Sergey Degtyarev

Doctor of Legal Sciences, Professor of the Department of Civil Law Disciplines of the Ural Law Institute of the Ministry of Internal Affairs of Russia

THE EVOLUTION OF THE AIMS OF COMPENSATION FOR MORAL DAMAGE FROM THE PRE-REVOLUTIONARY TO THE PRESENT PERIOD (FROM PERSONAL OFFENSE AND COMPENSATION IN FAVOR OF PUBLIC PLACES TO PERSONAL ENRICHMENT AND "CONSUMER EXTREMISM")

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Abstract. *The article analyzes the aims pursued by injured persons in compensating them for moral damage in the form of monetary equivalent in the pre-revolutionary (pre-Soviet) period, the Soviet period and at present. The civil punishment for personal offense in the pre-revolutionary period and the practice of using the received money by the victim in that period and at present are investigated. It is concluded that in recent times the institute of compensation for moral damage is used only for personal purposes, sometimes for property enrichment and even "consumer extremism".*

Keywords: *personal offense, civil emoluments, civil punishment, forgiveness of fellowman, compensation for moral damage, personal enrichment, consumer extremism.*

Compensation for moral damage is a fairly new institution for modern Russian civil law, enshrined as a method of protection of civil rights in Article 12 of the Civil Code of the Russian Federation and regulated in more detail in subsequent articles and Chapters — Article 151 of the Civil Code of the Russian Federation, Paragraph 4 of Chapter 59 of the Civil Code of the Russian Federation, etc. The possibility to compensate through the judicial authority the moral damage caused to the victim in its monetary equivalent in the Soviet civil, especially criminal and administrative legislation was not envisaged, and the very possibility of receiving compensation for moral damage was formalized legislatively only

in 1990[1]. Thus, it is not possible to talk about the purpose of compensation for moral damage in the Soviet period, because there was no institution of compensation for moral damage.

With the inclusion of the institute of compensation for moral damage in the current legal space, we actually returned to the origins of our pre-revolutionary civil law, since ***the pre-Soviet (pre-revolutionary) Russian legislation*** and judicial practice the institute of compensation for moral damage in its monetary equivalent was known and successfully applied.

A famous Russian legal scientist of that time, D. I. Meyer, distinguishing "civil emoluments" and "civil punishment" as negative consequences of a civil offense for the person who committed these illegal actions, pointed out that "civil punishment" could be applied to such illegal actions that do not constitute a violation of property rights at all. Thus, the author writes, "civil punishment is imposed for a *personal offense*"[2]. Interesting in this context are the grounds for the application of such civil punishment and the examples given by the author from the then existing judicial practice. D. I. Meyer points out that, of course, with personal offense can be combined and property damage: for example, insults to the doctor, as a result of which he is deprived of medical practice. "But still personal offense itself does not violate the property rights of the person, it violates the right of the person offended to honor, to respect from citizens — one of those rights that constitute the right of the individual: and here for the violation of this right is determined by law civil punishment, if the offended would require criminal punishment for the offense"[3]. The author continues by explaining why *personal offense* was transferred from the category of criminal offenses to the category of civil offense.

The following statement stands out as the first and main one: "… legislation could always recognize the character of a personal offense as a crime, because it is in the interest of legislation that citizens value their honor and protect it. But our legislation holds to the idea that the offense does not relate directly to the common good, that it affects directly only the personality of a private person, who should not be deprived of the *opportunity to show* in the case of offense *Christian virtue — **forgiveness of fellowman*** (emphasis mine — S.D.)"[4].

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[1] See more: *Erdelevskiy A. M.* Moralnyy vred i kompensatsiya za stradaniya. Nauchno-prakticheskoe posobie [The moral damage and compensation for suffering. Scientific and practical textbook]. M.: Izdatelstvo VEK, 1998, 188 p.

[2] *Meyer D. I.* Izbrannye trudy: V 2 t. / Vstupit. slovo d-ra yurid. nauk, prof. P. V. Krasheninnikova. T. 1. [The selected works: In 2 volumes / Introductory speech of Doctor of Legal Sciences, Professor P. V. Krasheninnikov. Volume 1]. Moskva, Statut, 2019. P. 261.

[3] Ibid.

[4] Ibid. P. 262.

D. I. Meyer considers the second basis, the prerequisite for the transformation from criminal to civil liability, to be "historical legends": "in the early life of society, the person offended himself washes away the offense, and here is the legislation, although it does not recognize for the citizen the right to self-satisfy himself for the offense, but still retains for him the right to forgive the offense and the very pursuit of it turns into an action relating directly to the private person".

Thirdly, in the opinion of the author, "the unsolicited intervention of public authority in cases of offenses would be embarrassing for the offended: some spark would fan the flames of enmity; some case, which perhaps would remain silent, would become public knowledge and would affect the good name, scandalize it"[1].

As for the size of civil liability in case of recognition by the court of the presence of personal offense — "civil punishment" according to D. I. Meyer — the pre-revolutionary Russian legislation defined only maximum and minimum punishment — up to 150 rubles in silver, the exact determination of the measure of punishment for each individual case was left to the court, "according to the knowledge of the offended person and his attitude to the offender"[2]. This rule of determining by the court the final amount of moral damage to be compensated in each specific case is preserved in the modern civil legislation of Russia, but there are no "maximum" restrictive limits of such liability in the modern civil legislation.

The most interesting and worthy of attention from the point of view of the then and now reigning mores, ethical perceptions and moral foundations in society is the following: what was spent on the money received for winning the case of "*personal offense*". D. I. Meyer remarks in the work that according to the modern concepts of that time it was considered reprehensible to accept a monetary payment as a reward for a personal offense, "and then every decent person, if he pursues the offender by judicial order and wants to punish him, either brings a civil suit and demands that the fine be collected in favor of some public institution, or brings a criminal suit; then the offender is subjected either to arrest or to a monetary fine, which goes in favor of places of detention"[3].

Nowadays, to the best of the author's understanding, such situations have an isolated, rather even exceptional character, and all the recovered sums of money are used to satisfy the personal property needs of the victim. In other words, the victim's claims for compensation for moral damage always pursue only one aim — ***personal property needs*** (not always even related to the restoration of moral and physical

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[1] *Meyer D. I.* Izbrannye trudy: V 2 t. / Vstupit. slovo d-ra yurid. nauk, prof. P. V. Krasheninnikova. T. 1. [The selected works: In 2 volumes / Introductory speech of Doctor of Legal Sciences, Professor P. V. Krasheninnikov. Volume 1]. Moskva, Statut, 2019. P. 261.

[2] Ibid.

[3] Ibid. P. 262.

condition of the victim) ***and enrichment***. Moreover, more and more often there are situations when lawsuits (not always justified and not having under them really violated personal non-property rights) become a source of permanent income and enrichment, such as in cases of "consumer extremism", etc[1]. The current law does not contain a legal definition of "consumer extremism", but it is actively used in the legal literature, just as it exists, according to practicing lawyers, in the legal reality. All this allows us to consider compensation for moral damage in more detail, and in some cases even as a manifestation of "consumer extremism"[2].

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[1] Potrebitelskiy ekstremizm: mif ili realnost [The consumer extremism: myth or reality] // Federalnaya sluzhba po nadzoru v sfere zashchity prav potrebiteley i blagopoluchiya cheloveka [Federal Service for Supervision of Consumer Rights Protection and Human Welfare]: [Electronic resource]. — URL: https://24.rospotrebnadzor.ru/s/24/files/center/zashita/aktual/145102.pdf (date of address: 23.01.2023).

[2] Many authors believe that consumer extremism, consumer terrorism is nothing more than a fiction. For example, see: Potrebitelskiy terrorizm — ne bolee chem vydumka so storony biznesa [Intervyu s M. S. Orlovym] [The consumer terrorism is nothing more than a fiction on the side of business [Interview with M. S. Orlov]] // Zakon [Act]. 2021. No. 9. Pp. 8–14; *Belov V. A.* Potrebitelskiy terrorizm: teoriya i praktika. Chasti 1 i 2 [The consumer terrorism: theory and practice. Parts 1 and 2] // Pravo i ekonomika [Law and economy]. 2021. No. 6. Pp. 22–30; *Belov V. A.* Vidy trebovaniy potrebiteley: teoretiko-prakticheskiy analiz [Types of consumer demands: a theoretical and practical analysis] // Zakon [Act]. 2021. No. 9. Pp. 33–41.

Information about the author

Sergey Degtyarev (Yekaterinburg, Russia) — Doctor of Legal Sciences, Professor of the Department of Civil Law Disciplines of the Ural Law Institute of the Ministry of Internal Affairs of Russia (66 Korepina St., Yekaterinburg, 620057, Russia; e-mail: dsl001@mail.ru).

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