

Preface

From autumn 2000 to spring 2001, I was a senior visiting scholar at the Institution of International Private Law and Comparative Law in Osnabrück University. One of my major works was to research European law of torts under the guidance of Prof. Christian von Bar, and the other one was to translate an epic monograph of Prof. Christian von Bar, entitled *The Common European Law of Torts*. This was an important academic development opportunity for me. I had never systematically researched the law of torts in Europe although I studied the American law of torts at Syracuse University in the 1990s, and being a senior visiting scholar at Osnabrück University allowed me to further explore the European law of torts.

The Institute of Law of the Chinese Academy of Social Sciences invited me to participate in drafting the Chinese civil code at the end of 2000, and my major work was responsible for the enactment of tort law in China.

I thus returned to China with two achievements in spring 2001, one was the Chinese translation of *The Common European Law of Torts* by Prof. Christian von Bar, while the other one was *The Civil Code: Proposed Draft of Tort Liability Law*. The Ninth National People's Congress made great efforts to promote the work of drafting the Chinese Civil Code at that time, and the Standing Committee of the Ninth National People's Congress first discussed a Chinese Civil Code Draft with 1000 articles in 2002. My major views and opinions contained in my paper, entitled *The General Provisions of Tort Liability Law*, and published in the Chinese Journal of Law had been adopted officially.

In summer 2002, I was employed by my alma mater, Renmin University of China School of Law, to teach civil law and to carry out research on the legislation of tort liability law. In December 2003, the Supreme People's Court issued an important judicial interpretation concerning tort liability, entitled the *Interpretation on Some Issues concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury*. As a principal professional, I participated in drafting this judicial interpretation in conjunction with the colleagues of the Commission for Discipline Inspection, as well as subsequent works of propagandizing and interpreting.

The Tenth National People's Congress adjusted the lawmaking project, and the lawmaking project of enacting a civil code was replaced by the plan of enacting the property rights law and tort liability law, respectively. These two specific laws were drafted simultaneously at that time but the former encountered more political resistance, specifically some scholars and a few retired senior officials had a different understanding of the provisions concerning private property protection and they paid more attention to the constitutional spirit of "property owned by the whole people is sacred". The legislation of the property rights law, which was delayed for 1 year, ended in the spring of 2007. In December 2009, the Standing Committee of the National People's Congress discussed and adopted the *Tort Liability Law*.

In the first decade of the twenty-first century, I placed more interest in enacting the tort liability law of China. In addition to putting forward a proposal draft of legislation and certain amending advices to the official draft, I wrote many papers to further elaborate and solve the issues concerning the legislative system of tort liability law and its system construction. At the same time, I was trying to establish the relation between the theories of tort liability law and its legislation on the one hand, but on the other hand, I further considered and discussed different opinions about the Chinese tradition of legislation. My theories and opinions such as negative theory of "news (or media) infringements" and "administrative laws and regulations shall not contain specific tort liability" (Part IV of this monograph) have been accepted by the legislation of tort liability law.

The *Tort Liability Law of the People's Republic of China* was adopted in December 2009. After enactment of this law, the Supreme People's Court issued two judicial interpretations concerning tort liability, which are the *Interpretation on Several Issues Concerning the Application of Law in the Trial of Cases on Compensation for Damage in Road Traffic Accidents*, adopted on September 17, 2012, and the *Provisions on Several Issues concerning the Application of Law in the Trial of Cases involving Civil Disputes over Infringements upon Personal Rights and Interests through Information Networks*, adopted on October 9, 2014. The adoption of these two judicial interpretations demonstrates that, in these two fields, the trial of infringement cases is complicated and the issues are serious.

Certain provisions of the *Tort Liability Law* are controversial; they include the standard of determining compensation for death (whether every life has equal value or not), the assumption of liability of throwing an object from a high altitude, etc. The *Tort Liability Law* thus makes a vague treatment of these provisions due to large differences in academic circles. Also, many opinions are still under academic discussion, including strengthening the liability of environmental pollution and ecological destruction, tort liability of mass tort, etc.

The Fourth Plenary Session of the 18th CPC Central Committee issued the *Decision of the CPC Central Committee on Major Issues Pertaining to Comprehensively Promoting the Rule of Law*, and one of the important contents of this decision is to compile the Civil Code in China. In the spirit of the central document and the guidance of the lawmaking department, the General Provisions of the Civil Code has been adopted by the National People's Congress on March 15, 2017. According to the lawmaking plan, the lawmaking tasks of enacting the

specific civil laws under the Civil Code shall be completed in the next 3 years, and the tort liability shall thus be incorporated into the Civil Code.

Most of the lawmaking theories and institutional programs in this monograph have been reflected in the current *Tort Liability Law*, and I believe, in the process of enacting a specific civil law of the Civil Code in the next 3 years, all these shall be reasonably absorbed by the Civil Code. It should be noted that the differences and discussions on theoretical and practical issues concerning the legislation of tort liability law will continue in China. The key part of these differences is how to deal with the relation between the nature of science and populist tendency at the time of overcoming the bureaucracy and other adverse effects. I have participated in the entire legislative process of the General Provisions of the Civil Code, and I will also participate in drafting specific provisions of the Civil Code. I really hope my legal knowledge can serve this great country and make a contribution to the legal construction in China.

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