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History of formation and development of liability for damage caused by sources of extreme danger in Vietnam: Issues of legal influence

История становления и развития ответственности за причинение вреда источниками повышенной опасности во Вьетнаме: Вопросы правового воздействия

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Abstract

This article analyzes the influence of Western legal ideology and socialist law on the formation and development of liability for damage caused by sources of extreme danger in the law of Vietnam. The authors have examined all the important legal documents that are associated with the issue of liability for damage caused by sources of extreme danger. The research materials are also based on the works of Western and Eastern authors writing about Vietnam during this historical period. To achieve this goal, the authors used the following methods: comparative legal, analysis, synthesis and historical method. The conclusions of the study showed that: under the influence of French legal ideology during the period of French colonization, liability for harm caused by sources of increased danger first appeared in the law of Vietnam. For the first time in Vietnamese civil law, the term "source of extreme danger" is used with the adoption of the Circular of the Supreme People's Court No. 173-TANDTS dated March 23, 1972. From 1986 to the present, this liability has been created and developed under the influence of old Soviet law and current Russian law.

Аннотация

В данной статье анализируется влияние западной правовой идеологии и социалистического права на возникновение и развитие ответственности за вред, причиненный источником повышенной опасности в праве Вьетнаме. Авторы исследовали все важные юридические документы, которые связываются с вопросом об ответственности за вред, причиненный источником повышенной опасности. Материалы исследования также основаны на работах западных и восточных авторов, пишущих о Вьетнаме в этот исторический период. Для достижения поставленной цели авторы использовали методы: сравнительно-правовой, анализ, синтез и исторической метод. Выводы исследования показали, что: под влиянием французской правовой идеологии в период французской колонизации ответственность за вред, причиненный источником повышенной опасности, впервые появилась в праве Вьетнама. Впервые во вьетнамском гражданском праве используется термин «источник повышенной опасности» с принятием Циркуляра Верховного народного суда № 173-ТАНДТС от 23 марта 1972 г. С 1986 года по настоящее время данная ответственность создавалась и развивалась под влиянием старого советского права и действующего российского права.

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Keywords: tort obligation, history of formation and development, sources of extreme danger, French legal ideology, socialist law.

Introduction

In every society, the national ideology is the basis, the foundation of all legal systems, all legal policies. In every historical era and civilization, ideology determines most of the processes in society, predetermining state policy. The history of Vietnam is characterized by the struggle to build and defend the country to free the people from the shackles of feudalism and colonialism. Along with the formation and development of the government, the Vietnamese legal system was influenced by many factors, including Eastern and Western ideologies or other socialist legal ideologies. Under the impact of these ideologies, many new norms have been fixed in Vietnamese legislation, one of which can be called the institution of liability for damage caused by sources of extreme danger.

Liability for damage caused by sources of extreme danger is one of the types of non-contractual obligation. A special characteristic of this liability, in contrast to a contractual obligation, is that a non-contractual obligation does not require a contractual relationship between people (Wallinga, 2020). Its purpose is to force those who commit illegal or guilty acts to compensate for the damage they cause.

The study of the history of the formation and development of civil liability for damage caused by sources of extreme danger from the perspective of the influence of French legal ideologies and socialist legal ideologies helps to understand the legal policy at each stage as well as the development trend of this legal institution in the Vietnamese legal system. American scholar Jim Phillips argues that the study of legal history can learn about the nature of law, including the contingencies that led to it (Phillips, 2010). The historical context can deepen our knowledge of the legal system and improve our understanding of the law's practical and theoretical operation (Raack, 1988). It is also noted that we cannot resolve questions about the future of the law without an adequately understood past (Raack, 1988).

The purpose of this study is to analyze the influence of Western legal ideology and socialist law on the formation and development of liability

Ключевые слова: деликтное обязательство, история становления и развития, источники повышенной опасности, французская правовая идеология, социалистическое право.

for damage caused by sources of extreme danger in the law of Vietnam.

In Vietnam, the formation and development of legal provisions on liability for damage caused by sources of extreme danger are mainly studied through the division of historical periods under the perspective of the Vietnamese Constitution. A typical work to mention is "Liability for damage caused by sources of extreme danger according to Vietnamese civil law" by scholar Hoang Dao (Hoang, 2011). In the above work, the formation and development of the liability regime for the damage caused by sources of extreme danger are divided into five stages: before 1945, from 1945 to 1983, from 1983 to 1995, from 1995 to 2005 and from 2005 up to now. With this approach, the author asserts that civil liability for damage caused by sources of extreme danger was first recognized in Vietnamese law in 1972 with Circular 173/TANDTC of the people's court. In "Liability for damage caused by property under Vietnamese Civil Law" (Nguyen, 2017), scholar Nguyen Van Hoi also takes this guideline and introduces a similar statement. The results of mentioned authors' studies led to a conclusion that the institution of liability for damage caused by sources of extreme danger was mainly approached from the birth of the Democratic Republic of Vietnam and its constitutions. However, does Vietnam have a legal institution of civil liability for damage caused by sources of extreme danger before the country gained independence? What factors influence the birth and development of this institution?

Scholar Dao Tri Uc, in his work "Basic Information for Legal Research - A Case Study on Vietnam", stated that Vietnamese legal thought throughout its long history has always been influenced and dominated by Eastern and Western legal ideologies. Although many generations have experienced numerous ups and downs in history, Vietnamese people have learned to absorb ideological and cultural values in general and legal ideas in particular from countries with historical relations with Vietnam to build national bravery for existence and development (Dao, 2003). The influence of Eastern and Western thought has become a

significant turning point in the change of the Vietnamese legal system. Besides, in “Law at war Vietnam 1964-1973” by scholar George S. P., it is affirmed that the French heritage remains heavy in the entire legal system, military, and civilian (Prugh, 1975). The older, more renowned lawyers and judges are often found to be French-educated, French and non-English speaking. Professional works are often published in French. The French trappings, as well as institutions, are adapted by the Vietnamese, and these are superimposed over the Vietnamese society without much change. The Napoleonic Code's influence is naturally strong, and the civil code system, as distinguished from the common law, is employed (Prugh, 1975: 21). Using the existing statements of leading scholars in the study of Vietnamese legal history, the authors delve deeper into Vietnam's legal documents in order to answer the question of whether there is an influence of foreign legal ideologies on the formation and development of the legal institution of liability for damage caused by sources of extreme danger. What is the development trend of this institution in Vietnam in the current period?

Methodology

The authors use a civilizational-cultural approach in legal studies to research the influence of French legal thought ideology and socialist law on the formation and development of the institution of liability for damage caused by sources of extreme danger. Accordingly, in modern jurisprudence, law is considered a phenomenon of civilization and culture (Nemytina, 2017). It is consistent with the civilization-culture approach, the concepts of “civilization” and “culture” are combined. Observation of the legal system of Vietnam from a cultural and civilizational point of view, which is influenced not only by traditional factors but also by external factors (foreign legal ideologies), as well as the process of Vietnam's active integration into the international economy; and the fluctuations of those factors are the basis for the authors to divide the development stages of the mentioned above institution. Thus, the study of this topic will be more comprehensive with this approach. It not only clarifies the matter in the period before Vietnam gained independence without a constitution but also shows the role of the factors leading to the formation and development of the above institution in Vietnam.

In this article, the authors used the following scientific methods: analysis and comparative

legal. Accordingly, the analysis method is used to analyze and clarify the essence of legal provisions on liability for damage caused by sources of extreme danger. In addition, this method helps to understand Vietnamese legislators' legal and scientific thinking when building this liability.

Based on the comparative-legal method, the authors compare the legal provisions on liability for damage caused by sources of extreme danger in the three Civil Codes of the French colonial period with the legal provisions of Circular № 172/TANDTC. In addition, this method is used to compare the provisions on liability for damage caused by sources of extreme danger in the Vietnam Civil Codes 1995, 2005, and 2015 with the legislation of the former RSFSR and the law of Russia today.

Legally supporting documents: report on the renovation results from 1986 to 1990, the sixth national party congress document, and the government's report on the 1995 Civil Code project of the Socialist Republic of Vietnam.

Results and Discussion

1. Timeline of the establishment of the institution of liability for damage caused by sources of extreme danger in Vietnam.

Under the profound influence of French legal ideology, the liability for damage caused by sources of extreme danger first appeared in Vietnamese legal documents in Vietnam during the French colonial period.

French law and its legal ideology also influenced most of the legal documents in Vietnam during this period. Several important codes of law are considered to be copies of civil laws promulgated by the French or by Vietnamese kings: the Abbreviated Civil Code 1883 (Bộ Dân luật Giản yếu) in the South, the Civil Code Implements in Vietnamese Courts in the North 1931 (Bộ Dân luật thi hành tại các Tòa Nam án Bắc kỳ) in the North, the Central Vietnam Civil Code 1936 (Hoàng Việt Trung kỳ Hộ luật) (Bui, 2006).

Chapter IX of The Abbreviated Civil Code 1883, a provision on liability for damage caused, states: Especially for liability for damage caused by vehicles, liability arises when an act causes damage in the use or operation of a vehicle itself. In addition, this Code also defines the liability for damage incurred by vehicles in specific cases, such as damage caused to pedestrians or passengers; or damage caused during vehicle

theft. Article 711 of the Civil Code Implements in Vietnamese Courts in the North 1931 and art. 763 of Central Vietnam Civil Code 1936 provide: "People are responsible not only for the damage they caused themselves but also for the damage caused by those they, whom they have guardianship over, or the property owns by them. If an inanimate object causes damage by itself, its custodian is presumed to be at fault, regardless of whether the object was touched with the hand or not. Evidence is needed to disprove this assumption. Liability is imposed on all of the above cases unless the responsible person has evidence that the arising act of such responsibility cannot be prevented". According to the above mentioned, a property (inanimate objects) can cause damage in two ways. The first case is because the property manager has committed an intentional or unintentional fault in the property's management, operation, and use, resulting in damage (damage caused by illegal acts, at the fault of the owner or manager of the property). In the second case, the property causes damage through no fault of anyone (damage caused by the property). The fault of the owner (property manager) in this case is presumed (if he had taken all the precautions, the property would not have made any damage). Therefore, the owner (property manager) must compensate for the damage. He can be released from liability for damage only in two cases: when he can prove that the damage was caused by an illegal act of a third party's fault or the damage was caused by force majeure (when he cannot prevent the cause of the damage). Compared with the French Civil Code, it can be argued that the content of the above laws is copied from article 1384 of the Napoleonic code 1804 (French Civil Code), according to which "Everyone is liable not only for the damage caused by his own actions, but also for the damage caused by people for whom he is responsible, or by the property he manages". Example: Parents are liable for the torts of their minor children living with them. In case of the father's death, the responsibility is on the mother. The above-mentioned liability exists only if the responsible person is unable to prove that he could not prevent the commission of the act entailing this liability. Moreover, in our opinion, the specificity of the provisions on liability for damage caused in the three legal documents issued during the French colonial period is reflected in the failure to use the term "source of extreme danger" to imply damage caused involving inanimate objects, for example, damage caused by using or operating vehicles. There is no major difference in comparing the above regulations with Circular 173/TANDTC.

2. *Stages of formation and development of liability for damage caused by sources of extreme danger in Vietnam.*

Before the French colonial rule, the liability for damage caused by sources of extreme danger was not specified in Vietnamese legal documents (Hoang, 2011: 28). The cause of this lack of regulation was, first of all, the feudal state of Vietnam at that time had formed with a predominantly agricultural economy. As a result, Vietnam's science and technology in this period were still underdeveloped, leading to a lack of conception of the source of extreme danger. Secondly, the development of law in the feudal legal system of Vietnam is influenced by Eastern and Confucian thought (Vu, Nguyen and Pham, 2019). The influence of Eastern thought (i.e., Chinese thought) on Vietnamese feudal legislation is clearly shown through the content of two ancient Vietnamese feudal laws: the Le Dynasty Code of 1483 (Nguyen, 2021). Le dynasty legislators selectively copied the Chinese legal system while following the Chinese legal system on the one hand and on the other hand combining it with Vietnamese cultural traditions (Insun, 1990). The law code of the Le dynasty defended the people's legal ownership and even it could be compared in many aspects to the law viewpoints from the West. The Nguyen Dynasty Code of 1811 was built based on amendments and references to the Le Dynasty Code but was also mainly taken from the Qing Dynasty of China (Nguyen, 1989; Nguyen, 2002). Studying the content of the two codes above shows that the general limitation of Vietnamese feudal law is the prevalence and dominance of the criminal legal norm (Dao, 2003: 196)(Nguyen, 2011). The law of this period did not have a clear division between criminal and civil law. In addition, with the provisions of the feudal codes of Vietnam, the king's position was elevated, and he became the person with the supreme power and made all classes of people respect (Vu, Nguyen and Pham, 2020). Any act infringing upon the king's interests can be considered disloyal and severely punished by law (Dao, 2003: 201). In our opinion, the reason for these limitations is that the king promulgated Vietnamese feudal law to ensure social order and maintain the king's position. Despite that, Vietnamese feudal law has provisions on the owner's responsibility to compensate for damage caused by the property under his/her ownership (art. 581 of the Le Dynasty Code), (6th book of the Nguyen Dynasty Code). From our perspective, although the legal system is still limited, the legislators of this period had initially laid the basis for making

regulations on liability for damage caused by sources of extreme danger in Vietnam for the next period.

When the French colonialists appeared in Vietnam, Western legal ideology initially influenced the transformation of Vietnam's feudal legal system. However, along with the influence of the feudal state regime and political ideas, the regulations on liability for damage caused by sources of extreme danger continued to develop. To better understand the role of French legal ideology and socialist legal ideology in the formation and development of liability for damage caused by sources of extreme danger in Vietnam, we suggest re-classifying the transitional stages of this institution based on the civilizational-cultural approach in legal studies.

From 1858-1954.

René David argued that the Roman-Germanic legal family expanded to the world in two ways: first, through the colonial conquests of the countries of continental Europe; secondly, through voluntary accession due to the need for modernization or the desire for Westernization of legislation in countries that are not colonies of continental European countries (David and Brierley, 1978). Thus, French law belonging to the Roman-German family of laws expanded into Vietnam along the first path that had historical milestones in 1858 (French and Spanish troops began to use force to invade Vietnam) (Tran, 2008), in 1867 (French troops finished invading all six southern provinces, turning this place into a French colony), and 1884 (A peace treaty signed between Vietnam and France made Vietnam completely lose its status as a legally independent country, becoming a protectorate of France) (Vu, 1973). It can be said that the French colonialists not only invaded Vietnam in terms of territory but also on the ideological front with the introduction of French legal ideology into Vietnam. Accordingly, Vietnam started using French law in the late nineteenth century (Quigley, 1988). A special feature of the law of this period is the separation of civil liability from criminal liability. Specifically, under French colonial rule, Vietnam was divided into three parts. With the profound influence of the French legal ideology, three codes were enacted that apply to three parts of Vietnam's territory with the aim of establishing the colonial governing regime in Vietnam, which included provisions on liability for damage caused by sources of extreme danger.

With the victory of the August Revolution in 1945, Vietnam abandoned the French colonial regime, and the Democratic Republic of Vietnam was born (now the Socialist Republic of Vietnam) as Southeast Asia's First People's Democratic State. However, Vietnam still cannot escape the influence of French legal ideology on the Vietnamese legal system. Scholar Bui N. S. asserts that French Civil Law continued to influence Vietnam even after the country regained its independence from France (Bui, 2017). Remnants of the colonial legal system persist more than a decade after the 1946 Constitution declared Vietnam independent from French rule (Gillespie, 2006).

On October 10, 1945, the provisional government of the Democratic Republic of Vietnam issued Decree 47/SL on the temporary application of legal documents of the old regime. This decision is because the fledgling government of Vietnam cannot immediately enact a new legal system, while the country cannot one day be without laws (Pham, 2011). Therefore, the first and foremost fundamental task of the Communist Party of Vietnam was to establish its power over the whole country and then to create a mechanism that ensures the Party's power is maintained and accepted by the majority of the people (Smith, 1978: 575).

From 1954-1986

This period can be considered a period of Vietnamese legal thought's interference when French legal ideology gradually reduced its influence, and socialist legal thought was introduced into Vietnam.

On July 20, 1954, the Geneva Agreements were signed, forcing France to accept the armistice throughout Indochina, committing to withdraw its troops from here. This event is considered a milestone marking the decline of French influence in Vietnam (B. C. 1956).

Before the French colonialists withdrew from Vietnam, the policy of building socialist law was set forth at the First Congress of the Vietnam Workers' Party in September 1951 (Hoang, 1962). The Third Party Congress of 1960 adopted the Soviet doctrine of "socialist legitimacy" (*sotsialisticheskaja zakonnost*) (Tran, 1971). The difference between the introduction of socialist and French legal ideology is reflected in the fact that the Vietnamese Party and government actively approach the socialist legal ideology. The introduction of socialist legal and political

thought in Vietnam in the 1960s and 1970s is demonstrated by explaining the similarities between Soviet and Vietnamese legal thinking in the Vietnamese approach to borrowed legal documents (Gillespie, 2005). The transition from French legal ideology to socialist legal ideology was identified by the Communist Party of Vietnam as a tool of the dictatorship of the proletariat to defeat the enemy, protect the democratic rights of people (Dinh, 1961). The Party determines the content of the law. The combination of Party policy and law allows the Party and state to use the law as a management tool to regulate or balance social relationships (Dinh, 1961). It was not until the 1970s that Vietnamese legislators unanimously accepted the imported socialist legal thinking as their own (Pham, 1970) (Ngo, 1982).

A unique feature of the law of this period is that instead of legal certainty, Vietnamese legislators are interested in creating legal documents to ensure the compliance of society. This interest is expressed in an effort to improve the legal terminology, making it more familiar to all citizens. As a result, Vietnamese legislators have replaced many Sino-Vietnamese legal terms with everyday Vietnamese terms (Dinh, 1964). Moreover, it seems that on the basis of inheriting the promulgated legal regulations and trial experience for many years: Circular of the Supreme People's Court № 173-TANDTC of March 23, 1972, on the guidelines for the consideration of a case for compensation for non-contractual damage and Circular № 03/TATC, April 25, 1983, of the Supreme People's Court on guidance in dealing with certain issues of compensation for damage caused to motor vehicles. In general, in comparison with previous legal documents, the content of the provisions on liability for damage caused by sources of extreme danger in these two circulars is essentially the same. The difference between the circulars is manifested in the fact that for the first time in Vietnamese legal documents, the term "source of extreme danger" is used to refer to objects in the physical world that possess hazardous properties in damage caused to others. In addition, these circulars clearly define the conditions for liability for damage caused: the existence of damage; the unlawful action of thein-doer; the causal relationship between an illegal action and negative consequences; the fault of the harm-doer. However, in the situation when damage is caused by a source of extreme danger, a person is held liable under three conditions as mentioned above, except for the "fault of the harm-doer".

From 1986 to present

Since 1986, Vietnam has started a comprehensive renovation of the country. In the process of transforming the economy from a centralized and subsidized mechanism to a market mechanism, it is required that laws, especially civil laws, be changed in proportion to commodity-monetary relations (Gillespie and Pip, 2005). Along with the development of the market economy, Vietnamese law has gradually integrated into regional and international legal life. Socialism and legal changes in Vietnam are actively seeking access to capital and international markets. Commercial laws and practices are introduced to ensure these advantages (Gillespie and Pip, 2005: 4). The influence and process of introduction into Vietnam of some democratic and progressive legal institutions in the East and the West have contributed to the extensive improvement of the legal system. The legal system, which was subjective and voluntary in the period of the centralized economic mechanism, has changed in the direction of the legal system of the socialist-oriented market economy. However, Western or Eastern values are simply an addition to Vietnam's efforts in renovating the Vietnamese legal system to suit the country's development situation, leading the country to progress to socialism. However, they cannot replace Vietnam's traditional and cultural values (Dao, 2003: 213).

At the end of the first five-year renovation plan (1986-1990): GDP increased by 4.4%/year; the total value of agricultural production increased by an average of 3.8 - 4%/year; industry increased by 7.4%/year on average, of which the production of consumer goods increased by 13-14%/year; export value increased by 28%/year. This growth is considered the initial success of concretizing the content of socialist industrialization in the first stage. Most importantly, this is the stage of a fundamental transformation of the old management mechanism to the new one, taking a step in renewing socio-economic life and initially liberating the productive forces, creating a new driving stimulation for development (Do, Nguyen, 2013). In addition, the primary motto is to constantly expand comprehensive cooperation with the Soviet Union in all fields and various forms.

The new advances in comparative economics and legal thinking show that different situations require different institutions to balance, stabilize society, and eliminate dictatorship (Djankov et

al., 2003). Learning from the collapse of the Soviet Union, on the one hand, Vietnam promotes the development of a market economy; on the other hand, it still preserves the traditional values of the nation and maintains close relations with other countries of the world (Pham, 2005: 86).

From 1986 to now, Vietnam has had three Civil Codes, respectively the Civil Code 1995, 2005, and 2015. Among them, the liability for damage caused by sources of extreme danger is specified in art. 627 of Civil Code 1995, art. 623 of the Civil Code 2005, and art. 601 of the Civil Code 2015. Accordingly, “Sources of extreme danger are motorized vehicles, power transmission systems, industrial plants in operation, weapons, explosives, inflammable, poisons, radioactive substances, wild animals, and other sources of extreme danger prescribed by law. The owner, possessor, and user of a source of extreme danger are obliged to compensate for the damage even in the absence of fault, except for the following cases: a) the damage was caused entirely through the intentional fault of the aggrieved party; b) the damage occurred due to an event of force majeure or an urgent situation unless otherwise provided by law”. The common point of liability for damage caused by sources of extreme danger in the above codes is the construction method of openly listing the objects as sources of extreme danger without providing a specific definition of the term “source of extreme danger”. Compared with the laws of other countries, this construction method is recognized in art. 404 of the Civil Code of the RSFSR 1922, art. 454 of the Civil Code of the RSFSR 1964, art. 90 of Fundamentals of Civil Law 1961, art. 128 of Fundamentals of Civil Law 1991 and art. 1079 of the current Civil Code of the Russian Federation. *Accordingly, legal entities and citizens whose activities put others at increased risk (use of vehicles, mechanisms, high-voltage electrical energy, atomic energy, explosives, potent poisons, etc.; construction and other related activities, etc.) are obliged to compensate for damage caused by sources of extreme danger, unless they prove that the damage was a result of force majeure event, or by the aggrieved parties' intent.* Based on the comparison above, the authors believe that the way to build the institution of liability for damage caused by sources of extreme danger in Vietnamese civil law is influenced by Soviet law and Russian law today.

Conclusion

By using a civilizational-cultural approach in legal studies - a not yet popular method in

Vietnam when studying the institution of liability for damage caused by sources of extreme danger - new knowledge about the establishment and development of this institution along the historical flow of Vietnam has been opened up. It is to redefine the time of emergence and redefine the stages of development of the institution of civil liability for damage caused by sources of extreme danger based on fluctuations in French and socialist legal ideology as well as the country's context and the Party's policy towards the construction of the legal system.

This article shows that the institution of liability for damage caused by sources of extreme danger first appeared in Vietnam under the influence of French legal ideology with the manifestation of three codes: the Abbreviated Civil Code 1883 in the South, the Civil Code Implements in the Vietnamese Courts in the North 1931 in the North, the Central Vietnam Civil Code 1936. After the French left Vietnam, the French legal ideology gradually reduced its influence, creating conditions for laying the foundation of socialist legal thought in Vietnam. Liability for damage caused by sources of extreme danger in this period is recognized by a change in legal terminology, whereby the term “source of extreme danger” is included for the first time in Vietnamese civil law documents (Circular 173/TANDTC). In the current period, the way of building this institution is influenced by the ideas of Soviet or Russian legislators.

However, the provisions of the current law on civil liability for damage caused by sources of extreme danger in Vietnam have shortcomings that need to be addressed. The objective reason for such shortcomings is that science and technology are constantly developing, which leads to the emergence of new objects with a high potential to damage people around them. Meanwhile, the speed of legal changes has not kept pace with the development of science and technology.

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