

PROBLEMS COMPENSATION FOR MORAL DAMAGE TO REHABILITATED MILITARY SERVICEMEN

Babakulov Bekzod Normuxamedovich

Judge of the Military Court of the Republic of Uzbekistan

Annotation: the article analyzes criminal procedural and civil law norms related to the procedure for compensation for moral damage to rehabilitated military personnel, in connection with which scientific proposals have been developed on issues arising in theory and practice.

Key words: moral damage, military servicemen, military court, rehabilitation, criminal process.

As the property rights and interests of the rehabilitated persons are protected, their personal non-property rights and intangible benefits are also valued as high value. Although organizational and legal criteria and rules have been developed in our national legislation for determining the amount of any material damage, the moral suffering inflicted on a person cannot be measured on a scale, nor can it be clearly shown with numbers.

As A. Kolieva rightly noted, due to the fact that there is no clear methodology for compensation of moral damage caused to a person, it is not possible to recommend the amount of moral damage even when compensating the damage caused by law enforcement agency or court documents [1]. According to T. Teterina, a claim for moral damages should be filed regardless of property damage [2].

For years, no efforts have been made to solve this problem in the criminal procedural, civil and labor legislation, but not only the military court, but also the courts of general jurisdiction have not been able to form a single model practice on compensation for moral damage.

According to our analysis, there are several specific reasons for this.

2 different concepts are used in the Criminal Procedure Code and the Civil Code: "moral damage" is used in the Civil Code, "moral damage" is used in the Civil Code.

According to B. Hamrokulov, since the moral damage is caused by the victimization of a citizen, in the legal documents related to the compensation of moral damage, instead of the phrase "moral damage", "moral damage" should be used. The author believes that in the Russian texts of the Civil Code and the Plenum Decision, the sentence "moralny vred" is correctly used, not "moralnye ubytki", therefore it is appropriate to change all the sentences "moral damage" to "moral damage" in the Uzbek text of the Civil Code and the Plenum Decision calculates [3].

According to S. Rogachyov, compensation for moral damage caused by illegal prosecution or illegal conviction should be carried out in the criminal procedure, because these actions always cause moral or physical suffering to one degree or another. The author states that when a citizen applies for rehabilitation in the criminal procedure, the amount of monetary compensation for moral damage should be clearly determined by law [4].

A. Podoprigora believes that "rehabilitation is a criminal-procedural institute, so compensation for material and moral damages should be carried out only in the criminal-procedural procedure" [5]. T. Sharifov stated that non-property claims are not considered in criminal court proceedings, they are resolved in civil court proceedings [6].

V.V. Nikoliuk said that "according to the procedure of conducting criminal court cases, there will be no possibility to compensate the moral damage caused as a result of procedural coercion measures. "Because the consequence of moral damage is a claim representing monetary recovery, it is considered in the civil procedure" [7].

According to A. Chorshanbiev, the norms on compensation of non-material benefits of military personnel - damage caused to life and health in the civil-law procedure (delict) are considered as additional guarantees of their rights [8].

We will try to analyze the norms of the national legislation on the institution of moral damage based on the conflicting opinions of scientists.

A total of 7 articles - 17, 302, 303, 309, 313, 470, 49730 of the Criminal Procedure Code are devoted to the grounds and procedural aspects of full or partial elimination of "moral damage".

In particular, when a person suffers not only physical and property, but also moral damage as a result of a crime, such a person can be recognized as a victim (according to Article 54 of the Criminal Code). As stated in its Article 17, the judge, prosecutor, investigator, and investigator must respect the honor and dignity of a person, demean a person's honor and dignity, lead to the dissemination of information related to his personal life, endanger his health, and unjustifiably it is forbidden to take actions or make decisions that cause physical and mental suffering.

The above-mentioned norms of the Criminal Procedure Code related to moral damage are directly related to the process and results of the case review. The fact is that during the consideration of the case in the appellate court, the appellate court can reduce or increase the amount of compensation of moral damage of the first instance court. In the decision part of the acquittal sentence, the right of the acquitted person to eliminate the consequences of moral damage is provided for only "recognition".

Article 302 of the Civil Code emphasizes the right of a person to demand the elimination of the consequences of moral damage.

Compensation for moral damage according to Article 309 of the Civil Code consists of the following, i.e.: "information about a person's detention, imprisonment or house arrest, removal from office, placement in a medical institution or sentencing is published in the press, distributed through radio, television or other mass media. in case of a rehabilitated person, in case of his death, his relatives, court, prosecutor, investigator and investigator, the relevant mass media must inform about his rehabilitation within one month.

In our opinion, the criminal-procedural mechanism for eliminating the consequences of moral damage is weak, and the above measure cannot fully rehabilitate a person morally.

According to V. Potetinov, publication in the mass media at the request of the rehabilitated person does not exclude the payment of compensation in the form of money for moral damage [9].

By the way, monetary compensation for moral damage is not available in JPK. Its solution is more widely reflected in the Civil Code.

5 articles of the Code - 11, 20, 100, 1021, 1022 - are devoted to this topic, and article 11 states that "compensation of moral damage is a way of protecting civil rights". Chapter 57, paragraph 4 of the Civil Code deals with moral damage.

Importantly, under civil law, non-pecuniary damage is compensated regardless of the property damage that is payable. In the JPK, only property damage is compensated in the form of money.

The amount of compensation for moral damage is determined by the court depending on the nature

of the physical and moral suffering inflicted on the victim, as well as the degree of guilt of the person who caused the damage in cases where the compensation is justified. The requirements of reasonableness and fairness should be taken into account when determining the amount of damages [10].

The institution of moral damage is also widely used in labor-legal relations. The Labor Code contains articles (4, 21, 37, 120, 150, 174, 319, 335, 527, 558, 560, 565, 568) related to the protection of the rights of employees and compensation for moral damage caused to them for various reasons.

In the Labor Code, compensation for moral damage is considered as a method of protecting the labor rights of employees (Article 527 of the Labor Code) and, in contrast to the civil and criminal procedural legislation, provides that the minimum amount of moral damage is compensated in the form of monetary compensation in an amount not less than the average monthly salary of the employee.

As A. Kolieva rightly noted, according to international principles, not only the rights of the person should be restored, but also the damages should be fairly compensated [11].

Accordingly, moral damage caused to rehabilitated servicemen under illegal criminal prosecution should be compensated with money. Its amount is determined by the court.

As noted by T. Izbienova, the institution of moral damage compensation is characterized by the complexity and versatility of its application [12].

G. Amirbekova believes that "lower and higher levels of compensation for moral damage to a rehabilitated person should be established by legislation" [13].

It is natural that the exact form and size of the assessment of the amount of moral damage has not been developed, which causes problems in determining the amount of payment.

As noted by I. Nasriev, in the issue of compensation for moral damages, sometimes without paying much attention to the required amount, they also report cases of unjustified reduction of the amount of moral damages [14].

M. Erdelevsky developed "Amounts of moral damage that can be inflicted" ("Tablitsa razmerov kompensatsii prezymiruemogo vreda") in order to recommend it for use in court practice. In it, the amount of compensation is determined by a special formula that takes into account the level of moral damage caused, the fault of the person causing the damage, personal characteristics of the victim and other circumstances [15].

According to V. Vladimirova, it is important to appoint a forensic psychological expert when determining the amount of moral damage, as well as to take into account the opinion of the injured person when determining the form of compensation. The author believes that it is possible to introduce an apology as a form of compensation for moral damage [16].

According to R. Proshchalygin, the issuance of a procedural document on rehabilitation does not require another legal fact to compensate for the damage caused, no formula or methodology can indicate the amount of moral damage caused to a person [17]. The author believes that the nature of physical and mental suffering should be assessed by civil courts, taking into account the actual circumstances of moral damage, personal characteristics.

The scientist's reasoning is valid. Lawsuits for the compensation of moral damages are brought only in the form of a claim, but they can be tried not only in civil courts, but also in military courts against military personnel.

In this case, it is necessary to follow the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 7 of April 28, 2000 "On some issues of application of the laws on moral damages".

According to the decision of the Plenum, the right of the rehabilitated person to recover moral damages arises after the verdict of acquittal or the termination of the criminal case. Claims for moral damages are considered in civil proceedings (Article 1021 of the Criminal Code).

In accordance with paragraph 8 of the decision, the court may consider the claim for the recovery of moral damage together with the claim for the recovery of property damage, as well as separately, since the liability for moral damage caused according to the current law does not depend on the existence of property damage. However, in the court experience, property damage is mostly used, and the issue of moral damage remains open.

The military court shall confirm the fact that the rehabilitated serviceman suffered physical and mental suffering, in what condition and what actions (for example, he was deprived of liberty due to illegal criminal prosecution, dismissed from military service, deprived of military rank, lost housing support, suspended pension, property confiscated for the benefit of the state, etc.), mental and physical suffering (illness, disability), other circumstances important for the resolution of the dispute (publication in the mass media of the fact that a military serviceman has been criminally punished it is necessary to determine whether it was given, whether it was discussed in front of the team in the military unit.

According to G.V. Kuleshov, the legislator avoided setting a normative requirement in determining the amount of compensation for moral damage, and assigned it to the court to determine it based on the criteria of justice and reasonableness [18].

N. Skobychkina approves the judicial application of the principle of "adequacy" and "satisfaction of the individual" in compensation for non-property damage caused by state bodies and its officials [19].

Because the object of damage caused to a rehabilitated military serviceman as a result of illegal criminal prosecution is not only intangible benefits (life, health, personal dignity, professional reputation, privacy, personal and family secrets), but also other material benefits (financial security, housing, medical, pension provision, property rights, education rights, deprivation of legal privileges of family members, legal aid, medical expenses, etc.).

Agreeing with the opinion of scientists, it can be concluded that the rehabilitation norms of the criminal procedural legislation only partially eliminate non-property and moral damages of a person. Its reference norms impose additional responsibility on the courts and require independent assessment of each situation.

Based on the above, we come to the following conclusions:

first of all, there is no model court experience for recovery of moral damage caused to rehabilitated military servicemen by military courts, in some cases, appeals are sent to civil courts without substantive resolution;

secondly, as a result of different interpretations of the law on the amount of moral damage, the amount of compensation is often reduced by the court without justification;

thirdly, the rehabilitated military serviceman should be compensated for moral damages regardless of property damages. The court should pay attention to the fact that the statute of limitations does not apply to the demand for moral damages in accordance with the first part of Article 163 of the

Civil Code;

fourthly, it is proposed to exempt the rehabilitated person from the payment of the state duty rate (2 times the amount of the basic calculation) established by the law "On State Duty" when a lawsuit is filed for recovery of moral damages. Because the moral damage itself is caused as a result of violation of judicial activity.

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