

## On the application by the courts of legislation on compensation for moral damage

### *Unofficial translation*

Normative decision of the Supreme Court of the Republic of Kazakhstan dated November 27, 2015 No. 7.

### *Unofficial translation*

Footnote. Throughout the text, the words "statement of claim", "statements of claim", "of statement of claim", "Statements", "statements" shall be replaced respectively by the words "claim", "claims", "of claim", "Claims", "claim"; in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (enacted from the date of its first official publication).

For purposes of correct and uniform application in judicial practice of the legislation governing the protection of personal non-property benefits and rights belonging to citizens and compensation for moral damage caused to them, the plenary session of the Supreme Court of the Republic of Kazakhstan

resolves:

1. To draw the attention of the courts to the fact that judicial protection of personal non-property benefits and rights belonging to individuals from birth or by virtue of the law, as well as compensation for moral damage caused to them, is one of the effective guarantees of the realization of constitutional rights and freedoms of person and citizen.

2. In accordance with Articles 9 and 141 of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Code) and other laws of the Republic, protection of personal non-property benefits and rights shall be carried out by the court by:

recognition of right;

restoration of the condition that existed before the violation of personal non-property benefits and rights, including the recognition as invalid or not subject to application of acts of state bodies that do not comply with the law;

elimination of consequences of violation of personal non-property benefits and rights;

compensation for moral damage.

Personal non-property benefits and rights shall be protected by the court both by applying the above methods in their totality and each of them individually.

The methods of protecting personal non-property rights provided for by the Civil Code may be applied by the court in cases where the protection of such rights is not specifically enshrined in the laws on labor, marriage and the family, on the use of natural resources, environmental protection, etc.

3. Personal non-property benefits and rights, the violation of which, deprivation or derogation of which may cause the victim moral damage, should be understood to mean the benefits or rights granted to the citizen by birth, which are granted by law, which are inextricably linked to his personality. The benefits belonging to a person from birth include life, health, honor, dignity, freedom, the inviolability of the person, and the rights of a citizen granted by law include the right to inviolability of the home or property; on personal and family secrets, secrecy of telephone, telegraph messages and correspondence; to use the name ; on image; authorship and other personal non-property rights provided for by the legislation on copyright and related rights; freedom of movement and choice of place of residence; to receive reliable information, as well as other rights provided by legislation.

Moral damage should be understood to mean the moral or physical suffering experienced by a citizen as a result of an unlawful violation, derogation or deprivation of his personal non-property benefits.

Moral suffering (emotional-volitional experiences of a person) should be understood to mean the feelings of humiliation, irritation, depression, anger, shame, despair, inferiority, discomfort, etc. experienced by him/her. These feelings may be caused, for example, by an unlawful assault on the life and health of both the victim himself/herself and his/her close relatives, spouse; illegal deprivation or restriction of freedom or the right to free movement; causing damage to health, including disfiguring open parts of the human body with scars and swordcuts; disclosure of family, personal or medical secrets; violation of confidentiality of correspondence, telephone or telegraphic messages; the dissemination of untrue information discrediting the honor and dignity of a citizen; violation of the right to a name, to an image; violation of his/her copyright and related rights, etc.

Physical suffering should be understood to mean the physical pain experienced by a citizen in connection with the commission of violence or bodily injury.

4. In accordance with subparagraph 1) of Article 187 of the Civil Code, the limitation period does not apply to claims for moral damage compensation, except in cases provided for by legislative acts. Therewith, the courts should contemplate that in accordance with the Law of the Republic of Kazakhstan No. 480-V “On Legal Acts” dated April 6, 2016, legislative acts providing for the protection of personal non-property rights of citizens shall be applied to legal relations arising after their entry into effect, unless otherwise provided by legislative acts. Paragraph 8 of the Law of the Republic of Kazakhstan No. 410-I “On the enactment of the Civil Code of the Republic of Kazakhstan (the special part)” dated July 1, 1999 prescribes compensation for non-property damage caused in the cases provided for in Articles 922 and 923 of the Civil Code, if it was committed before July 1 1999, but not earlier than July 1, 1996, and remained unreimbursed.

The claim for compensation for moral damage caused prior to the introduction into effect of the legislative act providing for the victim's right to compensation for such damage shall not be the subject to compensation. Such damage may not be compensated in those cases

when, after the introduction into effect of the legislative act, the citizen continues to experience mental or physical suffering.

If the unlawful action (inaction) that caused the victim moral damage began before the introduction of the legislative act into effect and continued after its introduction into effect, the moral damage caused by the unlawful action (inaction) committed after the introduction into effect of the legislative act shall be the subject to compensation.

**Footnote. Paragraph 4 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

5. Compensation for moral damage shall be made when the guilty party of the damage is established. In the cases provided for by the Civil Code, personal non-property benefits and rights shall be protected by the court, regardless of the guilt of the person who violated these rights.

In the statement of claim, the plaintiff must indicate the circumstances and provide evidence confirming the violation of his/her personal non-property benefits and rights, and the need to protect them, as well as the amount of compensation, which, in his/her opinion, will provide compensation for moral damage caused to him/her.

Claims of citizens for compensation for moral damage caused by bodies conducting criminal proceedings shall be subject to consideration in civil proceedings.

6. According to paragraph 1 of Article 917 of the Civil Code, moral damage shall be compensated in full by the person who caused it by his/her unlawful guilty (intentionally or through negligence) actions (inaction).

The full compensation for moral damage should be understood to mean such actions by the person responsible for damage that he/she must perform due to the direct prescription of the norms of legislative acts (for example, in accordance with the Law of the Republic of Kazakhstan No. 451-I “On Mass Media” dated July 23, 1999, the mass media shall be obliged to publish a refutation of the not true information widespread by it; in accordance with Article 41 of the Code of Criminal Procedure of the Republic of Kazakhstan (hereinafter referred to as the CPC), body with carriage of the criminal process must take measures to eliminate the effects of moral damage) and to pay on the claim to the victim the compensation for moral damage in the amount established by court decision.

7. According to the requirements of Article 952 of the Civil Code, moral damage shall be compensated in money. Therewith the court shall determine the amount of compensation based on the criteria of reasonableness and fairness.

The amount of compensation for moral damage should be considered reasonable and fair if, when establishing it, the circumstances associated with the violation of personal non-property rights of a citizen are taken into account. The measure of liability for the committed unlawful act and its consequences for the person responsible for damage shall be the amount of monetary compensation.

The amount of compensation for moral damage recovered by the court of the first instance may be reviewed by higher judicial instances if it does not meet the requirements mentioned above.

8. In determining the amount of compensation for moral damage, the courts must take into account both the subjective assessment by a citizen of the severity of the moral or physical suffering inflicted on him, and the objective evidence of this, in particular:

the vital importance of personal non-property benefits and rights (life, health, freedom, inviolability of the home, personal and family secrets, honor and dignity, etc.);

the degree of moral or physical suffering experienced by the victim (deprivation of liberty, bodily injury, loss of close relatives, spouse, loss or limitation of the ability to work, etc.);

the form of guilt (intent, negligence) of the person responsible for damage when its presence is necessary for compensation for moral harm.

When determining the amount of compensation for moral damage, the court has the right to take into account other circumstances confirmed by the materials of the case, in particular, the marital and property status of the person responsible for the moral damage caused to the victim.

**Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (enacted from the date of its first official publication).**

9. The obligation to compensate moral damage in accordance with paragraph 1 of Article 917 and paragraph 2 of Article 951 of the Civil Code shall arise in the presence of the following grounds:

committing directly against an individual an offense (tort) that encroaches on the personal non-property rights protected by law and the benefits of this person;

a causal link between the offense and the harm caused to the victim and violation of his personal non-property rights, which resulted in moral or physical suffering in the event of his death, violation of the personal non-property rights of his close relatives, spouse;

the guilt of the causer, except for cases stipulated by law for compensation for personal non-property damage without guilt.

The absence of any of the grounds mentioned above shall exclude the possibility of protecting personal non-property benefits and rights, since they are assumed not to be violated

**Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (enacted from the date of its first official publication).**

10. To draw the attention of the courts to the fact that Article 22 of the Law of the Republic of Kazakhstan No. 2143-XII “On the Rehabilitation of Victims of Massive Political Repressions” (hereinafter referred to as the Law “On Rehabilitation of Victims of Massive Political Repressions”) dated April 14, 1993 stipulates that the pecuniary and non-property

damage of victims of massive political repressions shall be compensated from January 1, 2001 in the amount of three quarters of the monthly calculated index established by the legislation of the Republic of Kazakhstan on the day the rehabilitated person appeals to social welfare bodies, for each month of illegal stay in places of detention. However, the total amount of compensation of pecuniary and non-property damage shall not exceed the amount equal to 100 monthly calculated indexes.

Compensation for moral damage is inextricably linked with the personality of the victim, respectively, payment of this compensation to the heirs of victims of massive political repressions shall not be made, unless the compensation was charged (recovered by the court), but was not received by the rehabilitated citizen due to his death.

Courts shall take into consideration that the direction in Article 26 of the Law “On the Rehabilitation of Victims of Massive Political Repressions” on the extension of the action of Articles 18 to 24 to victims of massive political repressions rehabilitated before this Law came into effect, shall be understood as giving the effect of these articles the opposite forces, without limiting the rights of persons rehabilitated after the adoption of this Law.

**Footnote. Paragraph 10 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

11. In accordance with paragraph 1 of Article 922, paragraphs 1 and 2 of Article 923, paragraph 3 of Article 951 of the Civil Code, regardless of the guilt of the person responsible for damage, the state treasury (funds of the republican or local budget) shall compensate the moral damage caused to the citizen as a result:

- issuance by government bodies of acts that do not comply with legislative acts;
- illegal conviction;
- illegal criminal prosecution;
- illegal use as a measure of restraint the placement in custody, house arrest, restriction of travel order;
- illegal imposition of an administrative penalty in the form of arrest;
- illegal placement in a psychiatric or other medical facility;
- in other cases provided for by legislative acts.

12. The state shall be the defendant in claims for compensation for non-property damage at the expense of the state treasury (republican or local budget), in which case the courts shall determine the jurisdiction of this category of cases at the location of the representative of the state treasury.

Representatives of the state treasury may be the Ministry of Finance of the Republic of Kazakhstan or other state bodies, legal entities or citizens with special powers to represent the interests of the state treasury.

When considering this category of cases, courts need to establish a specific representative of the state treasury and the administrator of the corresponding budget program, and involve them in the case.

13. When considering claims of citizens for compensation for non-property damage caused by a source of increased danger, the courts shall take into consideration that the owner of a source of increased danger is obliged to compensate for moral damage if he will not prove that the damage was caused to the victim due to force majeure or intent of the victim, or in connection with the fact that the source of increased danger dropped out of his legal possession as a result of illegal actions of the person responsible for harm.

The intent of the victim, the courts should understand to mean such actions that indicate a deliberate violation by the victim of the rules for safe handling of a source of increased danger (bullying a dog and other domestic animals; bullying of wild animals in zoos and other places of their detention in captivity; violation of the rules for safe handling of flammable explosive, ionizing and other objects and substances dangerous to human health and life, etc.), which contributed to causing moral harm to the victim.

By the dropping out of a source of increased danger from the legal possession of the owner, one should understand such a situation when the owner of the source of increased danger took reasonable and sufficient measures to exclude the possibility of using the source of increased danger in normal conditions by third parties against his will.

In case of causing moral harm to the victim by persons who illegally seized the source of increased danger, the obligation to compensate moral damage shall be borne by the persons who directly caused such harm. If the source of increased danger dropped out of the owner's legal possession, but it was found to be his guilt, then responsibility for the non-property damage shall be imposed in the shared procedure of both the direct person responsible for moral harm and the owner of the source of increased danger.

14. When considering claims for the recovery of wages and compensation for non-property damage, courts shall take into consideration that, on the basis of Article 24 of the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution), everyone has the right to freedom of work, free choice of occupation and profession, and working conditions that meet the requirements of safety and hygiene, on remuneration for work without any discrimination. Illegal dismissal, untimely payment of wages shall be a violation of the constitutional right of an employee to remuneration for work, which entails a violation of the moral rights of citizens to be protected when a lawsuit is filed to recover wages.

15. In accordance with subparagraph 13) of paragraph 1 of Article 1 of the Code of the Republic of Kazakhstan "On marriage (matrimony) and family" (hereinafter referred to as the "Marriage Code"), close relatives are parents (parent), children, adoptive parents, adopted

children, blood or non-blood brothers and sisters, grandfather, grandmother, grandchildren. The need to protect marriage and family relations follows from Article 27 of the Constitution and Article 2 of the Marriage Code, by virtue of which the family is protected by the state.

When considering cases in claims of close relatives, the spouse of the deceased for compensation for moral damage to the plaintiff, the court must check whether they proved the fact of causing moral suffering, whether they really maintained close ancestral, family relations with the deceased, as well as provide other criteria for assessing moral damage. In this case, the claims of the above persons shall be subject to consideration.

In order to exclude the repeated filing of a claim in civil cases by each close relative or spouse, the courts must, at the stage of preparing the case for consideration, resolve the issue of participation of all close relatives or spouse in the case as third parties on the plaintiff's side and explain to them the right to filing an independent claim in accordance with the Civil Procedure Code of the Republic of Kazakhstan (hereinafter referred to as the CPC).

**Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 07.12.2023 № 4 (enacted from the date of its first official publication).**

16. To draw the attention of the courts to the fact that in cases of private prosecution acquittal imposition and termination of the criminal case on the grounds provided for in subparagraph 5) of the first part of Article 35 of the Code of Criminal Procedure may not itself serve as a ground for imposing on the private prosecutor the obligation to compensate the acquitted person for non-property damage, since in this case there is a realization of the constitutional right to appeal to bodies whose competence includes the consideration of these complaints.

The demand of acquitted person in the case of a private prosecution to recover compensation for moral damage may be satisfied only if the private complaint had no legal basis, and the appeal to the court was aimed solely at causing harm to another person (abuse of right). In this case, the plaintiff must prove the fact of abuse of right by the prosecutor.

**Footnote. Paragraph 16 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

17. According to paragraph 6 of Article 143 of the Civil Code, a citizen with respect to whom information was distributed discrediting his honor, dignity or business reputation shall be entitled, along with the refutation of such information, to demand compensation for losses and moral damage caused by their distribution.

For value judgments the defendant in these categories of cases shall not be responsible.

The requirements for the protection of the business reputation of a citizen apply to the protection of the business reputation of a legal entity, with the exception of the requirement for compensation for moral damage. To protect the business reputation of a legal entity, the rules on compensation for losses in the manner established by the Civil Code shall be applied.

Civil legislation does not provide for compensation for moral damage to a legal entity and courts shall not accept claims of legal entities for compensation for moral damage; if the claim was accepted, the proceedings on the case shall be terminated.

When presenting claims for compensation for moral damage, the plaintiff must prove the presence of moral and physical suffering.

The court, having evaluated the evidence presented, proceeding from the criteria of reasonableness and justice, determining the amount of compensation for moral harm, must take into account the nature of the information distributed, the extent of its distribution, the form of defendant's guilt, his financial situation and other noteworthy facts and circumstances

18. To draw attention of the courts to the fact that the Law of the Republic of Kazakhstan No. 126-II "On Insurance Activities" dated December 18, 2000 and other regulatory legal acts in the field of compulsory civil liability insurance shall not provide liability insurance for the vehicle owner or carrier to passengers for causing moral damage.

Insurance organizations (insurers, reinsurers) may not be obligated to compensate the moral damage to third parties in connection with an insured event occurs.

The obligation to compensate for moral damage caused when an insured event shall be borne by the owner of the vehicle or carrier.

If the voluntary insurance contract provides for insurance of non-material goods and the rights of the insured, then insurance payments shall be made in accordance with the terms of the voluntary insurance contract.

19. Explain to the courts that for the purpose of paragraph 4 of Article 951 of the Civil Code, the property rights of individuals, the violation of which excludes the possibility of compensation for moral damage, should be understood to mean, in particular: rights related to the possession, use and disposal of property; property claims that arise between participants in legal relations (property or obligation rights, including in connection with non-fulfillment or improper fulfillment of the obligation to compensate for harm caused to the life or health of a citizen, etc.), as well as the rights of authors to receive remuneration for created works or inventions made by them; inheritance rights.

If the violation of a citizen's property rights occurred simultaneously with the violation of his personal non-property benefits and rights, then, along with the satisfaction of claims for compensation for the caused property damage, the claimed claim for compensation for moral damage shall also be satisfied (for example, illegal seizure of the victim's property with a simultaneous violation of the inviolability of home; violation consumer rights to quality goods; attribution of authorship, etc.).

According to Article 352 of the Civil Code, non-fulfillment of obligations provided for in Articles 272 to 288 of the Civil Code may be grounds for compensation for moral damage if the improper fulfillment of the obligation by the obligor is not associated with a violation of the property rights of the creditor. Improper fulfillment of obligations affecting the obligor's

property rights (for example, avoidance of paying money back under a loan agreement; non-fulfillment of obligation under a purchase and sale agreement regarding payment for a purchase or transfer of a transaction subject, etc.), in accordance with paragraph 4 of Article 951 of the Civil Code shall exclude the possibility of compensation for moral damage.

**Footnote. Paragraph 19 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

20. Moral damage caused to the victim by joint unlawful actions of several legal entities or individuals, in accordance with paragraphs 1 to 4 of Article 287 and Article 932 of the Civil Code, shall be subject to compensation in full by the causers of such damage in solidarity or in share order.

**Footnote. Paragraph 20 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan № 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

21. In the event of infliction of moral harm to the victim by the actions of minors or juveniles, or by the actions of citizens who are recognized as legally incapable or partially capable, or by the actions of capable citizens, but for health reasons who are unable to understand the significance of their actions or direct them, it shall be compensated by the court according to the Rules, established by Articles 925 to 930 of the Civil Code.

**Footnote. Paragraph 21 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

22. Claims of public associations for the protection of consumer rights for moral damage compensation to an indefinite number of consumers shall not be subject to consideration in civil proceedings, since the claim for compensation for moral damage is inextricably linked with the personality of a citizen.

23. Claims of citizens for compensation for moral damage shall be subject to payment of state duty in accordance with the requirements of the Code of Civil Procedure and the Code of the Republic of Kazakhstan “On taxes and other obligatory payments to the budget (Tax Code)”, if the plaintiff is not exempted from the payment of state duty in accordance with the legislation.

Upon presentation by the plaintiff in one statement of pecuniary claim and for compensation for moral damage, each of the alleged claims shall be subject to payment of state duty separately. The price of claims for compensation for moral damage in monetary terms caused by the distribution of information defaming the honor, dignity and business reputation, shall be determined by the amount presented for recovery.

In accordance with the CPC, when satisfying claims for compensation for moral damage, the court is obliged to collect from the defendant, respectively, in favor of the plaintiff or in the income of the local budget, the state duty that the plaintiff paid or should have paid when

filing the claim. The specified amount of state duty shall be subject to recovery in proportion to the amount of the satisfied claim for compensation for moral damage.

**Footnote. Paragraph 23 with amendment, introduced by the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No. 2 dated March 31, 2017 (shall come into effect from the day of the first official publication).**

24. The decision on compensation for moral damage shall contain:  
the description of the nature of the offense by which the victim suffered moral damage;  
the indication of those personal non-property benefits and rights of the victim that have been violated;  
the data on the victim's mental or physical suffering;  
the way of protection of non-property rights (restoration of the situation that existed before the violation of the right; elimination of the consequences of moral damage; recovery of compensation for moral damage), as well as justification of the amount of compensation for moral damage;a;  
the rules of substantive law that guided the court in making the decision.

In the resolatory part of the decision, the court is obliged to indicate the type of liability of the defendant (subsidiary, shared, joint, individual), as well as the source from which the moral harm shall be compensated (at the expense of the property of the individual or money held in the bank accounts of the legal entity; from the state treasury). When compensating for moral damage from the state treasury, the court is obliged to indicate the administrator of the corresponding budget program, which in the manner prescribed by law shall ensure the execution of the court decision that has entered into legal force.

25. To recognize as invalid:

1) Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated June 21, 2001 No. 3 “On the application by the courts of legislation on compensation for moral damage”;

2) Normative Resolution of the Supreme Court of the Republic of Kazakhstan dated March 20, 2003 No. 3 “On introducing amendments and additions to the normative resolution of the Supreme Court of the Republic of Kazakhstan dated June 21, 2001 No. 3 “On the application by the courts of legislation on compensation for moral damage”.

26. According to Article 4 of the Constitution of the Republic of Kazakhstan, this Regulatory Resolution shall be included in the existing law, shall be generally binding and come into effect from the day of its official publication.

*Chairman of the Supreme Court of the  
Republic of Kazakhstan  
Judge of the Supreme Court  
of the Republic of Kazakhstan  
Secretary of the Plenary Session*

*K. Mami*

