

# АКТУАЛЬНЫЕ ВОПРОСЫ УГОЛОВНОГО ПРАВА

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## THE PROBLEM OF DIFFERENTIATION OF CRIMES AND OTHER OFFENSES

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*Abstract.* The legislative definition of the concept of a crime and its features is of great theoretical and practical importance, it is a necessary condition for the rule of law and the observance of human rights and freedoms. The signs of individual offenses specified in the Criminal Code of Mongolia coincide with the signs of other offenses, while the degree of public danger and harmfulness of illegal actions is not always detailed in legislative acts. All this creates the problem of the objectivity of classifying an unlawful act as a crime, bringing such a person to criminal liability. The article cites specific crimes and administrative offenses, where the official wording of the compositions practically coincides, which causes significant difficulties in the practice of their application and creates conditions under which the human rights and freedoms guaranteed by the Constitution of Mongolia are significantly violated. A significant shortcoming of the criminal and administrative laws of Mongolia is the lack of a distinction between a crime and a misdemeanor according to a material criterion. The revealed facts testify to the relevance of the theoretical development of the issues of delimitation of crimes and other offenses. Recommendations are given for improving the current legislation.

*Keywords:* Constitution, human rights, criminal law of Mongolia, administrative law, elements of the offense, wrongfulness, public danger, harm, responsibility, crime, misconduct.

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Article 19, 1 of the Constitution stipulates that the State shall be responsible to its citizens for the creation of economic, social, legal and other guarantees to ensure human rights and freedoms, to fight against violations of human rights and freedoms, and to restore the enjoyment of violated rights<sup>1</sup>.

A legal violation is a violation of legal norms, a violation of law, law, or ethics that creates harm or harm to the society, and is punishable by legal or moral responsibility.

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<sup>1</sup> The Constitution of Mongolia // The Constitutional court of Mongolia: сайт. URL: [https://conscourt.gov.mn/?page\\_id=842&lang=en](https://conscourt.gov.mn/?page_id=842&lang=en) (дата обращения: 01.12.2022). Текст: электронный.

Academician S. Narangerel defined it as an act of guilt and violation of law committed by a person who is able to take responsibility for his own violation [1]. The main characteristics of legal violations are:

- Violation of law — act that violates the law or is prohibited by legal norms;
- Manifested by human will — the act of a person with legal capacity and responsibility;
- Determined to be guilty. A legal violation is a direct violation of legal norms or a violation of a procedure prohibited by law, which creates certain legal consequences.

According to the laws or legal regulations in effect in Mongolia, the responsibility for violations is carried out by the police, customs, tax, professional control, the Bank of Mongolia, the Financial Regulatory Commission, and social insurance. It is regulated by industry laws such as the Law on Competition, the Law on Customs and the General Law on Taxation.

This creates a duplication of legal norms, pressures, and violations, and thus restricts human rights by the rules and regulations of the sector, which creates conditions for different and unbalanced enforcement of violations and punishments.

The Law on Torts was approved in order to protect values and legal interests such as human rights, freedoms, and private property as defined by the Constitution of Mongolia, to assign different responsibilities for any acts or omissions that violate the law, and to improve the legal accountability system.

In addition, due to the fact that the conflict investigation and resolution process is not legalized by a unified legal standard, the above-mentioned organizations tend to establish and implement different standards of conflict investigation and resolution under the specific name of their sector.

As a result, the official of the above-mentioned authority /state inspector/ in the process of investigating the violation leads to a situation where human rights, freedom, and property may be violated, and human rights may be restricted outside of the law.

Not regulating the difference between the two concepts of crime and violation by defining the nature of certain crimes in the Criminal Law in the same way as the nature of similar offenses and the extent of harm, and by legislating in detail:

- Creating procedural legal uncertainty in the investigation and resolution of violations
- The law of tort has created a situation where it is not clear which branch of law belongs to it. For example,

Criminal Law 2017	Law of Torts 2017
Article 24.3 of the Criminal Code. Illegal circulation of toxic and dangerous substances	Article 5.11 of the Code of Torts. Violation of the Law on Chemical Poisons and Dangerous Substances
1. If toxic and dangerous chemicals were illegally used, imported, produced, stored, sold, received, transported, transferred to others, or misused	1. Chemical toxic and dangerous substances: 1.1. to export; 1.2. to import; 1.3. transport across the border; 1.4. to produce; 1.5. to transport; 1.6. to save; 1.7. to sell;

	1.8. to consume; 1.9. to destroy if basic requirements, procedures, safety rules and technological procedures are violated
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The elements of certain types of crimes and violations are codified in the criminal law and the law on violations in the same way in terms of content and wording. For example, since Article 24.3 is a formal crime, it is not clear in which case it should be resolved as a violation and in which case it should be classified as a crime<sup>1</sup>.

The Law on Violations and the Law on Investigation and Resolution of Violations are currently intermediate in both the criminal law and administrative law fields, so it is necessary to legislate clearly and unambiguously the violation and its investigation and resolution.

Legal violations are classified as crimes, administrative violations, civil violations, disciplinary violations, and international violations. Therefore, administrative violations are caused by violations of administrative procedures.

Rules of conduct and legal norms established to be followed in general are called administrative procedures. The real basis for imposing administrative responsibility is the commission of an administrative violation.

Therefore, it is appropriate to consider the question of what kind of legal violation is included in the administrative violation, its composition, main characteristics, and jurisdiction.

There is a tendency to consider the Law on Misdemeanors as a component of the Criminal Law, because it is believed that the basic principle of criminal law is that punishment is certain if a crime is committed.

However, in terms of content, most of the provisions of the Law on Violations are administrative regulations. Therefore, there is a need to legislate without a doubt, as it is an interim measure. The Law on Torts and the Criminal Code do not clearly regulate the difference between a violation and a criminal offense, and the difference between a crime and a violation is defined by the general phrase "...if not punishable by a criminal offense..."<sup>2</sup>.

However, the legal provisions do not clearly distinguish between crimes and misdemeanors. For example,

Criminal Law	Law of Torts
Article 18.5 of the Criminal Code. Illegal introduction of goods across the state border	Article 9.7 of the Code of Torts. Violation of the law on protection of cultural heritage
1. If prohibited or restricted goods are illegally introduced through the border or customs border of Mongolia...	1.4. If the introduction of historical and cultural monuments across the state border does not result in criminal liability...

<sup>1</sup> Criminal Code of Mongolia // Unified system of identity information. URL: <https://old.legalinfo.mn/law/details/16701> (data transfer: 01.12.2022). Text: electronic.

<sup>2</sup> Criminal Code of Mongolia // Unified system of identity information. URL: <https://legalinfo.mn/mn/detail/12695> (data transfer: 01.12.2022). Text: electronic.

As for the crime, the illegal importation of the mentioned historical and cultural monuments will complete the crime, and without satisfying this characteristic, this type of violation cannot be committed.

From this, it can be seen that the Criminal Law and the Tort Laws are not only theoretically, but also the application of these laws are not properly coordinated, which creates a legal conflict in the Tort Law at the level of practical application.

The problem of legal practice has always faced legal scholars, and each historical period has demanded its own decision. Legal action is more likely because life is richer than law.

Legal conflicts are of the following types. It includes:

Theoretically, Temporal collision cannot occur. In other words, in case of conflicts between the same norms in terms of legal capacity, the later norms will be applied, and in the case of applying the Law of Torts, there may be a possibility of misappropriation of the guilty party.

It is necessary to study the terms of criminal offense, violation, and administrative violation at the theoretical level, draw a fine line and regulate them, and in addition, the punishment imposed for any violation cannot depend on the subjective opinion and attitude of the law enforcer.

Define the concept of violation from the theoretical point of view, which type of violation is a legal violation. Punishment for any violation does not depend on the subjective attitude of the enforcer of the law, it is desirable to define the characteristics and components of the violation, create conditions for its implementation in a uniform manner, make the law easy to use, and distinguish it from other similar laws.

According to the current legal regulation of Mongolia, responsibility for violations is carried out by the police, customs, tax, professional control, the Bank of Mongolia, the Financial Regulatory Commission, and social insurance. It is regulated by industry laws such as the Law on Competition, the Law on Customs and the General Law on Taxation.

This creates a duplication of legal norms, pressures, and violations, and thus restricts human rights by the rules and regulations of the sector, which creates conditions for different and unbalanced enforcement of violations and punishments.

In addition, due to the fact that the conflict investigation and resolution process is not legalized by a unified legal standard, the above-mentioned organizations tend to establish and implement different standards of conflict investigation and resolution under the specific name of their sector.

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### **ПРОБЛЕМА РАЗГРАНИЧЕНИЯ ПРЕСТУПЛЕНИЙ И ИНЫХ ПРАВОНАРУШЕНИЙ**

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*Аннотация.* Законодательное определение понятия преступления и его признаков имеет большое теоретическое и практическое значение, является необходимым условием режима законности и соблюдения прав и свобод человека. Признаки отдельных составов преступлений, указанных в УК Монголии, совпадают с признаками иных правонарушений, при этом степень общественной опасности и вредности противоправных действий не всегда детализируются в законодательных актах. Все это создает проблему объективности отнесения противоправного деяния к преступлениям, привлечение такого лица к уголовной ответственности.

В статье приводятся конкретные преступления и административные правонарушения, где официальная формулировка составов практически совпадают, что и вызывает значительные затруднения в практике их применения и создают условия, при которых существенно нарушаются гарантированные Конституцией Монголии права и свободы человека.

Существенным недостатком уголовного и административного законов Монголии является отсутствие разграничения преступления и проступка по материальному критерию. Выявленные факты свидетельствуют об актуальности теоретической разработки вопросов разграничения преступлений и иных правонарушений. Даются рекомендации по совершенствованию действующего законодательства.

*Ключевые слова:* Конституция, права человека, уголовное право Монголии, административный закон, состав правонарушения, противоправность, общественная опасность, вред, ответственность, преступление, проступок.

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