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Research paper



Theory of Harm and Damages in the Pre-Soviet Period of Civil Law Development

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Abstract

The works of the first Russian jurists on the issues of damages in civil law are insufficiently used in science. This article may fill the gaps and be interesting for professionals in the field of studies. Historical and comparative methods were used when reading and comparing all pre-Revolutionary works on the topic. It was found that the science of civil law abstracted from universal adjudication of damages reimbursement as a means of legal protection and focused on its interpretation as a sanction for offence. The modern authors repeat the four-level structure of cases on damages, adopted and elaborated in the Soviet period: illegality, causality, guilt, and proved decrease of property. The authors conclude that it is necessary to return to pre-Revolutionary conceptions and use them for improving the current theory of damages.

Keywords: *Harm, damages, decisions of the Civil Cassation Department of the Governing Senate, draft of the Civil Code of the Russian Empire, Code of Civil Laws of the Russian Empire.*

1. Introduction

Despite the abundance of legal literature, there still has been no publications discussing all arguments and viewpoints on the topic of adjudication of damages reimbursement prior to the first civil law codification in 1922.

Considering the views of the Russian pre-Revolutionary jurists on reimbursement of damages and marking their contribution to the modern doctrine of damages, one should note that there was no authoritative scientific theory underlying the judicial recovery of damages in the Russian Empire. Legal regulation of the issues of damages recovery became significant not earlier than in the second half of the 19th century.

Development of the general legal principles was carried out due to the works of the prominent Russian civilists, who were professors at the leading Russian universities. When writing conceptual works they relied, first of all, on research by the German-speaking civilists, as well as on legislative process in their states, and later in united Germany.

2. Materials and methods

Theory and practice in Russia lagged behind those of advanced European countries. The authors of the present work have found only two books, about ten articles and several collections of Cassation Department of the Governing Senate,which contained estimation of cases involving damages, lesion, and loss of profit, and proposed legal classification of damages claims. The share of cases involving damages was constantly growing in the Senate, reaching one third in 1910. In the Russian judicial system in general it was between 3 and 5% even in the recent years, that is why the authors considered it logical to use, first of all, the historical method. As doctrines evolve under the influence of the rapidly growing turnover in commerce, transport and production forces, one may trace the differentiation of such legal categories as “damages”, “harm”, “proceeds”, and “expenditures” – initially used as synonyms and gradually assuming their own important meaning. The comparative research allowed juxtaposing the opinions of authoritative juristson thetopic under discussion, in order to comprehend and use the ideas of the most prominent pre-Revolutionary scholars.

3. Results

The authors come to a conclusion that the wordings of liability contained in the Code of Laws of the Russian Empire (Art. 684 et al.) are not suitable for regulating damages recovery today, as they use the key notion of “impermissible action”, i.e. unauthorized action; this contradicts the fundamental principle of private law“everything which is not explicitly forbidden by the law is allowed”, stipulated in Article 9 of the Russian Civil Code. Not all conceptual ideas of authoritative jurists of that time were developed in the Soviet period and later, for example, the conceptions of liability due to accepted risk. The judicial practice of real damage and loss of profit recovery did not rely on unified bases and was contradictory. That is why, a Civil Code of the Russian Empire was being prepared for issue and adoption – it was to be the first legislation codification act in the country, in which the normative basis was to become unified and consistent. All representatives of the pre-Revolutionary Russian science followed the example of German-speaking scholars from Austria, Switzerland, and, most of all, Germany, considering their opinions to be most authoritative. This explains the historical and genetic links between the Russian and the German legal systems and, in particular, the institution of damages.

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4. Discussion

4.1. Important works and sources

The adjudication bodies before and after the 1864 reform followed Articles 683 and 684 of vol. X, part 1 of the Code of Laws of the Russian Empire (Civil Laws) and Article 574 of general character, which said: "As according to the general law no one can be deprived of their rights out of court, then any property lesions, harm and damages shall be recovered by the one party and can be demanded to be reimbursed from the other party" This wording was elaborated within the fruitful activity of the supreme judicial institution of that time – the Governing Senate. Before the second half of the 19th century, when industrial development resulted in the increase of damages recovery claims, cases on those Articles were rare. The Senate heard up to 130 cases a year. Of them, damages recovery claims constituted about 10% in 1871, while in 1910 – about one third. They arose both from delicts and deals, mostly of household and small business character. Thus, there was actually no doctrine on damages; moreover, compilers of the Senate solutions reviews sometimes directly cited the works by German authoritative jurists and the achievements of the German legislator

Scientific summarizations of the topic of damages started to appear in textbooks on civil law, priority belonging to the distinguished statesman K.P. Pobedonostsev. Later, outstanding theoreticians G.F. Shershenevich, I.A. Pokrovski and D.I. Meyer touched upon the topic in university textbooks. Also, damages as monetary equivalent of forfeits are discussed in the work "Civil law of Ancient Rome" by S.A. Muromtsev

Besides, we should mention such works, important for the doctrine development, as those by jurist E.E. Privits and Professor K.P.Zmirlov (the latter was vice-prosecutor of the 2nd Department of the Governing Senate), and Professor of Perm and Kazan Universities V.P. Domanzho

The most detailed work on the topic of damages recovery was published in 1902 by a lecturer of Yuryev (Tartu) University A.S. Krivtsov. In 1911, a famous scholar T.M. Yablochkov published a two-volume work "Influence of the victim's guilt on the amount of damages reimbursed to them".

Before the Revolution, the following works were published, devoted to the said problem: A.A. Knirim "On recovery of damages due to incorrect judicial decisions" (1862), A.G. Yarotskiy "Liability of entrepreneurs for accidents with workers" (1888), M.B. Gorenberg "Principle of civil liability for damages and harm incurred by impermissible actions" (1892), G.L. Verblovskiy "Reimbursement of damages incurred by impermissible actions"(1900), A.A. Simolin "Bases of civil liability for damages and harm"(1905), P.N. Gussakovskiy "Recoveryof damages incurred by impermissible actions" (1912) and "Liability for nonfulfillment of contracts" (1913), S.A. Belyatskin "Reimbursement of moral (nonmaterial) damage" (1913).

Thus, we can see that the theory of damages was formed not earlier than in the beginning of the 20th century, and it is since then that comparison of various jurists' viewpoints on the issue became possible. Their works influenced the draft of relevant wordings in the Civil Code of the Russian Empire, which was not adopted because of the World War I.

A desert of a small group of law theoreticians in the imperial Russia was that they imparted new meaning to the norms on damages. Pre-Revolutionary jurists, first of all E.E. PrivitsandA.S. Krivtsov, convincingly advocated the principle of guilt when discussing the issue of whether to bestow compensation at all, though nothing was said about guilt in legislative texts.

A new round in the society development demanded doctrinal summarization of the cases on damages due to "dangerous" activity of industrial entities. A book by Professor K.P.Zmirlov was entitled "Reimbursement for damages and harm due to death or health injuries incurred by railroad and steamship companies, according to the decisions of the Governing Senate". The industrial level of that time, its significance and the social expectations caused by the progress, on the one hand, and on the other hand – the lack of firm political will to establish standards of labor and social protection of employees in the country with illiterate and poor, mostly peasant population,gave rise to considering plants and factories as tortfeasors, liable for the guilt only. Such practice was established in the beginning of the 20th century. Then, on the eve of the Soviet era, employers started to be liable for personal damages without guilt, as we call it today; moreover, they started to be liable for any property damages incurred by the source of increased danger.

Wordings of Articles 574 and 684 of the Code of Laws of the Russian Empireseemed to imply the principle of infliction, or, to be more exact, reimbursement of damages without guilt under any circumstances. Gradually, the Governing Senate departed from such interpretation of this postulate. E.E. Privitssummarized the relevant practice (see further in more detail).

To favor the developing industry, K.P. Zmirlov advocated the principle of guilt and the rule of strict causal relation in all cases of incurring injuries by railroad and steamship companies; at that, if damages was incurred not during the functioning of the tortfeasor, the guilt and the causal relation was to be proved by the victim. In the last edition of a "Textbook of the Russian civil law", G.F. Shershenevich, and later I.A. Pokrovskiy already stood for presumption of guilt and strict (i.e., even regardless of carelessness)liability of enterprises.

Authoritative Russian civilists, such as K.P. Pobedonostsev (1827–1907), G.F. Shershenevich (1863–1912), I.A. Pokrovskiy (1868–1920), devoted special chapters in their textbooks to damages. In his "Course in civil law", K.P. Pobedonostsev wrote of special liabilities to reimburse damages incurred by impermissible actions and crimes. He asserted that the punitive function of these requirements was transferred to criminal law, while the task of civil law is to arrange reimbursement of the incurred damage. G.F. Shershenevich also wrote of "liabilities", based on civil breach of law, which the scholar defined as "impermissible action violating another person's subjective right by incurring property damage".

K.P. Pobedonostsev, followed by all representatives of the Russian doctrine before 1917, gave the following qualification to quod recuperet: reimbursement of damages due to impermissible actions – law breaches and crimes. The most significant aspect here is that, within property circulation, the contract non-fulfillment and the intentional damages of property were put on the same plane as impermissible actions, entailing damages reimbursement. For these corpuses, in his opinion, there should be different conditions for imposing sanctions – guilt entailed liability only in criminal cases.

K.P. Pobedonostsev more often than the later authors turned to analyzing the decisions of the supreme judicial instance of the Russian Empire – the Governing Senate, which handled, among others, small household cases and interpreted, according to the dominant civilistic conceptions, such important legal categories as, for example, "objective guilt", estimating it with the criteria of diligence (equal to involvement into own affairs). Its lack was equaled to recklessness. Proper degree of diligence characterized "a good owner", who never allows even slight carelessness

As we can see, the notion of guilt lacked the "psychological" feature, which appeared in the Soviet period However, establishing of guilt in civil cases played an important role in determining damages since ancient times. K.P. Pobedonostsev marked that the amount of reimbursement was often the same for criminal actions and ordinary breaches of law. Besides, masters were not liable for the behavior of their servants, if it did not follow from their instructions If harmwas incurred by actions, it could not be accidental, as the actions include volitional goal-setting, under which *casus*could not happen. K.P. Pobedonostsev wrote: "Action on damages has a special economic significance. It is necessary that those who were offended and suffered damages had a practical opportunity to hope for satisfaction of their legal requirements... it is necessary both for the firmness of the property right and for

maintaining credit and good faith in mutual personal property relations"

The scholar considered it important tohave broad discretion of court in cases on damages, as well as the fact that the condition of bringing to court was the direct connection with the action of the tortfeasor. K.P. Pobedonostsev mostly used the term "neglect" to denote a cause of damages.

In his fundamental "Textbook of the Russian civil law", G.F. Shershenevich also did not distinguish between delict and contract variations of liability, not mentioning the latter at all. The scholar spoke of damages for impermissible action violating another person's subjective right. For the liability "to reimburse for the damages" to arise, there should be a corpus of illegal action. In absentia arguing with K.P. Pobedonostsev, who said that there are no accidental actions, i.e. that the tortfeasor must always reimburse damages if their will was aimed at committing a harmful action, G.F. Shershenevich emphasized the firmness and fundamental character of the guilt criteria and the unlawfulness of the demand to reimburse lesions (harm) and damages incurred by accidental actions. Further he wrote: "Civil breach of law implies that an unlawful action violating an objective and subjective right incurs *property damage*, which can be reimbursed in monetary form and, hence, subject to reimbursement by the tortfeasor".

G.F. Shershenevich had a non-standard opinion on the meaning of guilt in impermissible behavior: in case of a crime, guilt is the measure of liability; in case of a property breach of law, it is an ordinary condition of reimbursement. A sanction for harm in a crime is punishment, while in a civil breach of law it is amendment of evil incurred by the guilty. He asserted that "a civil breach of law and a crime are often two sides of the same phenomenon" and that "one and the same action often infringes both social interest and private property interest"

Discussing the causality of damages due to impermissible actions, G.F. Shershenevich was the only one among the Russian civilists to speak about adjudication of such damages which could have been reasonably foreseen: "From the viewpoint of the essence of law as a means of social impact on people's behavior, it should be admitted that civil liability for unlawful action cannot go further than an average reasonable person could foresee at the moment of committing the breach of law, based on the common everyday experience". However, this should not refer to the cases of intentional infliction. In that case, both remote and unforeseen damages are reimbursed

The scholar has a very interesting opinion on liability without guilt at the times when the notion of "source of increased danger" did not exist. It was stipulated by a special law for enterprises. By G.F. Shershenevich, "it would be most correct to consider the extreme liability of enterprises as an insurance function imposed by the state on the enterprises which it considers capable of carry that burden" The Senate formulated it differently: "...the damages must be imposed on those who acquire profit" It should be added that, according to G.F. Shershenevich, the moral damage damages as sufferings, for which the guilty is punished by reimbursement, differs from a broader notion of personal resentment. It can also entail adjudication of damages reimbursement, but only "if… it is indirectly reflected on material interests, for example, on the credit of the offended"

I.A. Pokrovskiy argumentatively spoke about a universal significance of guilt for determining liability and about impracticability of the principle of infliction. Probably, the scholar made a valuable conclusion, tough he did not state it directly, that the guilt factor is a very useful component of regulation, allowing the court to consider cases flexibly, with due account of the case peculiarities; while an alternative method would reduce everything to unjust and mechanistic approach, as damages would be adjudicated equally to those who inflicted harm intentionally and involuntarily. Relying on the idea of enduring significance of guilt and the functions of civil law "to reimburse and amend", I.A. Pokrovskiy came to the conclusion that the degree of guilt should not influence the completeness of reimbursement, i.e., in his understanding, the intention, not associated with the social danger when inflicting damage, coincides with light carelessness in terms of the size and conditions of liability.

4.2. Thesis on the limits of subjective law

Analysis of texts and arguments of the past epochs shows the logical struggle between the two conceptions on the freedom of commercial activity. The Roman wordings *Neminem laedit, qui suo jure utĭtur* ("Who uses one's right, offends no one") and *Qui jure suo utĭtur, nemini facit injuriam* ("Who uses one's right, violates nobody else's right")created a powerful impulse for developing private initiative. But it soon became obvious that in an industrial society the actors' modus operandi depends on the further judicial establishment of the limits of subjective authority. A cautious attempt was made to establish the limits of lawful implementation of right by introducing the category of abuse of rights, or chicanery.

The intellectual product of the German jurists was defined as follows: no one is entitled to implement their subjective authority with the exclusive aim of inflicting harm on another person. This legislative solution did not correspond to the level of society development as early as in the 19th century. Apparently, individual commercial freedoms naturally competed with each other, and constraint of one of them could take place not only with evil intentions, but also due to non-fulfillment of the principles of honesty, morals and openness.

That is why the limitation was formulated as exclusion of intentional harm and actions contradictory to good morals. At the same time it is clear that the formeris the sequence of the latter. Chicanery is the main case of immoral behavior. However, from the modern point of view it is a bad example of using juridical technique. The Senate precedent of 1902 No. 126 (see further in more detail) appeared to be much more progressive. In our opinion, its advantage was that there appeared more opportunities for court's discretion when the content of individual property freedoms are established; also, there was less need to use non-juridical tools, in particular ethical attitudes expressed by the term "good morals".

When debating the wording of the draft Civil Code of the Russian Empire, the thesis, stipulating that no one should be liable if acting within one's civil rights, was criticized. Commentators discovered consistent legal refutation of that maxim in a number of cases tried by Cassation Department of the Governing Senate. The Senate pointed out that the natural limit to implementing one's right is harm to other subjects.

A well-known civilist, Associate Professor of the Law Department of Kazan University V.P. Domanzho said that implementation of right must not be allowed (this idea is given in the chicanery doctrine of the German law), if its single aim is to inflict harm on another person or if it is done intentionally. But then a question arises: is their liability or a breach committed unintentionally or not with a single aim? Conclusion *ex contrario* implies a positive answer, but, in our opinion, such reasoning is only suitable for advocatory exercises but not for serious juridical analytics.

In our opinion, the Senate elaborated a correct conception, which consists in the following: there is no boundary between civil subjective rights of the turnover participants. Quite probable are situations when mutual violations take place, entailing mutually reimbursed damages. Each case should be examined by court separately. At that, legality of particular actions only matters for estimating the property expectations of the parties.

When elaborating the draft ofthe Civil Code of the Russian Empire, an issue of liability for harm inflicted during right implementation was raised. In 1915, V.P. Domanzho wrote: "The living experience did not fail to point out that there can be a lot of diametrically opposite views on the limits of particular rights, and that in searching these boundaries the courts, having no common principles, can easily be involved into a range of errors, fatal for private individuals and threatening the very stability of civil rights".

In 1902, the Governing Senatein its decision on case No.10 presented the following wording: "No one is free to use their right so that to deprive another person of using their right". In our opinion,this provision anticipated the correct comprehension of the damages institute and advanced its time in many aspects. Later, many jurists criticized that wording andadvocated, echoing the German scholars, the chicanery theory, which entered our legislation under the name of "right abuse".

The founder of "Civil Law Bulletin", a prominent figure of Constitutional Democracy party M.M. Vinaver wrote about the Senate's doctrine: "The conditional and artificial character of this construct, seemingly so attractive and popular, are indubitable. For the right here is the very unknown relative notion, the volume of which is to be determined versus the degree of constraint of 'my freedom'".

That sounds fine, but let us analyze that maxim. First, the jurist's identification of a subjective right and a notion of freedom is unclear. Such rationale is almost provocative. This is quite understandable, though, as M.M. Vinaver was an eminent revolutionary-reformer, acrimoniousfighter for juridical truth. Can a law-protected right be equaled to freedom? Apparently, a possibility of economic operation cannot be called so.

The key meaning of that term is the absence of constraints, limitations and rules, which is unthinkable in a developed society. Implementation of civil rights cannot be equal to just active functioning of their carriers. The phenomenon requires a broader comprehension, involving safety and increase of property, improvement of material well-being and living standards. We consider it wrong to think that if the relevant authority of the owner to use or alter an object is declared, then it is considered implementation of the right underlying it, and if, for example, arable land lies fallow, then there is no right implementation.

Subjective civil right consists in lawful interaction of persons concerning goodsin all possible manifestations. The task of objective right is not in maintaining freedom, but in constraining it on the basis of the following postulate: what is not prohibited is allowed. At that, the quintessence of regulation consists in reaction to subjective rights, giving the idea of the limits of their implementation by the subjects. Such categories as abuse and bad faithactually express the possibility of discretion of the courts and arbitration tribunals in the issue of subjective right and, what is extremely important, on the issue of its violation and reimbursement of damages if, for instance, the risk lies on the respondent and not on the person on whom it was inflicted.

The search for wording to become the prototype of Article15 of the Civil Code of the Russian Federationtook over ten years. It was based on routine cases with the content which was marginal from the viewpoint of the limits of rights implementation. For example, correcting the subordinate judicial instances, the Senateadmitted such cases as using nails in the back crossbeam of a carriage to prevent children from jumping onto itor planting trees shading neighboring land lot from sunlight, to be *beyond the limits of permissible implementation of rights*, while using snow barriers by a railroad company on its own territory entailing detention of snow and its melting with further flooding of agricultural lands to be the action *within the limits of subjective rights implementation*

M.M. Vinaver thus proved these conclusions: planting trees on the boundary of one's land lot without the obviously reasonableforeseeing that in a few years they would be a threat, is an unlawful action. On the contrary, constructing of the above mentioned barriers is lawful

Clause1 of Article 15 of the Civil Code of the Russian Federationreads: "A person whose right is violated, may demand full reimbursement of the damages inflicted on them…"Notably, the victim may demand imposing liability not only on the tortfeasor, but also on those who were legally obliged to repair the damage. Moreover, when damage is inflicted through legal actions and events, accidents or natural disasters, a victim may get compensation covering all kinds of damages, and these circumstances are included into the above mentioned provision of the Civil Code of the Russian Federation.

According to the predominant viewpoint, in the literal interpretation, the loss of profit is not implied by the term "damage". Indeed, imagine someone driving to a charity handout of Christmas presents and getting into a traffic jam due to negligence of some driver. Probably, one may say that the cost of the present is damage, but this notion implies only two objects: a person and property (material items, to be more exact).

The loss of profit is obvious here, but there is no damage. Thus, for pre-Revolutionary civilists the term "damages" as any decrease of property, including expenses for conducting other people's affairs without commission and damages groundlessly enriching another person. However, then the term changed its meaning and now refers to the monetary equivalent of actual harm, sufferings, physical deterioration, etc.

As was already mentioned, in the beginning of the 20th century a significant shift took place in the doctrine and the law-enforcement practice; its essence was that railroad and steamship companies had to deal with presumption of guilt when harm was inflicted in the course of their exploitation. This entailed a number of trials, in which the victims of those enterprises' activity obtained fair compensation. At the same time, claimants had to prove guilt when harm was inflicted not during exploitation, but, for example, when unequipped hostels for workers were put into operation. The same was true for other incidents; for example, when stones were thrown into passing trains and passengers were injured, claimants had to prove guilt of a railroad company for not taking the necessary safety measures.

Plenty of episodes with tragic outcomes, loss of health, deaths, etc. were left without due legal response. This was until prominent civilists persuaded the Governing Senate that dangerous activity should imply liability without guilt. Later, this tradition was stipulated and became the principle of delict liability. As for contract regulation, their non-fulfillment initially used the norms ofArticle684 "On reimbursement of damages and harm due to the actions not recognized as crimes ad breaches of law". Although initially this norm was intended mainly for the cases of inflicting various property harm and damages outside deals, later it started to be used for contract damages as well.

The degree of development of the damages reimbursement institution in the Russian Empire correlated to the demands of the society and the level of economic links of that time.

4.3. The greatest doctrinal contribution

During many years, only two books and a fewarticles, mainly on narrow issues, were devoted to damages Closer to the 1917 October Revolution, brilliant tutorials were published, but they failed to disclose the topic in question. The scholars did not agree concerning the basic legal categories, as well as in what range of cases and by what permissible means the claims on reimbursement for harm and damages should be legally formulated.

As early as by 1895, due to authoritative work by E.E. Privits ,understanding of the guilt principle when adjudication of damages reimbursement was formed, although Article 684 of the Code of Laws of the Russian Empirestipulated the grounds for release from liability. Earlier, opposite opinions were expressed, that a person causing damages was always subject to reimbursing it and that guilt should not have any significance in civil law, but in criminal law only. The leading role in establishing the postulate of guilt was played by an authoritative member of the Governing Senate S.V. Pakhman, who in his work "On the modern movement on the science of law" brilliantly spoke of the essence of juridical dogmatics. The significance of guilt was derived from the idea that, in his opinion, "law is a means to implement the ideas of good and fairness" (Latin *Ius est ars boni et aequi*) and that it should be moral itself.

It is essential to speak about the contribution to improving the theory of damages made by A.S. Krivtsov (1896–1910). His work

"General doctrine of damages" was written in 1902, when he taught Roman Law at Yuryev University, though he started collecting material when studying at Berlin University (1890–1894). A number of new, for the first time promulgated ideas of the jurist were not disseminated and supported in the academic circles; at the same time, some of his qualifications appeared to be rather useful for the theory of damages, which developed alongside with the economic reality.

For example, A.S. Krivtsov asserted that adjudication of damages reimbursement originates in monetary punishment. The natural transformation of the legal protection means took place at the moment of transferring this liability to new persons in the order of inheritance, while adjudication of damages reimbursement as a punishment has no succession after death. In particular, very valuable is A.S. Krivtsov's comment that this institution can also be found in actions which, "not being offenses per se, are accompanied by harmful consequences for other persons"

He repeatedly emphasized that adjudication of damages reimbursement is required under broader living circumstances than just property violations and that "it [violation] is free from this connection and is discussed alongside with the doctrine ofrisk distribution in juridical deals, which is very poorly developed in the Roman law…"

Further, A.S. Krivtsov wrote thatthe lesion entailing a claim for damages reimbursement should consist in developing a situation contradicting to right in subjective sense. In his opinion,the correlation between the notions of guilt and cause is that guilt is one of the elements of proving the existence of causal connection. He wrote: "For the damages reimbursement obligation to exist, the fact of harmful activity should be proved. Non-fulfillment of a contract *per se* does not obligatorily indicate that such harmful activity took place" Thus, A.S. Krivtsovstated that one should not distinguish damages due to contracts and outside contracts, as they imply liability, the grounds for which are indifferent According to him, damages occur under abnormal course of commercial turnover, and this is when the issues of compensation should be solved.

Also, A.S. Krivtsov's ideas are valuable because he interprets the above means of legal protection not only as a civil-legal sanction for, for instance, non-fulfillment of obligations, but as a more universal tool. At the same time, not only prominent Soviet civilists but modem jurists, too, agree that evidences of unlawful behavior are necessary for adjudication of damages reimbursement

There is no norm in the Civil Code of the Russian Federationthat a different provision should be stipulated regarding the adjudication of damages reimbursement. Damages reimbursement is adjudicated for violating subjective civil right, which may take place through committing lawful actions. Accidental use of another person's intellectual property, resulting in the proved loss of profit of a right holder, legitimizes the demand for damages reimbursement, as a businessperson becomes liable without guilt, i.e., regardless of his good faith, care and diligence.

Lawfulness as a juridical characteristic of behavior acquires great significance when committing delicts in the narrow sense, i.e. when inflicting harm to a person or property. Nevertheless, it allows adjudicating the damages in cases of necessary defense; emergency confirmed by the court as the reason to impose consequences on the tortfeasor; dangerous activity and any accidental harm during business activity.

The above mentioned polemics before1917 cleared the ground for codification of civil law in 1922 and for adoption of the Civil Code as the legislative basis for New Economic Policy. In this sense, the developments of pre-Revolutionary scholars were not wasted, and some jurists, likeI.B. Novitskiy, M.M. Agarkov, L.A. Lunts, T.M. Yablochkov, A.G. Goykhbarg, M.Ya. Pergament, Ya.M. Magaziner, E.A. Fleyshitz and others, worked in Soviet research and educational establishments remaining true to civilistics and making an invaluable contribution to the development of juridical doctrine in Russia.

5. Conclusion

The present research attempts to show that juridical science in Russia went with the times regarding the issue of damages; it cannot be called advanced, but it rapidly progressed with the development of industries, commercial, trade and general economic circulation in Russia, which underwent economic revolution in the second half of the 19th century and was the fifth world greatest economy by GDP in 1913 with the largest growth rate among the developed countries. That is why the ideas and polemics of the prominent pre-Revolutionary Russian professors retain their enduring and great significance.

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