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GENERAL AND ESPECIAL IN ADMINISTRATIVE-TORT LAW[1]

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Here is noted that the basic institutes do not only contain more generalized prescriptions, but also carry out pass-through legal regulation, and are reflected in the one-type structure of norms of the Special Part of the Code on Administrative Offences of the RF.

General rules, according to the author, demonstrate certain conservatism, stability of regulatory impact and are less subject to change. In contrast, the norms of administrative-tort law, which are contained in the Special Part of the Code on Administrative Offences of the RF, reflect the dynamics of administrative and jurisdictional protection of public relations.

Proceeding from the analysis of existing administrative-tort norms the author concludes about considerable variety of manifestations of the general and the especial, about discrepancies between general and especial norms that disrupt "balance" of their correlation. He cites cases where the general rules of imposing administrative punishment do not actually apply to a significant range of the most common administrative offenses.

Keywords: administrative-tort law, theory of administrative-tort law, legislation on administrative responsibility, general norms, especial norms.

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Contemporary development of administrative-tort law is characterized not only by the dynamism of its constituent norms, but also deepening scientific research of the problems of this young branch of Russian law. The fruitfulness of such elaborations is evidenced by defense of half a dozen doctoral dissertations (in recent years on the issues administrative-tort law doctoral thesis have been defended by V. V. Denisenko, A. V. Kirin, V. A. Kruglov, O. S. Rogacheva, P. P. Serkov, V. G. Tatarian), many master's theses, the constant discussion of problematic situations at scientific and practical conferences, including in the framework of the Nebug club of legal scholars. You can already say with certainty about the active formation of the theory of administrative-tort law. The scope of studied problems covers a wide range of issues: sectorial affiliation of administrative-tort norms, scenarios of their codification, institutionalization of administrative-tort law, application and effectiveness of administrative-tort law norms, etc. Further development of this problematics should, in our view, be associated with the study of norms themselves, the totality of which constitutes administrative-tort law.

This direction is already represented in legal science. The main place in the study of administrative-tort norms is taken by general issues of administrative responsibility, forming of legislation on administrative offenses, issues of administrative-jurisdictional process. Scientists have given considerable attention to the content of administrative-tort relations, the conceptual apparatus of the legislation on administrative responsibility, law-enforcement practice of numerous subjects of administrative jurisdiction. However, many theoretical issues of administrative-tort norms have not attracted the attention of researchers. There is a need for their further development from the perspective of philosophical categories of *general* and *especial*, that will allow us to deeper study the content and interrelation of these legal norms, place in the common system administrative-tort law, identify their regulatory capacities, justify the ways of removing existing conflicts. D. A. Kerimov stresses that on the base of correlation of these concepts is essentially formed the whole theory of fundamental legal categories, such as norm, institute, branch and system of law, which have a great cognitive and practical relevance [6, 229].

The proposed aspect of research is due to large variety of administrative-tort law norms, which are characterized by differences in subject matter and scope of regulation, addressees of norms, forms of interrelation, and other. These differences predetermine ambiguous roles of these norms in the regulation of administrative responsibility, separation of corresponding blocks in existing legislation. The general norm contains the concentration of regulatory impact. But it cannot exist without especial norms. General is detailed in an especial. Paying attention

to the correlation of these categories, Hegel wrote that "a general is the base and soil, the root and substance of an especial [4, 283]. Many of codified acts are built on this basis.

So, the norms of the first section of Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF) "General Provisions" are general in relation to the norms of the second section of CAO RF "Special Part". The very terminology of the law stresses an especial nature of the norms of the second section, they regulate only the illegality and punishability of certain types of administrative offences, i.e. especial concretizes the general legal matter. Signs of the norms of the Special Part of CAO RF are unreplicated and it, as noted by P. P. Serkov, is a guarantee of the proper legal assessment of a deed [8]. If these signs are not precisely defined or coincide with signs of another administrative-tort norm we are dealing with collision of norms, which complicates the qualification of administrative offences. Let's immediately make a reservation that any legal norm is a general rule of conduct and is obligatory for execution. General and especial just reflect the different roles of law norms in the system of administrative-tort law, various versions of their correlations.

Separation of administrative-tort norms into two sections: "General Provisions" and "Special Part" reflects the basic normative model of the correlation of general and especial in the considered branch of law. Its really existing in the legislation modifications are more diverse, varied, dynamic. This is reflected in the existence of reciprocal transits of one and the same phenomena (law norms, institutes, branches of law, etc.) from general to especial and vice versa. So, for example, legal institute is an especial category compared to administrative-tort law, at the same time it has common characteristics with respect to separate norms within this institute. Analysis of the existing administrative-tort norms shows a great variety of manifestations of general and especial. Let's consider the main ones.

First, complexes of administrative-tort norms, which regulate key issues administrative responsibility, are of overall nature. Such complexes are associated with the concept of basic legal institutes (according to S. S. Alekseeva, "main legal institutes"). Unlike other institutes governing local public relations (for example, institutes of the period of limitation for the institution of administrative proceedings, the possibility of release from administrative responsibility, etc.) the basic legal institutes cover fundamental blocks of administrative-tort law, which define the essence of this branch of the Russian law. They include administrative offence and administrative punishment [9, 106-111]. They form the basic institutes of administrative-tort law, perform the role of its load-bearing structures. The need for such

institutes is due to the need for uniform regulation of the most common issues of administrative responsibility. The legislator puts the basic institutes in the Section 1 "General Provisions" (chapters 2-4), emphasizing their priority in relation to other norms of administrative-tort law. For example, the norms enshrining the concept, objectives, system and types of administrative punishments, the rules of their imposition (articles 3.1-3.13, 4.1-4.4) are mandatory when applying any other norms of administrative-tort law concerning the choice of the type, amount and period of administrative punishment. Thus, the basic institutes not only contain more generalized prescriptions, they implement end-to-end legal regulation, are reflected in the one-type structure of the norms of Special Part of CAO RF (disposition and sanction), have baseline value in the interpretation and application of other norms of administrative-tort law.

Secondly, general norms have a certain conservatism, the stability of regulatory impact, they are less likely to be changed. In contrast, administrative-tort law norms contained in the Special Part of CAO RF reflect the dynamics of administrative and jurisdictional protection of public relations. Just for the time of action of CAO RF there have been adopted over 270 federal laws, which have made amendments and additions mostly to the Special Part of the Code. But the basic model of their correlation is formed on the principle of compliance of especial norms with the general ones. Analysis of the current administrative-tort legislation indicates that there are contradictions between general and especial norms that violate the "balance" of their correlation. The most significant are the following

The first contradiction is that the formation of the norms of Special Part is carried out without taking into account the relevant legal rules of the first section of CAO RF "General Provisions". This is most evident in the expansion of the absolutely certain sanctions for committing various types of administrative offences. This legislative practice has been tested in numerous reforms of the norms of chapter 12 "Administrative Offences in the Field of Road Traffic". Today absolutely certain sanctions are established for 63 types of these offences, that is, in most of the articles of chapter 12 of CAO RF. Later a similar design of sanctions has been extended to a number of articles providing for responsibility for other types of administrative offences. It is hardly necessary to prove that absolutely certain sanctions exclude individualization of administrative punishment, the legislator "cranks out" in a ruling on a case the same type and amount that is defined in sanction. And regarding many administrative offences, fixed by technical means, the same action is made by equipment. Articles 4.1-4.3 CAO RF determine the general rules of sentencing, provide for a wide range of circumstances relating to an offence committed and

the identity of offender (extenuating and aggravating administrative responsibility), which should be taken into account by the legislator when choosing the type, amount and period of administrative punishment. But there is no such choice in case of absolutely certain sanction. We add, the legislator is not entitled to reduce the amount of an administrative penalty established by the sanction of applied article of the Special Part of CAO RF, since the current CAO RF, in contrast to the Criminal Code of the RF, does not provide for the possibility of assignment of punishment below the lower limit. Thus, the general rules for the imposition of an administrative punishment in fact do not apply to a large range of the most common administrative offences.

The second contradiction is that establishing of new prohibitions in the Special Part is accompanied by tightening of responsibility for their violation. Moreover, there is a clear tendency to set the amounts of administrative fines that significantly exceed the maximum limits for this type of punishment under article 3.5 Administrative Code. And this kind of novelties of especial norms entails yet another exceptions to this, we emphasize, general administrative-tort norm. And these exceptions have already affected 50 articles of the Special Part of CAO RF. Essentially there is a return to the formula of article 27 of CAO RF of 1984, where, in addition to the overall limits of a fine, part 2 provided for an opportunity, if necessary, to increase these limits for certain types of administrative offenses, defining the maximum limits of the increased amount of fine. But in this case, the possibility of increasing the amount of fine was established by a general norm, according to which the legislator provided for responsibility for a certain kind of administrative offence. Modern rule-making practices goes from the reverse: the norm of the Special Part of CAO RF pushes the general norm through introducing in it new and new exceptions. Moreover these exceptions in article 3.5 CAO RF are focused on increasing the amount of administrative fine, substantiation of which is called into question not only by citizens, but also by the Prosecutor-General of the Russian Federation, the Constitutional Court of the Russian Federation.

Let's turn to the position of the Constitutional Court of the RF No. 4-P from 14.02.2013 "On Verification the Constitutionality of the Federal Law "On Amendments to the Code on Administrative Offences of the RF and the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing" in connection with the request from a group of deputies of the State Duma and complaint of E. V. Savenko" [2]. Analyzing the increased sizes of administrative fine in sanctions of articles 5.38, 20.2, 20.2.1, 20.18 CAO RF as amended by the Federal Law No. 65-FL from June 08, 2012, Constitutional Court of the Russian Federation drew attention

to the fact that the minimum amounts of administrative fine for violation the order of organizing or holding meetings, rallies, demonstrations, marches, picketing or organization of other mass events that have led to the violation of public order exceed the maximum limit for the amount of administrative fines established by the Administrative Code for all other administrative offenses. As a result, in application even the minimum possible size of fine for such administrative offences citizens and officials have to bear financial losses, which often surpass the level of their average monthly salary. The Federal legislator has been requested to make the necessary amendments to the legal regulation of minimum sizes of fines for administrative offences under articles 5.38, 20.2, 20.2.1, 20.18 CAO RF. Pending the appropriate amendments of CAO RF the size of an administrative fine imposed on citizens and officials for the mentioned administrative offences may be reduced by the court below the lower limit stipulated for the commission of corresponding administrative offence.

We note the important positions of the mentioned decision of the Constitutional Court of the Russian Federation. First of all, here can be traced a negative attitude to a sharp increase in the size of administrative fine, what does not preclude its transformation from a measure of impact aimed at preventing offences into a tool of excessive restriction of citizens' right of ownership, which is incompatible with the requirements of fairness in imposition of administrative punishment. Taking into account this position of the Constitutional Court of the RF, we deem it expedient to establish a moratorium on the increase of administrative fines, to set their limits only in article 3.5 CAO RF without exceptions that operate today, to increase within this general norm the size of administrative fine only on the basis of extensive research, but not emotions of separate initiators of bills and market condition. Let's recall that in the first years of Soviet Power and after World War II the legislator had to take measures against establishment of the excessive sizes of fine (see, for example, the Decree of the Presidium of the Supreme Soviet of the USSR from June 21, 1961 "On Further Restriction on the Application of Fines Imposed by an Administrative Procedure"). The relevance of adopting a similar Federal Law is more than obvious… So, for example, some deputies of the State Duma (P. Krasheninnikov) have already advocated for the establishment of a 50-thousandth administrative fine for insult. Study of judicial practice of application article 5.61 CAO RF in the Krasnodar region and other regions has showed that most of cases ended with the imposition of an administrative fine in the amount of 1000 rubles, that is, the justices of the peace did not use all the possibilities of the current sanction of part 1 article 5.61 CAO RF (from one to three thousand rubles) [3].

Further, the Constitutional Court of the RF on the merits recognized (although regarding certain types of offences) the feasibility of application administrative fine below the lower limit, for that has long been advocated by scholars and judges [5, 10; 7, 172]. Introduction of the appropriate norm in CAO RF will significantly expand possibilities of individualization of administrative responsibility. Pursuant to the considered decision of the Constitutional Court of the RF the Russian Ministry of Justice has prepared a draft Federal Law "On Amendments to the Code on Administrative Offences of the RF and the Federal Law "On Meetings, Rallies, Demonstrations, Processions and Picketing" [1]. But the content of this draft does not remove the problem indicated above, since, in accordance with it, imposition of administrative punishment below the lower limit applies only to certain types of administrative offences. This approach of the initiators of the draft is not correct because the focus should be given to the establishing of a general norm governing the rules of imposition of administrative punishments. In addition, a similar norm in the Criminal Code of the RF does not provide for any waivers to the rule of imposition of punishment below the lower limit enshrined by the sanction of the corresponding article of the Special Part of the Criminal Code of the RF.

Thirdly, the general exists not only in the first section of CAO RF "General Provisions". Many of the norms of the Special Part correlate between each other as general and special. This is true especially for articles providing responsibility for a general composition of administrative offense and special compositions. For example, article 7.17 CAO RF provides for administrative responsibility for the destruction or damage of other's property, if these actions have not caused significant damage. But the positive signs we find in the disposition of a number of other articles of the special part of the code. But its structural features we find in the disposition of a number of other articles of the Special Part of the Code. What is their correlation? Article 7.17 CAO RF provides for the general composition of the destruction or damaging of another's property. According to this article should be classified such illegal actions in respect of property, administrative responsibility for the destruction or damage of which is not enshrined in special norms: damage or destruction of religious or liturgical literature, objects of religious veneration, signs or emblems of worldview symbols or paraphernalia – part 2 article 5.26 CAO RF, elimination or damage to special marks – article 7.2 CAO RF, damage to facilities and systems of water supply, sewerage, hydraulic structures, devices and installations of water management and water protection – article 7.7 CAO RF, damaging property on transport vehicles – article 11.15, willful damaging or removing a stamp (seal) – 19.2, disorderly conduct accompanied by destruction or damage to

someone else's property – part 1 article 20.1 CAO RF. If a deed contains the signs of these norms, special norms should be applied, and there is no need for an additional qualification under article 7.17 CAO RF. But such law-enforcement practice does not have legal framework in administrative-tort legislation, it is rather the use of the rule enshrined in part 3 article 17 of the Criminal Code of the RF. This rule reads: "If a crime is provided for by both general and special norm, then the totality of crimes is absent and criminal responsibility shall arise according to the special norm". The expediency of introducing of such a norm to CAO RF is obvious, since there are quite a few of paired articles in the Special Part, which provide for general and special compositions of administrative offences.

Basic composition of administrative offence represents the general, special compositions – the especial. General norm defines the signs that are basic for special norms, but their content is richer, more varied due to inclusion of additional objective and subjective signs. In general, such legal structure constitutes a unity based on the interrelation of general and special norms.

In this regard, it is advisable to pay attention to the conflicts between CAO RF and the Criminal Code of the RF, arising in connection with the decriminalization of insult. Special criminal legal norms (articles 297, 319, 336 of the Criminal Code of the RF), using the term of "insult", do not disclose its concept. Previously they were based on the general concept of insult, which was enshrined in the previous general norm – article 130 of the Criminal Code of the RF. After decriminalization the general norm defining the concept of insult disappeared from the criminal law, the statutory definition of insult is represented only in article 5.61 CAO RF. Reference to the definition of insult in administrative-tort norm in this situation seems, in our opinion, incorrect because the logic of correlation of general and special criminal legal norms is broken. The latter should be based on the norm that stipulates general composition of offence.

In this article we have touched on only one aspect associated with correlation of the norms of administrative-tort law. There is a need for further study of these norms aimed at uncovering their essence, generic characteristics, constructional features and efficiency.

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