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## Research Article

# METHODOLOGY FOR DETERMINING AND ASSESSING MORAL HARM IN REAL ESTATE SEIZURES

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## ABSTRACT

The study examines the methodology for determining and assessing moral hazard in real estate seizures. It provides a comparative analysis of international experience and applied methodologies.

## KEYWORDS

Compensation, legal issues, expropriation, non-pecuniary damages.

## INTRODUCTION

The assessment and compensation of moral damages has always been and remains one of the most difficult judicial and legal issues, which has no specific and uniform criteria in studies and research papers.

Despite the expansion of the category of compensable losses to allow for the recovery of fair market value, severance pay and property-related losses incidental or indirect to the taking, courts have consistently denied compensation for subjective or non-pecuniary losses suffered by the property owner as a result of expropriation. Perhaps the reason for this

inconsistency lies in the relative difficulty of measuring subjective loss.

## MATERIALS AND METHODS

Subjective or non-pecuniary damages are similar to "moral damages found in contract or tort law. When an owner's property rights are affected, it is often reflected in the emotions of the holder of those rights. These emotions include mental anguish, mental anguish, emotional distress and frustration. These emotions may result from damage to aesthetic or sentimental feelings or simply inconvenience caused

by the taking. Such damages have no current market value that can be readily determined.

Non-pecuniary goods from birth have one feature, they cannot be alienated or transferred to others. That is the only reason why moral damage is non-property damage, which is expressed in negative psycho-emotional experiences of an individual, in violation of his psychological well-being (Parfilova and Karimova, 2016). Such experiences take the form of physical or mental anguish. Ensuring the psychological well-being of individuals is the task of the legislative, law enforcement and judicial authorities of the Republic of Uzbekistan.

Moral harm is moral or physical anguish experienced by an injured person as a result of the actions of another person. The Civil Code of the Russian Federation does not give a clear interpretation of moral harm, Article 151 of this code calls moral harm physical or psychological anguish caused by actions that violate or infringe on the personal non-property of a citizen. It follows that the specific subject to whom moral harm is inflicted is not defined, and the actions violating moral rights and material benefits are not specified.

The French Civil Code does not single out moral harm as a separate category, but singles out the grounds of liability for infliction of moral harm.

At the same time, the German Civil Code is quite specific about the concept and ways of inflicting moral damage, but it has a unique approach to its definition. Germany has established a uniform rule that any violation of another person's rights entails liability for compensation in case of intentional infliction of harm or negligence. It is also a rule that the injured person can demand a certain amount of money instead of restoring the previous state if the damage is caused to property. German law refers to compensation for

moral damages as "money for the suffering caused", the 823rd paragraph of the German Civil Code states that the obligation to pay compensation is the obligation of the person who has infringed, intentionally or unintentionally, on someone's life, health, freedom or property rights. The legislation does not have specific criteria for determining moral damage, it focuses on the attributes that lead to the infliction of moral harm.

This leads to disagreements in practice, lack of the principle of fairness in determining and assessing the inflicted moral damage.

But there is a practical solution to this problem in the experience of some Western countries. In Great Britain the tables of tariff grids, developed in 1994 by the special commission, which determine the amount of compensation to the victim of physical and moral anguish, are used. They define in detail the conditions and amounts of payments in different situations.

In the United States, the maximum amount of compensation for moral damages has been determined. For example, the maximum compensation is paid in case of death of the victim to his family members, in the amount of \$250,000. Japan is guided by the same principles. France and Germany are guided by court decisions on past precedents, developed into a norm of judicial practice.

Professor A.M.Erdelevsky tried to draw up a table of compensation for moral damage based on statistical, medical and other data. He proposed to take as a basis 720 minimum wages and certain amounts of compensation for various offences. This approach is quite often used in practice in the Russian Federation. When determining the amount of moral damage, the subjective assessment by the victim of the degree of moral damage received by him and objective data on

the severity of physical and moral anguish, such as: the importance of the benefits of the object, the severity of the offence, etc. are taken into account. However, it

should be noted that the legislation has not labelled the term "severity of anguish (suffering)" and the unit of measurement is not defined.

Table by A.M. Erdelevsky

Type of offence	Amount of compensation for presumed moral harm	
	Relative units	minimum wage
Causing grave harm to health	0,80	576
The same, committed with particular cruelty, abuse or torment	1,00	720
Causing moderately serious harm to health	0,30	216
The same, committed with particular cruelty, abuse or torture	0.50	360
Causing minor harm to health	0,03	24
Battery	0,025	18
Threat of death or serious harm to health	0,20	144
Compulsion to remove human organs or tissues for transplantation	0,40	288
The same committed against a dependent or helpless person	0,5	360
Infection with venereal disease	0,05	36
Infection with HIV infection	0,50	360
Failure to render assistance to a patient, resulting in the infliction of moderately serious harm to the patient's health	0,03	24
The same, resulting in infliction of serious harm to the patient's health	0,30	216
Kidnapping	0,80	576
The same, causing physical suffering	1,00	720
The same, resulting in serious or moderately serious harm to health	1,50	1080

Unlawful deprivation of liberty (for one day)	0,30	216
Same, causing physical suffering	0,50	360
The same, resulting in serious or moderately serious harm to health	0,80	576
Unlawful placement in a psychiatric hospital (for one day)	0,30	216
The same, causing serious or moderately serious harm to health	0,70	504
Dissemination of false defamatory information	0,03	24
Same, in mass media	0,05	36
The same, connected with accusation of committing a serious offence	0,30	216
Insult	0,015	12
Same, in mass media	0,03	24
Sexual intercourse or other violent acts of a sexual nature with the use of violence, threats or taking advantage of the victim's helpless condition	0,60	432
The same, accompanied by a threat of murder or serious harm to health	1,00	720
The same, resulting in serious harm to health or HIV infection	1,50	1080
Coercion to acts of a sexual nature by blackmail or threats	0,10	72
Discrimination against a citizen	0,20	144
Violation of the inviolability of private life	0,03	24
Violation of the confidentiality of correspondence, telephone conversations, postal or other communications	0,03	24
Violation of the inviolability of the home	0,025	18
The same, with the use of violence or threats	0,20	144
Unlawful refusal to provide information	0,025	18
Obstruction of the exercise of electoral rights	0,03	24

Unlawful refusal to hire	0,03	24
Unlawful dismissal	0,1	72
Other violation of labour rights	0,05	36
Violation of the non-property rights of authors and inventors	0,20	144
Violation of the right to freedom of conscience and religion	0,025	18
Disclosure of the secret of adoption or artificial insemination	0,20	144
Substitution of a child	0,50	360
Violation of the property rights of consumers	0,05	36
The same, causing significant damage	0,20	144
Causing the death of a close relative	0,30	216
The same, committed with particular cruelty	0,80	576
Abuse of the body or burial place of a close relative	0,025	18
Bringing an innocent person to criminal responsibility	0,50	360
The same, combined with an accusation of a serious offence	1,00	720
Conviction of an innocent person	0,40	288
The same, resulting in grave consequences	1,00	720
Unlawful detention	0,20	144
Unlawful detention or custody (for one day)	0,40	288
Other unlawful restriction of liberty (per day)	0,01	7,2
Coercion to testify	0,30	216
The same, committed with the use of violence, abuse or torture	0,80	576
Other infringement of a citizen's rights and freedoms by unlawful acts and decisions of the authorities and administrative bodies	0,05	36



The same, resulting in substantial harm	0,20	144
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Erdelevsky himself defined the degree of severity of suffering by measuring its depth, assessing it as weak or strong, unbearable, and therefore the degree of severity for a person depends largely on the type of intangible good, and the characteristics of the injured person himself can increase or decrease the degree of anguish (suffering). It follows that it is necessary to take into account the individual characteristics of the injured person.

Also, the "nature of suffering" is not defined at the legislative level.

In the literature, it is understood as a form of physical suffering - pain, breathlessness and other sensations.

The actual circumstances under which the damage was inflicted determine the amount of compensation. In this case, it is worth taking into account the degree and nature of moral and physical anguish, as well as the individual characteristics of the person who was harmed.

## CONCLUSION

In this article we have considered what concerns the assessment of moral damage, the lack of specific definitions of the concept of moral damage in the legal and judicial system of the Republic of Uzbekistan, the lack of elaborated methodology and practical recommendations for the assessment of non-material damage has actually led to a practical lack of practice of assessment and payment of compensation for moral damage during the forced seizure of real estate and property in general.

The foregoing makes it possible to conclude that the current legislation of the Republic of Uzbekistan does not have specific mechanisms and criteria for the assessment and payment of compensation for moral damage.

Legislative interpretation of moral damage by enumerating the ways of causing damage does not reflect the specific nature of the concept under study. The definition of the concept of "moral damage" through the categories of moral and physical anguish is highly vague and does not define the essence and content of such anguish. Disclosure of these concepts through normative-legal acts is very likely to put an end to this issue.

Analysis of international experience and practice has shown that there is no single methodology or approach, and each individual country proceeds from its own interpretation of moral damages. Of particular interest is the introduction of a specific tariff scale for the amount of compensation for moral damages introduced in the United Kingdom, as well as the establishment of a maximum amount of compensation in the United States of America.

Moreover, the absence of specific criteria for determining the amount of compensation for moral damage leads to an ambiguous approach of the law enforcer. It is proposed to solve this issue by developing a table of compensation for moral damages based on static, medical and other data, with fixed amounts of compensation for different types of offences.

## REFERENCES

1. Bush, G. W., Executive order: Protecting the property rights of the American people. – 2006.
2. Davy, B., Mandatory happiness? Land readjustment and property in Germany. In Y.-H. – 2007.
3. Hong, & B. Needham (Eds.), Analyzing land readjustment. Cambridge, MA: Lincoln Institute of Land Policy.
4. Franco, J. C., Monsalve, S., & Borrás, S. M., Democratic land control and human rights. Current Opinion in Environmental Sustainability – 2015.
5. Fullilove, M. T., Psychiatric implications of displacement: Contributions from the psychology of place. – The American Journal of Psychiatry, 1996.
6. Gold, M. E., & Sagalyn, L. B., (2010). The use and abuse of blight in eminent domain. – Fordham Urban Law Journal, 2010: 1119–1173.

