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EVIDENCE AND EVIDENCE BASE IN CASES OF COMPENSATION FOR MORAL DAMAGE

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Abstract

The article deals with the problems associated with determining the amount of payment of moral damages, its solution, analysis of the opinions expressed by legal scholars, and the legislative experience of foreign countries. The article also analyzes the criteria for compensation for non-pecuniary damage.

Keywords Moral damage, amount of harm, compensation, foreign experience, comparative legal analysis, legal basis, criteria, improvement.

INTRODUCTION

Recent years have seen a change in the content and essence of cases involving the recovery of moral damages in civil courts in our country. This particularly includes a new approach to proving the presence or absence of controversial legal facts in such cases.

The significance of evidence and material evidence in civil proceedings is underscored by the Supreme Court of the Republic of Uzbekistan's adoption of the Resolution «On the practice of courts in applying the norms of legislation on evidence and evidentiary activities in civil cases» on December 19, 2020. Paragraph 1 of this resolution explains that evidence in a civil case comprises any factual data used by the court, as prescribed by law, to establish the existence or non-existence of circumstances underlying the parties' claims and objections, as well as other relevant factors for correctly resolving the case. [1]

It is well-known that courts use evidence to establish factual circumstances. A court cannot decide on any civil case without first determining its existing circumstances. Given the court's

responsibility for the proper and timely handling of civil cases to protect the diverse rights and interests of citizens and legal entities, it is essential to ensure that the plaintiff's rights are not violated and that the alleged violator is not obligated to restore those rights. These issues are resolved only once the factual circumstances of the disputed legal relationship are established.

An analysis of judicial practices reveals that appeals for the recovery of moral damages constitute the majority of civil cases. This is largely due to the role of moral damage compensation in safeguarding non-citizens' rights, and the extensive and varied legislation on moral damages in our national laws. Consequently, the Supreme Court of the Republic of Uzbekistan's Resolution No. 7 of April 28, 2000, on the application of laws for moral damage compensation, reflects the diversity of relevant legislation and underscores the necessity for varied implementation timelines and appropriate decisions by the Plenum. [2] The compensation for moral damage is governed by various legislative acts, including specific articles of the Republic of Uzbekistan's Labor Code, the Law «On the Protection of Consumer Rights» (Article 22, April

26, 1996), and the Law «On the Protection of the Rights of Joint-Stock Companies and Shareholders» (Article 113, May 6, 2014), along with other laws such as the «On Road Transport» Law (Article 19, August 29, 1998).

According to the data, the number of civil cases processed in first instance courts was 518,087 in 2021, 863,883 in 2022, and 459,359 in the first six months of 2023. [3] Correspondingly, the cases involving potential recovery of moral damages have also increased proportionately. For instance, the total number of disputed labor cases rose to 11,113 in 2022, an increase of 6,083 from 2021. Of the 3,151 labor disputes considered in interdistrict courts in 2022, cases of reinstatement were prevalent; this figure was 2,606 in 2021. [4] Additionally, between 2016 and July 2023, Uzbek courts issued 5,304 acquittal verdicts, a significant increase from the 110 acquittals recorded between 2007 and 2015. [5]

Consequently, this results in cases involving the reinstatement of rehabilitated individuals at work and the recovery of compensation for moral damage inflicted upon them. Legal literature reveals numerous scientific studies examining the challenges of reinstating rehabilitated individuals at work and compensating them for moral damage. [6]

The analysis indicates that along with seeking reinstatement, employees often also pursue compensation for moral damage they have suffered.

The legal norm for compensation for moral damage, first established in independent Uzbekistan's legislation, acknowledges that it comprises both physical and mental suffering inflicted on the victim. [7] Consequently, in legal practice, there are numerous instances where citizens, besides their primary claims, also seek additional compensation for moral damage resulting from rights violations. However, in many of these cases, plaintiffs fail to adequately address the nature and extent of the moral damage, nor do they justify the amount sought for compensation. This results in outcomes like reductions or, conversely, increases and recalculations in the compensation amounts determined by courts. This

issue primarily stems from plaintiffs' misunderstanding or lack of knowledge about the basis of moral damage claims, and unfamiliarity with the means and rules for substantiating their claims in court.

Evidence in a trial is crucial for protecting the rights of both the plaintiff and the defendant.

In legal literature, practicing lawyers have proposed several scientific recommendations for proving the occurrence of moral harm. Specifically, following Yu.F.D. B. Khamrokulov's recommendations, plaintiffs may submit evidence such as:

- a copy of the court's acquittal;
- a copy of the resolution to terminate the criminal case;
- a copy of the decision to cancel the decision on administrative liability;
- contract of sale;
- product verification;
- cash receipt;
- written and oral testimony of witnesses;
- expert opinion;
- a copy of a certificate stating that an accident occurred at work;
- a copy of the statement about the occurrence of a traffic accident;
- a copy of the criminal court verdict;
- a directory of persons under the care of the deceased and members of his family;
- information published in the media;
- TV show recordings;
- description from the place of work;
- minutes of the meeting of the labor collective;
- copies of acts of state authorities, local governments, officials of public associations;
- a written request from the plaintiff to commit the action;
- a written response from the defendant to the refusal to commit such an act;

- if the response to the refusal is oral – explanations of the parties and testimony of witnesses;
- a response to the refusal is also not given, and when the action is also not completed to confirm spiritual and/or physical suffering. [8]

Indeed, these recommendations are of great significance in law enforcement practice.

Notably, the Supreme Court of the Republic of Uzbekistan's resolutions, dated April 17, 1998 (No. 12) on employment contract termination and April 28, 2000, on moral damage, did not provide specific explanations about the evidence in these cases. Paragraph 7 of the Supreme Court's December 19, 2003 Resolution (No. 18) on disputes related to compensation for harm to an employee's life and health explains that evidence should include: documents such as acts, court verdicts, resolutions on industrial accidents, findings of labor inspectors, medical reports on occupational diseases, and other relevant documents for a correct case resolution.

It is worth noting that even this resolution does not specify the types of evidence required for cases involving the recovery of moral damage.

However, an analysis reveals that in some countries, like the Republic of Kazakhstan, the Supreme Court's normative resolution on compensation for moral damage does provide clarifications on the legal facts that constitute evidence in such cases. According to this resolution, the evidence in moral damage compensation cases should encompass the following legal facts:

In fact, such recommendations are much more important for law enforcement practice. After all, the resolution of the plenum of the Supreme Court of the Republic of Uzbekistan dated April 17, 1998 No. 12 "On the application by courts of laws governing the termination of an employment contract (contract system)" and the resolution of the plenum of the Supreme Court of the Republic of Uzbekistan dated April 28, 2000 "on some issues of the application of laws on moral damage «did not provide explanations regarding the evidence in

the cases. In paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated December 19, 2003 No. 18 "On judicial practice in disputes concerning compensation for harm caused to the life and health of an employee in connection with the performance of labor duties," an explanation is given that the following documents must be submitted to the work as evidence of guilt and: "an act, a court verdict and a resolution on an industrial accident, a resolution of the prosecutor's office, the body of inquiry and preliminary investigation, the conclusion of a labor and technical inspector or other officials (bodies) that carry out compliance with labor protection requirements and labor legislation, monitoring the causes of harm to health; medical report on occupational disease; solution; decisions of the trade union committee, district (city) tax inspectorates on the employer's transfer of funds to the state social insurance budget in order to cover the costs associated with the payment of benefits for temporary disability to an employee due to an industrial injury, as well as other evidence relevant for the correct resolution of the case». [9]

If you pay attention, even in the resolution of this Plenum there is no explanation of what kind of evidence should be included in the work on cases of recovery of moral damage.

However, the analysis shows that in some states, for example, in the Republic of Kazakhstan, in the normative resolution of the Supreme Court of November 27, 2015 No. 7 "On the application of legislation on the payment of compensation for moral damage by courts" clarifications were given on what legal facts are included in the subject evidence in cases of compensation for moral damage. According to him, "the subject of proof in cases of compensation for moral damage includes the following legal facts:

- whether the defendant had any actions (inactions) that caused moral or physical suffering to the plaintiff, what they were expressed in and by whom they were conveyed;
- what personal intangible rights were violated by these actions (inaction) of the plaintiff and what intangible interests they encroached on;

- how the plaintiff's spiritual or physical suffering is expressed;
- degree of guilt of the offender;
- amount of compensation.[10]

In compensation cases for moral damage, facts established before the trial must be excluded from the subject of proof. It is also crucial in these cases to determine if the person was previously found guilty or if the acts were indeed committed by them. The second basis for exemption from proof is the pre-trial establishment of facts, meaning facts determined by a legally binding court decision in one civil case cannot be re-proven in another where the same individuals are involved.

According to Article 75 of the Code of Criminal Procedure, circumstances deemed commonly known by the court do not require proof. Once established in a legally binding civil case, facts cannot be re-proven in other civil cases involving the same parties.

A legally binding economic or administrative court decision is binding on the circumstances it determines, for any other court considering a related case involving the same parties.

A legally binding criminal court verdict is mandatory for courts considering the civil consequences of a convicted person's actions, specifically regarding whether these actions were committed and if they were by the sentenced individual.

The above points underscore the importance of research, both scientific and theoretical, on determining the subject and means of proof in claims for the recovery of moral damages from employees.

In civil cases involving the recovery of moral damages, legal literature reveals disputes regarding the subject of proof.

It is understood that the subject of proof refers to circumstances that the court must establish, and the means to prove these circumstances are termed as court evidence.

Judicial evidence, and the proof process in general, aim to identify elements with substantive and

procedural significance in a case.

Given that the civil process hinges on disagreements between parties, each is obliged to prove the circumstances supporting their claims and objections (Article 72 of the Civil Code). Professor MMMamasiddikov correctly notes that the subject of proof arises from these facts. The court determines the subject of proof based on the parties' requirements, objections, and the substantive legal rules applicable to the case. [11]

It is important to note that the composition of facts constituting the subject of proof varies in each civil case.

E.V. Kozyreva argues that in cases of single moral damage recovery, the subject of proof encompasses the payment amount, the defendant's degree of guilt and actions (or inaction), as well as the physical and mental suffering of the defendant, along with a complex of legal elements defining these aspects.[12] V.V. Yarkov and I.V. Reshetnikova identify the following legal facts as the subject of proof in moral damage recovery cases:

- 1) the reason for the action (inaction) of the defendant to cause physical and mental suffering to the plaintiff, what this is expressed in, when it was committed;
- 2) what personal non-property rights of the plaintiff were violated by this action (inaction) of the defendant and what intangible benefits were encroached upon;
- 3) what are the physical and spiritual suffering of the plaintiff;
- 4) the degree of guilt of the defendant;
- 5) payment amount.[13]

M.A. Stepanov and A.M. Erdelevsky argue that in cases of moral damage recovery, the victim's personal characteristics should also be proven.[14] A social survey of prosecutors and judges reveals that the subject of proof in labor disputes includes:

- actions (inaction) of the defendant that caused moral harm or physical suffering to the plaintiff;
- how this act (inaction) is expressed; who caused moral harm or physical suffering;

- what personal non-property rights of the plaintiff were violated by this action (inaction);
- what intangible interests they encroached on;
- how the plaintiff's mental suffering and this suffering were expressed;
- the degree of guilt of the plaintiff.[15]

We believe that in cases with moral damage claims, the subject of proof primarily includes the underlying facts of the claim, namely the circumstances and evidence on which the plaintiff bases their claims. Professor M.M. Mamasiddikov contends that the subject of proof should also encompass facts supporting the defendant's objections to the claim. [16]

In cases of moral damage recovery, the subject of proof involves determining the legality of the defendant's actions (or inaction) that caused moral or physical harm to the plaintiff, the nature and perpetrator of this harm, the defendant's degree of guilt, the extent of the plaintiff's physical and mental suffering, and the violation of the plaintiff's personal non-material rights.

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