
**LEGAL FRAMEWORK FOR PROVING AND COMPENSATING
MORAL INJURY IN PRE-TRIAL CRIMINAL PROCEEDINGS IN
RUSSIA**

***ESTRUTURA LEGAL PARA COMPROVAÇÃO E COMPENSAÇÃO DE
DANO MORAL EM PROCESSOS PENAL PRÉ-JULGAMENTO NA
RÚSSIA***

***MARCO JURÍDICO PARA LA PRUEBA Y LA COMPENSACIÓN DEL
DAÑO MORAL EN LOS PROCEDIMIENTOS PENALES PREVIOS AL
JUICIO EN RUSIA***

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ABSTRACT

Objective: The article covers current issues related to proving the facts of causing moral injury resulting from a crime under the legislation of the Russian Federation. Authors review the reason to amend the legislation of criminal procedure of the Russian Federation in order to develop a mandatory norm prescribing the mandatory appointment of a forensic examination when establishing the fact that a crime has caused moral injury expressed in additional costs incurred by damage to health.

Methods: The analysis of the provisions of the current criminal procedure law of Russia, as well as foreign countries (Great Britain), allows the authors to analyze the existing problems and propose rational ways to solve them.

Results: It has been proved that in the activities to ensure compensation for moral injury resulting from a crime, there is a justified need to use an integrated approach to the use of special knowledge to determine the nature and severity of harm caused to health.

Conclusion: The authors substantiate the conclusion that it is necessary to build a unified legal method for assessing the moral injury caused by a crime, which starts from the initiation of a criminal case, and to create guarantees of its full compensation within the framework of a single process without the court transferring decisions on the satisfaction of claims to the civil law plane.

Keywords: pre-trial proceedings, evidence, proof, moral injury, investigative actions.

RESUMO

Objetivo: O artigo aborda questões atuais relacionadas à comprovação dos fatos causadores de dano moral decorrente de crime previsto na legislação da Federação Russa. Os autores revisam o motivo para alterar a legislação processual penal da Federação Russa a fim de desenvolver uma norma obrigatória prescrevendo a nomeação obrigatória de um exame forense ao estabelecer o fato de que um crime causou dano moral expresso em custos adicionais incorridos por danos à saúde .

Métodos: A análise das disposições da atual lei processual penal da Rússia, bem como de países estrangeiros (Grã-Bretanha), permite aos autores analisar os problemas existentes e propor formas racionais de resolvê-los.



Resultados: Comprovou-se que nas atividades de reparação de danos morais decorrentes de crime, justifica-se a necessidade de uma abordagem integrada do uso de conhecimentos especiais para determinar a natureza e a gravidade dos danos causados à saúde.

Conclusão: Os autores fundamentam a conclusão de que é necessário construir um método jurídico unificado para avaliar o dano moral causado por um crime, que começa desde a instauração de um processo criminal, e criar garantias de sua reparação integral no âmbito de um processo único sem que o tribunal transfira as decisões sobre a satisfação dos créditos para o plano do direito civil.

Palavras-chave: procedimentos preliminares, prova, prova, dano moral, ações investigativas.

RESUMEN

Objetivo: El artículo cubre temas actuales relacionados con la prueba de los hechos de causar daño moral como resultado de un delito según la legislación de la Federación Rusa. Los autores revisan la razón para enmendar la legislación de procedimiento penal de la Federación Rusa para desarrollar una norma obligatoria que prescriba la cita obligatoria de un examen forense al establecer el hecho de que un delito ha causado daño moral expresado en costos adicionales incurridos por daño a la salud .

Métodos: El análisis de las disposiciones de la ley procesal penal vigente de Rusia, así como de países extranjeros (Gran Bretaña), permite a los autores analizar los problemas existentes y proponer vías racionales para resolverlos.

Resultados: Se ha comprobado que en las actividades para asegurar la reparación del daño moral resultante de un delito, existe una necesidad justificada de utilizar un enfoque integrado para el uso de conocimientos especiales para determinar la naturaleza y gravedad del daño causado a la salud.

Conclusión: Los autores fundamentan la conclusión de que es necesario construir un método jurídico unificado para la valoración del daño moral causado por un delito, que se inicia desde el inicio de una causa penal, y crear garantías de su reparación integral en el marco de una proceso único sin que el tribunal transfiera las decisiones sobre la satisfacción de las reclamaciones al plano del derecho civil.

Palabras clave: diligencias previas al juicio; prueba; daño moral; actuaciones investigativas.



1 INTRODUCTION

The issue of evidence is of particular importance in the investigation of crimes the consequence of which is the infliction of moral injury. The amounts required by the victims (civil plaintiffs) in compensation for the moral injury is difficult to prove and justify.

The issue of compensating for moral injury resulting from criminal acts has long been a subject of debate in legal circles worldwide. While various legal systems differ in their approach to compensating for non-pecuniary damages, they all share a common goal of ensuring that victims receive adequate compensation for the harm they have suffered. In this context, it is important to examine the legal framework for compensating for moral injury in Russia, particularly in criminal cases.

One of the key challenges in compensating for moral injury is the need to establish clear criteria for evaluating the harm caused by criminal acts. This requires a comprehensive legal framework that takes into account the various factors that can contribute to moral injury, such as the severity of the crime, the victim's emotional state, and the extent of their suffering. In Russia, efforts to address this issue are ongoing, with legal scholars proposing various approaches to assessing moral injury and ensuring that victims receive adequate compensation.

Another important issue to consider is the role of the courts in determining the appropriate level of compensation for moral injury. In many legal systems, courts are tasked with assessing the harm suffered by victims and determining the appropriate amount of compensation. However, the process of evaluating non-pecuniary damages can be complex, and there is often a lack of clear guidance on how to determine the appropriate level of compensation. As such, it is important for legal systems to develop clear and consistent standards for assessing moral injury and compensating victims.



2 MATERIALS AND METHODS

The authors use the general scientific method of cognition as the main research method. It allows to fully analyze the debatable issues related to proving the facts of causing moral injury resulting from a crime under the legislation of the Russian Federation.

The systematic approach allows to review the procedural aspects of the investigator's activities and the person conducting the initial inquiry to prove the facts of moral injury resulting from a crime.

The analysis and synthesis allow to identify existing problems in the law enforcement practice of proving the facts of moral injury resulting from a crime during pre-trial proceedings in criminal cases.

The comparative legal method allows to study the domestic legislation regulating the activities of the investigator and the interrogator to prove the facts of moral injury resulting from a crime, as well as other regulatory legal acts in the sphere under consideration. This method helps identify existing problems, propose ways to solve them and improve Russian criminal procedural legislation.

As a result, the authors have obtained new knowledge in order to improve the mechanism for compensating for moral injury resulting from a crime as well as about trends in improving legislation in order to increase the efficiency of the activities of officials conducting preliminary investigation.

3 RESULTS AND DISCUSSION

The current "presumption of moral injury" divides evidence into two groups.

First, there is the main evidence which includes the protocol of the interrogation of the victim; conclusion of forensic psychological examination.



The study of investigative and judicial practice proves that procedural actions are often carried out to establish and prove the facts of moral injury resulting from a crime.

For example, A. V. Vereshchagina (2013) gives examples when forensic psychological examinations are appointed and carried out in criminal proceedings in order to establish the nature of moral injury.

According to O. E. Berkovich and E. B. Matreshina (2015), the subject of this kind of examination are the individual features of the victim's internal reflection of the surrounding reality including the crime committed against him, which are important for the correct calculation of moral injury. This position is supported by E. N. Gritsenko (2005) who deems this type of expert examination to be relevant.

The medical and social examination helps determine the amount of compensation payments to persons who have become victims of criminal encroachments and have suffered moral injury. It covers not only the costs of direct treatment for the victim but also other expenses that result from the injury which entail the disability of the victim (additional food provision, prosthetics, extraneous care, spa treatment).

Regarding the additional expenses, R. A. Proshchalygin (2010) argues that they are subject to reimbursement only under a conclusion of the competent commission and only on the condition that they cannot be obtained free of charge.

However, the question is who and what should confirm the need for these types of assistance and care? Several researchers in civics suggest resolving this issue through medical and social expertise (Bogdanov, 2002, p. 121).

Under the general legal understanding, medical and social expertise implies determining (under the established procedure) the needs of the person being examined in social protection based on the disability assessment. This type of examination is carried out by units of the State Service for Medical and Social Expertise which functions under the system of social protection bodies.

Noting the stable legal positions of this type of expertise, we specify that in determining the costs of compensation for moral injury, an important element is the



establishing the degree of loss of the victim's professional working capacity. In the absence of such, it is advisable to establish the degree of general working capacity. At the same time, the degree of loss of professional working capacity is determined by the above-mentioned institutions of the state service of medical and social expertise.

The authors also analyze the relationship between forensic and medical-social examinations that can be seen in many aspects. In this regard, in the activities to ensure compensation for moral injury resulting from the crime, there is a well-founded need to use an integrated approach of special knowledge to determine the nature and severity of harm caused to health. It is rational to use this method to fully compensate for the moral injury resulting from a crime and not be limited only to the costs of inpatient and outpatient treatment of the victim. After the main course of treatment, the victim is left alone with his ailments and injuries, and his full recovery requires further costs and expenses which are often absent.

Nevertheless, the medical and social expertise is primarily aimed at resolving issues of compensation for harm caused to the health of citizens in civil law relations. However, the authors believe that the existing experience of this expertise in the State Service of Medical and Social Expertise should be applied in the criminal procedural sphere especially when it comes to compensation for moral injury including which led to the victim's disability as a result of a criminal encroachment, since a civil tort, an administrative offense and a criminally punishable act that caused harm to health often merge into a single negative experience of the victim.

To support the aforementioned position, we cite the materials of the civil case, which was considered after the decision was made in the criminal case regarding the commission of a traffic crime. Thus, according to the decision in civil case No. 2-1085/2014 of October 9, 2014, issued by the Lomonosov Court of Arkhangelsk, the verdict of the Oktyabrsky District Court of Arkhangelsk of April 16, 2013 against M.A.V., who was found guilty of committing a crime under Part 1 of Article 264 of the Criminal Code of the Russian Federation, stated that M.A.V. at about 11 o'clock, driving a car owned by K. allowed a collision with a scooter which resulted in the negligent infliction of bodily injuries on M., which was assessed by the forensic expert as serious harm to



health. According to the results of the medical and social examination, the plaintiff was diagnosed with the second group of disability. The court decided to recover from the open joint-stock company “Insurance Group MSK” in favor of M.A.V. the lost earnings in the amount of 32,346 rubles; a sum of 28 334 rubles in account of material damage, to recover 15,000 rubles from M.A.A. in favor of M.A.V.

This court decision is not only an indicator of the close relationship between the consideration of a criminal case and further proceedings on compensation for moral injury resulting from a crime in civil proceedings but also serves as a confirmation of how important and integral is the relationship between forensic medical and medical-social expertise.

However, the study of criminal cases on the facts of causing moral injury for the presence of conclusions of a medical and social examination reveals that there are few cases of this examination during the preliminary investigation. Thus, according to the data obtained, the conclusion of the medical and social examination was absent, but the lost income of the victim and the costs of treatment were confirmed by the relevant documents in 72.9% of cases. In 23.2% of cases, the conclusion of the medical and social examination was absent while the victim’s lost income and treatment costs were not documented in the materials of the criminal case. And only in 3.9% of the studied criminal cases there was a conclusion of a medical and social examination.

Thus, it should be noted that the importance of the conclusions of the medical and social examination is confirmed by its legal nature, set goals, and objectives. We are convinced that this examination should be performed in all cases when there is injury to health.

In this regard, the authors conclude that it is necessary to amend the legislation on criminal procedure in order to elaborate a mandatory rule prescribing the appointment of forensic examination when establishing the fact of causing moral injury expressed in additional costs caused by damage to health. Thus, it is proposed to set out paragraph 2 of Article 196 of the Code of Criminal Procedure of the Russian



Federation as follows: “The nature and degree of harm caused to health, as well as additional expenses caused by damage to health.”

These amendments will oblige the investigator or the person conducting the initial inquiry to appoint medical and social examination during the preliminary investigation which will allow the court not only to decide whether the person is guilty but also to resolve the civil claim filed by the victim in order to compensate for the moral injury resulting from a crime, expressed in such negative consequences for the victim as the loss of a permanent source of income due to disability, expenses associated with it, as well as other material costs that are in causal connection with the committed criminal act.

Undoubtedly, all the above testifies to a competent and innovative approach to the process of proving the circumstances of the committed criminally punishable act, which, in its procedural essence, allows a more detailed and objective approach to the question of the forms of compensation for moral injury when the court pronounces a verdict in terms of satisfying claims.

Regarding the inclusion of interrogation protocols in the evidence of moral injury, we assess the arguments expressed by Yu. N. Zvereva (2015), who believes that the testimony of a witness, as well as a suspect and an accused person can function as a source of information about the moral injury caused in certain situations. In this context, it is difficult to assume that these participants in criminal proceedings will be able to indicate the nature and extent of the injury and other negative consequences that the crime has caused to the victim. The peculiarity of this damage is its individualized nature and the perception of its infliction by the victim.

Thus, evidence of the infliction of moral injury is often represented by the information obtained directly from victims, or other information indicating the occurrence of negative consequences both for the victim or their relatives.

Furthermore, it is advisable to highlight auxiliary evidence which includes characteristics; letters to the victim; documents of an offensive nature, discrediting the honor, good name and business reputation of the victim; medical documents indicating stress, diseases; receipts for money transfers from the suspect (accused) to the victim.



In terms of money transfers to compensate for moral injury which take place at the stage of preliminary investigation and taking into account the provisions of paragraph “k” of part 1 of Article 61 of the Criminal Code of the Russian Federation can be taken into account by the court when considering a criminal case as circumstances mitigating the punishment, the following example from judicial practice is of particular interest. The cassation decision of the Moscow Regional Court excludes from the operative part of the verdict that a sum of money in the amount of 15,000 rubles was set as a compensation for moral injury to the victim G. In particular, the court of cassation established that during the consideration by the Lukhovitsky District Court of the Moscow Region of the criminal case against M., accused of committing a crime under Part 1 of Article 111 of the Criminal Code of the Russian Federation, it was not established that a notification of the transfer of funds had been received by the victim G. from the defendant M. In connection with which the cassation decision of the Moscow Regional Court decided to recover from the defendant M. the specified amount in compensation for moral damage (Cassation ruling of the Moscow Regional Court..., April 24, 2012). Currently, since January 1, 2013, such decisions are made in the framework of appeal proceedings.

In this case, it seems logical to conclude that the investigator did not attach the relevant copies of receipts of money transfers in compensation for moral injury. Thus, the court of first instance could not unequivocally establish the factual circumstances of a post-criminal nature which are related to the claims of the victim. This example shows a trend in the willingness of courts to accept evidence of compensation for non-pecuniary damage such as money transfer receipts. An important condition in this case is the confirmation by the victim of the real receipt of funds from the suspect, accused, or defendant.

Thus, it should be recommended that investigators and interrogators attach to the materials of criminal cases copies of various documents that not only prove the fact of causing moral injury but also testify to the measures taken by the guilty party to compensate for it at the pre-trial stages (Pushkarev et al., 2020, p. 281-287).



However, as it regards the confirmation of funds transfer between the specified participants in criminal proceedings in compensation for the harm caused by the crime, it is sufficient for the victim (civil plaintiff) to confirm them in his testimony and provide the investigator with copies of supporting documents to include in criminal case files.

According to V.A. Azarov (1990), the study of the investigative and judicial practice of the early 90s shows that voluntary compensation for moral injury during the preliminary investigation occurred in 22.4% of criminal cases. According to the results of the criminal case files study conducted by the authors, in the period from 2009 to 2017 regarding not only the issues of compensation for property, but also compensation for moral damage, the following empirical data were obtained: suspects (accused) voluntarily compensate the victim (civil plaintiff) during pre-trial proceedings in criminal cases for property damage in 68.9% of cases, while moral injury was compensated only in 14.6% cases. Thus, we pinpoint that the positive dynamics of recent years is obvious only in relation to voluntary compensation for property damage, which, unfortunately, is not the case with compensation for moral injury. It is obvious that this issue needs legislative regulation, the construction of a unified legal method for assessing the moral injury resulting from a criminally punishable act, starting from the initiation of a criminal case, and the creation of guarantees of its full compensation within the framework of a single process without transferring the court's decisions on the satisfaction of claims to the civil law sphere. It is necessary to minimize the possibility of separating materials from criminal cases for the subsequent resolution of claims for moral injury resulting from a crime in civil proceedings.

In addition, all the above proves that there is a need to prove the facts of moral injury resulting from a crime at the stage of preliminary investigation in order to substantiate clear evaluation criteria at the court hearing. In this case, during the consideration of the criminal case, the judge will have the necessary invoice to resolve the issues of compensation for moral injury and to indicate specific sums of money for compensation in the framework of criminal proceedings. All the above will provide an opportunity to resolve issues of compensation for moral injury during the consideration



of a criminal case by the court without allocating materials to civil proceedings solely on this basis.

As for the civil proceedings, M.I. Kopik (2014) argues that the amount of the monetary equivalent of moral injury is subject to mandatory proof. It should be noted that claims for compensation for moral injury resulting from a crime also need to be proved during the preliminary investigation of criminal cases under the provisions of Title III of the Code of Criminal Procedure of the Russian Federation “Proof and Evidence”. The provisions of this chapter of the Criminal Procedure Law do not imply any distinctions in the rules and limits of proving a specific type of harm caused by a criminal act. Accordingly, moral injury is proved in the same way as other types of harm caused by the crime.

Thus, the authors conclude that it is necessary to confirm the requirements of the claimed amounts of moral injury in the materials of criminal cases. Moreover, this should be the responsibility of officials conducting pre-trial proceedings in criminal cases.

Furthermore, we should address foreign legal sources regarding the resolution of issues of compensation for moral damage, for example the Anglo-American legal system (Tarnavsky, 2014, p. 123). In this regard, we are interested in the issue of proving intangible benefits subject to compensation which were violated or infringed by the crime.

At the same time, compensation is made in an indisputable manner (without recourse to the court) in accordance with the law. For example, in the UK, a Commission for Compensation for Moral (Non-Property) Damages Caused by a Crime has been created. Interestingly, compensation is not for any moral injury but for mental or physical suffering that lasts at least six weeks from the date of the crime. The abovementioned legal institution has, in contrast to the Russian legislation, an upper and lower limit on the amount of compensation for moral injury which is determined by the degree of mental disorder (Paliyuk, 2000, p. 57).

As for the domestic criminal procedure legislation in the field of regulating the activity of proving and assessing moral injury, it should be mentioned that this



institution is still relatively young and, as a result, incomplete (Nguyen et al., 2021, p. 211-220). Many scientists suggest different ways to assess moral injury. These opinions are polar and contradictory but the development of a unified approach is necessary both in theory and in practice.

G. P. Himicheva, O. V. Michurin and O. V. Himicheva (2001) suggest options for making amends for moral injury and harm to business reputation, which are not expressed in a specific property assessment by the victim. According to these researchers, compensation can have another form, the type and size of which can be determined by the victim and recognized by him as sufficient.

In addition, V. V. Vladimirova (2004) suggests providing in the articles of the criminal procedure law the defendant's apology to the victim as a form of compensation for moral injury.

It seems rational and sound but only in part of improving and developing the current criminal legislation. This applies to the provisions of paragraph "k" of Part 1 of Article 61 of the Criminal Code of the Russian Federation that deals with voluntary compensation for moral injury as well as other actions aimed at making amends for the harm caused to the victim.

The main aspect regarding a specific form of compensation for moral injury at the stage of preliminary investigation is the further activity of the court to determine the specific amount of money to be recovered from the guilty party. Thus, the of information about the actions of the accused to make amends and compensate for the moral injury are important for the court to make a final decision, including the resolution of claims.

4 CONCLUSIONS

In conclusion, the authors formulate substantiated suggestions for amendments to the Russian criminal procedure legislation.

It is concluded that the issues of establishing and proving the facts of moral injury resulting from a crime need legislative regulation. At the same time, it is



necessary to build a unified legal method for assessing the moral injury resulting from a criminally punishable act starting from the initiation of a criminal case, and to create guarantees of its full compensation within the framework of a single process without the court transferring decisions on the satisfaction of claims to the civil law plane.

It is proved that it is necessary to amend the law of criminal procedure of the Russian Federation in order to develop a mandatory norm prescribing to appoint a forensic examination when establishing the fact that a crime has caused moral injury expressed in additional expenses caused by damage to health. In this regard, it is proposed to amend paragraph 2 of Article 196 of the Code of Criminal Procedure of the Russian Federation as follows: "The nature and degree of harm caused to health, as well as additional expenses caused by damage to health".

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