

# **On the issue of the mechanism for the protection of honor, dignity and business reputation by compensation for moral harm**

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**Abstract.** The article examines certain topical aspects of compensation for moral damage as a way to protect such intangible benefits as honor, dignity of citizens and business reputation.

**Keywords:** intangible benefits, honor, dignity, business reputation, compensation for moral harm, protection mechanism.

## **Introduction**

It is unlikely that anyone would deny that the importance of such intangible benefits as honor, dignity, business reputation is extremely significant for a person and is sometimes placed by citizens on the same level (if not higher!) As the protection of property interests. In many respects, in our opinion, this is due to the peculiarity of these categories, characterized by belonging to social and social assessments. So, by honor one should mean the spiritual, socially significant qualities of a person in terms of their social characteristics, and by dignity - the self-assessment of the personality of his own qualities, abilities, the importance of a place in society. At the same time, self-assessment presupposes taking into account the public opinion that has developed about this person. Business reputation reflects the opinion prevailing in society about the professional qualities of a person.

As one of the ways to protect civil rights and legitimate interests in this area, domestic legislation puts forward compensation for moral harm [3, Art. 12].

However, how effective is the current mechanism of this method of protecting honor, dignity and business reputation?

**The purpose of the study** is to consider the essence of this mechanism in its retrospective, with the identification of both problematic aspects in the context of legislative gaps, and positive trends in the elimination of problems.

## **Methodology**

To achieve this goal, the authors used elements of the historical and legal method, as well as the formal legal one, which makes it possible to study the normative side of the research subject (conceptual apparatus, structure of the mechanism, etc.).

### **Results and discussion**

Considering the legal structure of this mechanism, in addition to brief characteristics of the above categories, one should also refer to some other conceptual representations. One of the semantic meanings of the word "protect" is interpreted as follows: "Protecting, protecting from encroachments, from hostile actions, from danger" [12, 203]. The dictionary interpretation of the word "mechanism" is "a system, a device that determines the order of some kind of activity" [12, 309]. With a certain preservation of the basic semantic "decoding", these concepts from a legal point of view are filled with a special legal meaning. The mechanism for the protection of civil rights as one of the essential varieties of the socio-legal mechanism prescribed in the domestic legal science should be presented as a system of legal factors, conditions and means consisting in phenomena that manifest themselves through tools, actions, technologies [7, 464].

This approach in the process of considering the mechanism of interest to us allows us to highlight the following basic provisions:

1. first of all, a kind of "hierarchy" of rights should be projected onto such protection, which is based, first, on human and civil rights reflected in international legal documents [2]; secondly, on his constitutional rights and freedoms [1, Articles 21, 23], the provision of which is carried out in accordance with the provisions of the Civil Code of the Russian Federation [3, Articles 12, 150, 152, 1099, 1100, 1251] (hereinafter – CC RF);

2. when defending honor, dignity or business reputation, a citizen has the right to go to court with a claim for compensation for moral damage caused by the dissemination of defamatory information (cl. 9 Art. 152 CC RF);

3. compensation for moral damage is carried out in cash (clause 1 of article 1101 CC RF) and regardless of the property damage subject to compensation (cl. 3 Art. 1099 CC RF);

4. in the event of harm caused by the dissemination of information discrediting part, dignity and business reputation, compensation for moral damage is carried out regardless of the fault of the tortfeasor (Art.1100 CC RF);

5. in cases of infringement of honor, dignity and business reputation, the right to compensation for moral damage arises only if there are grounds and conditions of liability established by law (Art. 1064 CC RF); and etc.

The analysis of CC RF and legal publications confirms that the practical application of individual means and their forms included in the system of the investigated mechanism is

accompanied by problems that, having a long history of debate, are not fully resolved even today.

This is partly due to a different approach to the very nature of moral harm. The law does not prescribe a detailed interpretation of the legal content of this concept, therefore, in the legal literature you can find many interpretations of it [16, 92-95.]. At the same time, some researchers [10, 43; 16, 92] the most complete is the definition contained in one of the decisions of the plenum of the Supreme Court of the Russian Federation. In particular, it refers to moral harm as "moral or physical suffering caused by actions (inaction) infringing on intangible benefits belonging to a citizen from birth or by virtue of the law (life, health, personal dignity, business reputation, privacy, personal and family secrets, etc.), or violating his personal non-property rights ... or violating the property rights of a citizen"[6, para. 1 item 2].

However, it seems that the noticeable emphasis in the resolution and in the CC RF on "suffering" - both physical and mental suffering, on "moral experiences" (including in connection with the dissemination of false information defaming honor, dignity or business reputation of a citizen) [6, paragraph 2, item 2], adds a controversial note to the question of the concept of "moral harm". The psychological meaning laid down in the well-established word usage, acquiring legal meaning, comes into conflict with the etymological sources of the word "morality", defined by linguists as "the rules of morality" [12, 319] and generally accepted behavior in society. Paying attention to this and pointing out the need to clearly formulate legal definitions, some experts propose to make a terminological substitution - instead of "moral harm" to introduce into legal circulation, for example, the adjective "mental" or "non-property" [17]. There are many other proposals for terminological casting. In our opinion, it should be recognized that it is reasonable to introduce not so much a new definition as its clarifications, most fully and unequivocally reflecting and complementing the legal categorical essence. It would be believed that this can help to eliminate the existing difficulties, both in practice and in theory.

The ambiguity of the terminological apparatus also affects the approach to another important problem, which has also been discussed for a long time in the scientific community - compensation for moral damage in favor of a legal entity in connection with the violation or diminution of its business reputation.

In accordance with the previous, penultimate version of Art. 152 that existed in the CC RF until 2013, the possibility of awarding compensation for moral damage to a legal entity was recognized in the event of a violation of its business reputation. However, both then and now in the majority of court documents, as the periodically published Reviews of Judicial Practice make it possible to conclude, instead of the term "moral" harm, the definitions replacing it were mainly

used - "non-property", "reputational". And the researchers quite rightly point out that "rather shaky basis" [9, 50], on which the awarding of compensation for moral damage to legal entities was then established by the courts, since there was no legal concept of "reputational harm".

After the publication of documents of the highest courts one after another, explaining the applicability of this method of protecting violated civil rights to the protection of the business reputation of legal entities [4; 5, item 15], the "foundation" of the justification of such an application has become, in the opinion of the same researchers, much stronger [9, 51]. But, as it turned out, was not entirely true.

By 2013, the same article 152 CC RF, due to the changes made, was transformed to, as it seemed to many, the direct exclusion of the possibility of compensation for moral damage to a legal entity in the event of a violation of its business reputation: "The rules of this article ... *with the exception of the provisions on compensation for moral damage* (highlighted by us), accordingly apply to the protection of the business reputation of a legal entity" [3, clause 11, Art.152].

In the opposite direction, the judicial practice began to unfold in a number of cases. Such a sharp legal "reversal", indicating, in our opinion, the complexity of the issue, again led to an exacerbation of the discussion around it, without diminishing the ardor of opponents who crossed their scientific "spears": some welcomed these changes, others categorically disagreed with this approach of the legislator. Still others believed that "the recognition of the right for legal entities to protect their business reputation is beyond doubt," however, "due to insufficient legislative regulation, legal entities cannot fully exercise their right" [11, 305]. The fourth emphasized that the jurisprudence of the ECHR does not exclude the award of compensation for non-property damage suffered by commercial companies; the same position was later confirmed by the Constitutional and Supreme Arbitration Courts [13, 72]. And by 2017, measures were once again taken to put a legal "point" on this issue: the Supreme Court of the Russian Federation finally formulated its position on reputational harm to legal entities [8, 3]. Compensation for such harm became possible despite the legal prohibition of compensation for moral damage in the event of a degradation of the business reputation of legal entities. However, at the same time, the Supreme Court established such an extremely tough mechanism for proving reputational compensation that practicing lawyers doubted the real possibility of recovering it [8, 3].

So, despite all the encouraging tendencies, the question again found itself in a kind of "frozen" state, and in the plane of the admissibility of suffering in a legal entity, two main positions are still opposed. The adherents of the first argue that moral and physical suffering is inherent only in humans, while a legal entity cannot experience such suffering, being an

"artificial" entity. So, according to N.N. Parygina "the legal nature of such subjects of civil relations as legal entities does not allow them to feel physical and mental suffering like citizens, - in other words, moral harm in the official interpretation of Art. 151 CC RF cannot be suffered by legal entities"[14, 59].

Opponents of this approach, accordingly, raise their objections. Without going deep into the numerous arguments, without categorically rejecting and at the same time, not accepting the arguments of both as unconditional, we note that the justifications of both sides contain rational seeds that deserve attention. So, we are very impressed by the following arguments of E.P. Redko: "Non-pecuniary damage to a legal entity is nothing more than collective moral suffering over the defamatory business reputation of a legal entity. ... In the suffering of the persons who form the human substrate of a legal entity, the suffering of the legal entity itself is expressed. That is, collective moral suffering is the suffering of a legal entity, although psychologically they are generated by living people"[15].

In any case, one cannot but agree with the opinion that the concept of non-property (reputational) harm inflicted on a legal entity has its own content, differing from the similar harm inflicted on a citizen [13, 71].

If the consequence of harm or infringement on the honor, dignity or reputation of a citizen is mental and psychological suffering (including in connection with a negative change in his status in the eyes of society), and they are recognized as moral damage, which entails compensation for such harm, then With regard to a legal entity, some researchers tend to note a kind of economic component. So, L.K. Ostriкова notes that "non-property damage caused to a legal entity can be expressed in a decrease in the assessment of production, economic and other business activities of a legal entity by potential counterparties, in a decrease in the total number of counterparties of a legal entity and, as a result, in a decrease in the business activity of a legal entity, in the formation negative attitudes among members of society, etc. [13, 72].

In parallel to the problems listed above, there is an extremely acute and largely unsolved problem of determining the amount of compensation for moral damage, for a long time, without disappearing from the debate about the admissibility of assessing non-property damage in monetary terms at all.

Let us emphasize that the recovery of material compensation for the inflicted emotional distress is not something purely new for domestic law, as well as the disputes around it. Without delving into the older and, moreover, ancient history, we note that for a long time in the legal literature of the Soviet period, a negative attitude towards compensation for moral harm prevailed, in which the ideological background was clearly visible. As A.M. Erdelevsky, "as a result of appropriate propaganda in the public sense of justice, the idea of the inadmissibility of

the assessment and compensation of moral damage in the form of property has taken root" [17]. Nevertheless, in the early years of the post-Soviet times, opponents of monetary compensation categorically argued that it was unacceptable to assess the moral suffering experienced as a result of encroachment or direct infliction of moral harm on honor, dignity and business reputation with "ruble". Similar controversies do not subside in today's scientific community. Researchers from different positions ask the question whether it is possible and how exactly to find a standard that would measure moral suffering in monetary terms.

The noted uncertainty is aggravated by the fact that the legislation, securing the right to compensation for moral damage and at the same time, without establishing a baseline level and method for determining its size, does not determine its minimum or maximum scope and does not indicate a single clear method for assessing physical and mental suffering. As a result, in practice, judicial protection of non-property rights in relation to such non-material goods as honor, dignity, and especially the business reputation of legal entities is significantly complicated. Consideration in court of disputes on the award of monetary compensation in this context gives rise to a large heterogeneity of decisions made, since the conclusion about the amount of compensation is left to the judicial discretion, respectively, subjectivity in the decisions made is inevitable.

In all fairness, it should be noted that there is no reason to complain about the absolute legislative gap in this matter, since the general procedure and criteria for determining the amount of compensation for moral damage have been significantly regulated. Basic principles such as legality, validity, reasonableness and fairness (Art. 151 and 1101 CC RF) are indicated, which in a certain way orient judges to the optimal boundaries of judicial discretion when resolving relevant disputes. In addition, the reviews of the practice of consideration by courts of disputes on the protection of honor, dignity and business reputation, approved by the Presidium of the Supreme Court of the Russian Federation, as well as other similar legal documents [for example, 5, paragraph 15], contribute to the rectification of emerging problem situations. It is impossible not to mention the proposed methods and other existing developments in terms of calculating the amount of compensation. For example, A.M. Erdelevsky proposes, including in determining the amount of compensation for moral damage caused by offenses that diminish the honor and dignity of the individual, the use of the coefficient of individual characteristics [17].

### **Conclusion**

In conclusion, we note that with all the above shortcomings, the mechanism for protecting honor, dignity and business reputation through compensation for moral damage is gaining new "momentum", more and more improving and "honing" specific legal forms in the course of acquiring new experience in judicial practice, as well as in the process scientific

searches, discussions at various scientific sites. The legislator should take into account the entire range of developments of the scientific community, taking into account new proposals, for example, submitted by the Russian Bar Association, as well as the proven experience of foreign countries.

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