

Dochshanova A.S.,
Smatlayev N.B.

**General issues of liability for
harm caused for life and health
in Germany and Kazakhstan:
comparative analyses**

Доцанова А.С., Сматлаев Н.Б.

**Германия мен Қазақстандағы
өмір мен денсаулыққа
келтірілген зияны үшін
жауапкершіліктің жалпы
мәселелері: салыстырмалы
талдау**

Доцанова А.С., Сматлаев Н.Б.

**Общие вопросы
ответственности за вред
жизни и здоровью в Германии
и Казахстане: сравнительный
анализ**

This article deals with the comparative analyses of legislation of Germany and Kazakhstan on liability for harm caused for life and health. The system of tort legislation of Kazakhstan and Germany is shown. The differences between the German Civil Code and the Civil code of the Republic of Kazakhstan are demonstrated. Also common features of these normative acts are defined. Moreover, advantages and disadvantages of both sides are analyzed.

Key words: tort obligation, life, health, Germany, Kazakhstan.

Мақалада Германия мен Қазақстандағы өмір мен денсаулыққа келтірілген зияны үшін жауапкершіліктің жалпы мәселелеріне салыстырмалы талдау жасалынды. Германия мен Қазақстанның деликтілік заңнамасының жүйесі көрсетілді. Германия азаматтық кодексі мен Қазақстан Республикасының азаматтық кодексінің айырмашылықтары көрсетілді. Екі нормативтік актілердің ұқсастықтары да анықталды. Оған қоса екі жақтың артықшылықтары мен кемшіліктері талқыланды.

Түйін сөздер: деликтілік міндеттеме, өмір, денсаулық, Германия, Қазақстан.

В статье проводится сравнительный анализа законодательства Германии и Казахстана по вопросам ответственности за вред жизни и здоровью. Показана система деликтного законодательства Германии и Казахстана. Выявлены различия между Германским Гражданским уложением и Гражданским кодексом Республики Казахстан. Также определены общие черты данных нормативных актов. Более того, проанализированы преимущества и недостатки каждой стороны.

Ключевые слова: деликтное обязательство, жизнь, здоровье, Германия, Казахстан.

**GENERAL ISSUES OF
LIABILITY FOR HARM
CAUSED FOR LIFE AND
HEALTH IN GERMANY
AND KAZAKHSTAN:
COMPARATIVE
ANALYSES**

The Republic of Kazakhstan is one of the countries which legislation is based on the principles of continental legal system. Continental law is a legal system that has laws written into a collection, codified and are created only by statutes, legislation, parliament or supreme legislative organ. This is the most often met legal system in modern world [1].

The main concept of Continental system was first created in Roman Empire by the initiative of emperor Justinian – «Code of Justinian» in 530 AD and was spread widely. Later, with the invasion of German tribes, this system experienced considerable changes after which it became Romano-Germanic legal system. Not only this, but also, during the Middle Ages, such concepts as natural law, ecclesiastical practices, legislative positivism and others also shaped this system. Roman system served as basic conceptual component to all modern Continental legal systems.

Civil legal system proceeds general principles, distinguishes substantive and procedural rules, also it holds legislation as primary source of law. There are no precedents used in court system of civil legal systems. The courts are inquisitorial which means that the judge endeavours to know facts about the case and at the same time he/she represents the interests of the state in trial. Judges in this system are specially trained judicial-officers.

The very basic tenet of this oldest surviving legal system is to provide society and people with written collection of laws that will apply them and that judges must follow [1].

One of the most experienced states which uses the principles and provisions of Roman-German legal system is Germany. Situation of Kazakhstan and Germany at different levels of economic development undoubtedly requires the comparative analyses of legislation of both countries. To date the issue of legal regulation of the compensation for harm caused for life and health is very important because of the majority of cases of a different legal nature.

German Civil Code, German Bürgerliches Gesetzbuch, the body of codified private law that went into effect in the German empire in 1900. Though it has been modified, it remains in effect.

The code is divided into five parts. The first is general, covering concepts of personal rights and legal personality. The subjects of the other four parts are: obligations, including concepts of sale and

contract; things, including immovable and movable property; domestic relations; and succession [2].

Title 27 of the German Civil Code considers Torts. In accordance with the section 823 «A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this [3].

The Civil code of the Republic of Kazakhstan also provides in its article 917, that damage (property and (or) non-property) caused by illegal actions (a failure to act) to property or non-property benefits and rights of the citizen and legal entities shall be subject to compensation in full amount by an entity who caused the damage [4].

The first difference between the legislation of two countries is shown in Section 825, which provides liability for a person who induces another person to undertake or acquiesce in sexual acts by cunning, duress or abuse of a dependency relationship is liable to him for the resulting damage incurred. Kazakhstan legislation does not contain such a norm.

German legislation also provides possibility to exclude or reduce the responsibility. A person who, in a state of unconsciousness or in a state of pathological mental disturbance precluding free exercise of will, inflicts damage on another person is not responsible for such damage. If he has temporarily induced such a state in himself with alcoholic beverages or similar means, he is then responsible for damage that he unlawfully causes in this state as if he were responsible because of negligence; responsibility does not ensue if he came into this state without fault.

In Kazakhstan there are other foundations. Damage which have arisen due to the intention of the injured shall not be subject to reimbursement. If gross carelessness of the injured himself promoted the emergence or increase of the damage, then, depending on the extent of the fault of the injured and the person who caused the damage, the amount of compensation must be decreased. A court may reduce the amount of compensation for damage inflicted by a citizen, subject to his property status, except for cases when the damage was caused by the actions committed intentionally.

There are also special rules for responsibility of minors.

- A person who has not reached the age of seven is not responsible for damage caused to another person.

- A person who has reached the age of seven but not the age of ten is not responsible for damage that

he inflicts on another party in an accident involving a motor vehicle, a railway or a suspension railway. This does not apply if he intentionally caused the injury.

- A person who has not yet reached the age of eighteen is not responsible for damage he inflicts on another person if, when committing the damaging act, he does not have the insight required to recognise his responsibility [3].

In Kazakhstan there is a division of minors for two groups: under 14 and between 14 and 18 years old.

- The parents (adopters), guardians shall be liable for the damage caused by a minor under fourteen years of age, unless they prove that the damage was caused through no fault of theirs.

- The minors at the age from 14 till 18 years shall be independently liable, on general grounds, for the damage caused by them [4].

Section 833 regulates the liability of animal keeper. If a human being is killed by an animal or if the body or the health of a human being is injured by an animal or a thing is damaged by an animal, then the person who keeps the animal is liable to compensate the injured person for the damage arising from this. Liability in damages does not apply if the damage is caused by a domestic animal intended to serve the occupation, economic activity or subsistence of the keeper of the animal and either the keeper of the animal in supervising the animal has exercised reasonable care or the damage would also have occurred even if this care had been exercised.

There is an interesting interpretation of the liability of the owner of a plot of land in German legislation. If a human being is killed or if the body or the health of a human being is injured or a thing is damaged by the collapse of a building or any other structure attached to a plot of land or by parts of the building or structure breaking off, then the possessor of the plot of land is liable to make compensation to the injured person for damage resulting from this, to the extent that the collapse or severing is a consequence of defective construction or inadequate upkeep. Liability in damages does not apply if the possessor has observed reasonable care for the purpose of avoiding danger. A previous possessor of the plot of land is responsible for the damage if the collapse or breaking off occurs within one year after he vacated possession, unless during his period of possession he exercised reasonable care or a later possessor would have been able to avoid the danger by observing this care [3].

In Kazakhstan these situations are combined in article 931 «Liability for Damage Caused by Activ-

ity Which Create Increased Danger for the People (Source of Increased Danger)». Legal entities and citizens whose activity is connected with increased danger for the people (transport organisations, industrial enterprises, constructions, owners of transport vehicles, and others) shall be obligated to cover damage caused by the source of increased danger, unless they prove the damage emerged due to force majeure or by the intention of the injured.

The obligations of compensation for the damage shall be imposed on a legal entity or a citizen who own the source of increased danger under the right to ownership, business management, or the right to operative management, or under any other legal basis (contract of property rent, power of attorney for the right to drive a transport vehicle, by virtue instructions of the authorised body concerning the transfer of the source, etc.) [4].

The issues of estimating the payment compensation are of large importance. German legislation provides if the earning capacity of the injured person is eliminated or reduced as the result of an injury to body or health or if his needs are increased, then the injured person is to be given damages by payment of an annuity. The life annuity is payable in advance. An annuity in money is payable for three months in advance; in the case of another kind of annuity, the period of time for which it must be paid in advance is determined according to the quality and purpose of the annuity.

Whether the person liable in damages must provide security and in what kind and in what amount is determined by the circumstances. In lieu of the annuity, the injured person may demand a lump sum settlement if there is a compelling reason for doing so. The claim is not excluded by the fact that another person must provide the injured person with maintenance.

In cases where death is caused, the person liable in damages must reimburse the costs of a funer-

al to the person under a duty to bear these costs. If the person killed, at the time of the injury, stood in a relationship to a third party on the basis of which he was obliged or might become obliged by operation of law to provide maintenance for that person and if the third party has as a result of the death been deprived of his right to maintenance, then the person liable in damages must give the third party damages by payment of an annuity to the extent that the person killed would have been obliged to provide maintenance for the presumed duration of his life. Liability in damages also arises where the third party at the time of injury had been conceived but not yet born.

In the case of death or injury to body or health, or in the case of deprivation of liberty, the person liable in damages must give a third party compensation for loss of services by payment of an annuity if the injured person by operation of law was under a duty to the third party to render services in the household or business of the latter [3].

In Kazakhstan when inflicting to a citizen of injury or any other harm to the health, compensation shall be subject with respect to earnings (income) lost by the injured which he definitely might have, as well as expenses caused by the damage to the health (on treatment, additional meals, purchase of medicines, making of prosthetic appliances, taking care of him by other person, sanatorium and health resort treatment, acquiring of special purpose transport vehicles, preparation to another occupation, etc.), if it is recognised that the injured is in need of all of these kinds of aid and care, and does not get them free of charge [4].

To sum up, the differences between two legislative systems shown on the example of life and health injuries are not substantial. In some issues German legislation provides a wider interpretation, but in others Kazakhstan civil code regulates obligations in detail and more official.

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