

Prospects for Applying the Concept of Moral Damages for Breach of Obligations Under A Construction Contract

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Abstract

Non-pecuniary protection in contractual relations remains insufficiently developed in the law of the Republic of Uzbekistan, particularly in relation to construction contracts. The Civil Code regulates compensation for moral harm within the framework of obligations arising from the causing of harm, whereas construction contracts are governed by the rules on contractual obligations; at the same time, the Law “On Protection of Consumer Rights” expressly provides for compensation of moral harm caused by infringement of consumer rights. The article examines this relationship in Uzbek law and compares it with selected European, common-law and post-Soviet approaches. It argues that moral damages should be neither categorically excluded from construction disputes nor awarded automatically, and proposes a differentiated model based on the seriousness of the breach, the purpose of the contract, interference with a protected non-pecuniary interest, actual suffering, causation and fault.

Keywords: Construction contract; moral damages; non-pecuniary loss; contractual liability; consumer protection; residential construction; Uzbekistan.

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1. Introduction

Construction contracts occupy a distinctive position within private law: they concern significant economic interests, require prolonged performance, involve technical and safety requirements, and frequently determine the living conditions of individuals and families. A breach may therefore produce consequences extending beyond the economic loss for which contractual damages are normally designed, since delay in completing a dwelling, serious defects, unsafe premises or a persistent refusal to remedy defects may cause anxiety, inconvenience and disruption of family life.

The traditional separation of pecuniary and non-pecuniary loss makes such consequences difficult to address, since compensation for moral harm has historically developed within the law of civil wrongs. Comparative scholarship increasingly challenges that separation, demonstrating that non-pecuniary interests may constitute legitimate contractual interests where the nature and purpose of the agreement make them foreseeable and legally relevant [1].

The issue is particularly significant in Uzbekistan. Article 666 of the Civil Code defines a construction contract as an agreement under which the contractor undertakes, within the contractual period, to construct a

specified object or perform other construction work, while the customer undertakes to create the necessary conditions, accept the result and pay the agreed price. Compensation for moral harm is regulated separately in Articles 1021–1022: moral harm is generally compensated where the person causing it is at fault, including in “other cases provided by law”, and courts determining monetary compensation must consider the nature of the physical and moral suffering, the degree

of fault where fault is relevant, and the requirements of reasonableness and fairness [2]. Neither provision establishes an express prohibition on compensation arising from contractual relations. Moreover, Article 22 of the Law “On Protection of Consumer Rights” provides that moral harm caused to a consumer through violation of the consumer’s rights is compensated where the person causing it is at fault, independently of compensation for property damage and losses [3]. Where construction relations fall within consumer-protection legislation, the legal position therefore differs materially from a purely commercial relationship.

The central question is accordingly not whether every breach should generate moral damages, but whether a serious breach can constitute a legal basis for such compensation and, if so, what criteria distinguish legitimate claims from attempts to transform ordinary economic disputes into claims for emotional suffering.

The article employs doctrinal, comparative and formal-legal methods; its contribution is a differentiated model for awarding such compensation under Uzbek law.

Uzbek legislation uses the concept of “moral harm”, whereas English comparative literature employs “non-pecuniary loss”, “moral damages”, “distress” and “loss of amenity”; these concepts are not identical. Here “moral damages” denotes monetary compensation for legally relevant physical or moral suffering and other qualifying non-pecuniary consequences.

Under the Civil Code, the provisions on moral harm are located in the chapter concerning obligations arising from the causing of harm, and fault is established as the general basis of compensation subject to statutory exceptions [2]. This structural placement may suggest a predominantly delictual conception, but it should not by itself be read as an absolute exclusion of contractual cases. The decisive wording is the reference to “other cases provided by law”, and consumer legislation supplies precisely such a statutory basis [3]. The

distinction between contractual and delictual liability is therefore not an insurmountable conceptual barrier; the more appropriate question is whether the legal system recognises the protection of a non-pecuniary interest within the relevant contractual relationship.

This corresponds with modern comparative scholarship. Kryla-Cudna argues that the possibility of compensating non-pecuniary loss is necessary for the adequate protection of contractual interests and that policy objections do not, by themselves, justify a categorical prohibition [1]. Contractual interests are not necessarily reducible to financial expectations, since the purpose of some contracts involves comfort, security or the use of a home; where those interests are objectively relevant, their serious infringement may constitute a legally recognisable loss. Unrestricted contractual moral damages would nevertheless undermine predictability, as contract law cannot become a mechanism for compensating every disappointment. The appropriate position is one of qualified compatibility: moral damages are compatible with contractual liability only where legislation or the nature of the protected interest provides a sufficient basis and the claimant establishes the elements of compensable harm.

Article 666 of the Civil Code establishes the basic framework for construction contracts, and subsequent provisions address technical documentation, cooperation, additional work, payment, quality and liability; the contract is thus designed around the creation of an economic result. Notably, the special rules do not establish autonomous forms of liability, so that the general rules of civil-law liability apply — a feature also emphasised in Russian doctrine regarding the corresponding chapter of the Russian Civil Code [4]. The economic character of the object, however, does not exhaust the interests the contract protects.

This is particularly evident in residential construction, where a dwelling is simultaneously an economic asset and a place of personal and family life.

A substantial delay in completion may require the customer to remain in temporary accommodation; serious defects may make the premises unsuitable for normal use; and unsafe construction may expose residents to danger. These consequences differ qualitatively from a reduction in the market value of property, and the consumer-protection framework reinforces this conclusion, since compensation of moral harm caused by violation of consumer rights is expressly

declared independent of compensation for property damage and losses [3]. This corresponds with the general principle that the consequences of a breach should reflect the interest the obligation was designed to protect: a commercial developer ordinarily has predominantly pecuniary interests, whereas an individual commissioning a home may have substantial personal and family interests connected with proper performance.

Consumer status alone, however, should not render every violation compensable as moral harm; otherwise every delay or minor defect could generate a claim for distress, and moral compensation would become an additional contractual penalty.

The 2025 Resolution of the Plenum of the Supreme Court on the protection of personal non-property rights and other intangible benefits is relevant here, since it recognises compensation for moral harm among the remedies for their violation [5]. The principal legal gap is therefore not the absence of a normative basis, but the absence of criteria explaining when a breach crosses the threshold from an ordinary economic violation into a legally compensable interference with non-pecuniary interests.

A coherent judicial approach should rest on the following cumulative criteria. Seriousness of the breach. The breach should be sufficiently serious: minor defects, insignificant delays, technical discrepancies and temporary inconveniences should normally remain within the sphere of ordinary contractual remedies. Seriousness should be assessed by the actual impact of the breach rather than its formal classification, taking into account the duration of the violation, the significance of the defect, the possibility of using the premises, safety risks and the contractor's refusal to remedy it.

Personal or residential purpose of the contract. The purpose of the contract should be considered, which is particularly important in distinguishing consumers from commercial actors. A contract for a family dwelling may objectively involve interests in security, privacy, stability and normal family life, whereas a commercial contract has a different risk structure. Comparative scholarship supports this distinction, showing that common-law courts, although historically reluctant to award non-pecuniary damages for breach of contract, have recognised exceptions and considered non-material consequences in residential construction disputes [6].

Protected interest, actual suffering and causation. Moral compensation should not rest on subjective dissatisfaction; there must be an identifiable protected interest, such as the ordinary use of a home, personal security, health or privacy. The claimant must also establish actual suffering rather than assert disappointment, whether through medical evidence where physical or psychological consequences are alleged, testimony on prolonged disruption of living conditions, correspondence with the contractor, evidence of temporary accommodation or repeated unsuccessful attempts to obtain repairs. Requiring a medical diagnosis in every case would nevertheless be excessive, since moral suffering is not necessarily a medical condition and the Civil Code requires courts to assess the factual circumstances and the individual characteristics of the injured person [2]. A direct and sufficiently close causal relationship must in addition exist between the breach and the alleged suffering: prolonged inability to occupy a newly constructed home because of serious defects may plausibly cause significant disruption, whereas generalised anxiety about property values or dissatisfaction with the contractor's communication style should not automatically establish compensable harm.

Fault and conduct after notification. Where fault is required, the contractor's culpability should be established. Deliberate disregard of contractual obligations, repeated failure to correct defects after notification, unjustified refusal to perform warranty obligations and concealment of serious defects should weigh significantly, whereas an isolated technical error promptly corrected should weigh against substantial compensation. Post-breach conduct deserves independent consideration: two contractors may cause the same defect yet produce different consequences, since one may promptly remedy it while another ignores repeated complaints for months. The latter conduct aggravates the claimant's suffering and should influence both the availability and the amount of compensation.

Amount of compensation. The Civil Code entrusts the determination of the amount to the court and requires consideration of reasonableness and fairness [2].

The absence of a mathematical formula is understandable, since moral suffering cannot be precisely converted into monetary terms, but discretion should be structured by consistent factors: the seriousness and duration of the breach, the degree of suffering and of fault, personal circumstances and proportionality to the violation. Russian doctrine has

proposed more rigid solutions, including linking the assessment to the cost of the works and establishing a statutory minimum award [7]. Such proposals highlight the need for structured discretion, although a direct correlation between contract price and suffering is difficult to reconcile with the individualised assessment the Civil Code requires. Moral damages must in any event remain compensatory rather than punitive.

The relationship between contract and non-pecuniary loss is neither uniform nor static. English law historically approached damages for distress cautiously, yet the construction case *Ruxley Electronics and Construction Ltd v Forsyth* recognised non-economic dimensions of performance: the House of Lords rejected an unreasonable cost-of-cure award and allowed compensation for loss of amenity where the result did not correspond to what had been promised [8]. The case is not direct authority for moral damages in the Uzbek sense, but it shows that the contractual interest in construction may include personal enjoyment not reducible to market value.

The post-Soviet tradition offers a further perspective. Russian courts uniformly refuse compensation for moral harm under construction contracts between legal entities and individual entrepreneurs, since it is available only to citizens, while consumer legislation supports awards in favour of individuals [9]. Practice confirms both the availability and the limits of the remedy: in a dispute over substantial defects in a newly built flat, the appellate court, having established a violation of consumer rights, awarded a penalty together with compensation for moral harm and a statutory fine in reduced amounts, and the higher court upheld that approach. The example illustrates the risk that moral compensation becomes a routine addition to economic claims unless its criteria are separately articulated.

Three lessons follow for Uzbekistan: the contractual character of an obligation does not exclude non-pecuniary consequences; residential construction deserves special treatment; and recognition of moral damages should be accompanied by limiting criteria preserving predictability. Uzbek law is thus capable of a middle position between categorical exclusion and unrestricted compensation.

The existing framework provides a partial basis for compensating moral harm in construction relationships, especially where consumer rights are violated, but greater certainty would improve judicial consistency.

The first reform belongs to judicial interpretation: courts should expressly distinguish the ordinary economic consequences of a breach from serious breaches causing legally relevant non-pecuniary harm.

The second could involve clarification of the Consumer Protection Law or the Civil Code, for which a possible formulation is:

“In the event of a substantial breach of a construction contract concluded by a consumer for personal, family or other non-commercial purposes, compensation for moral harm may be awarded where the breach has caused physical or moral suffering and there is a causal connection between the breach and such harm. The amount of compensation shall be determined by the court taking into account the seriousness and duration of the breach, the nature of the protected interest, the degree of fault of the contractor, the consequences for the consumer, the contractor’s conduct after notification of the breach, and the requirements of reasonableness and fairness.”

Such a provision would not create automatic liability, since the expressions “substantial breach”, “physical or moral suffering” and “causal connection” would operate as substantive limitations. A third reform concerns methodology: courts should explain why a particular amount is appropriate, since transparent reasoning promotes consistency even where uniformity is impossible. Finally, practice should maintain the distinction between moral damages and penalties: a penalty regulates economic consequences according to an agreed or statutory formula, whereas moral compensation addresses a qualitatively different injury, and the two remedies may coexist where their prerequisites are independently satisfied.

2. Conclusion

The question of moral damages for breach of construction contracts in Uzbekistan should be answered neither by complete exclusion nor by automatic recognition.

The Civil Code places moral compensation within the framework of obligations arising from harm, which may suggest a predominantly delictual remedy; nevertheless, the reference to other cases provided by law, together with the independent basis established by consumer legislation, already permits significant protection of non-pecuniary interests in consumer relationships. Residential construction concerns a place in which

individuals and families exercise important personal interests, and serious defects, prolonged delays, unsafe conditions and persistent refusal to remedy violations may produce consequences that material damages alone cannot address.

At the same time, moral damages should remain exceptional. The proposed model requires a serious breach, a personal or residential purpose, interference with a legally protected non-pecuniary interest, actual suffering, causation and, where required, fault, while the duration of the violation and the contractor's conduct after notification influence the assessment. The lesson for Uzbekistan is not to transplant a foreign model wholesale, but to combine the existing consumer-protection basis with clearer judicial criteria protecting genuine non-pecuniary interests while preserving the predictability of contract law.

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