disorders, only in the case when they are in the end admitted sane, limitedly sane, by court.

In the context of problematic issues of social danger of act or of person addressed, the category of persons lagging behind in mental development has specific criminal value, that is not connected to mental disorder. In legal literature it is common to call this state age insanity (Tsymbal, 2002). However, a question

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arises – how fair this name of a state of a person is? It is connected with formally legal aspects: a) norm of inclusion into art.20 CC RF, defining the age of criminal liability; b) a norm is constructed by analogy with an art.21 CC RF, enshrining attributes of a notion "insanity"; c) it contains a condition of exemption from criminal liability (Tsymbal, 2002). A remark of Spasennikov (2003) regarding this point is fair, claiming that sanity and reaching the age of criminal liability are self-standing attributes of a subject of crime. Apart from that, p.3 art.20 CC RF doesn't contain conditions of exemption from criminal liability, as stated by Tsymbal (2002) since, in compliance with the stated by norm of criminal law, juvenile, having reached the age of criminal liability, however, due to lagging behind in mental development, not connected to mental disorder, during commission of socially dangerous act wasn't able to fully realize the factual nature and social danger of his actions (inactions) or manage them, is not a subject to criminal liability.

In this regard, a circumstance that criminal law, art.21 CC RF, defining the notion "insanity", uses constructions "could not realize factual nature and social danger of his actions or inactions deserves attention, whereas applicably to p.3 art.20 CC RF "age insanity" is characterized as "could not fully realize factual nature and social danger of his actions or inactions. Therefore, the legislator allows that juvenile person, having reached the age of criminal liability, but due to lag behind in mental development, not connected to mental disorder, committing socially dangerous acts, to some extent still can realize the factual nature of his actions or inactions and manage them. It's quite obvious, that intellectual and volitional criteria of "age insanity" in criminal law are not fully expressed which creates additional complications at its doctrinal and judicial interpretation. For instance, this provision of criminal law, apparently, served as ground for conclusion, that age insanity is embodiment of humanism principle (Borzenkov & Komissarov, 2002).

It is thought, that admission of lag behind in mental development, not connected to mental disorder, age insanity, is not completely correct. In pre-revolutionary legal literature the age, that was referred to as the age of so-called complete insanity – before 14 years, was theoretically justified. In the stated age, according to the opinion of professor Kistyakovskiy (1891), a person doesn't have complete and clear understanding about proper and improper, as well as ability of conscious choice between good and evil. In the literature of that years there was a conscious objection against full insanity: the stated age wasn't always once and forever given, its borders didn't have consistency (Pustoroslev, 1912). In the history of Russian and foreign criminal law the range of variability of a minimal age, from which criminal liability was starting – from 7 to 18 years. In this regard, the position of Tagantsev (1994), one of the authors of the project Sentence code on punishments from 1903, is quite demonstrative, - he proposed the following arguments in protecting of 10-year age of criminal liability:

1)10-year limit doesn't mean a border of sanity, since juvenile persons, under common rules, are not a subject to criminal punishment; 2) can we imagine, that neither police, nor investigator will have rights to even bring an action against them, and what will be the impact of this irresponsibility on the most juvenile? (p. 159).

From the thesis provided it follows, that the problem of legal consequences of socially dangerous acts, committed by underage persons, was really faced by case law already in the beginning of the last century. From our point of view, Tagantsev (1994) fairly points out the arguments for 10-year age of

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criminal liability. It was, obviously, not spoken of imprisonment for an underage person, but criminal law had to envisage preventive and safety measures.

Traditionally, national science of a criminal law stays predominantly on positions of punishment as legal consequence of a criminal act. However, our research shows, that case law is more and more sharply feeling the gap in legal response to socially dangerous acts, falling into the attributes of articles of Specific part of CC RF, however not being criminal. Existing criminal law, has in its toolbox, coercive measures of medical nature, as well as coercive measures of educational nature, which it is reasonable to match with measures of safety and correction.

Jalinskiy (2004), while analysing German criminal law, came to the conclusion, that safety measures are connected not to guilt, but just to social danger of a subject of act, and, therefore can be applied at lack of guilt. The fact of being governmental reaction to unlawful act.

In modern Russian legal literature a problem of safety measures didn't achieve wide-scale development. Nevertheless, it is already stated in the science of criminal law as a fundamental problem (Shedrin, 2001). Existing CC RF, as commonly known, doesn't use a notion "measures of safety and correction", but repeatedly mentions "other measures of a criminal legal nature". In art. 2 of CC RF it is enshrined, that these measures are applied along with punishment for achievement of tasks of CC. They are also mentioned in art.3, 6, 7 of CC RF, defining the principles of criminal law.

For a certain time in theory of criminal law criminalists didn't pay necessary attention to other measures of criminal law nature, till the legislator adapted Federal law from 27.07.2006 153-FZ, that complemented existing CC RF with a new ch.151 "Confiscation of property", and section 6 obtained new name – "Other measures of criminal law nature". If abiding by literal interpretation of chapters of CC RF, included in the section 6 "Other measures of criminal law nature", then the measures reviewed the legislator limits just to "Coercive measures of a medical nature", ch.15, "Confiscation of property", ch.151, and "Court fine", ch.152, which cannot be correct on its own.

Besides, measures of educational effect, that are being applied with respect to underage persons, committed a crime, are placed in a sect.5 "Criminal liability of juvenile persons" of CC RF, which provides a formal reason to attribute them to forms of realization of criminal liability, even though many measures of educational effect, enshrined in art.90 of CC RF conform to analogue of measures of safety and correction by their legal nature, for instance, CC FRG.

5. Conclusion

The analysis of existing criminal law of Russia indicates that legal consequences of socially dangerous acts, not serving as criminal, are provided only with respect to the acts committed, stated in the Specific part of CC RF in condition of insanity, p. a part 1 art.97 CC RF. Criminal law doesn't encompass with legal regulation other categories of socially dangerous acts, committed by persons not having reached age of criminal liability, or due to part 3 art.20 CC RF.

Thus, the addressed problem of socially dangerous acts and their legal consequences allows to draw the following conclusions:

1. Problem of socially dangerous acts in the science of criminal law was studied predominantly as material attribute of definition of crime.

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2. Criminal law category "social danger" for its legal composition in the literature is presented within the scope of dualistic nature, that lies in causing harm to objects protected by criminal law or posing threat of causing of such crime, without taking into consideration the personality of "personage".

3. The legislator, while putting a prohibition on one or other acts, comes from a principle of apriority, i.e. act, for which a criminal liability is set, is accepted as socially dangerous. In this case, social danger of an act acquires meaning of value notion, depending on objective and subjective criteria.

4. The notion "age insanity", used in legal literature, applicably to part 3 art. 20 of CC RF is not really successful, since "lag behind in mental development, not connected to mental disorder", is not a medical criteria of insanity.

5. Criminal law consequences of socially dangerous acts are legally provided with respect to only two categories: a) as material indicia of a crime – punishment; b) commission of socially dangerous act, provided in Specific part of CC RF, in state of insanity, p. a p.1 art.97 CC RF, – coercive measures of medical nature.

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