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CONCEPT AND ATTRIBUTES OF CRIMINAL DELICT IN THE CRIMINAL LAW OF THE REPUBLIC OF KAZAKHSTAN

Saltanat Makhmetgalievna Sarybekova[*], Kairat Nurmanbetov[**], Kairat Yernishev[**], Zhangali Baktykhozhayev[***] and Kuat Imanbayev[***]

Abstract: The aim of the study is a complete, comprehensive and deep examination of the concept and attributes of criminal delict in the criminal law of the Republic of Kazakhstan. The consideration of the concept and attributes of the criminal delict is acute, as this legal category is new in the criminal law of Kazakhstan; it was introduced as a result of the criminal law reform and the adoption of the new Criminal Code. The transition to the new model of criminal law outlined the acute need for a precise definition of the characteristic and distinguishing attributes of criminal offense and crime in order to prevent errors in law enforcement, incorrect and ambiguous perception of these legal categories.

The scientific article, based on the analysis of the criminal legislation of foreign countries, crime rate in Kazakhstan, security and safety of the citizens of Kazakhstan, and bringing them to a higher level, comes to a conclusion about the justifiability of introduction of the concept of criminal delict, differentiation of criminal delict to crimes and criminal offenses.

Keywords: criminal delict, crime, guilt, criminal offense, Criminal Code, punishment, public danger.

INTRODUCTION

The head of the state, N.A. Nazarbayev in his message to people of Kazakhstan "Kazakhstan's Way – 2050: Common Goal, Common Interests, Common Future" mentioned that Kazakhstan should become one of the safest and most comfortable countries for people around the world, highlighting the most important attributes of a developed country – peace, stability, justice, rule of law (Nazarbayev 2014).

However, this program – a strategic document, focused on identifying the key goals and objectives for the development of Kazakhstan in the coming decades – mentions that during the years of independence, Kazakhstan has become a legal society, where the primacy of law is enhanced every day and democracy gained an irreversible character.

The Kazakhstan way of development and the process of the formation of democratic, civilized society in our state demanded from public authorities to reinterpret and reevaluate the essence of many legal phenomena from the position of the new priorities. Previous judicial reforms eliminated the barriers, preventing the effective development, that existed as a relic of the Soviet era bureaucracy, consolidated in legal acts basic and firm guarantees of protection of the rights

[*] L.N. Gumilyov Eurasian National University, 010008, Kazakhstan, Astana, Satpayev str., 2

[**] M.Kh. Dulaty Taraz State University, 080012, Kazakhstan, Taraz, Suleymanov str., 7

[***] Taraz Innovative Humanitarian University, 080000, Kazakhstan, Taraz, Zheltoksan street, 69 "B"

and freedoms of a man and citizen, established the independence of the judiciary, reduced the number of courts, thereby ensuring quickness, transparency, openness and objectivity of the judicial protection of citizens.

According to the Committee for Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan, for the period of implementation of the criminal law reform, the number of registered crimes was as follows: in 2011 – 206,801; in 2012 – 287,681; in 2013 – 359,844; in 2014 – 341,291 (*Information Service of the Committee for Legal Statistics and Special Accounts of the Prosecutor General's Office of the Republic of Kazakhstan*, n.d.).

The dynamics of crime growth, and the increase in the number of grave and especially grave crimes demanded from public authorities the adoption of effective measures of criminal and legal impact in the fight against modern threats, preventing criminal attacks.

In this regard, the adoption in 2014 of the new Criminal Code of the Republic of Kazakhstan, which entered into force on January 1, 2015, was a significant step in the criminal-legal policy of the country, the fight against crime, the formation of law-governed state (The Criminal Code of the Republic of Kazakhstan dated July 3, 2014, 2016). Provisions of the Criminal Code of the Republic of Kazakhstan of 2014 recognize the division of criminal delicts into crimes and criminal offenses. The criterion for the division of criminal delicts into crimes and offenses was the degree of public danger of criminal acts.

The study and analysis of the statistical data shows that after adoption of the new Criminal Code of the Republic of Kazakhstan, in 2015 there were 386,718 criminal delicts, including 346,510 crimes, and 40,208 offenses; in 2016, there were 361,689 criminal delicts, including 324,185 crimes and 37,504 offenses. In addition, according to official statistics, in 2016 there were committed 4,033,714 administrative delicts.

The need to develop effective legal means of combating crime and prevention of delict, prevention of criminalization of society, determines the relevance of this study.

RESEARCH METHODS

In the process of writing the article, in order to achieve scientific results, the author applied methods ensuring the way of studying the reality, scientific methods, such as observation, description, comparison, analysis, synthesis, logical methods of induction, deduction, historical legal methods, comparing legal methods, empirical methods. The use of general academic and special scientific methods, the statistical study of criminal delicts, made it possible to study the category of criminal delicts comprehensively, to look at the provisions and institutions of the criminal law through the prism of historical development of criminal law and criminal science,

to compare the existing Kazakhstan criminal law to the provisions of foreign legislation, and to the provisions of Kazakhstan administrative and other laws, providing the legal liability for delicts, and to make independent findings as a result of scientific research.

Historical-legal Research of Criminal Delicts

In 1465-1466, khans Zhanibek and Kerey formed an independent Kazakh Khanate, which became a regional leader for centuries. In 2015, Kazakhstan celebrated the 550th anniversary of the Kazakh Khanate formation. During this period of time, in order to support the state activity, its development, protection of the rights and freedoms of a man, there was adopted a large number of laws, including criminal and criminal procedure legislation.

In the history of the Kazakh Khanate, there were several documents being the sources of Kazakh customary law, regulating legal relations, such as "The True Path of Kasym Khan", "Ancient Establishment of Esim Khan", "Seven Legal Codes of Tauke Khan".

The customary Kazakh law did not contain a clear definition of the crime. The crime referred to committing by a person of "evil deeds" that led to moral, physical, and material damage to a victim.

By the period of the accession of Kazakhstan to Russia, the customary Kazakh law had the following system of penalties: the death penalty; the corporal punishment; the disgrace punishment; the extradition of the guilty party to the victim; the expulsion of the tribal community; kun (farming); aip (penalty) (Useinova & Useinova 2015).

The death penalty was seldom used in the Kazakh society, the use of property punishments, kun (farming), aip (penalty) was widely spread, which shows the saving of strict repressive measures and their replacement with a milder property punishment.

In 1868, the final accession of Kazakhstan to the Russian Empire ended. By the temporary regulation on the management of the steppe areas of 1868, in the Kazakh steppe was formed a judicial system, which included national judges, magistrates, district judges, military judges. Thus, imperial courts started to operate on the territory of Kazakhstan, applying the Imperial legislation in the law enforcement.

The historical analysis of criminal legislation of the Russian Empire shows that criminal offenses were recognized in the Code of Laws of the Russian Empire of 1832, the XV volume of which contained provisions of criminal law. The Legal Code about Punishments Criminal and Corrective, enacted in 1845, had two concepts of criminal act – crime and offence. Any violation of the law, through which it encroaches upon the inviolability of the rights of supreme power and authorities established by it, or the rights or security of society or individuals, is a crime (Article

1 of the Legal Code). Violation of the rules prescribed for the preservation of certain legal rights and public or personal safety or profit, is an offence (Article 2 of the Legal Code) (Chistyakov 1988).

In the Criminal Code of the Russian Empire of 1903, the legislator divided criminal acts into three categories: serious crimes, crimes and offences. Criminal acts for which the law established a highest punishment, the death penalty, penal servitude or the banishment for free settlement, referred to as serious crimes. Criminal acts for which the law established imprisonment in the house of correction, fortress or prison, as a punishment, referred to as crimes. Criminal acts for which the law established arrest or monetary penalties as the highest penalty, referred to as offences (Chistyakov 1994).

After the establishment of Soviet power, some legislative work was carried. With the adoption of the Criminal Code of the RSFSR of 1922, the legislator refused to consolidate the three categories of criminal offences known to the legal code of 1903.

The explanatory memorandum to the draft of the Criminal Code of the RSFSR of 1922 stated that the division of crimes into types, according to their gravity, loses its importance because of the need of granting broad rights to court in assessing the danger of behavior of the offender.

On February 8, 1977, the Decree of the Presidium of the Supreme Soviet of the USSR "On Modification and Additions in the Criminal Legislation of the USSR" established the possibility of applying measures of administrative responsibility for crimes, which do not constitute a significant public danger (Bulletin of the Supreme Soviet of the USSR, 1977).

The Criminal Code of the Kazakh SSR dated July 22, 1959 and the Criminal Code of the Republic of Kazakhstan dated July 16, 1997 did not contain legislative recognition of the concept of criminal offence (The Criminal Code of the Kazakh SSR, 1959; The Criminal Code of the Republic of Kazakhstan, 1997). Despite the lack of a definition of the criminal offence, the legislator, in the Criminal Code of the Republic of Kazakhstan of 1997, provided a deeper realization of the principle of humanism and saving of repressive measures, and – in Article 67 – the possibility of exemption from criminal responsibility for persons who committed a minor crime or committed a moderate crime, not associated with causing death or serious harm to human health for the first time, if he/she reconciled with the victim, applicant, including by means of mediation, and made amends for the harm.

The Criminal Code dated July 3, 2014 implemented the provisions of the Concept of Legal Policy of the Republic of Kazakhstan for the period from 2010 to 2020 about the two-pronged approach to the criminal behavior.

The provisions of the new Criminal Code provide humanity of punishment for persons who committed a minor act for the first time and for socially-vulnerable

groups – pregnant women and women with dependent minor children, minors, and elderly people. However, in respect to persons responsible for committing grave and especially grave crimes, hiding from criminal prosecution, stringent criminal policy is provided. Moreover, with regard to the current realities, in order to provide a higher degree of protection of the rights and freedoms of citizens, security of society and the state, there was revised a well-established approach to the determination of public danger of acts. In the new code, criminal acts are regarded as criminal delicts.

Thus, as a result of historical-legal research of criminal delicts, the following conclusions were made: firstly, the customary Kazakh law didn't have a concept of crime and criminal offence, the crime was understood as committing of "evil deed" causing the victim moral, physical, material harm. However, the customary Kazakh law attached great importance to the saving of repressive measures, there were no prisons, death penalty was rarely used, which was replaced with the property punishment by the kun (farming); secondly, the concept of criminal offense is not absolutely new for Kazakhstan, the institution of the criminal offense was presented in the pre-revolutionary legislation of the Russian Empire in the period of Kazakhstan being a part of it and it was applied to the person, committing a criminal delict without a great social danger.

A Comparative Study of Criminal Delicts in the Legislation of Foreign Countries

The effectiveness of the institute of criminal offense is confirmed by the international practice. The comparative analysis is an important tool in the study of the priorities, trends and perspectives of different models of legislation and "...is not only of cognitive interest, but also can contribute to perfection... of the criminal law ..." (Fedorov 2004). In this regard, it should be mentioned that the idea of separation of crimes and offences was carried out in the legislation of many countries, such as Austria, England, Belgium, Holland, Spain, the Republic of Latvia, Republic of Lithuania, Switzerland, Germany, France, and is actively discussed in Russia, Ukraine and in other countries (Kuznetsova 2009; Konstantinov, et. al., 2005; Kuznetsova 1969). In some countries, the category of "offense" is allocated in the criminal legislation, and in others – in separate regulations. Some states adopted special legislative acts on offense. These are, for example, the laws of the Republic of Serbia "On Offense" (2007), the Republic of Slovenia "On Offense" (2002), the Republic of Croatia "On Offences against Public Order and Peace" (1990), and the Czech Republic "On Offense" (1990). In general, at the present stage we have to mention the increasing number of countries that introduced the category of "offense" in their legislation.

The classification of a criminal act originated in the French criminal law. The well-known three-way classification of crimes comes from the French school of natural law of the 18th century. In accordance with it, a serious crime is a violation of the natural rights of man; a moderate crime is an endeavor on the rights of citizens based on the social contract, police torts are simple violations of the procedure (Kuznetsova 1969). The first French Criminal Code of 1791 divided all criminal acts to crimes, offences and violations. The Criminal Code of France of 1810 defined criminal offenses into: (a) crimes, punishable by grievous bodily and dishonoring punishments; (b) offences (delicts), punishable by correctional penalties – a fine not exceeding 15 francs and imprisonment up to 5 years; (c) police violations (contraventions), punishable by light police penalties – a fine not exceeding 15 francs and imprisonment for up to 5 days.

The Criminal Code of France does not contain a concept of criminal act, but only confirms the classification of offences existing in French law, introducing a new criterion of their differentiation – the gravity of delicts (Golovko & Krylova 2002).

The "Preliminary order" part of the Criminal Code fixed a division of criminal acts according to the punishment for violations, offenses and crimes. The violation is a criminal act, which, under the law, was punished by a police punishment. The offence was considered a criminal act involving corrective punishment. And, finally, the crime was admitted a criminal offence for which a painful or shameful punishment was applied (Gushchina & Epifanova 2003).

The Article 10 of the Swiss Criminal Code fixed a binomial construction of criminal acts. The distinction is made on the severity of the punishment threatened for committing an act. The crime is considered to be a criminal act punishable by imprisonment for a term exceeding three years, and an offence is a criminal act punishable by a deprivation of liberty for a term of up to three years or a monetary penalty (Serebrennikova 2002).

The criminal law of the Federal Republic of Germany is of interest. The threefold construction of criminal acts was reflected in the German Criminal Code of 1871, which divided all criminal acts depending on their severity into three groups: crime (Verbrechen), offence (Vergehen) and violation (Übertretung). The threefold construction of a criminal act determined a form of punishment for the commitment of specific criminal acts: crimes are punishable by death penalty or convict prison, offence – by prison, and violations are usually punished with a short-term arrest or a fine. In the process of reform of criminal law, carried out in Germany in 1974-1975, the threefold construction of the criminal act was replaced with twofold: the crime (Verbrechen) and offence (Vergehen), which is present in the criminal law of Germany so far (Serebrennikov 2012).

The legislation of the UK, Germany, Switzerland and Austria formalizes the twofold classification of criminal acts: the crime and offense.

The Chapter II (Explanation of terms) of the General Part of the Criminal Code of Germany contains an independent provision in which the legislator not only gives a definition of the crime and offense, but also highlights the two types, classifies the delicts. Paragraph 12, Crimes and offences.

1. Crimes are illegal acts, the minimum punishment for committing of which is a punishment in the form of deprivation of liberty for a term of one year or more.
2. Offences are illegal acts, the minimum punishment for committing of which is an imprisonment for a shorter term or a fine.
3. Aggravating or mitigating circumstances provided in the regulations of the General Part or for especially serious or less serious cases, are not taken into account at the division of acts (Shestakov 2003).

The analysis of legal rules of Paragraph 12 of the General Part of the Criminal Code of Germany shows that the addition of a specific act to a crime or offence is bases not on the kind and amount of punishment, but on a sanction clearly stated in the criminal law.

The Criminal Code of Austria accepted twofold categorization of criminal acts: crime and offense (Kleifel 1975). Up to 1975, the criminal law of Austria, as noted above, had a threefold attribute of an act: crime (Verbrechen), offence (Vergehen) and violation (Übertreten). It was based on one criterion – the amount of a punishment. On the basis of § 17 of the Austrian Criminal Code, the crimes are deliberate criminal acts which are punishable by life imprisonment or imprisonment for a term exceeding three years. All other criminal acts, including committed by negligence, are offences. The offences include a great part of criminal acts under the Criminal Code of Austria.

The Belgian Criminal Code also does not contain a concept of crime. According to Article 1 of the Criminal Code of Belgium: "The delict which is punishable by criminal penalties by law constitutes a crime. The delict punishable by correctional penalty by law constitutes an offence. The delict, punishable by police punishment by law, is a police violation" (Martsnev 2004).

Structurally, the Norwegian Criminal Code consists of three parts, subdivided into forty-three chapters, combining 436 paragraphs. Part 1 contains General provisions. Part 2 is entitled "Crime" and is a Special Part of the Criminal Code. Part 3 is called „Minor crimes" and is, in fact, a list of criminal offenses. The fact that there is a set of war crimes, called the "Military Criminal Code" is of interest.

According to paragraph 2 of the General Civil Criminal Code: "Criminal offenses considered in the second part of this Law are crimes. Unless otherwise

stated, the same applies to criminal offences considered in other laws, if they may lead to imprisonment for a term exceeding 3 months, detention for a period exceeding 6 months, or dismissal from official service as the main sentence.

Criminal acts considered in the third part of this Law, are minor crimes, as well as considered in other laws, if they are not considered crimes in accordance with the above" (Golik 2003).

Paragraph 2 of the Military Criminal Code stipulates that: "Military crimes and delicts include only criminal acts covered by this Law.

Crimes are acts that could result in a prison sentence for more than three months, detention for more than 1 year, or dismissal from official service as the main form of punishment, the other acts are considered minor crimes" (Golik 2003). It follows that according to the criminal law of Norway, socially dangerous acts are divided into crimes and criminal offenses.

The Turkish criminal law does not have a concept of crime: "According to the legislative gradation, all delicts are divided into crimes and offences. The crimes are provided in the Second, and offense – in the Third book of the Code. According to the criminal law of many countries, most of offences relate to administrative delicts, however, the Turkish criminal law doctrine is based on the assumption that crimes are classified according to the type of punishment provided by law. In such circumstances, it can be mentioned that offences in the Code are classified into three groups: the first includes heavy imprisonment and heavy monetary penalty, the second – imprisonment and financial penalty and the third – light detention and light monetary penalty" (Safarov & Babayev 2003).

As a result of comparative legal studies of criminal delicts in foreign countries, the following conclusions were made: firstly, in many foreign countries exists a division of criminal delicts into crimes and criminal offences; secondly, some countries have a legislative definition of crimes and criminal offences, while others do not; thirdly, the division of criminal delicts into crimes and criminal offences occurs in the degree of public danger; fourthly, for commitment of crimes in foreign countries a punishment in the form of longer terms of imprisonment shall apply to the guilty, and for committing of criminal offence, shall be applied a light confinement and light fines; fifthly, in some foreign countries crimes and criminal offences are recognized in one legal act, where criminal offences are stated in a separate Chapter, and in other countries, criminal offences are set out in separate legal acts; sixthly, criminals of foreign countries contain a category under the name of "criminal offence", other – under the name of "offence", and third – under the name of "minor crimes", while their legal content remains approximately the same.

The Concept and Attributes of the Criminal Delict in the Criminal Law of the Republic of Kazakhstan

Since gaining the independence, the Republic of Kazakhstan was actively conducting a legislative work on amendments and additions to the Criminal Code of the Kazakh SSR dated 1959. In connection with the change of socio-political situation in Kazakhstan, this code decriminalized a number of crimes.

In 1997, the Criminal Code of the Republic of Kazakhstan was adopted. The principle of humanity found its legislative implementation in many articles, some crimes were transferred to the category of administrative delicts; there were introduced new types of softer penalties that allowed courts to apply them; the institution of reconciliation of a guilty with a victim, with the subsequent appearance of the mediation was actively implemented, thus reducing the number of persons sentenced to deprivation of liberty, bringing Kazakhstan's criminal legislation to international standards.

However, with the purpose of providing criminal legal regulation, protection and enforcement of new legal relations in Kazakhstan under the threat of application of criminal penalties, there were established new types of crimes, which were not previously occurred, for example, computer crimes, etc.

Thus, the legal provisions created all conditions for safe and comfortable activity of Kazakhstan citizens, foreigners and persons without citizenship in the country, protecting them from possible criminal encroachments, there also was formed a basis for further improvement of Kazakhstan criminal legislation.

On July 3, 2014, a new Criminal Code of the Republic of Kazakhstan was adopted taking into account the international experience, introducing a two-tier system of penal acts consisting of crimes and criminal offenses, united by a common concept of criminal delict.

The Article 10 of the Criminal Code of the Republic of Kazakhstan dated 2014 includes the following:

1. Criminal delicts, depending on the degree of social danger and the punishability are divided into crimes and criminal offenses.
2. The crime is a socially dangerous guilty act (action or inaction) prohibited by this Code under the threat of punishment in form of fine, corrective works, restriction of freedom, imprisonment or the death penalty.
3. Criminal offence is a guilty act (action or inaction), not representing great public danger, causing minor harm or creating the risk of harm for individual, organization, society or the state, the commitment of which is punishable by fines, community service, involvement in public works, arrest.
4. An action or inaction, although formally containing signs of any act provided in the Special Part of this Code, but by virtue of insignificance,

not representing public danger, does not constitute a criminal delict" (The Criminal Code of the Republic of Kazakhstan dated July 3, 2014, 2016).

The new Criminal Code of the Republic of Kazakhstan dated 2014 provides in total 171 criminal offenses, including 58 being former violations of administrative nature, nine new violations, 104 existing offences of minor gravity. 20 of these 104 crimes provide "deprivation of liberty" as punishment.

The following offences were transferred to the category of criminal delicts: bodily blows, bodily injury, infecting with a venereal disease, petty theft of another's property, desecration of monuments of history and culture and natural object, deterioration of facilities, etc.

The criminal offences also include some new delicts that were not previously contemplated neither by the Code of Administrative Delicts nor by the Criminal Code. For example, this includes an act of unauthorized use of subsoil, violation of the rules of protection of fish stocks, etc.

Borchashvili, & Daulbayev mentioned that the idea of introducing a criminal offence among a number of criminal acts includes the gradual integration of norms of administrative-tort law (Special Part of the Code of Administrative Delicts of the Republic of Kazakhstan) to the criminal law as a so-called lower category of criminal offences, not representing a great social danger. This idea is primarily due to the harmonization of domestic criminal law, focused on the departure from the Soviet model and gradual bringing it in line with the classical model of criminal law and continental (Romano-Germanic) legal system. This is a logical and timely step of the legislator, in line with the general trends of the reforms in the domestic law which creates a great potential for building an effective criminal policy aimed at progressive standards of the continental legal system (Borchashvili 2015).

It should be mentioned that despite the absence of concepts of criminal offence in the Soviet criminal law, scientists in scientific and educational literature already cited arguments in favor of the selection of criminal offences in the criminal and criminal procedural law.

The most complete characterization of the socially dangerous acts falling under the category of criminal offences was prepared by N.F. Kuznetsova, who stated: "These acts, although overall crimes bear half-criminal character. The word "criminal" means that we are talking about a criminal act, and the word "offence" means that those acts are closed to antisocial offense – immoral, disciplinary, administrative and civil" (Kuznetsova 1969).

The analysis of legal definitions of crime and criminal offence in the Criminal Code of the Republic of Kazakhstan allows to establish the following mandatory attributes of criminal delict: the degree of public danger: for a crime – social danger, for a criminal offense – causing of minor harm or a threat of such harm; guilt; wrongfulness; punishability.

For a complete and deep theoretical research of attributes of the crime, the author studied the opinions of famous scientists in the field of criminal law.

A well-known Kazakhstan scientist, professor E.A. Ongarbaev says that public danger is a sign of crime, revealing its social identity. Dangerous to the public is an act that causes or creates the possibility of causing harm to social relations protected by criminal law. Public danger is inherent not only to crimes but also to other delicts (Ongarbaev 1996).

The category of public danger is supported by many scientists in the field of criminal law. In Soviet times, N.F. Kuznetsova noted that "the social danger of an act is that it causes or poses a threat of causing certain harm to socialist social relations" (Kuznetsova 1969).

According to professor Lyapunov Y.I.: "Criminal law public danger is a definite objective anti-social crime, determined by the totality of its negative properties and attributes and embodying a real possibility of harm (damage) to socialist social relations, placed under the protection of the law" (Lyapunov 1989).

We believe that this definition is the most acute at the present time, because under the existing criminal law there is a category of criminal offence, which is also characterized by the public danger, but with some peculiarities. According to the Part 3 of Article 10 of the Criminal Code of the RK, a sign of public danger of the criminal offence is manifested to a small extent.

A sign of criminal offence is the causing of minor harm or a threat thereof. This sign indicates insignificance of socially dangerous consequences coming as a result of the criminal offense.

The following attribute of a criminal delict is a criminal wrongfulness.

Professor Ongarbaev E.A. believes that criminal wrongfulness lies in the prohibition of a crime by the criminal law under a threat of punishment. No matter how socially dangerous the act is, it cannot be considered a crime, if there is no liability under a criminal law. At the same time, not all socially dangerous acts are recognized as criminal, as they must have a certain degree of public danger (Ongarbaev 1996).

In a theory of criminal law, public danger is considered a material characteristic public attribute of any crime and wrongfulness – as a legal expression of this attribute.

So, A.A. Piontkovsky mentions that "the social danger is a material attribute of the social property of any crime. Wrongfulness is a legal expression of this property. Therefore, the relationship between wrongfulness and social danger can be expressed as a ratio between the legal form of an act and its material socio-political content" (Piontkovskii 1961).

V.S. Prokhorov, pointing to their relationship, says that "wrongfulness is derived from public danger, since the legislator establishes the prohibition to perform a certain action because of its public danger" (Prokhorov 1984).

N.F. Kuznetsova mentions that criminal wrongfulness is a legal expression in the criminal law of social danger and guilt of acts. It is derived from them as evaluative-normative element of a crime, in contrast to the objectively-social attributes – social danger and guilt (Criminal Law. The Common Part, 1993)

The author, while agreeing with the opinion of the above scholars, makes an independent conclusion that the attributes of the degree of public danger of a criminal delict and wrongfulness exist in the concept of crime inseparably, being the main and interrelated. The absence of public danger either causing a minor harm or a threat thereof means a lack of wrongfulness, that is, the wrongfulness is a legal expression of a social danger, infliction of minor harm or a threat thereof in the criminal law.

The next attribute of the criminal delict is guilt. The theory of the Kazakhstan criminal law and legal practice committed to the subjective imputation and exclude objective imputation – liability without fault. The Criminal Code of the Republic of Kazakhstan recognizes as crimes only the criminal acts.

According to Part 2 of Article 19 of the Criminal Code of the Republic of Kazakhstan, objective imputation, i.e. criminal responsibility for innocent infliction of harm, is not allowed. In accordance with Part 3 of Article 19 of the Criminal Code of the Republic of Kazakhstan, guilty of a criminal delict could only be a person who committed the act intentionally or negligently. Since guilt is one of the essential attributes of illegality, the lack of guilt in action of a subject means the lack of wrongfulness.

The next attribute of the criminal delicts which referrers to a crime and criminal offense is a criminal punishability. The punishability is not just a consequence of crime and criminal offense. The punishability is an abstract and broad concept, which characterizes the rule of law, having criminal-legal sanction. The consequence of committing a criminal delict is punishment as a specific measure of state compulsion applied to a particular crime or criminal offense. Each branch of law has its sanctions. The criminal law provides various criminal penalties for violation of the criminal law through the application of criminal punishment. The establishment of a criminal punishment for a criminal delict warrants the protection of important public relations, interests. Criminal punishment following the commitment of a criminal for a criminal delict and a certainty of punishment when there are reasons for it is the main condition of its preventive effects.

The formula "a crime leads to punishable" is the rule guaranteeing the inevitability of responsibility. The prohibition of a conduct that is not expressly accompanied by a criminal sanction means that for one reason or another it is not

recognized wrongful by the state in a legal sense. A provision which has no sanctions under a threat of punishment is not a criminal-law prohibition (Vetrov 2002)

The threat of punishment is provided in sanctions of articles of the Special Part of the Criminal Code of the Republic of Kazakhstan. The General Part of the Criminal Code of the Republic of Kazakhstan establishes general attributes, system and types of punishments.

The Criminal Code of the Republic of Kazakhstan of 2014 undergone significant changes in terms of punishability as an attribute of a criminal delict. Separate kinds of punishments applied to the person committed a crime were established (Borchashvili 2015). There are five types of basic punishments for crimes: fine, corrective works, restriction of freedom, imprisonment and the death penalty. There are three exceptional forms of punishment from the list, assigned only for the crimes – restriction of freedom, imprisonment and the death penalty.

Punishability as an attribute of criminal offence also provides a limited list of penalties imposed for the commitment of a criminal offense. There are four types of basic punishment for an offence: fine, corrective works, community service and arrest. Community service and arrest shall be appointed only for the commitment of an offense. Fine or corrective works shall be appointed for both, offences and crimes.

It should be mentioned that any criminal act may have some attributes of only one of the two types of criminal delicts, that is, it may be regarded either as crime or as a criminal offense. Every criminal delict has clear distinctive features.

Based on the analysis of crime and criminal offense, – says I.Sh. Borchashvili, in the issues of qualification of criminal delicts in practice, the main role is played by the attribute of "punishability". The belonging of acts to offences or criminal offenses will be set based on the types of punishments stipulated in the sanctions of articles of the Special Part of the Criminal Code. Thus, the punishability becomes the differentiating, defining attribute of a crime and criminal offence" (Borchashvili 2015).

RESULTS

The result of the theoretical research of the concept and attributes of the criminal delicts under the criminal law of the Republic of Kazakhstan was the formation of the authors' own conclusions. Firstly, based on the study of the legislative and theoretical definitions there was prepared the following independent scientific definition. The criminal delict is a guilty socially dangerous act (action or inaction) harming or having the real possibility of harm to the public or an act not representing a great public danger, causing minor harm or creating the risk of harm to the individual, organization, society, or the state, prohibited by the Criminal Code under a threat of

punishment. Secondly, following the fact that both, crime and criminal offence are the types of criminal delict, the author identifies the following essential attributes of a criminal delict: the degree of public danger: for the crime – public danger; for the criminal offence – causing minor harm or the threat of such harm; guilt; wrongfulness; punishability. Thirdly, the criterion of differentiation of crimes from criminal offences is an attribute of a criminal delict – punishability, since all articles of the Special Part of the Criminal Code of the Republic of Kazakhstan, dated July 3, 2014 are grouped in chapters on the generic object, the name of which indicates the phrase criminal delicts, and enforcers, based on the punishments specified in the sanction of the article, will determine which article uses the legal category of crime or criminal offense. Fourthly, the concept of a criminal delict with its essential attributes is, so to speak, the basis of the construction, the initial starting point of criminal law and the superstructure are the circumstances that help the society to eliminate crime through the application and enforcement of criminal penalties specified in a sentence issued by a court, taking into account mitigating or aggravating circumstances.

DISCUSSION

The results of this study were discussed at a meeting of The Faculty of Criminal Law and Criminology of the Eurasian National University named after L.N. Gumilev, conducted with the participation of PhD students (minutes No. 7 dated February 14, 2017). Besides, the results of the study were discussed at the international scientific-practical conference (the International Scientific-Practical Conference "Modern Pedagogics and Education: Challenges, Opportunities and Prospects", May 13-14, 2016, Taraz) in the section of research of problems of criminal law.

CONCLUSION

In conclusion it should be mentioned that based on the study of the criminal legislation of Kazakhstan and foreign countries, the study of theoretical problems of criminal law and the opinions of prominent scholars in the field of criminal law reflected in scientific and educational literature, the authors have developed their own vision on some issues of criminal law which is reflected in this research.

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