Tort Law, Including the Tort Liability of the State

Donald D. Barry
Emeritus Professor of Government, Lehigh University, Bethlehem, PA

Russia’s move away from the Soviet form of socialism has necessitated the creation of more complex political institutions: genuine parliaments rather than token bodies; electoral laws worth fighting over, because of their effects on the distribution of real political power; a federalism fraught with problems and uncertainties instead of quiescent regional administration. The list of such developments could be extended considerably.

So it is too with legal institutions. Civil law, for instance, embraces a much broader set of relationships than under the old system, requiring longer, more detailed, and more sophisticated laws. And within civil law, the same is true of tort law, the subject of this chapter. The 1922 RSFSR Civil Code contained fourteen articles on tort and ran some 600 words in length.¹ There were twenty-eight articles on tort in the 1964 Civil Code,² totaling over twice the length of its 1922 counterpart. The provisions on tort in part two of the new RF Civil Code, which entered into force on 1 March 1996, take up thirty-eight articles and comprise a body of law about six times that of the 1922 version. For the most part, these new provisions are not novel developments of the post-Soviet period. Many can be traced to articles in the 1922 and 1964 RSFSR Civil Codes. But the most direct influence comes from the USSR Principles (Osnovy) of Civil Legislation of 1991.³

What is also obvious about the new tort law is its greater practical importance: “Chubais to Sue Journalists for Libel”;⁴ “A court decided that a cork from a lemonade bottle can be dangerous to your health”⁵

¹ Grazhdanskiy Kodeks RSFSR (official text with changes to 1 February 1961, and with an appendix of article-by-Article materials), Moscow 1961.
² Grazhdanskiy Kodeks RSFSR (official text with an appendix with article-by-article materials), Moscow 1964.
“St. Petersburg Governor Settles Suit Against Sobchak”; the State will pay citizen V.G. Panskov 4,714,150 rubles and 79 kopeks for an illegal accusation of bribe taking. Such headlines now appear regularly in the Russian and foreign press, demonstrating that tort law has come to occupy a significant place in the life of the law in Russia.

In this chapter, several aspects of the new tort law will be analyzed. First, a brief overview of the tort law provisions of the Russian Federation Civil Code will be given. Second, a more detailed examination of the code provisions on the tort liability of the state will be made. And third, some of the judicial practice in cases involving state tort liability will be reviewed.

The New Code Provisions: An Overview

Chapter 59 of the Civil Code (“Obligations Arising from the Causimg of Harm”) is composed of four parts: general principles of liability (Arts.1064-1083); compensation for harm caused to the life or health of a citizen (Arts.1084-1094); compensation for harm resulting from defects in goods, work, or services (Arts.1095-1098); and compensation for moral harm (moral’nyi vred) (Arts.1099-1101). Many of the 38 articles in the chapter are composed of multiple sections and sub-sections, thus yielding about one hundred separate provisions on tort.

General Principles of Liability

The most important provisions among the general principles in part one are these:

(i) That harm to the person or property of a citizen or to the property of a legal person is subject to full compensation by the person who caused the injury (Art.1064).


8 Typically (i.e., in the 1961 USSR Principles, the 1964 RSFSR Civil Code, and the 1991 USSR Principles) the word “citizen” rather than “person”, “individual”, or some other more general term has been used in this context. Only in the 1922 RSFSR Civil Code (Art.403) was there reference to the causing of harm to “another person”. Art.2 of the present Civil Code reads in part as follows: “The rules established by civil legislation apply to relations in which foreign citizens, stateless persons, and foreign legal persons participate unless otherwise provided for by a federal law.” For a further discussion of this point with regard to the 1991 USSR Principles, see this author’s “Tort Law”, 2 Soviet and East European Law 1991 No.6, 9.