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**TÍTULO:** Concepto de relaciones jurídicas y delitos.

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**RESUMEN:** La principal disputa en la literatura jurídica sobre las relaciones jurídicas radica en dos aspectos: las relaciones jurídicas y si éstas son como relaciones públicas en sí mismas o si esta forma jurídica está regulada por las normas de la ley de relaciones públicas. El surgimiento y la mejora de nuevas relaciones sociales y legales en Rusia continúa, y el sistema de relaciones públicas incluye cada vez más componentes virtuales que han aparecido en respuesta a los desafíos del progreso científico y tecnológico. En la literatura legal moderna hay definiciones, a menudo no coincidentes, de un delito. Un delito no es solo el comportamiento antisocial, sino también el comportamiento antisocial más dañino prohibido por la ley. El autor ofrece definiciones de los conceptos de "relación jurídica" y "delito".

**PALABRAS CLAVES:** relación jurídica, delito, relaciones públicas, responsabilidad legal, sociedad.

**TITLE:** Concept of legal relations and offenses.

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**ABSTRACT:** The main dispute in the legal literature on legal relations lies in two aspects: legal relations and whether these are as public relations in themselves or if this legal form is regulated by the norms of the public relations law. The emergence and improvement of new social and legal relations in Russia continues, and the public relations system includes more and more virtual components that have appeared in response to the challenges of scientific and technological progress. In modern legal literature there are definitions, often not coincidental, of a crime. A crime is not only antisocial behavior, but also the most harmful antisocial behavior prohibited by law. The author offers definitions of the concepts of "legal relationship" and "crime".

**KEY WORDS:** legal relationship, offense, public relations, legal responsibility, society.

**INTRODUCTION.**

The preparation of legal studies based on a modern theoretical level and having an intersectoral nature is an urgent issue in historical and modern legal reality [16, p. 7].

The problem of legal relations is one of the most fundamental and debatable in jurisprudence. Moreover, it does not remain without attention in scientific and educational literature even now [Serkov P.P. (2018)].

As a result of the consolidation of new social relations, the subjects of legal regulation of branches of law have changed. The consequence of this was the tendency to artificially specialize institutions and branches of law, which, apparently, gave rise to talk about the emergence of numerous “new” branches of law [17, p. 33].

It seems that the emergence and improvement of new social and legal relations in Russia continues, and the system of public relations includes more and more virtual components that have appeared in response to the challenges of scientific and technological progress.

Parliaments in many countries are considering bills to give robots legal personality. In the issue of the legal liability of robots, the concept of the responsibility of the “human agent” is discussed. From the point of view of morality and jurisprudence, the formation of a new doctrine (direction, concept) about robot law does not seem to be scientific, although today it is possible, including in our country. However, the recognition of the legal status of robots as quasisubjects of law causes problems of legal and moral justification for limiting liability for the operation of an artificial subject.

The legal literature contains various, often dissimilar, definitions of an offense. For example, offenses are identified with misconduct. Such a definition is very broad, including, for example, objective acts that are not considered an offense by modern science.

Legal relations and offenses, as the antipode of legal relations, are the most important concepts of jurisprudence and deserve an analysis of their relationship.

## **DEVELOPMENT.**

### **Research methodology.**

In the process of cognition of state-legal phenomena, based on the approach of S.A. Komarov, general scientific methods were used (formal-logical, sociological, systemic, structural-functional, concrete-historical, statistical, ascension from abstract to concrete, etc.); general logical methods of

theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modeling, etc.); private scientific methods (comparative law, technical and legal analysis, concretization, interpretation, etc.) [Komarov S.A. (2019), p. 33].

### **Study results.**

Legal relations must be considered on the basis of the concept of law, since legal relations, one way or another, are formed on the basis of the rule of law. Since the rule of law can be considered in the general social and legal aspects, it can be interpreted in the same way: as the norm of natural law and the rule of positive law. In Soviet legal literature, the concept of “objectless legal relations” was discussed, in particular, S.F. Kechekyan believed that there is an object of subjective law, but not legal relations [Kechekyan S.F. (1958), p. 147].

At present, other approaches to the object of legal relations have been identified, new objects of legal relations are highlighted in the conditions of Russian and foreign legal reality. So, the most controversial are such objects of legal relations as cryptocurrencies, computer programs, bitcoin-electronic monetary unit. All objects of public relations listed here are not recognized as an object of legal relations. At the same time, it is proposed to introduce “judicial robots”, robots in the banking system, in connection with which, reduce the staff of lawyers in Sberbank, etc. [17, p. 6].

Considering the issue of the nature of legal relations, it is necessary to reconsider the ratio of subjective rights and subjective legal obligations of participants (subjects) of legal relations. In normative legal acts, the correlation of rights and obligations is clearly not in favor of rights, hence the question of educating a person who “shakes rights”, forgetting about the need to comply with obligations.

Legal relationship is a legal phenomenon that has universal properties and requires universal analysis. This approach made it possible to identify general and specific, regulatory, protective and other legal relations in the system of legal relations.

It must be borne in mind that legal relations are very diverse, they arise, develop and terminate on the basis of the system of existing law. Relations not regulated by law do not give rise to legally significant consequences. Unfortunately, errors and contradictions in the legislation, the spread of anomie lead to the devaluation of legal values. So, the scale and degree of negative legal, political, social and economic consequences distinguish a legislative error from other mistakes made by law enforcement bodies [T.N. Moskalkova (2009), p.17].

The study of the philosophical aspects of norm-formation was often replaced by mythology: legal relations are reflected in legal consciousness. But the historical experience of the 20th century shook the confidence in the power of the state to establish the rule of law in accordance with the will of the legislator [16, p. 7].

In the domestic legal literature on the concept of legal relations, there are three main points of view, according to the most widespread - legal relations are public relations regulated by the law [Khalfina R.O. (1974), p. 7]. According to the second point of view, the legal relationship is not the social relation itself, but the legal form of this relationship, expressed in connection with the subjects of legal rights and obligations [Tolstoy Yu.K. (1959), p. 11]. According to the third, compromise point of view, legal relations are considered as "legal relations-model" and as "legal relations-relations" [Tkachenko Yu.G. (1980), p. 97].

The specificity of the legal relationship is that it is, in the figurative expression of V.M. Raw, "as it were an alloy of state and individual will" [Raw V.M. (2005), p. 308].

Legal relations - volitional public relations, the participants of which are endowed with subjective rights and legal duties. Public relations regulated by the rules of law are general legal relations, because the rule of law itself is a general rule of conduct. In the general legal relations, potential participants are identified who may become owners of the relevant legal rights and obligations.

In the literature, it was rightly noted: “The general theory of legal relations should begin with an analysis of state-legal relations, with the identification of the specifics of the operation of the norms of the Constitution. A feature of general legal relations is that they ... are of a general nature: they are lasting; mediate the most important and stable relationships; express the status of social entities ... In general legal relations, one should distinguish between two groups of rights and obligations: universal and absolute subjective rights and obligations, and the corresponding universal and absolute legal relations” [Komarov S.A. (2019), p. 364-365].

In the literature, there are points of view that common rights and obligations are subjective or, as existing outside the legal relationship, are elements of legal personality. So, R.O. Khalfina, considering the norms that determine the status of state bodies and public organizations and other subjects of legal relations, emphasizes that these legal norms are not directly implemented in the legal relationship, they create the prerequisites for the occurrence of a legal relationship [Halfina R.O. (1974), p. 30].

N.I. Matuzov considered general rights and obligations subjective in their legal nature: "from a theoretical point of view, all the rights of citizens, regardless of the way they arise, are subjective, and not any other." The author rightly noted that they were mistakenly identified with the rule of law or legal capacity. “The general (constitutional rights) belongs not only to everyone, but to everyone. Without personal rights, no one belongs to anyone” [Matuzov N.I. (1972), p. 147-151].

The specifics of general regulatory relations, noted N.I. Matuzov, “consists in the fact that, firstly, they arise on the basis of the norms of the Constitution and other normative acts of constitutional significance; secondly, they are general, and not strictly individualized, do not have predetermined subjects; thirdly, they are permanent, lasting, unlimited; fourthly, mediate the most important, significant and stable ties and relationships; fifthly, they express the general legal status (state, status) of the subjects, their basic, common rights and obligations for all, mutual connectedness and

mutual responsibility between a citizen and the state; sixth, arise, as constituting their rights and obligations, directly from the law, and not from legal facts; seventh, serve as the basis for the emergence and functioning of specific private-industry legal relations” [Matuzov N.I. (1972), p. 185-186].

Some authors, although they recognize common rights and obligations subjective, but do not connect the existence of these rights and obligations with legal relations [Grevtsov Yu.I. (1987), p. 77]. There are not only supporters, but also opponents of the theory of general legal relations [Alexandrov N.G. (1955), p. 89; Yavich L.S. (1976), p. 209]. Nevertheless, the problems of general legal relations deserve close attention and require additional justification, for example, consideration in the context of levels of legal regulation.

S.S. Alekseev believed that "the rule of law is a typical scale, which is aimed at such regulation, which achieves a commonality of regulation, a unified, continuously operating system of mediation of public relations that applies to all participants in relations of these types" [S. Alekseev (1966), p. 110].

Individual legal regulation translates normative regulations into the sphere of specific relations through legal facts recognized as grounds for the emergence, change and termination of specific legal relations [Protasov V.N. (1991)].

The rule of law and legal relations are inextricably linked. There are two points of view on this issue. According to the first, the legal relationship is the result of the impact of the norm on social relations according to the scheme: rule of law - actual relationship - legal relationship. According to the second, legal relationship is not a result, but a means of regulating social relations: the rule of law - legal relationship - public relation.

Legal relations is one of the main problems of legal science, from its interpretation, the solution of almost all legal issues depends, especially since legal relations in modern societies accompany a person throughout his life. Modern studies of the problems of imperative and dispositive methods of legal regulation define "strengthening dispositivity in the regulation of most types of legal relations" [13, p. 11].

Consider the relationship of the rule of law with the legal relationship on the example of legal relations of legal responsibility. The study of legal responsibility as a legal relationship allows you to better understand the essence of this social phenomenon.

In France, Germany, England and in some other countries, scientists interpret legal relations as a concept associated with a certain range of civil law relations, with the emergence of the concept of "legal relationship", it was considered only as a form of lawful behavior.

An indication that criminal law relations do not arise as a result of the impact of the rule of law on human behavior does not seem convincing. A crime is committed without the direct impact of criminal law on people's behavior, but the criminal law relationship arises as a result of the establishment by law of a certain competence of law enforcement agencies, the rights and obligations of offenders. From these positions, a criminal legal relationship is a relationship between entities that have subjective rights and legal obligations.

Creating the norms of criminal law, the state fixes the model of legal relations, while prohibitive norms have the goal of preventing the occurrence of criminal legal relations.

It is necessary to distinguish between legal prohibitions of a general nature and specific prohibitions that are peculiar only to any particular branch of law. Based on the requirements of general prohibitions, criminal law concretizes the guarantees established by the state to protect human life, health, honor and dignity, providing for criminal liability for murders, insults, slander, etc. Under pain of strict punishment, the criminal law requires all citizens to refrain from criminal



offenses, so the obligation not to commit a crime directly follows from the law. In this aspect, legal liability is a special legal relationship arising on the basis of an offense.

The relevant rights and obligations of citizens and the state form the content of the general relationship of legal responsibility. The legal fact as the basis for the emergence of a general legal relationship of responsibility is citizenship or residence in the country of foreign citizens and stateless persons. A specific relationship of legal liability arises only in connection with the commission of an offense.

According to S.S. Alekseev, in essence, legal responsibility and protection of law express the ongoing protective legal relationship, that is, legal relationship in its state when sanctions are actually applied within its framework [S. Alekseev (1981), p. 284].

Property liability N.Malein considers legal relationship, which outlines the rights and obligations of the victim and the offender [Malein N.S. (1970), p. 38]. Administrative responsibility is considered by I.A. Galagan as a legal relationship, which is a stage of a protective legal relationship [Galagan I.A. (1971), p. 12].

We can agree with the idea that a legal fact as the basis for the emergence of a general legal relationship of responsibility is citizenship or residence in the country (for foreign citizens and stateless persons).

A citizen behaves responsibly if he does not commit offenses. If he commits an offense, he behaves irresponsibly and violates the general attitude of responsibility. Legal liability for offenses is a protective relationship.

V.N. Kudryavtsev was right, saying that “the legal definition of an offense is tautological: it is a socially harmful action or inaction that violates the rule of law. However, behind this definition, a system of legal concepts and signs that characterize various aspects of the offense is developed in detail by lawyers” [V. Kudryavtsev (1985), p. 18].

Legal relations are associated with lawful behavior and are the main means of implementing the law. Lawful behavior is an important link and goal in the mechanism of legal regulation. Illegal behavior provokes a reaction of the state and the right to an act of irresponsible behavior, because this is required by social necessity and the nature of the state and law.

Offenses are a form of misconduct. The legal attitude to the behavior of one of the important requirements in the knowledge of law, while the behavior is associated with legal regulation.

Of course, if the behavior is lawful, that is, it meets the requirements of the law, then the law is realized: the subject of law respects, executes, uses, applies it.

An offense is one of the harmful social phenomena prohibited by law.

Crime under Art. 14 of the Criminal Code recognizes a guilty committed socially dangerous act prohibited by this Code under the threat of punishment [29]. Administrative offense under Art. 2.1

Administrative Code of the Russian Federation is defined as "Unlawful, guilty action (inaction) of an individual or legal entity for which administrative code is established by this Code or the laws of the constituent entities of the Russian Federation on administrative offenses" [30]. And according to Art. 106 of the Tax Code of the Russian Federation "A wrongful (in violation of the legislation on taxes and fees) act (action or inaction) of a taxpayer, tax agent and other persons for which this Code establishes liability is recognized as a tax violation" [31].

Without going into polemics on the concept of an offense, we believe that the offense is the arbitrariness of irresponsible individuals, expressed in the form of a guilty act of tortious entities that violate the rule of law and cause harm to the foundations of this society [18, p. 12-13]. Based on this definition, we highlight the following signs of an offense.

The first thing that should be highlighted in the offense is behavior that is illegal. The presence of an act in itself is not yet an offense, lawful acts and omissions cannot be an offense, acts become offenses when it contradicts the requirements of the rule of law, in other words, when it is unlawful.

We can say that unlawfulness is the prohibition of an act by law.

An offense is not only a violation of the law, but also an encroachment on the living conditions that gave rise to the law. An act is unlawful if it represents a failure to fulfill a legal obligation.

Wrongfulness creates a danger of harming public relations, prevents the achievement of regulatory objectives, violates the rule of law and the rule of law.

Yu.A. Denisov notes two interrelated, but not identical aspects of the act:

1) An objective violation of the rule of law, regardless of the fixation in the right of the act as unlawful.

2) Unlawfulness, as a result of awareness of public harmfulness to the state and the establishment of responsibility for it [Denisov Yu.A. (1983), p. 97]. With the conclusions of Yu.A. Denisov, it is difficult to completely agree with Denisov regarding the institution of the analogy of law and law.

The institution of the analogy of law and law is related to the problem under consideration. There is a confusion of concepts.

Only in the second half of the XIX century, a more coherent theory began to be developed. Conclusion by analogy (or simply analogy) is the resolution of a case not provided for by applicable law on the basis of a norm defining a similar case. If this norm is expressed in law, then there will be an analogy of the law; if it must be previously extracted from the general principles of the law in force, then an analogy of the law is obtained.

Both the analogy of the law and the analogy of law boil down to the following logical process: you need to analyze this case, find the norm in the law governing another case that is identical with the data in all legally relevant elements, or disclose the legal principle given in this norm and apply him for this occasion.

So, according to Part 1 of Art. 6 of the Civil Code of the Russian Federation, in cases where the relations stipulated by the relevant norms of the Civil Code are not directly regulated by law or by agreement of the parties and there is no business practice applicable to them, to such relations, if this does not contradict their substance, civil law governing similar relations is applied (analogy to the law). In accordance with part 2 of this article of the Civil Code of the Russian Federation, if it is impossible to use an analogy of the law of law, the obligations of the parties are determined on the basis of the general principles and the meaning of civil law and the requirements of good faith, reasonableness and justice (analogy of law) [32].

Within the meaning of Art. 8 Administrative Code analogy of the law is not used to establish the basis of administrative responsibility. No one may be subjected to any measure of influence in connection with an administrative violation other than on the basis and in the manner established by law [30].

In the field of criminal law and administrative offenses with a gap in the law, this issue cannot be posed at all. Here the rule “no crime and no misconduct, no punishment and no penalty if there is no law” applies.

According to Art. 5 of the Family Code of the Russian Federation - the application of family law and civil law to family relations by analogy: “In the event that relations between family members are not regulated by family law or by agreement of the parties, and in the absence of civil law rules directly regulating these relations, to such relations, if this does not contradict their essence, the norms of family (or) civil law governing similar relations (analogy of the law) apply. In the absence

of such rules of law, the responsibilities of family members are determined on the basis of general principles and principles of family or civil law, as well as principles of humanity, reasonableness and justice (analogy of law)” [33].

It was noted in the legal literature that: “a situation is not theoretically excluded when any relationship between family members will not be settled not only by the norms of family, but also civil law, and agreement between the parties on the merits of the dispute between them will not be reached. In such circumstances, it will be very difficult to resolve this conflict in favor of one of the family members, taking into account the observance of the rights of all interested parties” [Khachaturov R.L. (2009), p. 129-132]. Therefore, Art. 5 of the Family Code of the Russian Federation provides for the fundamental possibility of application in the regulation of relations between family members by analogy of certain norms of family and (or) civil law. Such an intersectoral analogy is called the “subsidiary” analogy.

Its essence is as follows: in the absence of the right in this industry of the necessary legal grounds for applying an analogy of law or law to a case that, by its content, can be attributed to relations regulated by this industry, it is possible to refer to the norms and principles of another branch of law or to general principles, general principles of law in general.

As for the objective violation of the rule of law, regardless of the fact that the right to act is an offense, we believe that when there is a gap in the law, when it can definitely be ascertained that a particular issue falls within the scope of legal regulation, but its solution is not provided for by law, then the need to develop and adopt an appropriate regulatory act. Most often, gaps in law arise as a result of the emergence and development of new social relations, which could not be foreseen by the legislator. At the same time, a complete denial of analogy will lead to the fact that the solution of certain legal cases will become impossible [Khachaturov R.L. (2009), p. 129-132].

In legal relations of legal responsibility, the analogy is completely excluded. The Penal Code must accurately and comprehensively determine all acts that are considered crimes. Crime is always illegal. As for other offenses, responsibility for them is provided not only by laws, but also by -laws. Law enforcement agencies should consider as an offense only such an act, which is provided for by criminal law.

It is possible and permissible to use an analogy in civil law (except for liability relations). Law gaps in procedural branches are not so frequent, but they still occur in court cases.

The exclusion of the analogy of the law and the analogy of the law when brought to legal responsibility will serve as a guarantee to suppress arbitrariness and subjectivity.

Legal liability is a consequence of an offense, therefore legal liability is not a sign of an offense, which clearly indicates that the offense was committed before being held accountable.

The current legislation of Russia provides for the following circumstances that exclude legal liability: necessary defense; insanity; failure to reach the age of legal liability; extreme need; causing harm during the detention of the person who committed the crime.

Although objectively wrongful behavior, like an offense, refers to unlawful behavior, such an act is not considered an offense. In the legal literature there are various points of view regarding the objectively wrongful act [Minnikes I.A. (1987), p. 9-12]. In our opinion, unlawful acts or omissions that are committed either innocently or by undetectable entities, or both circumstances are present simultaneously, are objectively wrongful acts.

The sign of wrongfulness of the offense contributes, as A.A. Gogin emphasized “the embodiment in all spheres of public and state life of other fundamental principles: justice, humanism, social freedom, equality before the law” [Gogin A.A. (2016), p. 111-112].

Each offense is not only unlawful, but also socially harmful. A different degree of social harmfulness of an act in each specific situation, for example, a crisis of political power, a civil war, ethnic conflicts, as well as a way out of conflicts, stabilization of the situation in the country, creates the need to make changes to the system of offenses and legal liability.

The legislator, when establishing crimes and misconduct, decides whether the offense is a misconduct or a crime. In the history of the Soviet state and law, all offenses committed in a socialist society were classified according to the degree of public danger of crimes and misconduct. The crime recognized such socially dangerous behavior, which was considered the most serious type of violation of the rule of law. He recognized only the crime that is provided for by criminal law.

Misconduct - all other offenses not recognized by law as crimes. Compared with crimes, these offenses are characterized by a lesser degree of public danger and harmfulness.

Signs of public danger were divided by the nature and degree of public danger. The nature of public danger is determined by the orientation of the act against the object of the offense, the amount of damage, the form of guilt and other distinctive features. The degree of public danger is a quantitative expression of public danger. The influence on the degree of public danger is exerted by all the elements of the offense, which are objective and subjective signs of the offense.

According to V.A. Khokhlova: "... no clear criteria that existed objectively have been found over all years of research on the border zone between crimes and misconduct. The terms "character", "public danger", "significance" used to qualify a criminal offense are, without any doubt, subjective in the sense that they represent only a reaction of political power to the relevance of the relevant violations. What yesterday was recognized only as misconduct, today can be declared a crime, just the same and vice versa" [Khokhlov V.A. (1997), p. 106].

The nature of the offense changes extremely slowly. The practical purpose of social harmfulness as an objective sign of an offense, according to A.A. Gogin, “is that the state with maximum objectivity perceive the ongoing negative processes. A consistent reaction to such facts should be reflected in legislative acts in a timely manner” [A. Gogin (2016), p. 118].

The complex issues of the topic of social harmfulness remain the problems of causing harm as a source of increased danger and the extreme need for law.

In the literature, the debate remains the question of compensation for harm caused in a state of emergency. In a state of emergency, the interests of two persons clash, moreover, the protection of one can only be done by causing harm to the other as compared to harm avoided by an act of emergency. I believe that a person acting in an emergency must be exempted from the obligation to redress.

In Russian criminal law, it is not a crime to harm interests protected by criminal law in a state of emergency, that is, to eliminate the danger that directly threatens the person and the rights of that person or other persons, the interests of society or the state protected by law, if this danger could not be eliminated by other means and at the same time it was not allowed to exceed the limits of emergency.

Extreme need is therefore called extreme because it represents a circumstance in which, in order to eliminate the danger that directly threatens one law-protected interest, it is necessary to harm other law-protected interests.

Exceeding the limits of extreme necessity entails criminal liability only in cases of intentional harm.

## **CONCLUSIONS.**

Summing up the study, we can conclude the following:

✚ Legal attitude and offense, as the antipode of legal relations, are the most important concepts of jurisprudence.



- ✚ Legal relationship is a legal phenomenon that has universal properties and requires universal analysis. This approach made it possible to identify general and specific, regulatory, protective and other legal relations in the system of legal relations.
- ✚ Legal relations - volitional public relations, the participants of which are endowed with subjective rights and legal duties. Public relations regulated by the rules of law are general legal relations, because the rule of law itself is a general rule of conduct. In the general legal relations, potential participants are identified who may become owners of the relevant legal rights and obligations.
- ✚ An offense is one of the conflicting and harmful social phenomena prohibited by law. An offense is not only a violation of the law, but also an encroachment on the living conditions that gave rise to the law. An act is unlawful if it represents a failure to fulfill a legal obligation.
- ✚ Wrongfulness creates harm to public relations, prevents the achievement of regulatory objectives, violates the rule of law and the rule of law.

### **Conflict of interest.**

The authors confirm the absence of a conflict of interest.

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