

Structural analysis of binding educational interventions in compensation for moral and environmental damage

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Abstract. This scientific article provides a detailed structural analysis of the issues interaction of the functions of law, in the implementation of specific tasks to ensure the inviolability and stability of the rights, freedoms and legitimate interests of man and citizen, strengthening the rule of law and law and order, as well as the sustainable development of civil society, legal and social state in the Russian Federation. Federation. The essence of the institution of compensation for moral harm and a brief history of its formation are touched upon. The authors also reveal and conduct a theoretical and legal analysis of the role of compensation for moral harm in the legal system and the influence of methods of data interpretation on it, through the prism of binding measures and educational impact.

1 Introduction

The scientific article is due to the theoretical and practical significance. The urgency of the research is due to its theoretical and practical significance. In scientific and theoretical terms, the study of the issue related to compensation for moral damage is necessary, since nowadays this legal institution is developing.

Moreover, the study of such issues is important because the infliction of moral damage is associated exclusively with physical or moral suffering. However, the normative acts do not define these terms, and this is a significant gap in the legal regulation.

Order and social stability are the fundamental purposes of law. The law is the opposite of chaos and arbitrariness. The law sets norms of behavior that reflect the interests of the majority. The significance of the legal norms for the society consists not only in the main processes regulation, but also in protecting the established foundations.

The law is a complex, highly organized structure that has its own characteristics, functions and purpose, that is, the role in the system of state power and society. Thus, in a broad sense, the functions of law are the legal construction. This legal construction includes such components as the basis, the content and the form of implementation [19].

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The above-mentioned circumstances determine the interest of legal theorists to the problems that arise when compensation for moral damage is applied as a liability that has an educational impact on individuals.

2 Methods

A lot of scientific literature is devoted to the problems of this legal institution formation. For example, in Russia, the question of essence of compensation for moral damage first arose in the XX-XXI centuries due to fact that in the period preceding the reform, Russian legal scholars were searching for ways to make the legal system more effective.

Characteristics of various types of functions of law are given in the works of such scientists as: T.N. Radko, V.V. Vasiliev, S.A. Ivanov, I.A. Kurtsev, S.T. Maksymenko, A.I. Ryzhenkov,

V.D. Filimonov, A.K. Shirmamedov. However, it will be fair to note that the deep study of aspects of modern legal support for the implementation of the compensatory function of law, including in the case of compensation for moral damage, was largely influenced by theoretical and legal research that E.V. Blinkova, I.V. Bondarenko, T.P. Budyakova, V.V. Vladimirova, A.A. Vlasov, A.I. Glybina, V.N. Kartashov, G.G. Gorshenkova, I.A. Sukharevsky, I.L. Marogulova, A.P. Tarakanov, A.A. Shvetsova, A.M. Erdelevsky, S.M. Vorobiev and others.

The attention is reasonably focused on the fact that the value of law as a fundamental phenomenon is reflected and further specified in the normative regulations establishing norms of behavior. And if the regulations are not implemented, the impact on the agent of social relations is carried out by the state authorities.

It is worth noting that the functional characteristic of law helps understand the nature of the normative regulations of public relations. However, despite a significant number of scientific papers written on this issue, the definition of «the function of law» is still the subject of discussion. Thus, T.N. Radko concludes in his own research work that the variety of approaches to understanding the category under discussion is connected to a significant number of meanings of its semantic elements.

The compensatory function of law is manifested in the institutions of compensation for material, physical and moral damage. However, in practice, material damage does not always lead to moral harm. Liability measures for moral damage can be applied when committing crimes against the physical integrity of a person, his health and life, or when losing family members in criminal attacks.

Thus, the category of «moral harm» represents moral or physical suffering caused by acts that endanger certain objects:

1. Intangible benefits;
2. Personal non-property rights;
3. Property rights of a citizen [12].

3 Results

The research has shown that legal nihilism is one of the fundamental problems, the solution of which will undoubtedly have a positive effect on the legal system of the state.

The reasons for legal nihilism on the territory of Russia are:

- 1) Specific historical development of the state;
- 2) Gaps in the legislation and in the legal system as a whole;
- 3) Existence of administrative and command methods in the political and economic spheres of society;

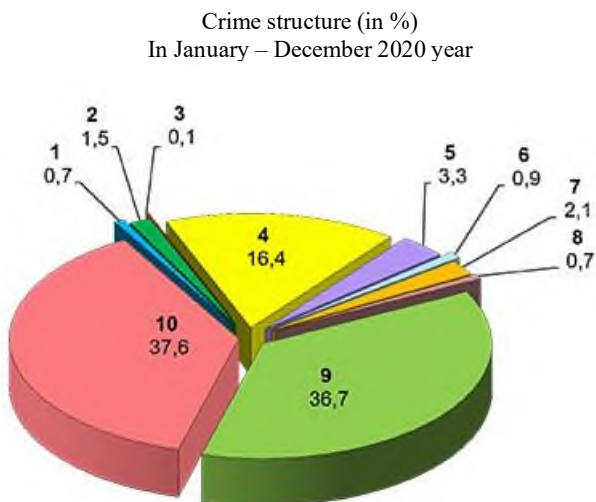
4) Absence of mechanisms for realization of democratic and legal traditions in the state;
5) Imperfect development of judicial and law enforcement activities on the territory of Russia.

Legal nihilism is expressed in the following forms:

- 1) Deliberate and direct violation of laws and regulations;
- 2) The spread of anti-legal policies in the society, the formation of a worldview that justifies the propaganda of cruelty and violence;
- 3) Mass violations of human and civil rights and freedoms.

It is possible to see the regular interconnection between the functions of law and duty of a person and a citizen. Due to the fact of that, the functions of law coordinate development and action of law as a socially necessary tool, these functions determine the fullness of the actions of the subject of law, which he must strictly fulfill regardless of his inner desire [19, P. 83].

A detailed structural analysis of the ongoing processes indicates the following indicators (Picture 1, Table 1).



- 1 - bribery;
- 2 - murder, willful infliction of grievous bodily harm;
- 3 - hooliganism;
- 4 - fraud;
- 5 - violation of traffic rules by a person subjected to administrative punishment;
- 6 - violation of traffic rules and vehicle operation;
- 7 - robbery, robbery;
- 8 - misappropriation or waste;
- 9 - theft;
- 10 - others.

Fig. 1. The state of crime in the Russian Federation in January – December 2020 year (source: Official website of the Ministry of Internal Affairs of the Russian Federation) [8].

Table 1. Indicators of compensation for damage caused by crimes, billion rubles (source: Information about the investigative work and the inquiry of the organs of internal affairs. Form 1-E. Section 18. M.: GIATs Ministry of Internal Affairs of Russia, 2014-2020) [15].

Year	The amount of damage established in the course of pre-trial proceedings	Amount of compensated damage in the course of pre-trial proceedings	The share of damages compensated in pre-trial proceedings from the damage established by the investigator. %
2014	739050	26816	36.3%
2015	157095	57038	36.3%
2016	259503	31043	12.8%
2017	237847	33339	14.0%
2018	164957	46012	27.9%
2019	202430	34722	16.8%
2020	255764	16036	27.6%

4 Discussion

In order to cover the topic, it is necessary to illustrate how the concept of «compensation for moral damage» has been developed retrospectively since the ancient times. Thus, due to the fact that the survival outside the tribe was impossible, at the first stages of historical development, the most severe punishment applied to a person committed an offence was expulsion from the tribal community.

While the statehood was developing on the territory of Russia, people were changing their minds about sanctions, the implementation of which was necessary for the public justice. Until the eleventh century, the fundamental basis of law was custom, which was reflected in the law of retaliation – the punishment must be proportionate to the damage. However, after the publication of the *Ruskaia Pravda*, the first normative act, the above-mentioned principle of blood feud was eliminated and the criminal law and procedural norms were regulated [7, P. 216].

In the time of Moscow Principality, the state responsibility for damage compensation was developing. The state protected intangible benefits. Thus, during the reign of Ivan III, it was said in the *Sudebnik* of 1497, that the punishment for a criminal offence was not only the death penalty, but also the compensation payment [6, P. 105]. The possibility of a civil claim for murder also existed in the *Sudebnik* of Ivan IV (1550). Thus, these legal documents contained a set of penalties for the benefit of the victim, used as additional coercive measures.

At the same time, a fine imposed according to the process of law could be a fundamental punishment. According to the *Sudebnik*, a double fine was established for dishonoring of a woman [18, pp.197-198].

Having analyzed the above, it can be concluded that according to the *Sudebnik* of 1497 and the *Sudebnik* of 1550 fines and monetary sanctions were considered as the main and additional punishments. It is, indeed, the evidence confirming the value of intangible benefits.

The exact amount of compensation for damage to various social classes was determined by the Council Code of Tsar Alexey Mikhailovich in 1649. It was the following legal act in the historical hierarchy. In case of an insult, the victim was supposed to be compensated from 1 to 400 rubles, depending on the social class.

It is an important fact that changes in the legal system of Russia are connected to the events of 1917. The Soviet legislation didn't provide compensation for moral damage, therefore, the judges were not authorized to satisfy the claims of the injured party. The idea itself was considered as bourgeois and unworthy of a socialist state. At the same time,

throughout the 20-60s, in the legal literature there were articles of theorists on the need to introduce the compensation for damage caused to intangible benefits.

Thus the normative act «About the Press and Other Mass Media» was adopted in the SSR only in 1990. This act regulated the procedure of compensation for moral damage in the commercial sphere. If the fact of spreading of false information is proved, the person guilty of committing these acts is obliged to pay a fine [5].

The Basic Principles of the Civil Legislation of the Soviet Union and the republics marked the beginning of the modern stage of development of the concept of «moral harm». The judicial authorities have the ability to impose a monetary compensation on the offender, if the victim is harmed [11].

Thus, in the author's opinion, it is necessary to distinguish six fundamental stages of historical development of the institution in question:

1. Functioning of the law of retaliation (XII century);
2. The birth of this institution in the old Russian law. The state supported the introduction of a monetary compensation in various ways, since the blood feud principle was superseded by this institution (XII-XV centuries);
3. The adoption of the Russkaia Pravda, which prohibited acts associated with blood feud (XV-XVI centuries);
4. Regulation of the directives that declared compensation for damage to individuals belonging to different classes (XVI-XIX centuries);
5. The Soviet period – the absence of regulations in the legislation was explained by supporters of Marxism-Leninism by the fact that it is incorrect and impossible to measure the human dignity with money (XX century);
6. The evolutionary stage is not limited to time intervals, since it is functioning in the conditions of the modern reality (the XXI century and beyond).

In order to make a theoretical and legal analysis, it seems reasonable to analyze the Russian legislation in terms of compensation for moral damage. In accordance with the Constitution of the Russian Federation, an act of supreme legal force adopted at the referendum on December 12, 1993, Russia is a legal state, and its fundamental distinctive feature is to ensure the protection of human rights and freedoms. In order to implement the above-mentioned guarantee, citizens are given the rights specified in the industry regulations.

Thus, the institution ensuring law and order in public legal relations is also the compensation for moral damage established by the norms of the Civil Code of the Russian Federation [3].

Having analyzed the legal regulations, it is reasonable to make a conclusion that the main aim of the legal institution is to minimize the damage consequences, as well as to provide educational measures to influence the harm-doer.

In accordance to article 151 of the Civil Code of the Russian Federation, the moral damage is associated with physical or moral suffering only. However, the normative acts do not define these definitions, and it is a significant gap in the legal regulation. That is why, it is necessary to analyze the directives of the legal doctrine and judicial practice to define the concept of «material damage».

In accordance with the Plenum of the Supreme Court of the Russian Federation, it is possible to confirm the physical suffering by legal documents issued by members of public health service (results of an expert research, medical notes of a standard form). Emotional stress can be related to the death of relatives, termination of an employment contract, or disclosure of information that is legally classified as a medical or family privacy.

Having analyzed the directives of the judicial practice, it is necessary to emphasize that at the Federal level there is not any exhaustive list of grounds that can be recognized as circumstances giving rise to moral feelings. Therefore, the possibility of compensation for

moral damage in each individual case is decided by the judge of the appropriate level on the basis of the evidence presented.

In accordance with the directives of the normative acts, to impose a sanction, the following elements of the offence must be established:

1. An act in conflict with the norms of law that violates personal non-property rights or encroaches on non-material values;
2. Socially dangerous consequences;
3. Cause-and-effect relationship.

Considering this issue, it is reasonable to mention that it is incorrect to use the scientific category «compensation» in this context. According to the etymological interpretation, it is assumed that an equivalent object is provided, and it is not possible in the objective sense [14, P. 20].

Thus, when creating a norm of law that establishes responsibility for moral damage, concepts that have an evaluative character are used as the subjects of the legislative initiative. It is the reason for a hypothesis among theorists about the need to replace the category under discussion with other concepts. In order to cover the topic of the scientific article, it is reasonable to analyze the above-mentioned directive in detail.

Zhaglin A. V. focuses on the fact that the definition of «non-property damage» has an all-encompassing character [4, P. 65]. Batyrov A. S., on the contrary, comes to the conclusion that the use of terminology regulated by the legislator helps us avoid double standards in the conceptual framework formation, which directly affects the quality of law enforcement activities [1, P. 138].

It is worth paying attention to the fact that in general, binding norms of law can be characterized as obligatory, formally defined, coming from the state and as rules of proper behavior of people in society regulated by the state, the main purpose of which is to encumber the addressee on a certain legal obligation.

In the legal science there is another definition. According to this definition the binding norms of law should be understood as the norms of law that impose a corresponding obligation on the subject of the law, associated with the need to perform an action.

One of the main directions of the impact of mandatory measures is education of the subject, that forms a positive attitude to the law and a socially acceptable way of behavior.

Moreover, Makarova N. A. comes to the following conclusion in her scientific works devoted to the subject: the main aim of the educational function of law is to form of the legal consciousness, which reflects the need for active good behavior. That is why, to adopt the norms it is necessary to implement these regulations in practice. The above function gets the fundamental importance in the modern conditions [10, P. 63].

It is worth noting that the result of the educational function of law, in the context of responsibility for moral damage, is the implementation of social regulations that exist in a certain period of historical development. To implement this, the subjects of legal relations are influenced not only by state authorities and local self-government, but also by civil society institutions [2, P. 19].

This function is reflected in the application of social means of influence to individuals. These social means of influence aim at forming the following fundamental elements:

1. Legal education;
2. Legal consciousness;
3. Legal culture;
4. Moral principles of law.

Having analyzed the above, the following conclusion can be formulated. The educational function plays a significant role in the implementation process of legal influence, although this function is not the main direction of the social regulator activity. That is why, the classification of legal functions presented in the legal literature is illogical:

1. Main (regulatory and protective)
2. Social (economic, political, educational).

The above idea is confirmed by the research of the theorist Radko T.N., who points out that the use of the term «social functions» is incorrect, since the classification is based on the criterion – the sphere of the social life. Thus, all functions of law are social without exception, since they effect social relations of all types and levels [13, P. 93].

At the present stage, the legal literature does not contain any research on the subject-matter of the educational function of law. Its place in the hierarchy of the main directions of the law impact is not defined.

It should be noted that the structural element of the law is a norm that contains certain directives. After reading these directives, an individual expresses his/her own psychological attitude to them. This attitude mainly determines the implementation of legal postulates in practice. Directives with a negative assessment are not reflected in the legal consciousness. In this case, the educational function does not fulfill its own purpose [9, P. 273].

That is why, legal nihilism is the next major problem that requires consideration. Legal nihilism is a form of legal consciousness expressed in a negative attitude to legal norms regulated by the national legislation. There are passive and active forms of legal nihilism. The passive form means that individuals do not consider laws as the fundamental regulator of social relations. The active form is characterized not only by hostility to the directives of normative acts, but also by propaganda of one's own worldview among other citizens (anarchism).

5 Conclusion

Based on the above, it can be noted that the compulsory measures captured in the current legislation have a significant effect on the compensation for moral damage, from the perspective of the educational impact. As a result, better enforcement of these compensatory measures by offenders ensures the inviolability and stability of human and civil rights, freedoms and legitimate interests, the strengthening of law and order, as well as the sustainable development of a civil society, a constitutional and social state.

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