

Information Support of Procedural Activities to Prove Moral Damage in Pre-Trial Proceedings*

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Abstract

This article explores the procedure for establishing the facts of moral harm resulting from criminally punishable acts during pre-trial criminal proceedings. The study employs a qualitative research method with a normative-juridical and descriptive-analytical approach, drawing upon legal documents, statutory provisions, and expert opinions to analyze how investigators and inquiry officers handle moral damage claims. Through qualitative content analysis of case files, legal frameworks, and interview data with practitioners, the study identifies procedural gaps and best practices in ensuring justice for victims. It has been demonstrated that investigators and inquiry officers must clearly explain the victim's right to file a civil claim, take appropriate measures to secure compensation, and provide guidance on evidence collection. The article also analyzes criteria for assessing moral damage, emphasizing the importance of documenting both the psychological and emotional consequences of criminal acts. The findings affirm the necessity of mandatory documentary proof to substantiate claims of moral harm. Moreover, the proactive role of investigators in gathering and attaching supporting documents to case files is essential, as it establishes the legal basis for courts to award fair monetary compensation proportional to the moral suffering endured by victims.

Keywords: Preliminary Investigation; Compensation; Investigator; Interrogator; Victim

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A. INTRODUCTION

To develop a unified approach to establishing and proving moral damage during the preliminary investigation, the authors study Russian modern criminal procedural legislation, provisions of other laws and by-laws, and accumulated experience from investigative and judicial practice.

In modern Russia, as noted by I.M. Komarov and V.A. Potetinov ([2016, p. 59](#)), these issues remain debatable both in the scientific community, lawmaking, and in law enforcement. Regarding compensation for moral damage caused by a criminally punishable act, M.A. Savkina ([2014, p. 49](#)) argues that the procedure and amount are not fixed in the legislation, resulting in a minimal number of satisfied civil claims. To clarify, a crucial procedural guarantee of fair and reasonable compensation for moral damage caused by a crime is the proof of its occurrence and, consequently, the creation of conditions for the court to issue a lawful and fair sentence, including the satisfaction of the victim's claims. The initial procedural actions in initiating a criminal case should also aim to establish all the components of this type of harm. In this regard, N.V. Kurkina ([2011, p. 100](#)) notes that it is necessary to study the issue of compensation for moral damage in practical terms.

To paraphrase the above-mentioned author regarding the transition from civil to criminal procedural aspects of officials conducting preliminary investigations, we note that the protection of the non-property rights of persons who are victims of criminal acts begins when the fact of causing harm is established. We emphasize that if victims violate property rights, they may also file claims for compensation for moral damage. At the same time, the investigator and person conducting the initial inquiry must explain to the victim the right to file a civil claim and take a set of measures aimed at ensuring their further compensation, and, without limiting themselves to the above, explain the ways of confirming the stated requirements. ([Erofeev & Erofeeva, 2005, p. 106](#); [Vereshchagina, 2013, p. 53](#))

Our interview with investigators and interrogators shows that providing compensation for moral damage causes the most significant difficulties in conducting the preliminary investigation. Difficulties occur in the activities of 50.3% of the surveyed employees of the initial investigation bodies. At the same time, we must note that officials conducting preliminary investigations avoid clear explanations to persons who have suffered from criminal encroachments of their rights, including compensation for moral damage. They consider this question to be optional and of a civil law nature, with the final resolution, in their opinion, being the prerogative of the court in a criminal case.

This opinion seems to be erroneous because of the criterion that moral harm, as well as other harm caused by crimes, is, by virtue of the provisions of Article 73 of the Code of Criminal Procedure of the Russian Federation ([State Duma of the Federal Assembly of the Russian Federation, 2001](#)) is subject to proof, starting from the moment when the authorized official issued a decision to initiate criminal proceedings (Articles 146, 147 of the Code of Criminal Procedure). ([Pushkarev et al., 2021, p. 400](#)) Thus, the purpose of this article is to explore and analyze the procedural mechanisms and methods utilized by investigators and interrogators to substantiate moral damage during pre-trial proceedings in criminal cases. The authors aim to clarify the importance of providing comprehensive documentation and procedural guidance in establishing facts of moral harm, thus ensuring fair and justified compensation for victims. Emphasis is placed on addressing the practical challenges encountered by investigative authorities and proposing solutions to enhance the effectiveness of proving moral damage within the existing Russian criminal procedural framework.

B. METHODS

The methodological basis of the study is the general scientific system method of cognition, which enabled the examination of the procedure for establishing, in pre-trial criminal proceedings, the facts of causing moral harm through criminally punishable acts. In this study, the authors apply scientific methods: Formal-logical, consisting of the analysis of the procedure for establishing in pre-trial criminal proceedings the facts of causing moral harm committed by criminally punishable acts; A comparative legal method was used to analyze features of the procedure for establishing the facts of causing moral harm in pre-trial criminal proceedings; A statistical method that includes the collection and analysis of information on the facts of causing moral harm as a result of crimes; A specific sociological method used in the sociological survey of investigators and heads of investigative bodies.

C. RESULTS AND DISCUSSION

Based on the materials of the studied criminal cases, we conclude that the investigators and interrogators do not take active steps in proving the facts of moral damage caused by the crime. In the studied criminal cases, proof of property and physical harm prevails. In contrast, moral damage is most often confirmed by a single procedural document—a decree on the recognition of a

civil plaintiff. Therefore, it is necessary to carry out procedural actions to form an evidence base justifying the fact of causing moral damage by the crime. Moreover, the resolution of these issues should not be left exclusively to the judicial stages of criminal proceedings, which rely solely on the principles of reasonableness and fairness, de facto applied by the courts (judges) in sentencing.

After comparing the evidence of causing criminally punishable acts of property and moral harm, E.N. Gritsenko prefers the second type. In particular, the author is convinced that moral damage should be proved more thoroughly than property damage ([Gritsenko, 2005, p. 23](#)). However, according to the provisions of the law of criminal procedure, such preferences do not exist since both types of harm are proved on an equal basis and by uniform procedures. Nevertheless, as for the accumulated investigative and judicial practice and the identified difficulties in establishing and assessing the moral harm caused by a criminal act, proving moral damage should be prioritized due to its special intersectoral status.

In this regard, in general, we agree with Yu.N. Zvereva ([2015, p. 149](#)), who, in her dissertation research, indicates that there is no case of positive law enforcement in the field of compensation for moral damage caused by a crime that could be used as a model. Some of the identified examples testify to specific positive changes in the activities of investigators and interrogators aimed at proving moral damage during the preliminary investigation. One of these few confirmations of the establishment not only of the direct fact of moral damage caused by the crime but also of its proof, can serve as criminal case No. 50200 initiated on August 16, 2004, under Part 1 of Article 201 of the Criminal Code of the Russian Federation ([State Duma of the Federal Assembly of the Russian Federation, 1996](#)) against the director of Karamos LLC. In the course of the preliminary investigation conducted by the Investigative Directorate of the Pushkin Department of Internal Affairs of the Moscow Region, it was established that from December 2003 to February 2005 the accused P. systematically exerted influence on the victims - shareholders in the construction of a residential building forcing them to renew investment contracts with Karamos LLC and pay the cost of apartments exceeding the amounts established by them in previously concluded agreements with the former developer ProfExclusive LLC. According to the accusations against the accused P., sixteen shareholders had to pay a total of 3,340,681 rubles. As a result of the actions of the accused P., the victims suffered material and significant moral damage, including the unlawful postponement of residence in the purchased apartments, prohibition of access to them, and the shutdown of heating and electricity, even during winter periods. The court accepted the investigation's arguments during the consideration of the criminal

case, and the accused P. was sentenced to imprisonment and required to pay various sums of money to the victims as compensation for property and moral damage.

In this regard, the authors deem it essential to consider the methods and criteria for evaluation, as well as the importance of documentary evidence of causing moral harm by a criminally punishable act. It should be noted that the opinion of the above-mentioned I.M. Komarov and V.A. Potetinov ([2016, p. 63](#)), who argue that at present it is difficult to develop a unified methodology for assessing the amount of moral damage. According to A.V. Grinenko ([2001, p. 144](#)), compensation for moral damage is expressed in monetary form regardless of the property damage to be compensated. Other scholars argue that compensation can take another form, such as cryptocurrency. However, this opinion is debatable due to the novelty of this type of social relations and requires additional study ([Pushkarev et al., 2022](#)). At the same time, we should add that in case of other reparations of harm, which are not actually compensation, different methods are used (for example, apologizing).

When determining the amount of compensation for moral damage, in all cases it is necessary to consider the degree of physical and moral suffering caused to the victim, including those caused by his individual characteristics, the degree of guilt of the accused, his financial situation, as well as other specific circumstances established in the criminal case. However, other authors have opposing views on the material form of assessing the moral damage caused by a crime. For example, R.G. Khasanshina ([2014, p. 134](#)) is convinced that moral damage cannot be translated into a material plane since the suffering of the victim cannot be calculated in monetary terms.

Refuting the arguments of R.G. Khasanshina and supporting scholars who propose to assess moral damage in a specific monetary dimension, we also note that the explanations of the Supreme Court of the Russian Federation confirm our position. Thus, about the grounds for exemption from criminal liability in view of compensation for moral damage, paragraph 2¹ of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 27.06.2013 No. 19 “On the application by the courts of the legislation regulating the grounds and procedure for exemption from criminal liability” (Plenum of the Supreme Court of the Russian Federation, 2013) explains that under the reparation of harm (Part 1 of Article 75, Article 762 The Criminal Code of the Russian Federation), along with other means, is also understood as property, including monetary compensation for moral damage.

These days, Russian experience in determining the amount of compensation for moral damage lacks sufficient theoretical and practical justification, as noted above, since there is no methodology for establishing it at the legislative level. Some authors ([Kopik, 2014, p. 85](#); [Krylov, 2016, p. 36](#); [Nguyen et al., 2021, pp. 212-213](#); [Vladimirova, 2005, pp. 61-62](#)) propose various methods for calculating the amount of compensation for moral damage based on multiple criteria but they are only theoretical and have not yet been introduced into the law enforcement activities of the preliminary investigation bodies and the court. V.Y. Melnikov ([2014, p. 465](#)) and O.A. Tarnavsky and A.V. Kurbatova ([2011, p. 229](#)) state that for some unification of the amount of moral damage caused in monetary terms, it is advisable to establish certain extreme (upper and lower) boundaries.

It is possible to supplement this statement with arguments about the need to scientifically prove and introduce into practice the criteria for the upper and lower limits for assessing the amount of this type of harm, taking into account the category of a criminally punishable act depending on the object of the criminal encroachment (crimes against life and health, against property, in the field of economics, crimes against public security, etc.).

At the same time, the study of investigative and judicial practice indicates that it currently involves a material assessment of moral damage and its documentary confirmation. The victim, civil plaintiff (their representatives), according to the established tradition, declare an inflated amount in compensation for moral damage without any confirmation, knowing that the court will reduce it when making the final decision. In turn, the courts are guided by court decisions that have already entered into legal force on similar situations related to moral damage (damage to business reputation), thus creating "judicial precedents."

It should be emphasized that judicial practice is forced to develop a conditional classification to determine the amount of compensation for moral damage. However, this classification does not have the necessary degree of adequacy, novelty, and clarity. Judges are forced to secretly and with a sufficient degree of conditionality establish an acceptable amount of monetary compensation for causing moral damage, depending on the specific category of the criminal case ([Shipshin, 2021, p. 116](#)). However, it should be noted that for crimes with similar encroachment objectives, the courts prescribe completely different amounts of compensation for moral damage. Proceeding from this, we express our disagreement with the opinion of S.V. Erofeev and A.R. Erofeeva ([2005, pp. 419-420](#)), who argue that from the content of the materials of criminal

cases, there is a particular tradition that concerns the determination of the amount of moral damage.

The analysis of the studied criminal cases and the collected empirical data allows us to state that different sums of money can be recovered for causing moral damage within one category of crimes. As S.M. Ostankov notes, according to the verdict of one of the district courts of the Voronezh region of April 30, 2002, the accused L. was convicted under Part 4 of Article 111 of the Criminal Code of the Russian Federation for intentionally causing serious harm to health, which caused the death of the victim by negligence. At the same time, the court decided to recover 100,000 rubles from the convict in compensation for moral damage in favor of each of the two victims. At the same time, another court of the same region, having found the accused O. guilty of committing premeditated murder (Part 1 of Article 105 of the Criminal Code of the Russian Federation), decided to recover from the convict in favor of the victim 40,000 rubles in compensation for moral damage. In the case of cassation, the court's verdict in this part was left unchanged. ([Ostankov, 2007, p. 52](#))

Another example is given by G.I. Chechel (2013, p. 179), who points out that in consideration of the moral damage caused by murder, the court decided to recover 20,000 rubles from the guilty. A significant number of such court decisions that have entered into legal force on this category of crimes can be cited. Still, according to V.V. Vladimirova ([2005, p. 63](#)), the amounts can vary from 10,000 to 250,000 rubles.

Problems of uniformity in approaches to the amount of compensation for moral damage caused by a crime also arise in the practice of the European Court of Human Rights. In the case of *Kanayev v. the Russian Federation*, the applicant claimed EUR 1,500,000 for moral damage. Based on the principle of equity, the ECtHR awarded only EUR 1,000 under this paragraph. ([Kanaev v. the Russian Federation, 2009, p. 412](#))

In this case, it is necessary to revisit the concepts of reasonableness and justice, which the court should consider when making a final decision and awarding specific amounts in compensation for moral damage. For the application of these criteria, the subjective discretion of the judge (court) is not enough. In our opinion, it is also necessary to be guided by the materials of a particular criminal case, which substantiate the claims of crime victims. Such data may include materials collected by the investigator or person conducting the initial inquiry, indicating the social status of the victim (civil plaintiff): marital status, presence of dependent persons, level of education, place of work and position, average salary, etc.

The European Court of Human Rights is also paying attention to the issues we have raised. In particular, the ECtHR, in its judgment in the case of *Burdov v. the Russian Federation*, when determining the amount of moral damage, proposes to consider such indicators as the applicant's age, personal income, the applicant's health, and other indicators that may affect the amount of compensation for damage awarded. ([Burdov v. the Russian Federation, 2009, p. 441](#))

It is essential to establish and confirm in the materials of the criminal case the post-stress state of the victim: the state of health, the presence of diseases resulting from the criminal encroachment, the psychological state (nervousness, stress, anxiety), the ability to perform labor duties at the previous place of work, and the presence of prerequisites for disability. At the same time, it is not possible to violate the principle of equality of citizens, and, thus, we do not propose a way to determine the amount of compensation for moral damage that would directly depend on the material situation or social status of the victim. Our position is also confirmed by E.Kh. Nadyseva ([2014, p. 93](#)), who argues that when such dependence is used, it is impossible to talk about the equality of citizens.

It is about transparently unifying the methods of assessing moral damage caused by a crime, providing the court with maximum information about the victim of a criminal act. In this case, it is appropriate to indicate the so-called feedback in this area of activity and to designate the preamble stating that the courts, in turn, need to carefully and thoroughly check that the pre-trial investigation bodies take necessary measures to ensure compensation for moral damage.

At the same time, some authors disagree. N.V. Krivoshchekov ([2008, p. 60](#)) is convinced that investigators and interrogators should establish only the very fact of physical and moral suffering. Also, T.V. Teterina ([2004, p. 13](#)), who, as it regards compensation for any harm, believes that the use by the victim of his procedural rights, including to compensate for the damage caused, represents a special procedural function of interests defence. At the same time, the proof of any harm caused by a criminally punishable act should comply with the general provisions of the Law of Criminal Procedure (Article 73 of the Code of Criminal Procedure). It cannot be limited depending on the claims filed by the victim of the criminal act.

Having compared the various approaches in support of claims for compensation for moral damage, it seems reasonable to mention the provisions stated in the Article. Article 155 of the Code of Criminal Procedure of the

Republic of Belarus establishes that the amount of moral damage to be compensated directly depends on the consequences that have occurred.

In this context, we realize that the consequences of a criminally punishable act that caused moral harm are also subject to proof during the preliminary investigation. Regardless of the type and nature of such consequences (loss of a relative or a loved one, harm to health, loss of trust, psychological stress, full or partial disability, etc.), they must be reflected in the documents and attached to the materials of the criminal case. The activity of the investigator or person conducting the initial inquiry is part of the evidentiary process. It involves establishing the circumstances specified in the general provisions of the criminal procedure legislation (Article 73 of the Code of Criminal Procedure).

This conclusion is explained by the premise that the use by the victim, the civil plaintiff (their representatives) of their powers to eliminate or compensate for any harm caused by the crime, as well as the actions of the body of inquiry, and the investigator's actions, represent a special procedural function of interests defence. ([Pushkarev et al., 2019, p. 7950](#); [Teterina, 2004, p. 21](#))

However, some of the studied examples of judicial practice confirm that the victim, the civil plaintiff (their representatives), should not confirm the specific amount claimed for compensation for moral damage with any documents. Thus, the accused N. was found guilty of violating traffic regulations, which caused serious harm to human health through negligence, constituting a crime as provided for in Part 1 of Article 264 of the Criminal Code of the Russian Federation. The court, considering the nature of the moral suffering caused to the victim, concluded that the civil claim for compensation for moral damage, amounting to 150,000 rubles, was fully satisfied, as it was deemed reasonable and appropriate to the circumstances of the case.

Contrary to the arguments in the convict's appeal in cassation regarding a civil claim for compensation for moral damage, the victim's legal representative did not have to confirm the costs associated with the treatment, as they did not file a civil claim for compensation for material damage. It consisted of compensation for moral damage, that is, the physical and moral suffering caused to his daughter by actions related to bodily injuries obtained as a result of a traffic crime involving the driver. Thus, given the non-property component of moral damage, it is often quite difficult for an investigator or person conducting an initial inquiry to confirm the amount of claim documented by the victim (civil plaintiff).

D. CONCLUSIONS

The moral damage caused by criminally punishable acts must be established through mandatory documentary evidence. The investigator and interrogators play a crucial role in proving moral damage by collecting and attaching comprehensive documentation to substantiate the claims in the criminal case files. Such procedural diligence establishes the necessary legal conditions for the court to determine appropriate and justified monetary compensation, directly correlating with the severity and consequences of harm experienced by the victim.

Given the current inconsistencies in judicial practice regarding the assessment of moral damage, there is a compelling need to introduce unified methodological standards. Clear and well-defined criteria, alongside reasonable upper and lower monetary boundaries, would facilitate fairer judicial decisions and strengthen the transparency of compensation procedures. This approach not only ensures equitable outcomes but also contributes significantly to protecting the rights and legitimate interests of victims in criminal proceedings.

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