

THE ROLE OF JUDICIAL PSYCHOLOGICAL EXAMINATION IN THE SOLUTION OF THE PROBLEM IN CASES OF CAUSE OF MORAL DAMAGE

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***Abstract.** This article discusses topical issues of forensic psychological examination in resolving the issue of cases of causing moral harm. It also reveals the necessary research factors to determine the nature and severity of human suffering, as well as the essence of the psychological assessment of the severity of moral harm in criminal proceedings.*

***Keywords:** forensic psychological examination, expert psychologist, suffering, harm, expert, law.*

It is known that in accordance with the tasks defined by the Action Strategy for the five priority areas of development of the Republic of Uzbekistan in 2017-2021, the judicial and legal system is in an era of transformation. To fulfill one of the tasks provided for in the Strategy, the Decree of the President of the Republic of Uzbekistan (dated January 17, 2019) “On measures to further improve forensic activities” [1] is timely and topical. According to the resolution, forensic activities are required to introduce the latest results of scientific research, improve methods for conducting forensic examinations. The noted tasks cannot be carried out without a research approach. This circumstance is also relevant to forensic psychological research.

Until today, in the Republic, forensic activities in the field of psychology had significant limitations. The lack of a unified methodological base, as well as the lack of a training and retraining base, significantly affected the quality of the examinations. The number of incompetent expert studies in this area has increased. As you know, in judicial practice, an expert opinion is extremely important for making the right judicial decisions. This statement is connected with the circumstance in which many mistakes and incidents were made, both in the parameters of law and in the parameters of the competence of conducting forensic psychological research with a biased interpretation of the conclusions, which sometimes have a crucial significance in making decisions and sentences.

Despite the growing demand for forensic psychological research and the increase in the number of their assignments, the qualitative aspects of forensic psychological examinations are far from perfect. Today, the influence of time suggests that it is necessary to move “from the point of stagnation” and clarify objective directions, taking into account the methodological positions adopted both in the CIS countries and in foreign countries [2].

One of the subject types of forensic psychological examinations is the examination of moral damage. To determine the degree and nature of the moral and physical suffering suffered by the victim as a result of the crime committed against him, as well as the individual psychophysical characteristics of the victim, it is advisable to conduct a forensic psychological examination. The logic of law enforcement actions is due to the fact that as a result of illegal actions committed against a person, he declares that he “deeply worries” in these circumstances,

and perhaps this is true. According to A.L. Yuzhaninova, “the presence in the statement of claim of information about the strength of a person’s suffering is the basis for checking them for reliability and accuracy, since emotional involvement reduces the level of realism in assessing what is happening” [3].

To determine the nature and severity of human suffering, it is necessary to examine factors that fall into the following categories:

1) factors associated with the characteristics of psychological trauma (the strength of the existing traumatic factor; the duration of the action and the time period that has elapsed from the moment of infliction of suffering to the consideration of the case in court);

2) factors associated with the properties of the person who suffered the injury: emotional stability, psychophysiological maturity, development of the psychological defenses of the individual, qualities that determine the level of claims and behavior of the individual during the consideration of the case;

3) factors related to the personality traits of the offender who caused moral suffering to the victim (consciousness or unawareness of his act and the consequences of his behavior, taking into account individual psychological characteristics).

The content of moral damage is given special attention in the decision of the Plenum of the Supreme Court No. 7 of April 28, 2000 “On some issues of application of legislation on compensation for moral damage” [4]. The resolution notes that “in order to ensure the correct and timely resolution of disputes that have arisen, the courts need to find out in each case the nature of the relationship between the parties and what legal norms they regulate, whether the legislation allows for the possibility of compensation for moral damage in this type of legal relationship and, if such liability is established, find out when a legislative act came into force providing for the conditions and procedure for compensation for harm in these cases, as well as when actions were committed that caused moral harm.

Moral harm is defined as "physical or moral suffering". Any illegal actions (or omissions) can cause moral suffering of varying degrees in a person or deprive him of his mental well-being. Moral harm may consist in experiences in connection with pain, a disease suffered as a result of moral suffering. It would be reasonable to call physical suffering (as one of the forms of moral harm) organic harm that brings any negative changes in the human body and prevents its prosperous biological existence. Moral damage is compensated regardless of the property damage subject to compensation.

Revealing the content of one of the types of moral harm - moral suffering, it should be noted that moral suffering can be associated with pain or a disease suffered as a result of moral humiliation of human dignity. It is also important to keep in mind that organic harm can be brought to the successful biological functioning of a person, contributing to negative changes in the human bodily organization. Negative changes in the state of mental well-being can be expressed in both kinds of suffering, defined as "moral damage", which must be functionally compensated through the material benefits of the defendant who committed the civil offense. In this case, compensation for non-pecuniary damage is aimed at eliminating or smoothing out the experiences and suffering associated with causing harm to the human body.

In accordance with the current legislation, one of the mandatory conditions for liability for causing moral harm is the fault of the inflictor, namely:

- harm caused to the life and health of a citizen by a source of increased danger;

- harm was caused to a citizen as a result of his unlawful conviction, unlawful criminal prosecution, unlawful use of detention or a signature on proper behavior as a preventive measure, unlawful application of an administrative penalty and unlawful detention;

- harm was caused by the dissemination of information discrediting honor, dignity and business reputation.

According to scientific data, for a psychological assessment of the severity of non-pecuniary damage in a criminal process, it is important to consider:

- the type of crime that caused the suffering of the victim;
- the nature of the crime committed (as a life event);
- the degree of objective significance (change in the social situation in which the plaintiff finds himself);
- the level of subjective significance of the event (intensity of experiences);
- forecast of the impact of this event on the subsequent course of life of the victim;
- psychological consequences for the restructuring of his image of "I" (loss or change of leading motives);
- personality structure;
- deformation of the picture of the life path.

According to V.F. Engalycheva and S.S. Shipshin, "in fact, only an expert psychologist can establish either the presence or absence of signs of moral harm caused to a person" [5]. It is the conduct of a psychological examination that will reliably establish the degree and nature of the moral and physical suffering of the victim.

Russian scientist E.N. Kholopova [6] defines the object, subject and competence of forensic psychological examination on the fact of non-pecuniary damage, namely:

Objects are subdivided:

1) on the main ones (the personality of the accused and his actions related to the fact of causing harm; the identity of the victim and his condition after causing the fact of harm);

2) auxiliary (the state of the victim before the criminal situation; the state of the victim during the period of the criminal situation; the situation in which the victim found himself; protocols of interrogations of witnesses about the identity of the victim and his condition; documentation confirming the fact of harm).

The subject of the examination are:

- 1) a set of changes in the mental activity of the victim;
- 2) a causal relationship between the actions of the accused and the mental state of the victim;
- 3) the depth, intensity and strength of the experiences of the victim.

So, taking into account the above factors, the competence of forensic psychological examinations includes:

- 1) determination of the physical and moral suffering of the victim;
- 2) establishing the personal, individual psychological characteristics of the victim, which could have a significant impact on the depth and intensity of subjective experiences from the actions and statements of the accused;
- 3) diagnosis of changes in the mental state of the victim, determination of damage to his values;

4) establishing the presence or absence of a causal relationship between the mental state of the victim and the actions of the accused.

Thus, the forecasting of individual consequences caused by psychotrauma is carried out. In the development of this provision, we can talk about a system of psychological measures to restore the violated rights of the victim as a form of compensation for moral harm. Forensic psychological examination can be the starting point in the process of rehabilitation of the victim, establishing the so-called diagnosis of the victim's post-stress state in an expert opinion.

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