Soviet Tort Law and the Development of Public Policy

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In spite of profound differences between the Soviet social system and Western systems, many of the details of Soviet tort law would appear quite reasonable to the Western lawyer. In both cases, tort law is essentially a mechanism for the settlement of private law disputes which has some public law aspects (for instance, the problem of governmental tort liability). And over the years in both the Soviet Union and the West, tort law has attracted considerable attention from those involved in the discussion and formulation of public policy. The policy objectives sought in the two systems differ in some important ways, but the fact that tort law can be seen in both as a vehicle for achieving policy ends is an interesting parallel in itself.

The law of torts might be considered politically neutral in nature, since it is based on rather technical legal rules and applies largely to private parties. But some of the major political trends in Soviet history have been reflected in the developments of Soviet tort law, and some of the provisions on tort articulate principles rooted in the political values of the system. This paper will examine several aspects of Soviet tort law which, over the years, have had important public policy implications. These will include liability based on fault, strict liability, the liability of governmental organs, compensation for work-connected injuries, and a provision which allows the court to consider the economic situation of the defendant in assessing damages. These matters comprise only a relatively small portion of the total statutory law devoted to torts, so the analysis will be introduced by a general review of the major principles of Soviet tort law. In the third section of the article, the role of Soviet courts in fashioning tort law will be discussed. The final section will be devoted to an analysis of several policy problems connected with tort law presently being debated.

1. General Principles of Soviet Tort Law

Soviet law is related to the civil law tradition of continental Europe rather than the Anglo-American common law system. Accordingly, a major feature in the development of Soviet law has been the detailed legal code rather than the judi-
cial decision. For tort law, the major sources of authority have been the civil codes. An RSFSR Civil Code was adopted in 1922. Civil codes enacted thereafter by the other union republics were largely patterned on the RSFSR Code. In 1962 a USSR law, the Principles of Civil Law of the USSR and the Union Republics (hereinafter “The Principles”), replaced the old civil codes. Its broad provisions served as the basis for the more detailed republican civil codes which were adopted subsequently. The new RSFSR Civil Code came into force in 1964. Its articles on tort law are largely repeated in the codes of the other republics, and it and the 1922 RSFSR Civil Code will serve as the basis for the discussion here.

Chapter 40 of the 1964 Civil Code of the RSFSR is entitled “Obligations Arising from the Causing of Injury” (Oblazatel’stva, Voznikaiushchie Vstledstvie Prichinenia Vreda). This is the term in Soviet law (often abbreviated to prichinenie vreda, literally, “the causing of injury”) used most often to designate the equivalent of what is known as tort liability in Anglo-American law. Soviet writers also refer occasionally to “tort” (pravonarushenie) or “delictual” (deliktnye) obligations or liability, but this is now rare. All three terms were used in pre-Revolutionary Russian law. The 1964 RSFSR Civil Code contains 28 articles on tort law. Provisions on tort are also found in several other enactments. For instance, for injuries caused to crew members of commercial airplanes during flights, a special statute outside of the civil codes and the Principles was adopted in 1973. But the tort law relationships of the great majority of Soviet citizens and organizations are governed by the civil codes.

In all tort cases in Soviet law, certain general elements are considered necessary to a finding of liability. Because of the briefness of the statutory provisions, these characteristics are not spelled out in the statutes. They have been worked out in the treatises and cases.

Almost every Soviet writer seeking to explain tort law begins with a listing and discussion of four conditions to liability in tort. These are: the presence of harm or damage; illegality of behavior (action or failure to act) which caused the damage; “causal connection” between the illegal behavior and the damage; fault of the person causing damage. Each of these is largely self-explanatory, but a few details concerning their particular interpretation in Soviet law should be discussed.

First, compensable harm or damage in Soviet law is “property damage”, that is, “damage which may be calculated and compensated in money”. What this means is that in Soviet tort law there is no compensation for what Soviet writers call “moral damages” (moral’nyi vred) which includes pain and suffering and injury to the honor or good name of a person. The new civil legislation of the 1960s for the first time allowed citizens and organizations to bring suit on the basis of false statements that disparage their honor or dignity. But a judgment for the plaintiff does not carry with it money damages, but only the requirement of a published