JUSTICE IN TORT LAW OF RUSSIA AND CHINA

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The article describes the main issues of tort liability regulation in the context of the principle of justice and its implementation into the legislation and law enforcement practice of the Russian Federation and the People's Republic of China (PRC). The comparative method of the study revealed critical differences in the provisions of Russian and Chinese tort law. The analysis of the domestic and foreign scientists' works and judicial practice in disputes on compensation for harm contributed to findings and results related to the forms of justice implementation in these countries. The authors argue the dominance of procedural form of justice implementation in the Russian legal system but distributive form in the Chinese legal system. Positive and negative aspects of both forms are discussed. The reform of Chinese civil law which completely changed legal regulation of tort liability and excluded many of the controversial provisions of the previous PRC law on liability for offenses required new theoretical studies aimed at evaluating new laws. Comparison of the new tort law of the People's Republic of China and the tort law of the Russian Federation is especially acute in connection with the objective to integrate the BRICS member countries against the background of the increasing conflicts in international arena. Optimization of legal norms by choosing the most effective model for the principle of justice would improve the protection of victims' rights. In particular, the authors conclude that it is necessary to integrate the Russian and Chinese approach for determining the compensation and defining clear criteria for resolving disputes. In addition, possibility of the tort liability parties to agree on the procedure, time frame and amount of compensation should be set out under the law.

Keywords: tort liability; tort law of the Russian Federation; tort law of the People's Republic of China; compensation for harm; justice.

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Introduction

The strategic partnership of the Russian Federation and the People's Republic of China within the framework of BRICS alliance requires harmonization of law, identification of common and special homogeneous social relations in the regulation of domestic law and relevant comparative legal research.

Justice as a principle of law is embodied in all legal systems of civilized countries and in all branches of law. However, its manifestation can be completely different. The principle of justice takes on particular value in relations concerning the protection of victims in cases of harm. This is due to the fact that a person having undergone deprivation of a non-property or property nature needs a special approach of the legislator to protect his or her rights. At the same time, the establishment of excessively harsh conditions for the harm can lead to abuse of the right by the victim and lead to his or her unjust enrichment. One of the purposes of tort liability is compensation (re-establishing of a pre-breach situation), which can only be achieved by balancing the interests of a victim and a tortfeasor.

Russian tort law is based on the provisions of Chapter 59 of Part 2 of the Civil Code of the Russian Federation (hereinafter referred to as the RF CC). Certain laws reflect only private issues, for example, the Law of the Russian Federation No. 2300-I of 7 February 1992 "On the Protection of Consumer Rights" (hereinafter referred to as the RF Law on the Protection of the Consumer Rights) specifies the rules on compensation for harm caused by the defects in goods to the consumer.[1] Despite the

[1] *See* Закон Российской Федерации от 7 февраля 1992 г. № 2300-I «О защите прав потребителей» // Ведомости съезда народных депутатов РФ и Верховного Совета РФ. 1992. № 15. Ст. 766 [Law of the Russian Federation No. 2300-I of 7 February 1992. On the Protection of Consumer Rights, Vedomosti of the Congress of People's Deputies of the Russian Federation and the Supreme Council of the Russian Federation, 1992, No. 15, Art. 766].

tremendous changes associated with the rapid increase in demand for information technologies and with the projected change in the number and types of torts, with the pandemic and taking measures by states to combat its spread Russian tort law remains conservative. Since 2013, civil law reform has hardly affected tort law. Such an effect is logical to expect in cases of recognition of legal norms as optimal and not requiring changes. However, is that true?

Until the end of 2020, Chinese tort law was concentrated in the Tort Liability Law of the People's Republic of China (hereinafter referred to as TLL) which consisted of 12 chapters including general provisions and certain types of torts.[2] Some laws established specific rules for special torts (for example, Law on the Protection of Consumer Rights and Interests (CRIPL) of 2013).[3] On 28 May 2020, it was adopted a comprehensive Civil Code containing general provisions and special rules in which the rules on tort liability are included in Part 7. TLL has lost its legal force since the entry into force of the Civil Code of the People's Republic of China – from 1 January 2021 (hereinafter referred to as the PRC CC).[4] Against the background of large-scale reforms in the scientific community, interest has intensified in the problem of the adequacy of the introduced norms of tort law to modern realities and the state's tasks. Chinese scientists raise problems of the balance of interests between the demands of society and the provision of remedies to victims that correspond to the degree of harm;[5] they identify the particular importance and practice of applying rules on social liability[6] and analyze the factors influencing the formation of tort law.[7] A significant part of the modern works of such authors as Zhang Xinbao, Wei Zhang, Chenglin Liu is devoted to the fundamental idea of justice of the law and its embodiment in tort law. This is due to the fact that the reform of civil legislation can be successful only in cases where individual private torts will be based on

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[2] 中华人民共和国主席令 第 二十一 号 《中华人民共和国侵权责任法》已由中华人民共和国第十一届全国人民代表大会常务委员会第十二次会议于2009年12月26日通过 [Tort Liability Law of the People's Republic of China, promulgated by the Standing Committee of the National People's Congress, 26 September 2009] (Dec. 25, 2021), available at http://www.gov.cn/flfg/2009-12/26/content_1497435.htm.

[3] 中华人民共和国消费者权益保护法1993年10月31日第八届全国人民代表大会常务委员会第四次会议通过 [Law on the Protection of Consumer Rights and Interests, adopted as the fourth member of the Standing Committee of the Eighth National Assembly of Representatives, 31 October 1993] (Dec. 25, 2021), available at https://gkml.samr.gov.cn/nsjg/fgs/201906/t20190625_302783.html.

[4] 中华人民共和国民法典2020年5月28日第十三届全国人民代表大会第三次会议通过 [Civil Code of the People's Republic of China, adopted at the third session of the 13th National People's Congress, 28 May 2020] (Dec. 25, 2021), available at http://www.npc.gov.cn/npc/c30834/202006/75ba6483b8344591abd07917e1d25cc8.shtml.

[5] Xinbao BZhang, *Legislation of Tort Liability Law in China* (2018).

[6] Chenglin Liu, *Socialized Liability in Chinese Tort Law*, 59(1) Harv. Int'l L.J. 16 (2018).

[7] Wei Zhang, *Understanding the Law of Torts in China: A Political Economy Perspective*, 11(2) U. Pa. Asian L. Rev. 171 (2014).

fundamental principles which are reflected not only in the general provisions of the Civil Code but also in special rules. In fact, justice as a moral and legal principle expressing the basic ideas of civil law, the basic requirements for legal acts and law enforcement should directly regulate public relations.[8]

In Russia, special attention is paid to the manifestation of justice in tort law only in the works of D. Bogdanov,[9] in the work of S. Dontsov and V. Gliantsev dealing with the concept of social justice in compensation for harm and in the work of M. Egorova describing presumed guilt and innocent tort liability.[10] Meanwhile, justice should be manifested in all material elements reflected in law (torts and punishments, damage and reimbursement).[11] Accordingly, the issues of justice in cases of harm are of paramount importance to victims and tortfeasors.

The purpose of this study is to determine the optimal legal regulation in terms of the implementation of the principle of justice in Russian and Chinese norms on torts.

To achieve the goal, a comparative legal research method and a system analysis method were used. They made it possible to draw conclusions on the most successful regulatory options and interpret the norms of the law not in isolation from each other and the practice of their application but as a single legal matter.

1. General Provisions on Torts Under the Laws of Russia and China

Torts arise in case of violation of the non-property rights of the subject (life, health, name, reputation) or violation of the property status of a person expressed in the death, loss or damage of his or her property.

Tort liabilities protect the victim's rights in all cases where the harm is caused outside of any legal relationship in general, as well as when the harm is not fully compensated under the rules of social security, voluntary or compulsory insurance. The right of the victim to protection in the event of harm includes three powers: the ability to take real steps to protect and restore his or her right (use of self-defense measures, measures of operational impact); the ability to require the State to restore

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[8] *See* Гражданское право: участники правоотношений: учебное пособие [*Civil Law: Participants of Legal Relations: A Study Guide*] 172 (Vladimira V. Dolinskaya & Vladimir L. Slesarev eds., 2016).

[9] *Богданов Д.Е.* Триединая сущность справедливости в сфере деликтной ответственности // Журнал российского права. 2013. № 7. С. 49–62 [Dmitry E. Bogdanov, *The Triune Essence of Justice in the Sphere of Tort Liability*, 7 Journal of Russian Law 49 (2013)].

[10] *Егорова М.А., Крылов В.Г., Романов А.К.* Деликтные обязательства и деликтная ответственность в английском, немецком и французском праве: учебное пособие [Maria A. Egorova et al., *Tort Obligations and Tort Liability in English, German and French Law: A Study Guide*] 32 (Maria A. Egorova ed., 2017).

[11] *Донцов С.Е., Глянцев В.В.* Возмещение вреда по советскому законодательству [Sergei E. Dontsov & Valentin V. Gliantsev, *Compensation for Harm Under Soviet Legislation*] 267 (1990).

the violated right (application of protective measures and liability); ability to protect property rights (enforcement).[12] These abilities are manifested in tort law in different ways. Thus, the use of self-defense and protection of third parties is possible only if certain conditions are met, therefore, both Russian and Chinese legislation provide for tort liability if the necessary defense is exceeded and if absolutely necessary in certain cases (Arts. 1066, 1067 of the RF CC; para. 2 of Art. 1077 of the PRC CC). In the PRC CC in Article 1177 there are rules which are known to a Russian legislator as self-defense (Art. 12 of the RF CC), according to which the victim of the alleged tort has the right to protection by taking actions to seize property owned by the tortfeasor. This new law, referred to as the self-help doctrine, was previously unknown to TLL. It allows the commission of such actions only if the victim, in the absence of active actions on his or her part, will suffer irreparable damage, as well as upon the immediate report of the tort to the relevant state bodies.[13] This doctrine integrates Russian rules on the prevention of harm (Art. 1065 of the RF CC) and self-defense. The first ones lie in the possibility of granting the right to demand a ban, termination, suspension of the disturber's activities while the second ones lie in the possibility of committing independent actions to suppress it.

The right to demand in court the suspension or termination of the relevant activities of the defendant that creates a threat or danger of harm (Art. 1065 of the RF CC; Art. 1167 of the PRC CC) can also be considered as the application of coercive measures in tort law.

With regard to protective measures and liability, that ability of the victim could be applied in various torts. Russian legislation provides for such methods of compensation for harm as compensation in kind, correction of a damaged thing and compensation for caused losses (Art. 1082 of the Civil Code). Chinese law in Article 15 TLL mentioned, along with the previous ones, such methods of protection as restitution, apology, elimination of influence and restoration of reputation. It has been noted that these methods may be used alone or in combination. In the PRC CC, they are not highlighted in a separate article in Part 7. The mentioned methods of protection, with the exception of apology, are also reflected in the general part of the RF CC in Article 12 and in special legislation. Therefore, they can also be applied if necessary and in liabilities for compensation for harm. The official apology offered on behalf of the Russian Federation by the prosecutor as a way of protecting of a rehabilitated person's rights is contained in Article 136 of the Criminal Procedure Code of the Russian Federation.

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[12] Denis Karkhalev, *Protection of Rights Under Russian Civil Law in a Comparative Context*, 3(1) BRICS L.J. 126, 128 (2016).

[13] 全国人民代表大会宪法和法律委员会关于 《民法典侵权责任编（草案）》修改情况的汇报 [Report of the Constitution and Law Committee of the National People's Congress on the revision of the Civil Code Tort Liability (Draft)] (Dec. 25, 2021), available at https://npcobserver.files.wordpress.com/2019/08/2019828-public-consultations-explanations.pdf#page=3.

The duty of the tortfeasor is to perform certain actions to restore the violated right. As a rule, such restoration can be achieved by appropriate compensation. In the RF CC, the procedure for determining the amount of compensation is established in relation to cases of harm to life or health (Arts. 1085–1092). The Law of the Russian Federation on the Protection of Consumer Rights contains an indication of the possibility of recovering a fine if the consumer's requirement is not fulfilled voluntarily (Art. 13). In TLL, the size and procedure for determining compensation was not contained. This omission was noted by scientists as one of the significant shortcomings of the law. Thus, K. Thomas points out that, based on the analysis of the provisions of TLL, it is unclear whether the calculation of various punitive damages should be related to the degree of damage to the applicant or the amount of behavior of the defendant.[14] As a result, the provisions on tort liability were supplemented in the PRC CC with a separate chapter which describes the procedure for determination and the types of refundable or compensated income of the victim (Arts. 1179–1187). Compensation is paid for medical expenses, nursing expenses, transportation costs, food costs, other reasonable expenses for treatment and rehabilitation, compensation by reducing income at work, disability, funeral, compensation for mental damage. Chapter 2 of the PRC CC also specifies the algorithm for calculating various damages.

In the laws of both countries, the construction of rules on compensation for harm is based on the principle of general provisions to private ones. Chapter 59 of the RF CC first establishes the principle of full compensation for harm (Art. 1064 of the RF CC); indicates the obligatory existence of guilt to impose liability for causing harm, except in cases established by law; the conditions for exemption from reparation and the possibility of imposing a duty of reparation on a person who is not the tortfeasor are noted. Further, individual varieties of torts are regulated. In particular, rules are established for compensation for harm if the necessary defense and extreme necessity are exceeded (Arts. 1066, 1067 of the RF CC); liability for harm committed by minors and persons with disabilities (Arts. 1073–1078 of the RF CC); liability for harm caused by a source of increased danger (Art. 1079 of the RF CC) and other special torts. The PRC CC also first establishes general rules on the liability to compensate for damage caused, on the concept of harm, on conditions for exemption from liability and its reduction. Further, special types of torts are regulated: liability for product quality, liability for traffic accidents, liability for medical negligence, liability for environmental pollution and harm, liability for super-hazardous activities, liability for harm caused by pets and liability for harm caused by buildings (construction, repair works) or facilities.

In contrast to Russian law, Chinese law focuses liability for damage caused to the environment in the provisions of the Civil Code and prescribes the right to demand

[14] Kristie Thomas, *The Product Liability System in China: Recent Changes and Prospects*, 63(3) Int'l Comp L.Q. 775 (2014).

compensation from the violator for the restoration of the ecological environment (Art. 1235 of the PRC CC), as well as compensation for losses possible during the restoration of the damaged environment functions; compensation for the costs of research, identification and assessment of environmental damage; costs of pollution elimination, prevention of damage spread. However, the method of calculating punitive damages is not specified in the PRC CC.

It is distinguished by the specificity of the tort liability regulation when causing harm from objects with increased danger. In Russian legislation, regardless of the variety of such facilities, the norms are the same. They prescribe increased liability (liability without fault) for the owners of such objects (Art. 1079 of the RF CC). If the gross negligence of the very victim contributed to the occurrence or increase of harm, the amount of reparation should be reduced depending on the degree of guilt of the victim and the causing of the harm.

In the PRC CC, norms on liability for road accidents, for medical damage, for the operation of especially dangerous objects and for damage caused by pets and buildings, construction and other objects are allocated in separate chapters. Thus, the types of facilities are clearly distinguished and their exploitation entails strict liability.

Harm caused as a result of the injured's intention during the operation of dangerous objects, as well as insurmountable force or force majeure, is not compensable in both legal orders. In the presence of gross negligence of the victim in the torts under consideration, Russian law prohibits refusing to compensate for harm to life or health. Compensation may be reduced in such cases. Chinese tort law allows the reduction of the compensation amount for gross negligence of the victim only in a tort related to high-altitude, high-pressure or underground excavation or high-speed rail transportation (Art. 1240 of the PRC CC). Gross imprudence or negligence of the victim in a tort in causing harm to pets will not only reduce but also exempt from tort liability (Art. 1245 of the PRC CC). In this context, a person in the treatment of animals should be aware of the potential unpredictability of their behavior and the impossibility of establishing complete control over them. Strict standards compared to Russian law are provided for owners, escaped or abandoned animals, since they are responsible for the harm caused by their animals (Art. 1249 of the PRC CC). There are no special rules in this regard in Russian legislation.[15] Meanwhile, tort liability issues in this area are very relevant, considering Russia has introduced norms on the responsible treatment of animals (Federal Law No. 498-FZ of 27 December 2018 "On Responsible Treatment of Animals and on Amending Certain Legislative Acts of the Russian Federation") which tighten control over the actions of animal owners.

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[15] *Летута Т.В., Минеев Е.В., Шипилова О.В.* Вред, причиненный животными: проблемы гражданско-правовой защиты потерпевших // Вестник Оренбургского государственного университета. 2014. № 3. С. 29 [Tatiana V. Letuta et al., *Harm Caused by Animals: Problems of Civil Protection of Victims*, 3 Bulletin of Orenburg State University 29, 29 (2014)].

However, there is no regulation of the rules of civic behavior with strangers or wild animals.

Such a special type of tort in Chinese law as harm by medical organizations and their employees is very interesting. This tort in the RF CC does not stand out as a separate kind. The PRC CC assumes the liability of such entities for guilt. Rules are established under which medical organizations are presumed guilty if there has been either violation of treatment standards according to the relevant laws and rules, concealment or refusal to provide medical documentation, fabrication, falsification or destruction of medical documentation (Art. 1222 of the PRC CC). Conditions are also established under which tort liability is excluded: the fulfillment by medical workers of their duty to reasonably diagnose and treat in emergency situations (rescue of dying patients); difficulty of diagnosis and treatment based on the available level of medicine (Art. 1224 of the PRC CC). The introduction of rules on the responsibility of medical organizations and workers in the PRC CC is a convenient approach of the legislator for victims. The existence of a specific violation does not require a search and systematic analysis of the various sources of law governing liability in the relevant area. In Russia, the absence of such rules in the RF CC creates a situation in which the norms that allow medical organizations to bring to tort liability are scattered in voluminous medical legislation, in separate laws and subordinate acts. General rules on the possibility of imposing liability (wrongfulness of acts, harm, causal link, guilt) in the absence of special provisions in Chapter 59 of the RF CC do not allow to unequivocally answer the question of the need for guilt in the actions of employees of medical organizations, its form and significance for compensating patients. The latter problem gives rise to a debate about the relationship between medical activities and those associated with the exploitation of a source of increased danger.[16] The issue does not find its unequivocal solution under what conditions and in what cases medical organizations and employees will be responsible without guilt, and in what cases for guilt.

Chinese law provides for the possibility of imposing tort liability on network users and network service providers who use the network to infringe on civil rights and the interests of others. Liability of network users and network service providers in Russia is provided in the Civil Code in Part 4, regulating intellectual rights, as well as laws establishing administrative liability for certain violations on the Internet (Federal Law No. 126-FZ of 7 July 2003 "On Communication," Federal Law No. 152-FZ of 27 July 2006 "On Personal Data," Federal Law No. 149-FZ of 27 July 2006 "On Information, Information Technologies and on Information Security"). There is no direct consolidation of the possibility of applying tort rules to the actions of network users and network service providers in Russia. Meanwhile, the approach of Chinese law seems worthy of attention because bringing the liability of these entities to the

[16] *Мохов А.А.* Некачественное медицинское обслуживание как источник повышенной опасности для окружающих // Современное право. 2004. № 10. С. 6 [Alexander A. Mokhov, *Poor Quality Medical Care as a Source of Increased Danger to Others*, 10 Modern Law 2, 6 (2004)].

level of tort eliminates the need to link the actions of the offender with a violation of specific rules of law as is the case now in Russian law. For example, when disseminating information defaming human honor and dignity on the Internet, a person will be subject to liability according to the rules on moral harm and the general provisions of the Civil Code on the protection of honor and dignity (Arts. 151, 152 of the RF CC). If the Internet is used for threats and blackmail, the person will be subject to criminal or administrative liability and compensation for non-pecuniary damage is also possible. Thus, in Russian law, liability for such entities comes not for the unlawful use of the network (which can take completely different forms) but for the specific content of the violator's actions. However, the imposition of fines, restriction of actions and other sanctions that can be applied in such cases do not seem to cover the real expenses of the victim (for example, treatment by a psychotherapist) and compensation for non-pecuniary damage should not perform the functions of covering victim's losses. Therefore, the approach of a Chinese legislator in this matter greatly facilitates the search for grounds, the determination of the compensation amount and the protection process for the injured.

One of the significant innovations in the PRC CC is the introduction of the "safe harbor" rule for Internet providers (network service providers). Its essence lies in the procedure of the provider's actions when information about the violation of his/her rights is received from the copyright holder. The provider must immediately take measures to eliminate violations and inform the content user of violations on his/her part who in turn can send a rebuttal. If the copyright holder does not answer the refutation, does not justify the claims (does not send the complaint to state authorities, to the court), the Internet provider is exempted by law from tort liability for violation of the rights of the copyright holder (Arts. 1195, 1196 of the PRC CC).

A comparative analysis of the provisions of Russian and Chinese legislation leads to the conclusion that there is a significant similarity in the legal regulation of torts and at the same time that there are differences that fundamentally affect the regulation of torts.

2. On Justice and Tort

The principle of justice occupies a special place in scientific works and judicial practice. The abstract notion of justice needs to be specified on formulating more or less specific rules. These rules are determined by the nature of the relationship to which their scale is applied, as well as the needs and interests of stakeholders. In relation to torts, horizontal and vertical justice[17] are distinguished as well as retributive,

[17] *Прибыткова М.* Обоснование размера морального вреда: принципы горизонтальной и вертикальной справедливости // Журнал РШЧП. 2018. № 1. С. 193 [Maria Pribytkova, *Justification of the Amount of Moral Harm: The Principles of Horizontal and Vertical Justice*, 1 Journal of the Russian School of Private Law 191, 193 (2018)].

distributive and corrective one.[18] As A. Cherdantsev correctly pointed out, any type of justice changes during historical development.[19] D. Bogdanov noted that justice in tort law is a historically established idea of conformity with the social ideals of compensation for losses caused by harm.

The significance of justice is explained by the history of tort law which since the time of Roman law originated as an alternative and later a replacement of the principle of the talion "an eye for an eye, a tooth for a tooth" which previously provided for the possibility of lynching causing the same harm to the offender. Since tort law was entrusted with the mission of replacing the psychologically necessary instinct of revenge for a person, a significant equivalent to a talion should have been offered. This "equivalent" was a tort despite various interpretations of which the general intention is to proclaim at the level of law any harm wrongful and requiring its compensation.

With the development of statehood, with the growing need of rulers to eradicate arbitrariness among the population and to strengthen the authority of state power, the principle of the talion began to gradually be replaced by a fine. The Laws of the Twelve Tables contained a rule on revenge for self-mutilation if there was no voluntary agreement between the parties to pay a fine. But for other torts, the payment of a fine was already a mandatory measure of liability. So the principle of the talion was gradually ousted from the sources of law.[20] In contrast to Roman law, in imperial China, compensation in the form of property compensation for damage caused to life or health was virtually not practiced. Physical punishment (bamboo sticks) was the only remedy.[21] Accordingly, for a long time there was no question of equitable compensation for harm in Chinese law. Moreover, given the traditions of Confucianism, where property belonged to the family as a fundamental concept and was managed by the head of the family, the topic of collecting money from the head of the family for the actions of a family member could raise questions. What are the grounds? Is there a causal link? Does age affect? Where are the limits of the family's property responsibility for the actions of its members? Therefore, Chinese law, unlike other legal systems, has gone a rather long way of replacing physical penalties with monetary compensation.

Modern states preach the idea of social or socialized justice. The latter is widely discussed in the legal literature and has various interpretations.[22] In general, it should

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18 Bogdanov 2013.

19 Справедливость и право: межвузовский сборник научных трудов [*Justice and Law: Interuniversity Collection of Scientific Papers*] 7 (1989).

20 *Климович А.В.* Обязательства из деликтов в римском праве // Сибирский юридический вестник. 2008. № 1(40). С. 44 [Alexander V. Klimovich, *Obligations from Tort in Roman Law*, 1(40) Siberian Legal Bulletin 44, 44 (2008)].

21 Hao Jiang, *Chinese Tort Law in the Year of 2020: Tradition, Transplants, Codification and Some Difficulties*, SSRN Papers (2020) (Dec. 25, 2021), available at https://ssrn.com/abstract=3622837.

22 *Аверкиева Е.С.* Равенство, социальная справедливость и общественное благосостояние // Вопросы регулирования экономики. 2016. Т. 7. № 3. С. 44–54 [Elena S. Avarkieva, *Equality, Social Justice and Social Welfare*, 7(3) Issues of Economic Regulation 44 (2016)].

be noted that social justice should be aimed at creating an enabling environment for a certain category of persons. In the usual sense, justice is characterized by the establishment of equality which in tort law consists in taking into account the guilt of the victim and the causer, taking into account the property situation of the harm when awarding compensation (Arts. 1078, 1083 of the RF CC). The injured is always a weak party to tort liabilities and the special attitude of the Russian and Chinese legislator towards him/her is determined by the application of the presumption of guilt of the tortfeasor that implies his/her guilt until it is proved otherwise. Shifting the burden of proof has the goal of protecting the weaker. Therefore, derogations from the principle of legal equality and equality are possible in order to achieve justice in the context under consideration.

Social justice is a means of integrating politics, morality and law in a single plane of action, in a single, albeit contradictory, system of assessing people's behavior and the resulting way of treating them. Accordingly, justice is a reflection of the common will of the people which is embodied in the form of law at a specific period of the historical development of statehood.

In the legal literature, not only the types of justice are distinguished but also the forms of the realization of justice.

According to the classification by K. Muzdybaev, such forms can be attributed to distributive, correctional and procedural.[23] In general, this classification echoes the types of justice indicated earlier. However, in cases where we need to understand the mechanism for the realization of justice in the rules of tort law and the acts of its application, the latter classification is of greater interest.

The correctional form allows implementing the punitive component of justice and emphasizes the tortfeasor's guilt. Punitive compensation in both Russian and Chinese tort law is an exception to the general rule and manifests only in isolated rules. For example, in Russia, it relates to the fines that imposed on retailers for refusing to voluntarily satisfy consumer requirements in cases of harm due to defects in goods, while in China, it relates to the fines that imposed on the manufacturer and seller that did not remove from economic activities goods with defects which can cause serious damage to the life and health of citizens. The corrective form is also considered by Chinese scientists in the context of strictly established rules on the need for full reparation. It is assumed that this form requires strict protection of the individual (private) rights of the subjects through a mechanism of compensation for harm – "punishment with money" or, in other words, negative property consequences for the tortfeasor. The correction of the situation at the expense of the causer as an equitable option for restoring the property sphere of the victim does not in itself entail any complaints but it cannot take into account the peculiarities of each specific case of harm and according to Confucianism it is not generally welcome.

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[23] *Муздыбаев К.* Идея справедливости // Социологические исследования. 1992. № 11. С. 95 [Kuanyshbek Muzdybaev, *The Idea of Justice*, 11 Sociological Research 94, 95 (1992)].

In the distributive form of justice, the law focuses on the distribution of rights and duties, resources and various benefits. In this form, normative provisions will tend to the realization of such components of justice as "meeting the needs of those in need of something," "the public utility of the norm," "minimizing suffering." The distributive form implies universal burden sharing, the elimination of injustice by "common forces" in the absence of "selfishness."[24]

The procedural form of the exercise of justice should be manifested in the establishment of mechanisms at the law level that allow the subjects of tort law relations to effectively exercise their rights.

According to Jiang Hao in China, the traditions of Confucianism created the conditions for the development of a distributive form of justice. In Chinese tort law, the distributive form manifests itself in the establishment of a "medium" liability which applies if the amount of liability is difficult to determine or the property of the tortfeasor is insufficient and "joint" liability when it is impossible to identify a particular offender (formerly Arts. 9–11 of the TLL, now Art. 1254 of PRC CC), as well as "equitable" ("socialized" or liability "in share") of liability which is established in cases where the victim and the tortfeasor are not guilty of causing damage, but both parties, by decision of the court, can divide the damage in accordance with the real situation while previously the only reason for distributing the amount of compensation was the "wealth" of the tort liability parties (Art. 1186 of the PRC CC). To date, the wording of the law is limited to the need to separate losses in accordance with the provisions of the law. The distributive form of justice is also disclosed in the new rules on "alleged risk" when tort liability is reduced, "dissipated" under certain conditions. For example, with voluntary participation in activities related to certain risks, the causer, in the absence of intent and gross negligence on his part, is exempted from tort liability (Art. 1176 of the PRC CC). Another example is associated with a reduction in tort liability of drivers of vehicles not involved in entrepreneurial activity (Art. 1217 of the PRC CC). This rule demonstrates the legislator's desire to improve the legal situation of drivers who are not private entrepreneurs in order to gradually resolve the issue of the development of non-commercial passenger traffic and the unloading of public transport.

Jiang Hao believes that a similar approach is contained in Russian tort law when the guilt of the victim and the property of the tortfeasor are taken into account. However, this is not quite true. Russian tort law does not propose and did not propose legislative constructions in which the absence of guilt on both parties would lead to compensation for harm. Causing harm in special torts that do not require guilt by the tortfeasor but in the event of gross negligence of the victim are cases where the amount of compensable life or health damage can be reduced. Such a rule is aimed at forming a responsible attitude of "potential" victims to their actions and, in

[24] Jiang, *supra* note 21.

the whole, the lawful behavior of citizens. For example, the crossing of a pedestrian a red light is an unlawful action which in the event of a traffic accident should lead to such serious property consequences for the driver as in the case of an incident where the victim abided by traffic rules and crossed the road a green light. Thus, we are talking about the presence of guilt on the part of the victim.

Taking into consideration the tortfeasor's property status under Article 1083 of the RF CC occurs if the damage arose out of negligence or in the absence of the tortfeasor's fault. Such a consideration is intended to prevent cases where strict tort liability is established due to the danger of the object but may result in unfairly exorbitant compensation. A classic example of the need for this rule is commonly known: the tortfeasor is the owner of an old cheap car as a result of awkward movement during a maneuver scratches the door of a new expensive car. Apparently, both the danger to society and the victim's expenses actually required for repair are small here. However, for the tortfeasor, they can cause serious negative property consequences.[25] Thus, consideration of the property status of the latter person occurs exclusively in those torts where the harm appears in the absence of the tortfeasor's fault or due to negligence.

It seems that this version of regulation available in Russian law is more consistent with a universal understanding of the principle of justice and allows taking into account the circumstances of each particular tort. The existence of the rules under consideration allows, within the framework of the law, to ensure an individual approach and not lead to the authorization by the court of an act requiring compensation from a person who is not involved in the tort or who is actually the victim of a combination of circumstances. Soviet scientists moved even further in their discussions about the justice of tort liability. The main emphasis was on the significance of the guilt of both the tortfeasor and the victim. They insisted that the high risk and unexpected nature of torts should not undermine the foundations of social stability, confidence in the legitimate actions and, after all, in the correctness of the city traffic. Otherwise, a person is sealed for endless anxiety, for example, "I will go today in public transport, suddenly it will slow down sharply or I will unsuccessfully step on the foot of another person and will have to compensate for a long treatment or I will suffer and will not be able to continue to work." Therefore, at clarification of a question of imposing of the tort liability there can't be "approximate," "inexact," "average" legal categories. F. Gavze noted that the courts should take into account not only the specific situation in which the harm was caused but also the form and varieties of guilt (intent, carelessness in the form of negligence or frivolity), motive, purpose of the actions of the victim.[26] As

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[25] This example intentionally does not explain the purpose and mechanism of compulsory insurance for vehicle owners. The visibility of cases of inconsistency in the amount of damage for the victim and the causer was the reason for the demonstration of such an example.

[26] *Гавзе Ф.И.* Возмещение вреда, причиненного механизированным транспортом [Faivel I. Gavze, *Compensation for Damage Caused by Mechanized Transport*] 48 (1988).

an example, he convincingly shows that in a multimillion city, the crossing a red light by a middle-aged urban resident and the crossing a red light by an elderly citizen living all his life in a far village and being first time in the city are completely different acts from the point of view of taking into account their guilt.

Indeed, questions of guilt in determining tort liability in Chinese law are a subject of separate reasoning. They are not elaborated to the extent that they occur in other legal systems. This is also due to the peculiarity of the development of Chinese law. Tort liability on general grounds (for guilt) and strict (increased, without guilt) liability are supplemented by the previously indicated "equitable" liability (Art. 1186 of the PRC CC). Moreover, the form of guilt is not disclosed in the laws. As there are precedents in which guilt is not important for the even distribution of losses in a tort, the theory of guilt as such has not been the subject of in-depth studies.

It should be noted that given the resonance of Chinese court cases that made it possible to recover damage from persons who did not actually cause harm, modern Chinese courts make decisions that do not aim to satisfy the need for harm compensation that arose but have the goal of clarifying all the circumstances of the case. For example, in one of the cases, the court explained that according to common sense a river in winter is an apparently dangerous place that threatens human health and life. Predictability of hazardous effects can be known without professional knowledge. So entering the territory of the river, not intended for public events which is not a public recreation area or a zone for crossings the drowned one acted overly self-confident. Every citizen must realize that "he or she should not, at will, enter places where mass events are not held ... Adults should be primarily responsible for their own safety. They should not make their security dependent on the constant reminders of the relevant state bodies". Therefore, the lawsuit of the relatives of the drowned to the Beijing Yongding River Administration is not satisfied.[27]

The fragmentation of liability into various subspecies (equitable, medium, joint) may indicate the desire of the Chinese legislator to achieve the goal of harm compensation in any possible way and even in cases where it is impossible to establish the exact degree of the tortfeasor's guilt. Such an approach may be justified, however, it poses a risk of unjustifiable infringement of the tortfeasor's rights or the rights of third parties not related to the harm. It is indeed widely used, for example, in cases of harm caused by a "falling object." According to Article 1254 of the PRC CC liability for harm done by the falling objects, not fenced holes and unauthorized dumps comes if owners, proprietors, managers or builders can't prove the innocence. When it is impossible to identify the tortfeasor, plaintiffs, in such cases, can sue all citizens living in a residential building. So the court decides that all residents are responsible in equal

[27] 指导案例141号：支某1等诉北京市永定河管理处生命权、健康权、身体权纠纷案 [Guiding Case No. 141: *ZHI X 1 et al. v. The Yongding River Management Office of Beijing Municipality, A Dispute over the Right to Life, the Right to Health, and the Right to Body*] [Judgment of 16 October 2020] (Dec. 25, 2021), available at http://www.court.gov.cn/fabu-xiangqing-263581.html.

shares with the exception of those who were able to prove their absence from the house. In practice, it is not enough for the owner (manager or builder) to prove that he/she took reasonable care. He/she must prove that the third person, the plaintiff or the natural force caused harm to the plaintiff. Managers must prove that they took the necessary security measures to prevent such torts. If security measures have not been taken, they are liable. As Chenglin Liu points out, if the court followed traditional fault-based principles, a victim injured by a falling object would most likely be left without a remedy since the cost of finding the tortfeasor and holding him/her to account would be excessively high.[28] For jurisprudence, this theoretical nonsense in practice expresses a fairly clear task of Chinese tort law like speedy compensation for losses to the victim, a person who is at an extremely disadvantage compared to the defendant. In this part, a new law of the PRC CC is the establishment of a mandatory immediate investigation by the police and other state bodies of the liable person's location. Only if such an investigation does not make it possible to identify the tortfeasor, residents in the building may be obliged to pay.

Chinese "equitable" liability or, as Chenglin Liu calls it "socialized liability" is criticized by scholars who give examples of fairly controversial court decisions made using it. Chinese scientists note the space and uncertainty of such liability which allows the widest possible use of "judicial discretion." As a result, in some cases, citizens have to reimburse medical expenses, funeral expenses when the labor relations between the defendant and the victims were not related to the illness of the latter and his/her death and when the defendant took the necessary measures to assist in saving the victim. In other cases, "equitable liability" allows courts to dismiss claims against a party guilty of mass tort proceedings in the name of maintaining social stability. Judicial discretion raises the problem of justice of the decision of the court in a tort dispute. A just judgment is interpreted according to three concepts. The first puts the law at the forefront. Therefore, a court decision consistent with the law can be equitable. The second recognizes a just decision that is based on the law. The third concept only defines an equitable solution that complies only with the norms of justice and can run counter to legislative provisions.[29] Undoubtedly, if possible, the law should be essentially equitable. But due to the causistic nature of tort law, the act cannot provide for all possible regulatory options. Therefore, despite attempts by Russian or Chinese legislators to resolve in detail various aspects of offenses in the law, the objective impossibility of the existence of a tort law should be recognized in which the court could always refer to a specific norm prescribing such a case. Under the existing conditions, for example, the decision of the Russian court does not raise questions in justice according to which the victim, in addition to the expenses of treatment, it was

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[28] Liu 2018, at 24–26.

[29] *Черданцев А.Ф.* Социалистическое право и справедливость [Alexander F. Cherdantsev, *Socialist Law and Justice*] in *Justice and Law*, *supra* note 19, at 5, 13.

reimbursed the cost of airfare which she could not use due to a complication caused by a medical organization.[30] In this case, the court justly considered that the reason for being in a stationary medical organization and the inability of the victim to fly to her parents for a holiday was the result of an inflammatory process after removing a tooth. Despite the fact that the removal process itself was carried out in accordance with the standards of medical activity, the rules for further accompanying the patient after such removal were violated. It was necessary to prescribe adequate drug treatment of the patient's peculiarity which was expressed in the ability to develop a strong inflammatory process after mechanical effects on the body.

In other case, the decision of the Chinese court to refuse to satisfy the claim in case when the actions to detain the victim did not directly cause his death is beyond question.[31] In that situation, there was a collision between an adult driving a bicycle and a cyclist who was a minor. As a result of the accident, the latter was injured. Eyewitnesses took measures to block the movement of the adult's bicycle calling the parents of the minor and calling emergency services. A few minutes later, during a heated discussion on what happened, when the culprit of the collision tried to leave, he became ill and after a while he died. Subsequently, it turned out that he had a number of diseases that could lead to death due not only to intense emotional excitement but also as a result of other external influences. Given the legality of the actions that detained him, the court rightly dismissed the claim of the relatives of the deceased.

As a whole, despite the uncertainty of equitable or socialized liability, its use, taking into account the provisions of other norms of the PRC CC, really allows to compensate for harm by any means. Judicial errors may be related to the amount of compensation, however, without compensation for harm, the victim (at least in torts not related to harm caused by the state) cannot remain in such conditions. Accordingly, Chinese tort law, as Zhang Xinbao notes, presupposes the correction of the victim's situation to the detriment of finding out the guilt of the defendants and, according to the opinion of Chenglin Liu, contributes to the equalization of wealth between rich and poor.[32]

In contrast to this approach, Russian tort law remains committed to the formal principles of imposing liability and requires detailed proof of guilt, the wrongfulness and causation of the plaintiffs including those affected by the falling objects, pits on the roads, etc. For example, in practice, attempts to identify exactly if the ice formation fell from the roof of an apartment building or from the visor of a glazed

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30 *See* the case *Patrina v. Alexander Vakulchik Dentistry Corporation* (Judgment of 7 July 2016).

31 指导案例142号：刘明莲、郭丽丽、郭双双诉孙伟、河南兰庭物业管理有限公司信阳分公司生命权纠纷案 [Guiding Case No. 142: *Liu Minglian, Guo Lili, and Guo Shuangshuang v. Sun Wei and the Xinyang Branch of Henan Lanting Real Estate Management Co., Ltd., A Dispute over the Right to Life*] [Judgment of 9 October 2020] (Dec. 25, 2021), available at http://www.court.gov.cn/fabu-xiangqing-263591.html.

32 Zhang 2018, at 34.

balcony may be unsuccessful. The courts having established the fact of harm, nevertheless refuse to satisfy the claims of the victims due to the impossibility of determining the specific place of separation of the ice formation and, accordingly, the person liable for the harm.[33] In such judicial examples, the triumph of formalism gives rise to the absolute helplessness of the victims.

The courts may claim the incorrect basis of the statement of complaint and deny the claim in those torts that arise in a contractual relationship.[34] The victim in torts (for example, when providing poor-quality medical services or when causing harm to a poor-quality product) in some cases is actually deprived of the possibility of bringing a tort lawsuit. Meanwhile, tort defense can often provide more opportunities for the victim due to fines and compensation established at the law level.

The study of both the theory of Russian tort law and judicial practice makes it possible to note that Russia is characterized by a procedural form of the implementation of justice. The procedure involves careful attention to the grounds for presenting claims and to the content of these claims and their provability. The procedural form of the realization of justice is manifested in the detail of the issues of the size and procedure of compensation for harm, as well as in the procedure for proving the wrongfulness and guilt of the tortfeasor, in the detail of the tort types. The latter feature, in particular, is manifested in the allocation as an independent type of state liability (including law enforcement agencies). Despite the fact that the provisions of the RF CC in this part are criticized in some cases due to the lack of a presumption of guilt of the State, they demonstrate a readiness for a high degree of liability for creating conditions for the effective performance of their functions by state bodies.

Despite the presumption of tortfeasor's guilt in all other torts proclaimed in the Civil Code, victims are generally obliged to prove to the court not only the fact of harm and the causal link but also the wrongfulness of the tortfeasor's acts and, in fact, the guilt of the latter. There is a finding by the court of the tortfeasor's guilt with a focus on the evidence presented by the plaintiff, except where liability arises without guilt.[35]

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[33] *See* the case *Hadarin v. Vesta LLC* (Judgment of 31 March 2014).

[34] In the Ruling of the Supreme Court of the Russian Federation of 23 November 2016 in case No. A51-20318/2015, it was concluded that in making the claim, the plaintiff essentially based the claim on the position that the defendant, as a contractor, improperly fulfilled its obligations to repair the vessel, which meets the criteria of improper quality of the result of the work, and the plaintiff's arguments about the need to apply to the claims in this case, in particular, the provisions of Article 1095 of the Civil Code (on causing harm due to defects in goods) are rejected due to an erroneous interpretation of the law and the circumstances of the case Ruling of the Supreme Court of the Russian Federation No. 303-ES16-15223 (23 November 2016) (Dec. 25, 2021), available at http://www.supcourt.ru/stor_pdf_ec.php?id=1493388.

[35] Справка по результатам изучения судебной практики рассмотрения споров, связанных с возмещением вреда, возникших из деликтных правоотношений / Саратовский областной суд [Saratov Regional Court, Reference on the Results of the Study of Judicial Practice in the Consideration of Disputes Related to Compensation for Damage Arising from Tort Relations] (Dec. 25, 2021), available at http://oblsud.sar.sudrf.ru/modules.php?name=docum_sud&id=10146.

Formalism and, in some cases, excessive settlement of Russian tort law can still not be considered exclusively in a negative way. The general concept of the need to prevent the illicit enrichment of the victim creates opportunities for the observance of the principle of justice in relation to the tortfeasors. Available rules:

Firstly, to bring law and practice as closely as possible in order to avoid the breadth of judicial discretion. In this version, an equitable court decision just finds its approval within the framework of the previously indicated legalistic concept.

Secondly, it eliminates subjectivity in the interpretation of the law when the number of tort disputes in the country is very impressive, and in some cases tends to increase, a clear legal formulation of the order, conditions, methods of protection is critically necessary. For example, judicial statistics on claims for damages from unlawful actions of law enforcement agencies and the court show that the number of cases considered by courts in this category is consistently high and in the first half of 2020 significantly exceeded the annual testimony of previous years (Table 1).

Table 1

Year	2016	2017	2018	2019	1st half of 2020
The number of cases	4371	4227	3581	3726	5372

Unfair compensation can be avoided not so much by relying on judicial discretion in the framework proposed by the legislator but by the impossibility of awarding it by virtue of the rules prescribed by law. For example, in a case claiming compensation for moral harm from the State, the court found that the plaintiff had already exercised his rights to reparation through a complaint to the European Court of Human Rights about the investigation ineffectiveness of his application for criminal proceedings. As a result of the appeal, he was awarded compensation in the amount of 45,000 euros. Given that on the same grounds a lawsuit was filed in a Russian court, he was denied satisfaction of the lawsuit.[36]

It should be noted that the number of tort cases in China is also quite large, but due to different criteria and the basis for the formation of statistics in Russia and China, it is hardly possible to draw direct parallels. However, the approximate data can still be correlated.

For example, in the Russian Federation, the number of cases of compensation for harm for violation of environmental legislation is separately allocated. In 2018, the courts considered 3025 cases.[37] During the same period, according to paragraph 3

[36] *See* the case *D. v. Russia* No. 2-3315/17 (Judgment of 17 July 2017).

[37] Отчет о работе судов общей юрисдикции по рассмотрению гражданских, административных дел по первой инстанции за 2018 год / Судебный департамент при Верховном Суде РФ [Judicial

of the decision on the report on the work of the Supreme People's Court of the People's Republic of China, 251,000 cases on natural resources and compensation for harm to the ecological environment were considered. It is possible that this number of cases includes not only cases of compensation for harm but also other cases of environmental violations. However, even this figure indicates a large number of cases in the area under consideration.[38]

The number of claims for compensation for harm from road accidents (except for injuries and the death of a breadwinner) in the Russian Federation in 2017 amounted to 98 998, while in 2018, there were 102 141 ones.[39] In the People's Republic of China, statistics cover the total number of cases of liability disputes in road traffic accidents considered by people's courts at all levels in different categories in the country over several years. So, from 1 January 2012 to 30 June 2017, it amounted to 4.491 million.[40]

One way or another, statistics indicate the relevance of tort law in practice. And if the Russian courts have improved the system of collecting and analyzing statistical data, dividing them into separate torts specified in the Civil Code of the Russian Federation, then the Chinese courts are not yet ready to analyze the number of cases based on the division into separate special torts. Despite the fact that a significant number of tort disputes in China can only be judged on the basis of available generalized data, it can be assumed that the development of a single concept of justice in such a large state needs to be gradually separated from the distributive form of the implementation of justice and the introduction of more or less clear parameters of tort liability and its streamlining with the borrowing of elements of the distributive form of justice. Such a form would make it possible to achieve uniformity in court decisions and their unambiguity.

Thus, an analysis of legislation and judicial practice in Russia leads to the conclusion that the procedural form of the implementation of justice dominates. An analysis of Chinese law and law enforcement practice leads to a conclusion regarding

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Department under the Supreme Court of the Russian Federation, Report on the Work of the Courts of General Jurisdiction for the Consideration of Civil and Administrative Cases in the First Instance for 2018] (Dec. 25, 2021), available at http://www.cdep.ru/index.php?id=79&item=4891.

[38] 最高人民法院工作报告——2019年3月12日在第十三届全国人民代表大 [Report on the Work of the Supreme People's Court at the 13th National People's Congress on 12 March 2019] (Dec. 25, 2021), available at http://gongbao.court.gov.cn/Details/a5a0efa5a6041f6dfec0863c84d538.html.

[39] Отчет о работе судов общей юрисдикции по рассмотрению гражданских, административных дел по первой инстанции за 2017, 2018 год / Судебный департамент при Верховном Суде РФ [Judicial Department under the Supreme Court of the Russian Federation, Report on the Work of the Courts of General Jurisdiction for the Consideration of Civil and Administrative Cases in the First Instance for 2017, 2018] (Dec. 25, 2021), available at http://www.cdep.ru/index.php?id=79&item=4151; http://www.cdep.ru/index.php?id=79&item=4891.

[40] 机动车交通事故责任纠纷案件报告 [Motor Vehicle Traffic Accident Liability Dispute Case Report] (Dec. 25, 2021), available at http://www.court.gov.cn/fabu-xiangqing-88822.html.

the predominance of a distributive form of the implementation of justice in the event of harm.

3. Justice in Determining the Amount and the Procedure for Compensation for Harm

Professor Wei Zhang points out that China's tort law provides for mandatory legislative provisions.[41] This distinguishes tort law from contract law in which contracting parties can adapt most rules. Such provisions are certainly characteristic of the tort law of Russia. However, a significant difference between the PRC CC and the RF CC is that the possibility for the parties to agree on the amount of compensation that the injured person must pay to the victim is legally prescribed (Art. 1187 of the PRC CC). If the tortfeasor is not able to pay a lump sum at a time, he/she can do it in installments but with the condition of providing an appropriate guarantee of payment. Only in the event that agreement cannot be achieved, the court must determine the amount of compensation in accordance with the actual situation based on the provisions of Article 1179 of the PRC CC and other laws. Such provisions list the possible types of expenses that will be compensated, also in Article 1185 of the PRC CC indicates penalties for violation of intellectual property rights. The Notification of Opinion of the Supreme People's Court on a number of issues concerning the application of the general principles of civil law of the People's Republic of China (for judicial application) dated 4 February 1988 which was declared partially invalid by the new legislation provides that compensation for the costs of treatment is generally based on the hospital's diagnostic certificate, medical expenses and hospitalization charges. Moreover, the cost of medicines purchased without the permission of the attending doctor should not be reimbursed.[42]

The rules on tort liabilities in Russia are mandatory excluding the discretion of the parties in determining the conditions for their occurrence and the amount of compensation. It is a matter of course that there is no prohibition on voluntary reparation on the basis of an agreement. However, the possibility of a contractual settlement of compensation is not prescribed by law. Compared to Chinese tort law, Russian tort law in determining the types and procedure of payments is strictly formalized and contains detailed explanations in the RF CC. In order to identify possible distinctive features or similarities in the regulation of the issue under consideration, we will reflect the provisions of interest in Table 1 where the numbers in parentheses indicate the number of the article of the relevant civil code.

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41 Zhang 2014.

42 最高人民法院印发《关于贯彻执行＜中华人民共和国民法通则＞若干问题的意见(试行)》的通知 [失] [Notice of the Supreme People's Court on Issuing the Opinions on Several Issues Concerning the Implementation of the General Principles of the Civil Law of the People's Republic of China (for Trial Implementation)] (Dec. 25, 2021), available at http://www.lawinfochina.com/display.aspx?lib=law&id=3700.

Table 2

RF CC	PRC CC
lost earnings (income) (1085, 1086)	costs by reducing income due to missed work (1179)
cost of treatment (1085)	medical expenses (1179)
supplementary feeding (1085)	food expenses, hospital food subsidies (1179)
costs of external care (1085)	expenses paid for patient care (1179)
acquisition of special vehicles (1085)	Cost of assistive devices for persons with disabilities and disability compensation (1179)
purchase of drugs, prosthetic appliances and treatment in a sanatorium or resort (1085)	other reasonable costs of treatment and rehabilitation (1179)
–	transport costs (1179)
training for another occupation (1085)	–
if the victim – a minor – is compensated for damage related to the loss or decrease of his or her working capacity based on the cost of living of the able-bodied population as a whole in the Russian Federation (1087)	–
funeral costs (1094)	funeral costs (1179)
for persons who were supported (dependent) by the deceased victim – the share of earnings (income) of the deceased that they received or were entitled to receive for their maintenance during their lifetime is reimbursed (1089)	–

–	market price of property lost as a result of tort at the time of loss or by other reasonable methods (1184)

A visual presentation of the data makes it possible to verify that the statutory list of reimbursable expenses in both countries reflects all significant losses for the victim. However, Russian tort law is featured by higher concreteness and takes into account the interests of different categories of victims and their needs. The absence of the rule on the amount of compensation for lost property in the norms of the RF CC in the chapter on torts may be explained by the possibility of applying the general provisions of the civil code on determining the value of property in the liabilities.

According to the explanations given in paragraph 12 of the decision of the Plenum of the Supreme Court of the Russian Federation No. 25 of 23 June 2015 "On the Application by the Courts of Certain Provisions of Section 1 of Part 1 of the RF CC," the amount of reimbursement should be calculated with a reasonable degree of certainty. The materials of court cases indicate that the degree of accuracy of calculations for tort liabilities is not inferior to the specificity of calculations in contractual liabilities between entrepreneurs. Consequently, in the absence of rules similar to those of China on the preferential possibility of the tortfeasor and the victim to agree on the amount of compensable damage, the procedure for determining the compensable harm is established quite accurately.

As regards such compensation as compensation for moral harm, compensation for moral (mental) harm in Chinese law does not contain a detailed interpretation or the rules for its application. It is indicated only that it is used when serious moral harm is caused (Art. 1183 of the PRC CC). Reimbursement for such damage is compensated by applying the Interpretation of the Supreme Court on a number of issues on the establishment of liability for compensation for moral harm in civil law; Article 10 states that the amount of compensation for moral harm is determined based on the degree of tortfeasor's guilt, the circumstances of the tort, the consequences, income situation of the tortfeasor and the average standard of living in the area where the case was initiated.[43] However, the general principle of freedom of agreement between the parties on the amount and procedure for compensation specified in Article 1087 of the PRC CC applies to compensation for mental harm.

The victim in China has greater opportunities to determine the amount of compensation for harm with implying no need for strict regulation of moral (mental) harm which, either due to the high amount of compensation on other grounds, is not of interest to the victim or can be imposed arbitrarily without violating the legal provisions.

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[43] 最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释法释[2001]7号 [Interpretation of the Supreme People's Court on Several Issues Concerning the Determination of Liability for Compensation for Mental Damage in Civil Torts (2001)] (Dec. 25, 2021), available at http://jtgl.beijing.gov.cn/jgj/jgxx/flfg/qt/122224/index.html.

The RF CC in contrast to Chinese law contains not only the characteristic of moral harm but also the grounds, method and amount of its compensation (Arts. 151, 1099, 1101 of the RF CC). Russian legislation clearly states that the amount of compensation for non-pecuniary damage is determined by the court. Guidelines for its definition are: the nature of the suffering of the victim (includes an assessment by the court of the actual circumstances of the case and the individual characteristics of the victim), the degree of guilt of the tortfeasor (if in the tort before the court liability comes for the guilt), requirements of reason and justice.

The Supreme Court of the Russian Federation drew attention to the need to take into account the requirements of justice in the form of a reasoned justification of the specific amount of compensation.[44] This legal position of the Supreme Court of the Russian Federation is of great importance for the elimination in judicial practice of the formalism characteristic of the procedural form of justice realization. However, the vagueness of the category of justice elevated to the rank of criterion allows courts to make decisions that cause an intense negative assessment in the scientific community. Consequently, for example, the motivation parts of court decisions can, on formal grounds, correspond to Article 1101 of the RF CC, take into account its requirements, with the exception of a common understanding of reason and justice. For instance, one of the cases states that a law enforcement officer who achieved significant merit in his career should have stress resistance, therefore, a criminal case illegally instituted against him/her could not significantly affect his mental health and the preventive measure in the form of house arrest did not entail any adverse consequences for him/her.[45]. In another case, when determining the amount of compensation for moral harm, the court takes into account the type of preventive measure chosen, the period of illegal criminal prosecution against the plaintiff, the severity of the act in which the plaintiff was suspected, the scope of investigative actions, marital status, the type and kind of her activity, her state of health, and having a family.[46] Unquestionably, these criteria can and should be taken into account. However, how can one discuss the amount of compensation for moral harm caused by the state to a citizen, based on his/her successful or unsuccessful personal life or on his/her abilities to being good at work? After all, the degree of suffering should be calculated primarily from the degree of negative effects of the harm and not from the victim's merit or failure of in his/her own life.

It seems that insufficient attention to moral harm, as well as the amount of compensable damage, is paid in China due to the possibility of agreeing on its size

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[44] *See* the case *Zvereva v. Ministry of Finance of Russia* (Judgment of 5 March 2018).

[45] *Иванова Е.В.* Проблемы возмещения вреда, причиненного органами следствия, прокуратуры, суда // Проблемы экономики и юридической практики. 2018. № 3. С. 255 [Elena V. Ivanova, *Problems of Compensation for Harm Caused by the Investigation, Prosecutor's Office, Court*, 3 Problems of Economics and Legal Practice 251, 255 (2018)].

[46] *See* the case *Minina v. Ministry of Finance of Russia* (Judgment of 2 June 2015).

by the parties to the tort. Such an approach does not require details of the amount of compensation for harm, it does not limit the victim in making claims. For example, in one of the cases described by Chenglin Liu, the court partially satisfied the plaintiff's claims. Dew to the claims made by the widow of the deceased for damages for part of the medical expenses, funeral expenses and emotional experiences in the amount of about 270,000 yuan, 16,800 yuan was recovered from the defendant, taking into account the fact that he was not guilty and was not responsible for the illness and death of the victim.[47] Moreover, as a recent study convincingly reflects, the strong influence of the peculiar history of religion and state in China on tort law explains the significant specifics of Chinese law.[48] Jiang Hao explains that Confucianism does not welcome litigation and does not contribute to the development of a person's need to chase property benefits and to cover minor losses. The solution to the question of an equitable restoration of the "balance" between the person who caused the harm and the person who suffered from the harm should be concerned with development and self-improvement. The relevant mentality is reflected not only in the actions of citizens but also in the norms of law formed by the authorities and judicial practice. For example, Chinese tort law establishes the rule that the person who caused the harm but voluntarily provided emergency assistance is exempt from liability (Art. 184 of the PRC CC). Jiang Hao describes a case in which the victim was not restored a paid tour which he could not use due to an accident.[49] The court argued that such a property loss arose from the contractual relationship between the plaintiff and the travel agency and its occurrence does not depend on the property of the tortfeasor and the person. They can be uncertain and unpredictable. At the same time, there are decisions of Chinese courts in which, in the absence of substantiation by the plaintiff of the actual expenses incurred, the court satisfies its requirements on the basis of the obvious economic losses that the plaintiff incurs and may suffer from the defendant's guilty actions.[50] The essence of such court conclusions is that violating the reputation of an entrepreneur by distributing insulting, slanderous or derogatory statements on an information network (having an attribute of public space) will inevitably lead to losses. Therefore, the defendant was brought to legal liability. Consequently, a certain inaccuracy in the specificity of the order and the amount of compensation exist in Chinese law not as a gap but due to the need to leave the possibility for a judge to make a decision corresponding to the historical and religious spirit of Confucianism.

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47 Liu 2018, at 24.

48 Jiang, *supra* note 21.

49 指导案例143号：北京兰世达光电科技有限公司、黄晓兰诉赵敏名誉权纠纷案 最高人民法院审判委员会讨论通过2020年10月9日发布 [Guiding Case No. 143: *Beijing Lanshida Optoelectronics Technology Co., Ltd. and Huang Xiaolan v. Zhao Min, A Dispute over Rights to Reputation*] [Judgment of 9 October 2020] (Dec. 25, 2021), available at http://www.court.gov.cn/shenpan-xiangqing-263601.html.

50 Kui-Hua Wang & Danuta Mendelson, *An Overview of Liability and Compensation for Personal Injury in China Under the General Principles of Civil Law*, 4(2) Torts L.J. 1, 36 (1996).

Taking into account mentioned points, significant progress has been made in regulating torts in China in the late nineties of the last century being at a very early stage of development. In such a short period of time, a legislator was able to fix the types of compensation in the law retaining priority over the contractual establishment of the amount of such reimbursement.

In Russian law and legal practice, it is important to determine the limits of violation of the victim's property issues, since the damage reimbursement liability should not serve to the victim's unreasonable enrichment. For example, when considering tort disputes, the prosecutor may demand a reduction in the amount of claims filed by the plaintiff insisting on the groundlessness of the treatment costs which include drugs that are not included in the list of appointments.[51]

The issue on the significance of the procedure for calculating the amount of compensation in tort liabilities is of fundamental importance. Definitely, on the one hand, the victim must be exempted from excessive burdens associated with the search for evidence of specific property losses while experiencing physical or moral suffering due to the fact of the harm done. However, baseless penalties from the tortfeasors, or even, as in the practice of the Chinese court, from third parties, can also be regarded as actions completely inconsistent with the general principles of the law. Apparently, the issue on the procedure for calculating the losses suffered, their composition, should still find its specific permission at the law level where the procedure for determining the amount of compensation should be established. At the same time, in order to maximize the protection of the victims' rights, the law should establish the possibility of the tort liability parties to agree on the procedure, the time frame, the amount of compensation (not lower than the legal minimum). This rule will allow to level situations when it is difficult to find out the specific amount of losses for the victim.

Therefore, on the issue under consideration, an integrated approach, including a variant of Russian law and Chinese law, seems quite optimal comparing with the approaches currently contained in Russia and China.

Conclusion

Justice in Russian tort law is implemented in a procedural form that allows taking into account the characteristics of each particular casus. Justice in Chinese tort law takes the form of a moderate distribution of property benefits and restoration of the victim's property by any means.

What is indeed, both the forms of realization of the justice of Chinese tort law and the corresponding forms of Russian tort law have a number of undeniable advantages, as well as a number of significant shortcomings. However, the idea of justice which reaches its climax precisely in tort liabilities due to their inexpertness,

[51] *See* the case *Gerasimova v. Abdulkhalikova* (Judgment of 20 June 2017).

risk for injury and, as a rule, the negativity of their actual consequences, both for the victim and for the tortfeasor (in some cases), should be improved taking into account modern political and economic development. The very fact that Chinese scientists and practitioners pay great attention to the development of tort legislation deserves special attention and support. China seeks to integrate into the world community preserving the basic political tenets and ideas of collectivism. At the same time, the inexplicable rigidity in the discussion and introduction of new provisions in the RF CC into the chapter on tort liabilities remains incomprehensible and incompatible with current reality.

It should be recognized that despite numerous complaints and interesting proposals in the literature to improve the norms in force in China, the proposed form of implementation of justice actually seems to be optimal and in some cases especially effective for victims. According to S. Dontsov and V. Gliantsev, the main value of tort liabilities lies in the ability to compensate for property losses suffered by an organization or a citizen.[52] The evident main social value of reparation is the achievement of justice.

Given the peculiarities of China's political and economic development, the current system of norms on tort liabilities most fully reflects justice in the context of collectivism and the need to smooth out social inequalities. The forms that it acquires are mainly in the moderate distribution of property benefits and the speedy restoration of the property status of the victim.

Compared to the tort law of China, the undeniable advantage of Russian tort law is the establishment at the law level of clear guidelines for determining compensation, as well as taking into account the guilt of both the victim and the tortfeasor. Jurisprudence demonstrates a commitment to the formal requirements of identifying the necessary conditions for tort liability. With this approach, there is no doubt that the issues of holding third parties unrelated to the tort to account are removed. Also, given the provisions of Russian law, the amount of compensation cannot be unreasonably overstated.

The problem of the procedure for calculating victims' losses should be solved on the basis of integrating the Russian and Chinese approaches and find their specific permission at the law level by determining the criteria for such calculations. At the same time, in order to protect the rights of victims, at the level of the law, the possibility of the tort liability parties to agree on the procedure, the time frame and the amount of compensation (not lower than the legal minimum) should be set out.

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52 Dontsov & Gliantsev 1990, at 10.

References

Karkhalev D. *Protection of Rights Under Russian Civil Law in a Comparative Context*, 3(1) BRICS L.J. 126 (2016). https://doi.org/10.21684/2412-2343-2016-3-1-126-137

Liu C. *Socialized Liability in Chinese Tort Law*, 59(1) Harv. Int'l L.J. 16 (2018).

Thomas K. *The Product Liability System in China: Recent Changes and Prospects*, 63(3) Int'l Comp L.Q. 775 (2014). https://doi.org/10.1017/s0020589314000219

Wang K.-H. & Mendelson D. *An Overview of Liability and Compensation for Personal Injury in China Under the General Principles of Civil Law*, 4(2) Torts L.J. 1 (1996).

Zhang W. *Understanding the Law of Torts in China: A Political Economy Perspective*, 11(2) U. Pa. Asian L. Rev. 171 (2014). https://doi.org/10.2139/ssrn.2531202

Zhang X. *Legislation of Tort Liability Law in China* (2018). https://doi.org/10.1007/978-981-10-6961-1

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