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ON THE ISSUES OF DETERMINATION ADMINISTRATIVE TORT

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Administrative tort has rationally explainable causes, conditions, and other forms of its occurrence and functioning, clarification of which would be contributed by determination. It is the category of determination can reveal conditioning, identify the causes, conditions and trends in the development of administrative tort.

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At clarifying the content of administrative tort the problem of determinism is of crucial importance. By the general rule, a concept, which involves strict causation of one event by other, associated with a possibility of unambiguous prediction, was being understood as determinism for a long time.

The current stage for development of knowledge determines the further evolution of the concept of determinism, which goes in the direction of its greater generalization. Detection of what is called statistical determination is not just the definition of a new specie or type of determination, but the establishment of a new method of its implementation. The kind of determination can be the same -causation, but causality can exist in the form as dynamic (single-valued), and statistical laws. Now the question is not only to enrich the knowledge about the different ways of determination (to which is added, in particular, the distinction between physical and informational methods of determination), but also about the identification of different types and kinds of determinism.

Philosophical Encyclopedic Dictionary defines determinism as the doctrine of objective, well-formed interrelation and interdependence of various phenomena of the material and the spiritual world, the central core of which (determinism) is

the provision on the existence of causality. Moreover current determinism assumes various forms of interrelation of phenomena, many of which are expressed in the form of interrelations without direct causal character, that is, do not explicitly contain a moment of generation one by another. This includes the spatial and temporal correlations, functional dependencies, symmetry relations, probabilistic connections, etc. [19, 148-149].

Despite the fact that even today the category of determinism is defined as a doctrine of causation, but new researches have shown, that the relations of determination are very diverse and cannot be reduced to one even universal type – causality. Any determination should not be associated only with causality. This view is getting increasing recognition and now seems adequate to the real situation in the world and also reflects, among other things, determination of administrative tort.

However, the issue of determination of administrative tort is related to certain methodological difficulties associated primarily with known uncertainty of the concept of “determination”. Lexical interpretations do not clarify the issue. In them we have encountered some similar concepts, “determinant” – qualifier [17, 192], “to determinate” – define, stipulate [17, 192], but they do not contain the definition of the concept of “determination”.

Resorting to legal literature shows that in some cases the determination is considered as logical connections between processes, phenomena and states [11, 87], in others – as various forms of dependence between phenomena [7, 103], but, at this, a detailed definition of the concept of “determination” is not given.

Within the framework of our study under determination we suggest to understand a complex and diverse process, the result of interaction of many different in power and form of expression, divergent, discordant factors.

The issues of determinism, determination are sufficiently well developed in philosophy. For a long time philosophers have been researching the causes, conditions of existence of various phenomena. In connection with this, has been accumulated rich methodological material on causality and of other types of impact of determination.

The relevance of this approach to the study of administrative tort is that determinism is generally a basic principle, the methodological basis of all cognitive and socially-transformational actions of people [5, 106, 2, 30], including legal practice. It provides an opportunity to see the impact of various factors of reality on administrative tort [7, 101]. Thus, upon further thought, exactly deterministic explanation leads to the detection of the full range of events, phenomena or processes that affect the phenomenon under study.

Determinism is a doctrine on the universal conditionality of objective phenomena. The basis of this view of the world is a universal interrelation of all phenomena. The initial categories of determinism are the concepts of interrelation and interaction. Interaction is manifested in mutual change of things. Here things are factors, through actions of which the attitude to determination is implemented. The existence of universal interrelation of all phenomena and processes is a presupposition of the principle of determinism. Thus, determinism is a general doctrine, which recognizes the existence of a universal interrelation and denies the existence of any phenomena and things outside of this universal interrelation [9, 8]. At present, in administrative law in the study of administrative offenses only the causes and conditions are subject to study when other interrelations are not taken into account. Either, the causes and conditions are equated by some authors [14, 238]. Consideration of determination allows take into account the largest number of interrelations, which influence committing administrative offenses.

We agree with E. E. Genzyuk, that should be abandoned the detection of causes and conditions of administrative tort as offered by most experts in the field of administrative law, and consider determination through factors [3, 96], this will allow to take into account the largest number of interrelations and dependencies that lead to the commission of administrative offenses.

One should agree with the view of K. K. Goryainov, who believes that “by factor should be understood a certain property of social processes and phenomena, their interdependent combinations, to be the engine, parameter in the formation and changes of the state of criminological situation” [4, 24].

Causality, as V. I. Lenin said, - “is just a small piece of the world interrelation, but ... piece of not subjective, but objectively real connection” [12, 114].

The concept of “factor” is extremely broad in scope and is used to refer to different types of determinants: causes, conditions and circumstances, moreover the factor denotes not only a phenomenon, process and state, but also context and situation.

Though causality is considered as an essential, major factor determining administrative tort, but is not the only measure of impact on it. Analysis of literature allows highlighting such types of determinations as conditional, functional, inspiring, system determination and correlation.

B. F. Kevbrin rightly points out that in the notion of determinism “is fixed the existence of determining factors (the unity of forces, interactions, etc.), by virtue of which the development process is ensured” [8, 123].

Continuing, B. F. Kevbrin points out, that “there are many kinds of social determination, which are the internal conditions of the development of social organism as a system. The main are the following: 1) intellectual determination (or determination by the level of development of science and education); 2) determination by the level of mechanization; 3) informational one; 4) spiritual (or determination by the level of development of culture, religion); 5) determination by mentality; 6) determination by the level of economic development; 7) political (ideological) one; 8) legal one; 9) determination by the state of environment; 10) organizational one (determination of public authorities); 11) personal one; 12) targeted one” [8, 177]. This list of types of determination is quite wide, but it can be significantly expanded and added, for example, by the determination of resource, time, meaning, institutions, corporations, morals, values, etc. Each of them in some way influences on administrative delinquency as a system phenomenon.

With the deepening of knowledge the task of researcher is to determine the extent and intensity of interaction, mutual influence of identified factors, set between them functional and causal nexus. As a result certain factors, which have a causal relation with the commission of offenses, are considered to be its causes, others act as conditions promoting to it.

Solution of the most complex tasks, related to the search for ways to effective combating administrative delinquency, is hampered by the fact that, first, there are a large number of factors; second, these factors, as well as connections between them, are constantly changing; third, objective factors usually act not directly, but mediating the minds and actions of people, their psychology. Finally, it must be recognized that many mechanisms of this action have not yet been studied, and apparently they are different for different types of offences.

As noted by M. I. Nikulin, the study on the factors of administrative tort allows to achieve two goals:

- a) to show that the emphasizing of the category of “factors” is justified theoretically and practically necessary;
- b) to draw attention to the diversity and interconnectedness of the problems in studying the causes and conditions that promote delinquency, and development of measures to prevent them [14, 259].

There are no unambiguous factors that have only a positive or negative orientation in public life. Each of them has tort and anti-tort aspects. The first is a kind of “background” of administrative delinquency, the second – is the adverse party. The more tort lesion of this or that social phenomenon, the greater the risk of becoming a breeding ground for administrative delinquency, one of its causes.

However, most of tort factors do not generate commission of offenses; they seem to create prerequisites that objectively facilitate its existence. They act along with the anti-tort factors, and the stronger the impact of the latter, the more they counter the commission of offenses.

As has already been noted, there are not only positive or negative effects in real life. Let's take, for example, such attributes of a modern society as democracy, freedom of discussion, information, rallies, meetings, etc. They can be considered as the principles of society and as real-life phenomena, which, of course, is far from univocal. As principles of social life their progressive and constructive role is quite obvious and requires no additional arguments. As for the implementation of these principles and real estimation them as social phenomena, here we face not only its positive but also negative aspects, which are often of criminal nature. There are facts where under the slogans of democracy, freedom provoke interethnic conflicts, create formation of an extremist orientation, form and act unconstitutional nationalist formations with a clearly aggressive goals, organize economic sabotage, etc.

The mechanism of factors' influence on committing of administrative offenses is complex and ambiguous. On this basis, we can speak on the impact of any of them only with a certain degree of conditionality, because positive or negative impact of this or that aspect of social life (phenomenon, process) depends on a particular combination of factors.

V. N. Kartashov does not give the notion of mechanism of determination, and notes that in relation to any legal phenomena the mechanism includes the following elements: first, the different types (subtypes) of factors (natural, social, domestic, etc.), which disclose the specifics, the diversity of determining circumstances; second, forms, i.e., ways of influencing on legal phenomena and processes of relevant factors of reality (causal, conditional, inspiring, correlation, structural, functional, regulatory, assuring); third, the levels and scale of determining impact; fourth, the power of determination, which discloses the size, degree of intensity of influence by certain circumstances (factors and methods, forms) on certain legal phenomenon; fifth, the stages of impact; sixth, carriers of determination; seventh, the result of (legal and other social) determining impact [7, 102, 6, 29-30]. At the same time, the mechanism involves the interaction in a specific sequence of not one but various elements and processes that involve the occurrence of any phenomena. In our case, determination assumes that only factors impact on administrative tort and therefore we can only speak of the presence of determination, but not about its mechanism. Presence of methods, types, kinds, stages of impact is only relevant to determining factors, and other processes, states are not observed.

Misconduct cannot be explained only by focusing on the circumstances directly preceding it. Here is always realized a complex set of subjective (personal) and objective (situational) interacting factors that are different in nature and usually associated with it.

Consequently, all of the factors of different types of administrative tort determination can be both objective and subjective as contradictory, interacting parties of any activity.

Objective factors – all the natural and social factors, which in respect to this actor act as independent of consciousness, determine its mind and activity, and to which its activity is aimed. In the category of objective conditions social phenomena from their essential position act as incarnation of historical necessity. The subjective factor of a historical process – it is that is opposed to the objective conditions, what preserves or changes them, what is objectified to objective conditions by follow-up activities. As pointed out by V. N. Kudryavtsev, “... a specific situation creates a volitional act not by itself, but only in interaction with the personality of a certain person, refracting through its interests, views, habits, psychological features, and other individual traits” [10, 15].

As we have already noted, most of studies do not explore factors, but causes and conditions that induce administrative tort. However, either causal or conditional determination is the variant of determination in general.

V. I. Remnev was one of the first who classified in administrative delictology the causes and prerequisites of offenses. According to his classification there are “common causes and prerequisites of offences (economic, political, ideological, legal, organizational, cultural, and educational); causes and prerequisites associated with a specific professional situation (lack of control, impunity of offenders, “pressure from above”, conniving violators by managers and so on); circumstances relating to the personality of an offender, firstly, of an official (such as deficiencies in qualifications, ignorance of law, false understanding of “case objectives”, commitment to implement a plan “at any cost”, etc.), and secondly, of a citizen who is not an official (low educational and cultural level, system of values, disregard for the law, etc.)” [16, 13].

For example, according to A. P. Stolbovoi the most typical reasons of administrative tort are: a) lack of legal awareness of citizens and officials about administrative law norms and, above all, ones that are set in the field of public administration; b) lack of administrative and legal education of workers; c) influence of negative anti-social environment; d) idleness; e) household and workplace disorganization, etc. [18, 8]. Of course, we cannot completely deny the possibility of the impact of

these phenomena and processes on administrative delinquency in general and on specific types of administrative offenses.

In turn I. K. Petrunina analyzing the results of such type of administrative offenses as violations of trade rules with vodka and other alcoholic beverages, indicate that the causes of these offenses are: “causes linked to the identity of an offender – desire for profit, flouting rules, carelessness, desire to fulfill the plan of trade at any cost and causes associated with a particular professional situation – lack of control, low level of awareness of administrative legislation, lack of effective application administrative responsibility measures” [15, 84]. And then the author writes that the “knowledge of the totality of common and specific causes of administrative violations in trade, which expresses the complex interrelation of objective and subjective factors and circumstances in violation of the rule of law, leads to the conclusion of the immediate causes of administrative misconducts in this sector, which are the current situation” [15, 84].

In the examples the authors mix causal and conditional determination of administrative delinquency.

The essence of *causal* determination is that it serves to indicate the necessary genetic connection of phenomena, one of which (called cause) leads to another (known as a consequence) [19, 329].

The ancient sages said that “true knowledge is the knowledge of causes”. Aristotle wrote: “... there is something, if there is its cause, and that something does not exist if there is no cause; because a cause and something what it causes co-exist, and nothing exists without cause ...” [1, 252-253].

The causes of administrative delinquency, we believe, lie in subjective plane, in the personality of an offender.

A phenomenon is conditional upon certain conditions, which are sometimes more serious impact than cause.

Condition is a category of philosophy, which denotes the attitude of a subject to surrounding reality, phenomena of objective reality, as well as to itself and its inner world. The subject acts as something conditioned, and the condition acts as a relatively external regarding the subject diversity of objective world.

The condition must be distinguished from the concept of cause, because unlike the cause, which directly generates this or that phenomenon or process, the condition creates an environment, in which the latter occur, exist and develop [20].

Conditions that may affect the committing of administrative offences are also varied: economic, political, social. For the most part exactly conditions are indicated by the above authors.

Accompanying, necessary and sufficient conditions are emphasized in the philosophical literature. These categories, in our view, are also of value in tort study. Thus, “under the accompanying conditions understand mainly circumstances of time and place, which have no direct influence on what is happening ... The most important are necessary conditions, without which the phenomenon could not occur. Totality of all the necessary conditions constitutes sufficient conditions. When there are sufficient conditions and a cause, the result comes with necessity” [10, 18].

E. E. Genzyuk notes that it is possible to talk about these kinds of factors affecting administrative tort: of socio-demographic nature (factors associated with urbanization, migration, changes in demographic structure of the population, etc.); of economic nature (factors associated with the problems of welfare, unemployment, economic and industrial infrastructure, etc.); of social and socio-psychological nature (factors associated with the weakening of traditional forms of social control over an individual due to urbanization, the role of family in upbringing children, women’s employment, educational level of population, the condition of mental and physical health of certain special groups); of organizational and legal nature (the factors conditioned by the state of normative-legal support at the level of constituent territory of the federation, local self-government bodies, by professional preparedness of representatives of the authority, civil servants, officials, etc.) [3, 98-99]. In addition to the designated groups of factors in recent times political factors should be considered relevant, besides, personality factors, personal attitude to the current system of legal rules, its directives, desires, needs and interests are of the most importance in the framework of administrative delinquency.

While supporting the idea of replacing the causes and conditions of committing administrative offenses by factors N. P. Myshlyayev offers to select two groups of factors administrative delinquency [13, 54-55]. To the first group he proposes to include administrative tort factors that do not depend on the activities of bodies of prevention, in particular of internal affairs bodies.

The most important of these are:

- objective contradiction between economic needs and opportunities of the modern Russian society – of individual social classes, groups, individuals;
- general decline in living standards, and in some groups of society below the level of physiological survival rates;
- certain determinations in the field of social psychology that are manifested in distorted needs, interests, goals, attitudes, moral values and legal consciousness of perpetrators of offenses;

- destruction of the traditional Russian patterns of behavior, generally accepted norms of morality and ethics expressed in increased alcoholism and drug abuse, family breakdown, legal nihilism, the prevalence of the ideology of greed, violence and cruelty, etc.

Other group of factors that contribute to the commission of administrative offenses is directly related to the activities of law-enforcement bodies and other bodies of prevention. In content these factors are divided into a) associated with insufficiency of normative-legal support of prevention activity of all bodies of prevention and b) organizational factors.

As seen, in the designated classification, the author does not divide factor into objective and subjective ones. Also, in our opinion, in respect to the activity of bodies of prevention administrative delinquency, it is insufficient to select only two factors. We also consider important the logistical, HR, financial and economic factors, which largely influence on the results of prevention activities of authorized entities and, accordingly, the level of administrative tort.

Emphasizing of imperfection in mechanisms to ensure implementation of administrative-legal norms as an independent factor, which significantly influences on administrative tort, is of great importance.

References:

1. Aristotle. *Poetics. Rhetoric* [Poetika. Ritorika]. Translation of V. Appel'rot, N. Platonova from ancient Greek, St. Petersburg: 2010.
2. Askin Ya. F. *Philosophical Determinism and Scientific Knowledge* [Filosofskii determinizm i nauchnoe poznanie]. Saratov: 1977.
3. Genzyuk E. E. *Administrative Science of Tort: thesis of a doctor of law* [Administrativnaya deliktologiya: dis. ... dokt. yurid. nauk.]. Moscow: 2001.
4. Goryainov K. K. *Criminological Situation (methodological aspects)* [Kriminologicheskaya obstanovka (metodologicheskie aspekty)]. Moscow: All-Union Scientific Research Institute of the Ministry of Internal Affairs of the USSR, 1991.
5. Demin M. V. *Nature of Activity* [Priroda deyatel'nosti]. Moscow: 1984.
6. Kartashov V. N. *Introduction to the General Theory of the Legal System of Society* [Vvedenie v obshchuyu teoriyu pravovoi sistemy obshchestva]. Yaroslavl: 1995-2004, parts 1-10
7. Kartashov V. N. *Legal Activity: Concept, Structure, Value* [Yuridicheskaya deyatel'nost': ponyatie, struktura, tsennost']. Saratov: 1989.
8. Kevbrin B. F. *Development. Determinism. Law* [Razvitie. Determinizm. Zakon]. Moscow: Moscow University of Consumer Cooperatives, 1998.

9. Kedrov B. M. Scientific Concept of Determinism [Nauchnaya kontsepsiya determinizma]. *Sovremennyyi determinizm. Zakony prirody – Modern Determinism. Laws of Nature*, Moscow: 1973.
10. Kudryavtsev V. N. *Reasons for Delinquency* [Prichiny pravonarushenii]. Moscow: 1976.
11. Kudryavtsev V. N. Causal Relationship in Legal Field [Prichinnaya svyaz' v pravovoi sfere]. *Metodologicheskie problemy sovetskoi yuridicheskoi nauki – Methodological Problems of Soviet Jurisprudence*, Moscow: 1980.
12. Lenin V. I. *Omnibus Edition* [Poln. sobr. soch.]. Vol. 29, p. 114.
13. Myshlyaev N. P. *Theoretical and Practical Aspects of Administrative Science of Tort*: thesis of a doctor of law [Teoreticheskie i prikladnye aspekty administrativnoi deliktologii: dis. ... dokt. yurid. nauk]. Moscow: 2004.
14. Nikulin M. I. *Problems of Administrative Science of Tort*: thesis of a doctor of law [Problemy nauki administrativnoi deliktologii: dis. ... dokt. yurid. nauk]. Moscow: 2005.
15. Petrunina I. K. On the Issue of Causes of Administrative Offences in Trade [K voprosu o prichinakh administrativnykh pravonarushenii v torgovle]. *Aktual'nye problemy administrativnoi deliktologii – Actual Problems of Administrative Science of Tort*, Kiev: 1984.
16. Remnev V. I. Topical Issues of Administrative Science of Tort in the Current Period [Aktual'nye voprosy administrativnoi deliktologii v sovremennyi period]. *Aktual'nye problemy administrativnoi deliktologii – Actual Problems of Administrative Science of Tort*, Kiev: 1984.
17. *Modern Dictionary of Foreign Words* [Sovremennyyi slovar' inostrannykh slov]. Moscow: 1993.
18. Stolbovoi A. P. *Administratively-preventive Measures of Militia as a Means of Fighting Offences in Developed Socialism*: thesis abstract of a candidate of legal science [Administrativno-predupreditel'nye mery militsii kak sredstvo bor'by s pravonarusheniyami v usloviyakh razvitogo sotsializma: Avtoref. dis... kand. yurid. nauk]. Kiev: 1984.
19. *Encyclopedic Dictionary of Philosophy* [Filosofskii entsiklopedicheskii slovar']. Moscow: 1983.
20. Available at: <http://ru.wikipedia.org/wiki/Uslovie> (accessed: 14.12.2012).