

SEPARATE ISSUES REGARDING COMPENSATION FOR  
MORAL (NON-PECUNIARY) DAMAGE

QUESTÕES DISTINTAS RELATIVAS À INDEMNIZAÇÃO POR  
DANOS MORAIS (NÃO PECUNIÁRIOS)

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**ABSTRACT**

**Objective:** The article is aimed at studying certain issues of legal regulation of compensation for moral (non-pecuniary) damage.

**Methods:** The methodological basis of the research on the indicated topic is a set of used general scientific and special legal methods. These methods complement each other taking into account the research topic, which in turn contributes to objective analysis. Among the methods of research on the topic of this article, it is worth highlighting dialectical and semantic methods, the method of system analysis, and the method of analogy, comparative legal and historical methods.

**Results:** Is to study and analyse the current legislation to identify the possibility of compensation for moral (non-pecuniary) damage to an individual who has suffered from a criminal offence at the expense of the State Budget of Ukraine, with further formulation of possible conditions and procedure for compensation for moral (non-pecuniary) damage to an individual caused by a criminal offence at the expense of the State Budget of Ukraine.





**Conclusion:** The article is devoted to the investigation of the possibility of compensation (compensation) of moral (non-property) damage to an individual who suffered from a criminal offense at the expense of the State Budget of Ukraine. The definition of the concept of moral (non-property) damage caused to an individual by a criminal offense is formulated. The content of moral (non-property) damage and the conditions for its reimbursement are analyzed.

**Keywords:** moral (non-property) damage, an individual, the victim, a criminal offense, suspect, accused, defense counsel, victim, civil plaintiff, representative.

## RESUMO

**Objetivo:** O artigo tem por objetivo estudar certas questões de regulamentação jurídica da indenização por danos morais (não pecuniários).

**Métodos:** A base metodológica da investigação sobre o tema indicado é um conjunto de métodos científicos gerais e jurídicos especiais utilizados. Estes métodos complementam-se mutuamente, tendo em conta o tema da investigação, o que, por sua vez, contribui para uma análise objetiva. Entre os métodos de investigação sobre o tema deste artigo, vale a pena destacar os métodos dialético e semântico, o método de análise de sistemas e o método da analogia, os métodos jurídicos comparativos e históricos.

**Resultados:** Estudar e analisar a legislação atual para identificar a possibilidade de indenização por danos morais (não pecuniários) causados a uma pessoa que tenha sido vítima de uma infração penal a expensas do orçamento do Estado da Ucrânia, com posterior formulação de possíveis condições e procedimentos para a indenização por danos morais (não pecuniários) causados a uma pessoa por uma infração penal a expensas do orçamento do Estado da Ucrânia.

**Conclusão:** O artigo é dedicado à investigação da possibilidade de indenização (compensação) de danos morais (não patrimoniais) a um indivíduo que tenha sido vítima de uma infração penal a expensas do Orçamento de Estado da Ucrânia. É formulada a definição do conceito de dano moral (não patrimonial) causado a uma pessoa por uma infração penal. É analisado o conteúdo dos danos morais (não patrimoniais) e as condições do seu reembolso.

**Palavras-chave:** dano moral (não patrimonial), indivíduo, vítima, infração penal, suspeito, arguido, advogado de defesa, vítima, queixoso civil, representante.





## 1 INTRODUCTION

The problem of compensation for moral (non-pecuniary) damage to an individual who has suffered from a criminal offence at the expense of the State Budget of Ukraine is not new. The issue of such liability was first raised in 1985 at the UN General Assembly. In Ukraine, the desire to solve this problem in full remains only a good intention, despite the fact that the first steps in this direction have already been taken. The legal basis for compensation for moral (non-pecuniary) damage by the state was laid down in Article 56 of the Constitution of Ukraine. Subsequently, the possibility of compensation for moral (non-pecuniary) damage was provided for in Article 1177 of the Civil Code of Ukraine and Articles 2, 8, 127 of the Criminal Procedure Code of Ukraine, where the legislator enshrined provisions for the protection of private rights and interests of individuals who suffered property and/or moral damage as a result of a criminal offence (crime) and determined the content and focus of the state's activities.

One of the areas of activity is the protection of the rights and interests of persons who have suffered from a criminal offence in other ways. In this sense, the primary importance is to compensate for the damage caused by a criminal offence in favour of its victim (the injured person). Of course, the victim hopes for punishment of the guilty person who committed the criminal offence (crime) against him/her, but first of all, he/she seeks to restore the previous situation (both material and non-material spheres of his/her life). Whatever sphere of life of the victim of a criminal offence committed against him or her, it is obvious that the person suffers not only physical pain, suffering and/or material damage, but also mental suffering. And why, then, should in certain cases only physical and property damage to an individual who has suffered from a criminal offence be compensated (compensated) at the expense of the State Budget of Ukraine?

There are many problems related to this issue, for example, Ukrainian legislation lacks a single definition of the concept of moral (non-pecuniary) damage, does not sufficiently define the procedure and criteria for assessing such damage, and does not resolve the issue of the scope of this legal institution, etc. There is also virtually no case law on compensation for moral (non-pecuniary) damage to a person who has suffered from a criminal offence at





the expense of the state budget of Ukraine, which could possibly provide answers to these extremely important questions. This situation allows courts to interpret differently the legal provisions on compensation for moral (non-pecuniary) damage.

Certain aspects of the problem of compensation for moral (non-pecuniary) damage have been studied by many scholars, among whom we should mention M. Haliantyck, O. Hryshchuk, V. Kozatska, V. Paliuk, N. Malein, D. Luspenyk, D. Shcherbak, V. Fleishyts, and V. Belyaevsky. Kozatska, V. Paliuk, O. Erdelevskyi, N. Malein, D. Luspenyk, S. Shcherbak, K. Fleishits, S. Belyatskin, V. Prymak, P. Rabinovych, Z. Romovska, R. Stefanchuk, S. Shimon, and other scholars. However, the civil law science and the legislation of Ukraine have not yet formed a comprehensive approach to the possibility of compensation for moral (non-pecuniary) damage to an individual who has suffered from a criminal offence at the expense of the State Budget of Ukraine, etc.

The purpose of the article is to study and analyze current legislation with a view to identifying the possibility of compensation for moral (non-pecuniary) damage to an individual who has suffered from a criminal offence at the expense of the State Budget of Ukraine, and then to formulate possible conditions and procedure for compensation for moral (non-pecuniary) damage to an individual caused by a criminal offence at the expense of the State Budget of Ukraine.

## 2 METHODS

The methodological basis of the research on the indicated topic is a set of used general scientific and special legal methods. These methods complement each other taking into account the research topic, which in turn contributes to objective analysis. Among the methods of research on the topic of this article, it is worth highlighting dialectical and semantic methods, the method of system analysis, and the method of analogy, comparative legal and historical methods.

## 3 RESULTS AND DISCUSSION

The modern development of society makes the issue of observance of human rights and freedoms one of the most pressing. The right to compensation for non-pecuniary





damage is one of the most valuable human rights, which allows compensation for losses suffered as a result of a criminal offence and is a very effective way to protect the violated right. The Constitution of Ukraine enshrines these basic ideas, according to which a person, his or her life and health, honour and dignity, inviolability and security are the highest social value, and the establishment and maintenance of human rights and freedoms is the main duty of the state (Article 3 of the Constitution of Ukraine). The obligation of the state to ensure human rights and freedoms makes it possible, in case of violation of the latter, to apply to the court for their protection and restoration, as well as for compensation for damage caused by such violation (Articles 55, 64 of the Constitution of Ukraine).

A number of international legal acts introduce the need for compensation for moral (non-pecuniary) damage caused by a criminal offence by the state itself. These include: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; European Convention on the Compensation of Victims of Violent Crimes; Recommendation R (85) of the Committee of Ministers of the Council of Europe to 11 member states on the position of the victim in criminal law and criminal procedure, etc.

The right to compensation for moral (non-pecuniary) damage is directly provided for in the Constitution of Ukraine and is one of the guarantees of protection of human rights and freedoms and, accordingly, has been legally enshrined in a significant number of legislative acts. Since the most important task of the state is to actually ensure the rights and freedoms of each individual using all possible means of state influence. Therefore, the moral (non-pecuniary) damage caused to the victim as a result of a criminal offence should be compensated at the expense of the State Budget of Ukraine.

The right to compensation for moral (non-pecuniary) damage arises as a result of damage (property, physical or non-property (moral)), regardless of the existence of special rules of civil law and has no economic content. In our case, the law does not directly indicate the possibility of compensation for moral (non-pecuniary) damage caused to the victim (individual) as a result of a criminal offence at the expense of the State Budget, but it does not contradict it either (Shimon S., 2005). Article 23 of the Civil Code of Ukraine is a rule of general application and also does not link such a right with its consolidation in special legislative provisions Halyantych M. K., 2013).

The wording of the concept of moral (non-pecuniary) damage is the subject of





numerous discussions among scholars. However, due to the imperfection of law enforcement practice, courts are limited to the "narrow" concept of moral (non-pecuniary) damage, without bothering to establish the severity of the mental (emotional) suffering. The Constitution of Ukraine has only a few articles that mention moral (non-pecuniary) damage (Articles 32, 56, 62, 152), but do not disclose its essence. The Civil Code of Ukraine does not define both property and moral (non-pecuniary) damage. The legislator defines the concept of "moral damage" through a list of circumstances in which moral (non-pecuniary) damage occurs. Thus, according to part 2 of Art. 23 of the Civil Code of Ukraine, non-pecuniary damage consists of physical pain and suffering suffered by an individual due to injury or other damage to health; mental suffering suffered by an individual due to unlawful behaviour towards him or her, members of his or her family or close relatives mental anguish suffered by an individual in connection with the destruction or damage to his or her property; humiliation of the honour and dignity of an individual, as well as the business reputation of an individual and a legal entity.

Thus, the legislator refrains from defining the concept of moral (non-pecuniary) damage, since such a definition would be quite extensive in order to cover all the essential features of the concept. It is impossible to foresee all cases of unlawful actions that may cause moral (non-pecuniary) damage, so moral (non-pecuniary) damage may also be caused by other actions that violate the subjective rights of a person (Iasechko, S., 2023).

Paragraph 3 of the Resolution of the SCU Plenum "On judicial practice in cases of compensation for moral (non-pecuniary) damage" No. 4 defines moral damage as losses of a non-property nature, resulting from moral or physical suffering or other negative phenomena caused to an individual or legal entity by illegal actions or omissions of other persons. According to the current legislation, moral (non-pecuniary) damage may include, in particular humiliation of honour, dignity, prestige or business reputation, moral distress due to damage to health, violation of property rights (including intellectual property), consumer rights, other civil rights, unlawful detention under investigation and trial, disruption of normal life ties due to the inability to continue active social life, disruption of relations with other people, and other negative consequences. This list is not exhaustive, as in practice courts also compensate for moral (non-pecuniary) damage in other cases that result in physical and mental suffering. For example, it may be a delay in investigative actions to





identify the perpetrator of a criminal offence or in the investigation of a criminal case.

The Resolution of the SCU and the Civil Code of Ukraine defines the concept mainly only in relation to one of the two types of moral (non-pecuniary) damage - "moral or physical suffering". At the same time, a new term "moral or physical suffering" is introduced as a synonym for "moral or physical suffering". This gives grounds to conclude that the victim must be aware of the diminution of their rights and the emergence of a negative self-esteem.

The definition proposed in the resolution of the SCU Plenum more fully reflects the concept of "moral (non-pecuniary) damage". It is more precise in its content, since the definition is based not on suffering as a certain process that is not subject to assessment, but on the negative consequences of a non-property nature caused by the said suffering, which is moral damage (Stefanchuk R.O., 2008).

In the science of civil law, there are three approaches to defining the concept of moral (non-pecuniary) damage. The first one is characterised by the establishment of the fact of moral, mental or physical suffering (Neskorodzhena L.L., Shcherbak S.V., Sirotkina M.V., 2008). For the second, it is not enough to establish such suffering (Shimon S., 2005), but it is necessary to prove the existence of losses of a non-property nature or negative consequences of a moral or other non-property nature that arose as a result of moral, mental or physical suffering (Shevchenko Y.M., 2009). The third is the humiliation of honour, dignity and business reputation or moral experiences associated with damage to health, and as a result of violation of other rights (Paliyuk V. P., 2000).

According to the literal interpretation of part 2 of Article 23 of the Civil Code of Ukraine, it should be assumed that there is a definition of the concept of moral (non-pecuniary) damage. However, this provision does not provide a complete picture of the content of this concept, and its provisions are to some extent contradictory. Moral (non-pecuniary) damage is "physical pain and suffering" (clause 1), "mental suffering" (clauses 2, 3) of an individual, "humiliation of the honour and dignity of an individual, as well as the business reputation of an individual and a legal entity" (clause 4). In this definition, the essence of non-pecuniary damage is linked to the grounds for its occurrence (Halyantych M. K., 2013).

In general, the term moral (non-pecuniary) damage is defined in the legislation as physical, mental or moral suffering, and it is obvious that the term "suffering" (emotional and





volitional feelings of a person) is the key one. Suffering is caused by certain changes in a person's life: inability to fulfil their habits and desires, embarrassment, fear, anxiety, emotional instability, depression, changes in blood pressure and other diseases, deterioration of relationships in the team, in the family, loss of work, trust of close people, etc., in other words, reduction, destruction of personal non-property benefit. In other words, the actions of the perpetrator of the damage must necessarily be reflected in the victim's mind, causing a certain mental negative reaction. And the harmful changes are reflected in the form of sensations (physical suffering) and perceptions (mental suffering) (Iasechko, S., Zaitsev, O., Pokusa, F., Saienko, V., & Harashchuk, I., 2022).

Victims of a criminal offence experience mental suffering individually, depending on the nature and traumatic situation. No one knows how much and how a person can suffer. At the time of a mental trauma, a person's personality can be destroyed by the internal perception of negative events. A person experiences what is happening around him or her, and this can lead to irreversible consequences related to the deterioration of his or her health. A criminal offence is quite capable of causing emotional distress (Iasechko S., Zaitsev O., Kozhevnykova V., Melnyk K., Kulchii O., 2020). These feelings may be caused, for example, by an unlawful attack on the life and health of the person and his or her close relatives (parents, spouse, child, brother, sister); unlawful deprivation or restriction of liberty or the right to free movement; harm to health, including disfigurement of exposed parts of the human body with scars and scars; disclosure of confidential secrets, etc.

Adverse changes in a person's mental state consist of both "physical suffering" and "physical harm". These two concepts are different in content, but are components of moral (non-pecuniary) damage. Physical suffering is a form of moral (non-pecuniary) damage (Article 23 of the Civil Code of Ukraine). Physical (bodily) harm is a set of changes that have objectively occurred as a result of a criminal offence in the state of a person as a physical being, and can be both pecuniary and non-pecuniary.

The components of physical harm are: bodily injury, health disorder, physical suffering, pain. According to the Rules for Forensic Medical Determination of the Severity of Bodily Injuries, approved by the Order of the Ministry of Health of Ukraine No. 6 of 17.01.1995, bodily injuries are a violation of the anatomical integrity of tissues, organs and their functions resulting from one or more external damaging factors - physical, chemical, biological,







mental. Harmful changes occur in the bodily (i.e. material) sphere of the victim under the influence of certain external influences. Physical harm consists in the deprivation of life, harm to a person's health, infliction of various kinds of bodily injuries that deprive them of their ability to work. In the legal sense, physical harm cannot be compensated for; it can only be compensated for the negative consequences.

The concept of "physical harm" used in legislation is found only when it comes to harm to human life and health. From the point of view of law, a person is not an object of law, and therefore, harm to health (physical harm) (Article 1207 of the Civil Code of Ukraine) cannot be attributed either to property damage, although it entails negative property consequences, or to moral damage. In this case, we can talk about such type of damage as non-pecuniary damage.

In this context, the second approach to defining the concept of moral (non-pecuniary) damage is more correct (Stefanchuk R.O., 2008) since suffering itself cannot be assessed by any methodology, it is not assessable, and losses of a non-property nature can be determined. The result of suffering is negative consequences of a non-property nature, which is moral (non-pecuniary) damage. A person loses the ability to make certain decisions, perform certain actions, and continue their usual way of life. These changes force them to make certain efforts to further organise their lives.

In the event of a criminal offence being committed against them, the person realises that they are the object of the offence; their suffering is mainly related to the reassessment of their own social significance; it causes changes in their attitude to their own way of life, and affects the content of legal relations in which they have participated. Violation of an absolute right, which is protected and protected from everyone, in the vast majority of cases is unexpected for the victim and deepens his or her moral losses.

In establishing the fact of non-pecuniary damage, one should be guided not only by the criteria that determine the subjective perception of the victim (feelings, emotions), but also by those that characterise the external manifestation - the violation of the person's established way of life. In our opinion, the definition of the concept of moral (non-pecuniary) damage in terms of "losses" emphasises the compensatory function of the institution of compensation for such damage. For a comprehensive understanding of this concept, it is not enough to define it through "suffering". This is also in line with the Resolution of the





Plenum of the Supreme Court of Ukraine "On judicial practice in cases of compensation for moral (non-pecuniary) damage" No. 4.

Moral (non-pecuniary) damage can also be caused by acts that violate the property rights of a citizen, as mental (moral) suffering is caused by the loss, destruction or damage to property. A person who has lost any property or suffered losses as a result of a criminal offence may suffer from the realisation that the efforts made to acquire this property were in vain or that he or she was deprived of the opportunity to acquire property benefits. The fact of the diminution of property benefits is realised by the individual and reflected in his or her mind, which causes physical and/or moral (mental, psychological) suffering. The cause of suffering is usually a change in the social status or self-esteem of a person as a result of a diminution of property benefits. We find confirmation of this position in the Resolution of the Plenum of the Supreme Court of Ukraine of 31.03.1995 No. 4, according to which moral damage consists of moral feelings in connection with the violation of property rights... the inability to continue active social life.

Moral (non-pecuniary) damage may consist of both physical and moral (mental, psychological) suffering. This analysis allows us to define non-pecuniary (moral) damage caused to an individual as a result of a criminal offence as losses of a non-property nature that result from mental, psychological or physical suffering caused by a violation of a person's rights by unlawful acts or omissions on the part of the perpetrator and lead to humiliation of honour, dignity, business reputation; damage to health; disruption of normal life ties due to the inability to continue an active social life; forced changes or restrictions in the choice of activities, the usual circle of contacts and other negative consequences.

Further, it should be noted that the legislator uses the terms "compensation" and "reimbursement" in the definition. Pursuant to Article 23 of the Civil Code of Ukraine, the term "compensation for non-pecuniary damage" is used, while Article 1177 of the Civil Code of Ukraine already uses the term "compensation" for damage to an individual who has suffered from a criminal offence. In fact, Article 1177 of the Civil Code of Ukraine compares these two terms, but this is not correct. It should be interpreted solely as a mistake, and not as the existence of a special remedy - compensation for moral (non-pecuniary) damage, which is different from compensation for moral (non-pecuniary) damage. Although it is also possible to identify these terms.





We assume that there are certain differences between the legal categories of "reimbursement" and "compensation". We believe that compensation for physical and moral (non-pecuniary) damage is possible only through compensation. The term "reimbursement" does not fully reflect the essence and characteristic features of the relations arising in connection with the infliction of moral (non-pecuniary) damage. At the same time, the amount (size) of such losses includes the approximate value of the benefits that will help the injured person to "eliminate" or "smooth out" the consequences of the moral (non-pecuniary) damage caused by the infliction of moral (non-property) harm (Rabinovych P.M., O.V. Hryshchuk, 2006). At the same time, there should also be reimbursement of costs associated with physical or moral (non-pecuniary) damage (the cost of medicines, prostheses, medical services, rehabilitation measures, etc.)

Therefore, the existing terminological inconsistency in Articles 16, 23, 1167, 1168 of the Civil Code of Ukraine should be corrected. Let us take as an example Article 1177 of the Civil Code of Ukraine, which uses the term compensation for moral (non-pecuniary) damage.

Although an individual is often forced to endure physical or mental suffering, not in all cases is he or she entitled to compensation for moral (non-pecuniary) damage. This right presupposes the existence of the necessary conditions for compensation for damage (including non-pecuniary) set out in Article 1166 of the Civil Code of Ukraine: the existence of damage, unlawful behaviour of the person causing it, causal link between the damage and the unlawful behaviour of the offender and guilt (Shevchenko Y.M., 2004). The need to establish these conditions was once emphasised in para. 5 of Resolution No. 4 of the SCU Plenum "On Judicial Practice in Cases on Compensation for Moral (Non-Pecuniary) Damage".

The above conditions are recognised as general, since their presence is necessary for all cases of compensation for damage, unless otherwise provided by law. If the law changes, restricts or expands the range of conditions necessary for compensation for damage, then in this case we are talking about special conditions of compensation (Halyantych M. K., 2013), which are based on the rules on general tort (Prystupa S. N., 2011).

Pursuant to Articles 23, 1177, 1207 of the Civil Code of Ukraine, the special conditions





are

- the damage (property, physical (bodily), moral (non-property)) must be caused to an individual, members of his/her family or close relatives;
- the damage is the result of a criminal offence;
- the person who has committed the criminal offence (crime) has not been identified (obviously, this condition should also include the announcement of the person who has committed the criminal offence as wanted, etc;)
- the person who committed the offence must be insolvent.

During the investigation of a criminal offence, there may be other cases that make it impossible to fully compensate the victim for the damage caused by the criminal offence, such as the declaration of the person who committed the criminal offence as wanted or the termination of the pre-trial investigation on the basis of amnesty, etc. It seems that the latter two conditions should be replaced by a single, more universal one, which would provide for any cases that make it impossible for the actual offender to compensate for the damage caused, and in which the state has an obligation to compensate for the damage (property or non-property) caused by a criminal offence.

The right to compensation to an individual who has suffered from a criminal offence at the expense of the State Budget of Ukraine does not arise from the moment such damage is caused, but from the moment a circumstance arises that makes it impossible for the person who caused it to compensate for moral (non-pecuniary) damage. The existence of such a circumstance is evidenced by procedural documents issued by the investigator, prosecutor or judge. For example, it may be a decision to suspend the investigation on the grounds that the suspect is hiding from the investigating authorities in order to evade criminal liability and it is impossible to establish his or her whereabouts (Article 280(1)(2) of the CPC of Ukraine), a decision to put a suspect on the wanted list whose whereabouts are unknown, etc.

The entity entitled to compensation for moral (non-pecuniary) damage should be considered only an individual who has suffered moral (non-pecuniary) damage as a result of a criminal offence, who has filed a statement about the commission of a criminal offence against him or her or an application to be involved in the proceedings as a victim or has given written consent to be recognised as a victim by the investigator, prosecutor or court.





In the event of the victim's death, close relatives or family members have the right to compensation in accordance with the rules provided for in Articles 1200 and 1207 of the Civil Code of Ukraine.

The legislation does not set any realistic minimum and maximum limits on the amount of money that can be recovered as compensation for physical and mental suffering. It should be borne in mind that at present there are no methods for calculating the amount of compensation for moral (non-pecuniary) damage, no formula or model is provided and does not exist that would help to objectively determine the amount of moral (non-pecuniary) damage and prevent situations where courts award different amounts of compensation in similar situations or where victims are awarded excessively high and unjustified amounts of compensation for moral (non-pecuniary) damage (Paliyuk V. P., 2000).

In order to determine the amount of such damage in Ukraine, according to part 3 of Article 23 of the Civil Code of Ukraine and the Resolution of the Plenum of the Supreme Court of Ukraine, a number of criteria are taken into account[8]. Namely: the nature of the offence; the nature, extent and depth of physical and mental suffering; the nature of non-pecuniary losses (their duration, possibility of recovery, etc.); deterioration of the victim's abilities or deprivation of their ability to exercise them; the degree of fault of the person who caused non-pecuniary damage, if it is the basis for compensation; the principles of reasonableness and fairness; other circumstances. It seems that this approach allows for optimal consideration of the requirements of justice in the content of the law, since nothing is big or small in itself, but is so only in comparison with another. The established requirement of reasonableness relates rather to the basic level of compensation for moral (non-pecuniary) damage, which would allow developing a comparable scale of compensation for summarised moral (non-pecuniary) damage for different types of offences.

In general, when determining the amount of compensation, the judge has several options for making a decision. Firstly, to take as a basis the amount claimed by the plaintiff in the statement of claim and accept it Secondly, to order a forensic psychological examination. This study is carried out by a forensic psychologist in accordance with the methodology for establishing moral (non-pecuniary) damage and the method for assessing the amount of compensation for suffering. The methodology for establishing the infliction of





non-pecuniary damage and the method for assessing the amount of compensation for suffering, developed in 1997 by O.M. Erdelevskiy, was registered by the Ministry of Justice of Ukraine on 03.03.2010 under the number 14.1.04 in the field of "Psychological examinations", i.e. it has been officially used for five years (Paliyuk V. P., 2000), and is the only methodology of official nature.

Non-pecuniary (non-property) damage is compensated in money, other property or in any other way and regardless of the property damage to be compensated, and is not related to the amount of such compensation. Non-pecuniary damage is compensated in a lump sum, unless otherwise provided by contract or law (Article 23 of the Civil Code of Ukraine). Courts award compensation for non-pecuniary damage, as a rule, in monetary form. If moral (non-pecuniary) damage is caused by injury or other damage to health, it may be compensated in a lump sum or by making monthly payments (Article 1168(1) of the Civil Code), i.e. the monetary method of compensation is applied. If compensation is awarded by way of monthly payments, the total amount to be recovered as compensation for moral (non-pecuniary) damage must be specifically determined, and therefore, the period during which such payments will be made must be set.

It has been noted in the literature that, along with the monetary form, other forms of compensation for moral (non-pecuniary) damage should be introduced. The essence of the issue is that the victim needs to mitigate moral losses, suffering, restore his or her sociability, etc. For example, a person who has suffered physical harm and has been injured (amputated) needs not only compensation in the form of money, but also a vehicle that will provide mobility, etc.

Therefore, by agreement between the parties or by a court decision, moral (non-pecuniary) damage may be compensated not only by money, but also by other property, i.e. by providing certain material goods (things): motor vehicles, TV sets, household appliances, furniture, prostheses, clothing, etc. Another way of compensation may be to provide benefits of a different property nature, rather than tangible ones: free vouchers to healthcare facilities (sanatoriums, rest homes), tourist trips; performance of services or works (repair of residential premises, transportation, publication of a work authored by the creditor, medical services, etc. (Rabinovych P.M., O.V. Hryshchuk, 2006).





## 4 CONCLUSION

It should be noted that according to para. 12 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse, in cases where compensation cannot be obtained in full from the offender or other sources, states should take measures to provide financial compensation: Victims who have suffered significant bodily harm or significant damage to their physical or mental health as a result of serious crimes; families, including dependents of persons who have died or become physically or mentally incapacitated as a result of such victimisation. One of such measures is the creation of the State Fund for Assistance or Compensation to Victims of Criminal Offences (Crimes). The creation of the State Fund for Assistance to Victims of Crime was introduced by the Presidential Decree "On Measures to Intensify the Fight against Corruption and Organised Crime", which indicates the need to coordinate the work on drafting the Regulation on the State Fund for Assistance to Victims of Criminal Offences. There are a number of other draft laws on this issue, but to date, the Fund has not been created.

The state is obliged to compensate for the damage caused by a criminal offence. The victim should not be made dependent on the solvency of the perpetrator of the damage and on whether the pre-trial investigation of the criminal offence is properly conducted by law enforcement agencies and whether the perpetrator of the damage is found. The creation of such a special fund by the State is related to the real value of constitutional guarantees reflected in Article 3 of the Constitution of Ukraine. The actual recovery of compensation often takes many years, and is irregular or not compensated at all. Therefore, a relevant legislative act should be adopted (there are four drafts in the Verkhovna Rada of Ukraine), which would provide for the creation of a special fund for the protection of victims of criminal offences (crimes), the procedure for its functioning and the mechanism for compensation. Or to supplement the Budget Code of Ukraine, in terms of departmental classification of expenditures, with a provision on compensation for damage to persons affected by a criminal offence.

Even with a strong desire, it is possible to find the necessary funds at this time. Today, there are all possibilities for compensation for moral (non-pecuniary) damage, but the question is whether the state is ready or willing to fulfil its obligations to compensate for moral (non-pecuniary) damage to an individual who has suffered from a criminal offence at





the expense of the State Budget of Ukraine.

## REFERENCES

Budget Code of Ukraine dated 08.07.2010 No. 2456-VI // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://zakon2.rada.gov.ua/laws/show/2456-17> (accessed on September 7, 2023).

Civil Code of Ukraine: dated January 16, 2003 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://zakon1.rada.gov.ua/laws/show/435-15> (accessed on September 7, 2023).

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 29.11.1985 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: [http://zakon4.rada.gov.ua/laws/show/995\\_114](http://zakon4.rada.gov.ua/laws/show/995_114) (accessed on September 7, 2023).

European Convention on the Compensation of Victims of Violent Crimes of 24.11.1983 No. ETS N 116 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: [http://search.ligazakon.ua/l\\_doc2.nsf/link1/MU83302.html](http://search.ligazakon.ua/l_doc2.nsf/link1/MU83302.html) (accessed on September 7, 2023).

Iasechko, S. (2023). Peculiarities of the regulation of personal non-property rights when concluding sports contracts. *SPORT TK-Revista EuroAmericana de Ciencias del Deporte*, 12, 30. <https://doi.org/10.6018/sportk.575941>

Iasechko, S., Zaitsev, O., Pokusa, F., Saienko, V., & Harashchuk, I. (2022). Legal regulation of intellectual property in sports. *SPORT TK-Revista EuroAmericana de Ciencias del Deporte*, 11, 45. <https://doi.org/10.6018/sportk.526631>

Iasechko S., Zaitsev O., Kozhevnykova V., Melnyk K., Kulchii O. (2020). "Transactions with the Personal Non-Property Right". *SRP11(10)*: 49-52. [https://doi.org/10.14505/jarle.v11.4\(50\).12](https://doi.org/10.14505/jarle.v11.4(50).12)

Halyantych M. K. (2013). Compensation for non-pecuniary damage: commentary, legislation, judicial practice. Kyiv: Jurinkom Inter, 288.

Methodology for establishing moral damages and method for assessing the amount of compensation for suffering registered by the Order of the Ministry of Justice of Ukraine of 03.03.2010 No. 14.1.04 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://rmpse.minjust.gov.ua/> (accessed on September 7, 2023).

Neskorodzhen L.L., Shcherbak S.V., Sirotkina M.V. (2008). Civil action, moral damage and its compensation in criminal and civil proceedings: Theory and practice: scientific and practical manual / Kyiv: KNT. 416 p.







On judicial practice in cases of compensation for moral (non-pecuniary) damage: Resolution of the Plenum of the Supreme Court of Ukraine of 31.03.1995 No. 4 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://zakon4.rada.gov.ua/laws/show/v0004700-95> (accessed on September 7, 2023).

On measures to intensify the fight against corruption and organised crime: Decree of the President of Ukraine of 10.02.1995 No. 35/95-rp // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: [http://search.ligazakon.ua/l\\_doc2.nsf/link1/R035\\_95.html#](http://search.ligazakon.ua/l_doc2.nsf/link1/R035_95.html#) (accessed on September 7, 2023).

Paliyuk V. P. (2000). Compensation of moral (non-property) damage: monograph : 2nd edition, revised and supplemented. Kyiv: Pravo. 272 p.

Prystupa S. N. (2011). The concept and significance of obligations to compensate for damage. Civil law: textbook: in 2 volumes - Vol. 2 / V. I. Borisova (head of the author's team), L. M. Baranova, T. I. Begova and others; edited by V. I. Borisova, I. V. Sposob-Fateeva, V. L. Yarotskyi. Kharkiv: Pravo. 816 p.

Rabinovych P.M., O.V. Hryshchuk (2006). Human right to compensation for moral damage (general theoretical aspects): works of the Lviv Laboratory of Human and Civil Rights. APNU. Research Institute of State Building and Local Self-Government; Edited by P. M. Rabinovich and others. Lviv: WORLD, 140 p.

Recommendation of the Committee of Ministers of the Council of Europe R (85) to 11 member states on the position of the victim in criminal law and criminal procedure of 28.06.1985 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: [http://zakon4.rada.gov.ua/laws/show/994\\_127](http://zakon4.rada.gov.ua/laws/show/994_127) (accessed on September 7, 2023).

Rules for forensic medical determination of the degree of severity of bodily injuries: Order of the Ministry of Health of Ukraine of 17.01.1995 No. 6 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://zakon4.rada.gov.ua/laws/show/z0255-95> (accessed on September 7, 2023).

Shevchenko Y.M. (2003). Civil Law of Ukraine. Academic course: textbook: in 2 volumes. Special Part. Kyiv: In Jure. 408 p.

Shevchenko Y.M. (2004). Civil Code of Ukraine: Scientific and practical commentary: In 2 parts. Kyiv: Concern "Publishing House "In Yure". Part 2. 896 p.

Shevchenko Y.M. (2009). Encyclopedia of Civil Law of Ukraine / V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine. Kyiv: In Jure. 952 p.

Shimon S. (2005). Commentary to Art. 23 of the Civil Code of Ukraine // Scientific and Practical Commentary on the Civil Code of Ukraine: in 2 volumes / edited by O. Dzera (head of the author's team), N. Kuznetsova, V. Luts. Kyiv: Yurinkom Inter. Vol. I. 832 p.





Stefanchuk R.O. (2008) Personal non-property rights of individuals (concept, content, system, features of implementation and protection): Monograph. Kyiv: KNT. 626 p.

The Constitution of Ukraine: Law of 28.06.1996 № 254к/96-BP // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://zakon2.rada.gov.ua/laws/show/254к/96-bp> (accessed on September 7, 2023).

The Criminal Procedure Code of Ukraine of April 13, 2012 // Database "Legislation of Ukraine" / Verkhovna Rada of Ukraine. URL: <http://zakon4.rada.gov.ua/laws/show/4651-17> (accessed on September 7, 2023).

