

Ina Fodor,

Expert judicial, National Center for Judicial Expertise, Chişinău,
Republic of Moldova, e-mail: fodorina9@gmail.com

Theoretical aspects of psychological judicial expertise: compensation for moral damages

Іна Фодор

Теоретичні аспекти психологічної судової експертизи: відшкодування моральної шкоди

Abstract. For our country the psychological judicial expertise on cases of compensation for moral damages is a relatively new type of expert research. Due to the fact that this direction is new, its theory, methodology and methodology are at the stage of formation. The reason for the commissioning of psychological judicial expertise on cases of compensation for moral damages is the lack of evidence on the part of the court about the psychological component of the moral suffering of the victim claiming compensation for moral damage, and the basis is the need for special knowledge in the field of psychology in the process of proving the fact of moral damage. Modern methods of psychodiagnostics allow us to determine the features of mental experiences and objectify subjective statements about them by the plaintiff.

Keywords: expertise, psychodiagnostics, expert, mental reaction, subjective experience, compensation for moral damage, individual psychological characteristics of the individual.

Анотація. Для нашої країни психологічна судова експертиза у справах про відшкодування моральної шкоди є доволі новим видом експертного дослідження, чия теорія, методика та методологія перебувають на стадії становлення. Підставою для призначення психологічної судової експертизи у справах про відшкодування моральної шкоди є відсутність у суду доказів про психологічну складову моральних страждань потерпілого, який вимагає відшкодування моральної шкоди, а інструментом такої експертизи є спеціальні знання в галузі психології. Сучасні методи психодіагностики дають змогу визначити особливості психічних переживань та об'єктивізувати суб'єктивні твердження про них позивача.

Ключові слова: експертиза, психодіагностика, експерт, психічна реакція, суб'єктивний досвід, відшкодування моральної шкоди, індивідуально-психологічні особливості особистості.

Consumer disputes in the court phase are examined in the civil process, which is a series of actions taken by the court and the participants in the process in connection with the examination and settlement of civil cases and the enforcement of court judgments. All these actions take place in strict sequence, and each procedural action is provided for by law.

The main legislative act that stipulates the way the civil process has to be conducted, all actions to be taken in the civil process, who are the participants in the civil process is the Civil Procedure Code of the Republic of Moldova.

Non-material damage is damage resulting from an injury to personal interests and manifested in physical and/or mental suffering experienced by the victim.

The mandatory conditions for compensation for non-material damage is the existence of the damage, displayed by: the explanations of the parties and third parties, the testimonies of witnesses, written evidence (documents), material evidence and expert conclusions. For example: by carrying out a psychological expert examination of the suffering of non-material damage.

While such examinations have been conducted abroad for a long time, then this is a relatively new type of expert research for our country. Due to the fact that this direction, its theory, methodology and methodology are at the stage of formation. In practice, psychological experts rely on different theoretical and methodological positions, develop a methodology for a specific study based on their ideas about its subject and their professional skills, which leads to the formulation of controversial expert conclusions on the same issues. The need to consider some complex issues related to the subject and procedure of psychological judicial expertise on cases of compensation for moral damage has determined the purpose of this work.

Definition of the content of moral damage as suffering means that the actions of the harm-doer must necessarily be reflected in the consciousness of the victim or cause a certain mental reaction. At the same time, adverse changes in the benefits protected by law are reflected in a person's consciousness in the form of negative feelings (physical suffering) or experiences (moral suffering). The content of the experiences may be fear, shame or other unfavorable psychological state.

In reality, only a psychological expert can establish the presence or absence of signs of moral damage caused to a person.

It is recommended to raise the following questions for the resolution of this type of examination:

1. Are there, and if so, what are the individual psychological characteristics of the personality of the examinee, which could

have a significant impact on the depth and intensity of subjective experiences of the actions and statements of the defendant?

2. To what extent did the actions and statements of the defendant affect the main indicators of the mental state and activity of the examinee?
3. Has the hierarchy of the main life values of the subject been affected, has it been damaged?
4. Are there any signs of other adverse changes in the personality of the subject, and if so, what are they?

Usually, during the judicial review of this category of cases, the evidence of the fact of moral damage is the plaintiff's statements about the physical or moral suffering they endure. According to M. A. Erdelevsky, the plaintiff's statement that they suffered physical or moral harm is a direct proof of the fact of causing moral damage [4]. Witness statements, various documents, medical certificates, expert opinions can also be the means of proving the suffering experienced. Knowledge in the field of psychology allows us to note that the plaintiff's description of their suffering should be treated as a hypothesis: it can fully correspond to reality, partially correspond to it, or completely differ from it.

Of course, it is difficult to challenge a person's statement about the suffering they are experiencing, since feelings are the subjective experience that only the individual itself has. At the same time, modern methods of psychodiagnostics allow us to determine the features of mental experiences and objectify subjective statements about them by the plaintiff.

The nature of moral harm is not limited only to the psychological component. Only specialists of the appropriate profile can determine the degree of physical and moral suffering: the mental state of a person is determined by psychologists, and to assess mental or somatic pathological disorders that have occurred as a result of the suffering experienced, based on the specifics of a particular case, it may be advisable to involve psychiatrists, neuropathologists, therapists or other specialists. In such cases, the court may refer for complex psychological and psychiatric, or medical psychological, or medical psychological and psychiatric examinations.

The first steps in carrying out the psychological judicial expertise are connected with the determination of the psychoemotional state of

the examinee, which occurred after the offense was committed by the defendant. As a result of a psychodiagnostic examination of the plaintiff in their condition, various negative experiences can be revealed: fear, grief, shame, anxiety, humiliation, despondency, dismay, etc. The next stage of the study is connected with the establishment of the presence (absence) of a causal relationship between the sufferings of the plaintiff and the illegal actions of the defendant. Different authors propose different mechanisms for its expert determination.

V. F. Engalychev and S. S. Shipshin believe that therefor it is necessary to compare the established mental state that characterizes the examinee after the defendant commits an offense with the retrospectively determined state that the examinee had before the offense was committed. The detected changes in the emotional sphere serve as a sign of causation. In addition, the experience of what happened can lead to negative changes in the activity and personality of the subject, change their attitude to life, reduce the level of social adaptation [1]. Negative changes can affect their vital activity, disrupt the integrity and stability of their self-consciousness and mental functioning, lead to deterioration of their mental or somatic well-being [4]. It is also important for the psychologist to establish the type of traumatic impact to which the plaintiff is sensitive. If the actual traumatic experience does not correspond to sensitivity to such injuries, then the plaintiff's messages may be poorly realized personal characteristics or intentions towards the defendant and the court, which are manipulative in their nature.

A. N. Kalinina believes that the causal relationship between the offense and negative changes in the mental activity of the victim is established in the presence of two mandatory signs at the same time:

- 1) the fact of a temporary connection between changes in the mental activity of the victim and the situation of causing damage, including cases of delayed reaction to the traumatic event that has occurred;
- 2) personal significance for the victim of the violated right and changes logically related to the infliction of moral damage [2; 3].

A common approach to determining the scale of mental suffering, however, does not yet exist. Based on the level of intensity of negative experiences endured, their duration, as well as on the forecast of possible consequences that may come later, A. Yujaninova proposed

to identify 5 degrees of suffering that occurred as a result of illegal actions caused by the person responsible for moral damage:

1. Emotions of low intensity, self-limited in time, without essential consequences;
2. Emotions of moderate intensity, self-limited in time, without essential consequences;
3. Emotions of high intensity, self-limited in time, which led to temporary deterioration of the physical and mental functions of the person;
4. Emotions of high intensity, which lengthen in time and exceed the temporal indicator and decrease the effectiveness of activities that temporarily damage the psychophysiological and social psychological adaptation;
5. Strong emotional shock, which led to forms of mental disorders or psychosomatic pathologies (or to the forecast of a high probability of disease in the future) [3].

The general subject of judicial psychological or complex judicial psychological and psychiatric examination consists of negative changes in the mental activity of the victim as a result of the traumatic actions of the person responsible for damage.

In order to assess the psychoemotional state of the examinee, the judicial psychologist will apply those methods and tools that will allow the emotions and psychoemotional state of the expert to be reflected and observed.

The judicial psychologist expert has to make the conclusions and answer the questions submitted by the orderer, which refer only to the assessment of the psychoemotional state of the evaluated person, and are not related to legal order.

In conclusion, reason to designate psychological judicial expertise on the causes of reparation of moral damage is the absence of evidence on the part of the court about the psychological component of the moral suffering of the victim claiming compensation for moral damage, and the basis is the need for special knowledge in the field of psychology in the process of proving the fact of moral damage.

At the same time, it is important to remember that an psychological expert cannot decide whether there is a fact of moral damage. His task is to establish one of the components of moral damage — negative changes in mental activity.

Bibliography

1. Engalychev V. F., Shipshin S. S. Judicial Psychological Expertise. Kaluga ; Obninsk ; Moscow, 1997. Pp. 156—159.
2. Kalinina A. N. Theoretical and methodological bases of judicial psychological expertise in cases of compensation for moral damage. Theoretical and Methodological Foundations of Judicial Psychological Expertise in Cases of Compensation for Moral Damage. Candidate of Law Sciences : Thesis Paper. Moscow, 2006.
3. Tsvetkova (Kalinina) A. N. Establishment of the connection between the actions of the person responsible for damage and suffering of the victim. *Yearbook of Russian Psychological Society : Materials of III All-Russian congress of psychologists*. 25—28 June 2003. Vol. 8. Saint-Petersburg : Publ. house of SPU, 2003. Pp. 229—232.
4. Yuzhaninova A. L. Judicial psychological expertise in cases of compensation for moral damage. Saratov, 2000.