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Some Civil Law Concepts of Non-Pecuniary Harm in Europe

Abstract. The article is aimed at comparing different concepts of individual right protection. The author dwells on two theories of claims for moral harm. They are the rebuttable presumption relied on in the EU, and the need to provide evidence of harm under Russian law. In addition to reviewing several doctrinal works, higher courts rulings and the European views on the topic, the author focuses on the question of the relationship between moral and reputational harm, noting here that not all of the identified doctrinal concepts correspond to strict legislative terminology. For example, information injurious to honor, dignity, or business reputation may not cause harm (save for moral harm) but is associated with the occurrence of damages. It seems to be the first work advocating the thesis that damages can be recovered instead of non-pecuniary harm. The Russian tort law concept bares some features of Soviet tradition with strict division between reimbursement of harm and recovery of losses. It was allowed only when reimbursement in kind grew impossible. That was later transferred on to judicial discretion to determine the right means of legal protection. The formula that recovery of losses is a substitute of compensation of any harm had been set forth in Civil Code serving as a legal basis to sue for losses in lieu of moral damage.

Keywords: civil law, liability, damages, loss, fault, non-pecuniary harm, obligation, business reputation.
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Некоторые гражданско-правовые концепции нематериального вреда в Европе

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Аннотация. Целью статьи является сравнение различных концепций защиты личных прав. Автор делает особый акцент на рассмотрении двух теорий исков о возмещении морального вреда. Они являются опровержимой презумпцией, на которую полагаются в ЕС, а также показывают необходимость предоставления доказательств причинения вреда, согласно российскому законодательству. Помимо обзора ряда доктринальных работ, постановлений высших судов и взглядов различных европейских исследователей на данную тему, автор акцентирует внимание на вопросе о соотношении морального и репутационного вреда, отмечая при этом, что не все выявленные доктринальные понятия соответствуют строгой терминологии законодательства. Например, сведения, порочащие честь, достоинство или деловую репутацию, могут не причинять вреда (за исключением морального вреда), но связаны с возникновением определенных убытков. Вероятно, это первая работа, отстаивающая тезис о возможности возмещения убытков вместо возмещения морального вреда. Российская концепция деликтного права несет в себе некоторые черты советской традиции, строго дифференцируя возмещение вреда и взыскание убытков. Взыскание убытков допускалось только тогда, когда возмещение в натуре становилось невозможным. Впоследствии опреде-

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ление возможности подобного взыскания было передано на усмотрение суда для определения правильных средств правовой защиты. Формула о том, что взыскание убытков заменяет собой возмещение вреда, была закреплена в Гражданском кодексе Российской Федерации как правовая основа для предъявления иска о возмещении убытков вместо иска о компенсации морального вреда. Вместе с тем проблема конкуренции или альтернативности данных требований в полной мере до сих пор не изучена.
Ключевые слова: гражданское право, ответственность, убытки, ущерб, вина, моральный вред, обязательство, деловая репутация.
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Introduction

Civil law tradition derived from *corpus jurius civilis* as opposed to later national laws, is based on the principle of restoration rather than punishment to the tortfeasor.

A remedy for a violation of individual rights where *restitutio integrum* is impossible can take three alternative forms. First, partial compensation for suffering and mental inconvenience. Second, a penalty that the offender has to pay in favor of the aggrieved party. Third, full compensation.

This article covers the Russian legal approach to such suits and demands which are mostly based on the first option. However, there is growing public demand to adopt the second and third options. This would reflect harmonization and development of civil law as a whole, and the trend of graduate unification of different national legislations.

This article also covers European legal theory which is compared with Russian doctrine and legal practice. The purpose of this exercise is to determine whether it is possible to adopt some fundamental concepts of the recovery of damages, and then propose new theoretical findings and amendments to the Civil Code of the Russian Federation.

On the hand, the Russian law approach is based on the requirement to prove the degree of anxiety, suffering, emotions. It remains subjective and fully dependent on the vulnerability of an individual and how a particular event affects that individual.

Court are required to take into account two factors.

First, the psychological impact of harm on an individual.

Courts tend to afford higher amount to individuals who they consider more sensitive and vulnerable and less to those individuals who appear to them as tougher and stronger when compared to an average citizen. To give an example, because of this trend and prevailing cultural views, in Russia women may obtain higher compensations than men.

Second, the degree of fault and personal features of a tortfeasor or a defendant.

On the other hand, PETL and DCFR frameworks have their emphasis on personal rights of different kind and focus less on the individuality. They provide for such notion as «quality of life» impairment.

Both documents proceed from the objective criteria rather than subjective ones. Hence, non-pecuniary claims may be satisfied without evidence of suffering at all. Moreover, a personal right is protected stronger than the consequences of pure economical losses, ordinary property harm, etc.

The author finds many practical and theoretical advantages and results by comparing the different concepts of moral harm, non-monetary damage, and non-pecuniary loss in Russia and the EU.

Methods

The author has used the comparative analysis method to weigh benefits and disadvantages of the European civil law approach to such remedies as, among other, recovery of damages and moral harm compensation.

Results

The author believes that the new approaches to non-pecuniary losses and moral harm embodied in European model law instruments should be taken into account for the development of the Russian legislation and in national disputes over the compensation of losses or moral harm.

Discussion

Because of the relatively recent civil legislation reform, there has been no doctrinal works on what European approaches deserve reception. Articles on the topic are unknown to the author.

The theoretical contribution of this publication consists in the discussion as to the necessity to jointly analyze the European and Russian

experiences to adopt the most effective model of legal protection.

In this publication the author relies on articles of P. Benjamin, Ch. Fried, M. W. Hesselink, H. Kotz, H. Koziol, N. S. Malein, B. Nicholas, J. M. Perillo, M. Rumelin, A. J. Sebok, A. A. Sobchak, A. V. Vorobiov, and A. A. Yagelnitsky on the recovery of damages and compensation of moral harm. On the other hand, the author has not taken into consideration doctrines from other jurisdictions like the USA, Latin America etc. which could have their own prevailing views on the subject.

1. Basic Laws on Non-pecuniary Losses

The compensation of moral harm as a legal remedy was not based on dogmatic assertions. On the contrary, it developed along with the evolution of legal science in line with public needs and time. Moreover, despite the natural unification of the understanding of legal concepts, especially fundamental ones such as liability, contract, obligation, transaction, etc., there still is a considerable difference in the legal treatment of compensation of moral harm between Russian laws and certain international laws and treaties incorporating all modern ideas of European civil law such as the Principles of European Contract Law (the «PECL»), the Principles of European Tort Law (the «PETL»), the Draft Common Frame of Reference (the «DCFR»), and the UNIDROIT Principles of International Commercial Contracts (the «UNIDROIT Principles»). In all of those documents, moral harm *per se* is part of the so-called «non-economic» or «non-pecuniary» losses or damage. They constitute a universal component of the recoverable damage[1] (according to Articles III.-3:701(3) and VI.-2:101(1) of the DCFR, Article 9:501(2)(a) of the PECL, and Article 10:301(1) of the PETL). In Russian civil law, they constitute a kind of harm that is done to a person whose non-proprietary rights or, where specially prescribed by law, other subjective rights are infringed (pursuant to Articles 151 and 999 through 1001 of the Civil Code of the Russian Federation) (this matter will be discussed in more detail below).

The special attitude of the Russian legal doctrine towards the term in question manifested itself in the following situation. When Article 7.4.2 (Full Compensation)[2] of the UNIDROIT Principles was translated into Russian in 2003, non-economic losses were said to include moral harm, even though the English version contained no such concept. Instead, the latter stated that non-economic losses included, inter alia, physical suffering and emotional distress, which is a wider definition. The DCFR[3] also provides that non-economic losses include quality of life impairment.

In Russia, the infliction of harm or a tort is supposed to entail effects characterized by a closer connection between the destructive act and the resulting damage. There are only three cases where moral harm can be compensated without *culpa*. Those provisions act to persuade judges that where a person suffers from pain or emotional distress caused, for example, by baiting they should award monetary satisfaction in the minimum allowable amount. Obviously, their logic is that one can hardly imagine the extent of another's suffering or indisposition. And in the context of Russia's strict directive unification of case law, the smallest possible amount of compensation will be less vulnerable during the appeal process.

2. Domestic Concept

Fundamental concepts of civil litigation in Russia are adversariality and parties' proactivity in proving the facts they rely on in their pleadings (Article 65(1) of the Arbitrazh Procedure Code of the Russian Federation and Article 56(1) of the Civil Procedure Code of the Russian Federation). Relying on those principles, courts require that victims should prove the alleged suffering.

As mentioned above, according to the latest European private law codification, non-pecuniary losses are equivalent to moral harm as part of damages recoverable in tort and losses caused by a breach of contract. Therefore, the very con-

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1 Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). Munich, 2009. Art. III.-3:701(3), VI.-2:101(1); The Principles of European Contract Law. 2002. Part I, II, III. Art. 9:501(2)(a) // URL: https://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/portrait.pdf (cited: 25.12.2019) ; Principles of European Tort Law. 2005. Art. 10:301(1) // URL: http://www.egtl.org/docs/PETL.pdf (cited: 25.12.2019).

2 Perillo, *Joseph M.*, Unidroit Principles of International Commercial Contracts: The Black Letter Text and a Review, 63 *Fordham L.* Rev. 281 (1994) // URL: http://ir.lawnet.fordham.edu/flr/vol63/iss2/1) (cited: 26.12.2019).

3 Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). Munich, 2009. Art. VI.-2:101(4)(b)).

cept of losses as a measure of an infringement of subjective rights is different. Moreover, the replacement value of personal rights, which are called «protected interests»[4], and are related to life, bodily or mental integrity, human dignity and liberty, is determined through the practical use of presumptions and assessments resulting in material compensations for non-pecuniary damages. The DCFR clarifies[5] that it is personal injury *per se* rather than the extent of suffering caused by a tort that constitutes a cause for recovering a compensation.

Suffering without any pecuniary effects for a person is the main criterion of moral harm in Russia. That is a necessary condition, so if any of the aforementioned personal non-proprietary rights are infringed without any suffering or emotional distress, there is nothing to award — that is the logic behind this legal treatment. Because no personal harm means no infringed right.

Let us imagine an unlawful detention that causes no distress due to the certain personal peculiarities of the detainee who is, say, a former prisoner. The Civil Code of the Russian Federation expressly obliges courts to take into account the personal peculiarities of claimants as a major criterion. Under European law, that is the so-called non-pecuniary damage to an interest related to the right to freedom, so its restriction would suffice to entail liability irrespective of whether the person had suffered or not. Under Russian law, moral harm may only be compensated if non-proprietary benefits granted by civil law get impaired or, where specifically prescribed by law, other subjective rights are infringed. Accordingly, you will have to substantiate to a Russian court your allegations that the defendant's conduct was improper, there was a causal relationship between the defendant's behavior and your suffering, and that your suffering really took or is likely to take place.

The amount of satisfaction depends on two factors: the extent of fault and the victim's personal peculiarities. Needless to say, if somebody intentionally causes suffering and indisposition to a sensitive or fragile person (such as a child or an elderly person), the harm-doer should be ordered to pay a large compensation. Russian courts, which are currently dealing with over 15 million civil cases, took a uniform approach to the satisfaction of claims by awarding only nominal compensations for moral harm. They tend to cut the amounts claimed for suffering at least by half, thereby demonstrating their reluctance to earnestly look into the claims which, according to the legislators, must be decided on a case-to-case basis.

The concept of moral harm is the most important dispute regulator in general and supports the canonical approach of highly civilised justice. The task of law is to thoroughly and efficiently counteract any encroachment on a person. As appears from both modern and historical legal literature, law-making efforts in the field of moral harm are based on two concepts. The first one is about peace of mind and serene existence that help a person unlock his or her versatility and integrity as independent values to be protected. Therefore, any intrusion, anxiety or deformation in one's inner world would be enough for a legal intervention in the form of compensation for the displeasure experienced, whatever the life period during which it occurs. The second theory equates moral harm to physical and moral suffering arising only where subjective (primarily personal) and proprietary (only in specifically prescribed cases) rights are infringed.

Where a house containing family paintings and photos is lost as a result of a tort (e.g., an arson), there is no doubt as to the owner's distress as they have lost their relics and a source of their peace of mind and harmony, so, according to the first theory, they are entitled to a financial compensation from the arsonist plus a payment for the non-economic losses incurred. However, according to another understanding, moral harm resulting from the encroachment on pecuniary benefits and, directly, on personality and health, bodily injuries causing physical pain, and slander resulting or not in a loss of benefits should be compensated. The second theory stipulates that the owner should get nothing in excess of the value of his properties. Nevertheless, the legislators used the concept in question to provide for the possibility to recover the maximum harm done as by an infringement of not only pecuniary but also usual civil rights resulting from low-quality consumer services or an unlawful detention.

We assume that the first doctrine constitutes the essence of the European law where the universal legal remedy also incorporates compensation for unlawful impact on personality, which now consists not only in the infliction of physical or mental suffering but also in quality of life im-

[4] PETL. 2005. Art. 2:102 // URL: http://www.egtl.org/docs/PETL.pdf (cited: 25.12.2019).

[5] DCFR. Munich, 2009. Art. VI.-2:203, 2:204.

pairment or the communication of information affecting one's honor *per se* instead of the effect of the impairment or restriction that causes suffering. This approach is not based on the persuasiveness of the claimant's supporting evidence.

As discussed above[6], any encroachment on honor, dignity or privacy «as such», i.e., irrespective of the extent of the resulting sufferings, will cause a legally relevant damage, including, but not limited to, non-economic losses. The same rule applies if a person communicates any information about another person that the communicator knows or could reasonably be expected to know is incorrect, even if the need to substantiate the reputational devaluation is not expressly stated: in that case, a legally relevant damage is deemed to occur[7].

As mentioned above, the Russian legislators have adopted laws approaching the second theory that moral harm is essentially associated with physical and mental sufferings. This conclusion is based on the fact that the applicable rule of law is Chapter 59 of the Civil Code of the Russian Federation, which requires the victim to prove his or her sufferings. Even where the appearance of a person is disfigured by a car accident and the resulting personal impairment is absolutely obvious, Russian courts tend to recover moral harm in a small, if any, amount.

Under Russian law, the communication of discrediting information does not constitute a tort: unlike moral harm, tort is not mentioned in Chapter 59 of the Civil Code of the Russian Federation and will only entail the recovery of losses if the reputational damage has been proved. The following question appears to be very interesting to us: if the communication of certain information has inflicted a considerable loss of profit on a prominent business person or, what is more, has resulted in the communicator's enrichment (by winning a tender, etc.), should the communicator become liable without fault? The literal interpretation of the Civil Code of the Russian Federation prompts the affirmative answer. Moreover, in this case, the moral harm must be recovered without fault (pursuant to Article 1101(2) of the Civil Code of the Russian Federation), similarly to damages caused by a source of increased danger and measures under criminal law.

However, we believe that fault, being a specific instance of unlawfulness, should be a factor to consider when deciding whether to award a compensation. The communication of harmful information, even where there is no neglect, may entail no pecuniary consequences under law. In the same situation, Article VI.-2:204 of the DCFR provides that, as mentioned above, the communicator will become liable if he or she knew or could reasonably be expected to know that the information so communicated was incorrect.

3. Some Recommended Interpretations

According to the Civil Code of the Russian Federation, the infliction of moral harm constitutes a tort. The «harm-doer» should compensate the victim for the harm done (Article 1062(1) of the Civil Code of the Russian Federation). Its danger may be mitigated by a claim for prohibiting a person from engaging in a certain activity (Article 1065(1) of the Civil Code of the Russian Federation).

In general, moral harm should be awarded in the event of an infringement of personal rights or non-financial benefits[8] and, in exceptional cases expressly prescribed by law[9], damage caused to the victim's property[10]. Suffering, illnesses and in-

6 DCFR. Munich, 2009. Art. VI.-2:203 of the DCFR.

7 DCFR. Munich, 2009. Art. VI.-2:204 of the DCFR.

8 Personal rights serve to formalise the belonging of non-pecuniary benefits such as one's name, honour, personal dignity, life, health, etc. According to some scholars, these include the power of a person to take actions on his or her own, the power of the holder of a subjective right to demand that the public refrain from infringing his or her right, and the power to protect oneself (for details, see Ulbashev, A. Kh. Osushchestvlenie i zashchita lichnykh prav [The Exercise and Protection of Personal Rights] // Zakonodatelstvo, 2017, No. 9. P. 11).

9 According to the second paragraph of Clause 2 of RF Supreme Court Plenary Resolution No. 10 of 20 December 1994 «Certain Matters of the Application of Law on Compensation of Moral Harm» («Resolution No. 10»), this type of damage «may, in particular, consist in emotional distresses caused by a loss of one's relative, inability to continue one's active public life, loss of one's job, disclosure of one's family or medical secret, communication of misleading information discrediting one's honour, dignity or business reputation, temporary restriction or deprivation of one's rights, or physical pain resulting from a bodily injury or other damage caused to one's health or from any disease resulting from one's moral sufferings, etc.».

10 For example, according to Article 237.1 of the Labour Code of the Russian Federation, «the moral harm done to an employee by any unlawful act or omission to act by his or her employer [i.e., an infringement of the

disposition, which may well deprive an individual of the ability to work, miss his or her private practice or lose or become unable to get any income or benefit, do not apparently enable such individual to claim the resulting losses under law.

Irrespective of the foregoing, Russian courts tend to determine the extent or value of moral suffering in miserable amounts — in contrast with the existing Western case law, primarily in the Unites States, where courts may award astronomical compensations for mental torment inflicted by the illness or death of a relative which has been caused by low-quality medicine or for shock conditions experienced by consumers as a result of incidents, undue performance, etc. Legal entities are not authorized to claim moral harm. They can only enforce their rights by claiming damages to their reputation[11].

According to the applicable Russian rules of law, no loss may be recovered in addition to moral harm compensable under Article 151 of the Civil Code of the Russian Federation: only the reverse situation is possible for an individual. That is evidenced by the fact that the idea of compensation for emotional distresses is based on penal liability, meaning nothing else but punishment of the harm-doer[12] along with a satisfaction for the victim and a mitigating effect for the victim's emotional state[13]. Since the claimant gets even more than the replacement cost of the damage inflicted to his or her personality, he or she may not claim any loss.

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employee's employment (pecuniary) rights — *Yu. M.*] shall be compensated to such employee in cash in the amount to be agreed on by the parties to the employment contract.» (see Ulbashev, A. Kh. Op. cit. P. 18).

11 Clause 21 of RF Supreme Court Case Law Review No. 1 (2017) (as approved by the RF Supreme Court Presidium on 16 February 2017) // ConsultantPlus Law Information System.

12 However, the European Court of Human Rights (the «ECHR») believes the purpose of an award is to reimburse the claimant for the actual adverse effects of a violation rather than to punish the defendant: «9. The purpose of the Court's award in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. It is not intended to punish the Contracting Party responsible. The Court has therefore, until now, considered it inappropriate to accept claims for damages with labels such as "punitive", "aggravated" or "exemplary"»…
13. The Court's award in respect of non-pecuniary damage is intended to provide financial compensation for non-pecuniary damage, for example mental or physical suffering. (Clauses 9 and 13 of the Practice Direction «Just Satisfaction Claims» // URL: https://www.echr.coe.int/Documents/PD_satisfaction_claims_ENG.pdf (the «Practice Direction»)). That said, it should be taken into account that «it is in the nature of non-pecuniary damage that it does not lend itself to precise calculation» (Clause 14 of the Practice Direction); «…the task of estimating damages to be awarded is a difficult one. It is especially difficult in a case where personal suffering, whether physical or mental, is the subject of the claim. There is no standard by which pain and suffering, physical discomfort and mental distress and anguish can be measured in terms of money» (Clause 9 of the Joint Partly Dissenting Opinion of Judges Spielmann and Malinverni as expressed in the case of Maksimov vs Russia (Application No. 43233/02) (ConsultantPlus Law Information System)). However, «if the existence of such damage is established, and if the Court considers that a monetary award is necessary, it will make an assessment on an equitable basis» (Clause 14 of the Practice Direction).
We would like to note that the question of which function — compensatory or punitive — is more important for the concept of compensation of moral harm still entails doctrinal difficulties (see, e.g., Vorobiov, A. V. Institut kompensatsii moralnogo vreda v rossiiskom grazhdanskom prave [The Institution of Compensation of Moral Damage in Russian Civil Law]. St. Petersburg, 2008 ; Sebok, A. J. Punitive Damages in the United States // Punitive Damages: Common Law and Civil Law Perspectives (Tort and Insurance Law, vol. 25) / H. Koziol, V. Wilcox (eds.). Springer, 2009. P. 161–162).

13 Russian legal scholars often note that the obligation to compensate moral harm is intended to enable the victim to get some material benefits alleviating his or her pain and sufferings. In that sense, the reasonings by V. T. Smirnov and A. A. Sobchak are quite indicative (see Smirnov, V.T., Sobchak, A. A. Obshchee uchenie o deliktnykh obyazatelstvakh v sovetskom grazhdanskom prave: uchebnoe posobie [The General Theory of Tort Obligations in Soviet Civil Law: Textbook]. Leningrad, 1983. P. 61) as they give the following example: a huge music, theatre and movie buff was bedridden as a result of his injury and became unable to go to theatres and cinemas. Therefore, in addition to the pecuniary damage in the form of loss of his earnings, he also incurred a certain moral harm in the form of his inability to visit entertainment events, concerts, etc. In such cases, according to the authors, it would be reasonable to obligate the harm-doer to buy the victim a radio receiver,

As mentioned above, the Russian legislators have chosen to compile an exhaustive list of elements of a wrongdoing that allows claimants to claim moral harm as an additional remedy if their proprietary rights are infringed. According to Article 1099(3) of the Civil Code of the Russian Federation, moral harm shall be compensated irrespective of any pecuniary damage. Such regulatory approach permitting both pecuniary and non-pecuniary damages to be simultaneously awarded is also embodied in the second paragraph of Article 15 of RF Law No. 2300-I dated 7 February 1992 «On the Protection of Consumer Rights».

So far, we have seen no commentaries asserting that actual damages or lost profits may be awarded instead of claimed moral harm. However, if read literally, Article 1082 of the Civil Code of the Russian Federation does allow recovering losses instead of such compensation as the provisions of Para. 1 («General Terms of Compensation of Harm») of Chapter 59 also apply to Para. 4. Article 1082 of the Civil Code of the Russian Federation which makes the author come to a conclusion that losses may be substituted for «harm done to the personality… of an individual» (Article 1064(1) of the Civil Code of the Russian Federation). Moral suffering entail an impairment of non-pecuniary benefits, including such important ones as dignity[14], health and life. That constitutes a legal cause for claiming a compensation.

The Russian legislators have designated compensation of moral harm as a special legal remedy along with recovery of loses and a default interest as listed in Article 12 of the Civil Code of the Russian Federation. That list mentions no «usual» harm — a fact that, at first sight, enables the author to conclude that this concept is identical to losses. However, we believe that conclusion would be wrong. While compensation of harm is not on the exhaustive list contained in Article 12, it is still mentioned in the Civil Code of the Russian Federation — that is, first of all, restitution in kind or an award of damages (Article 1084). Losses may be recovered with reference to Articles 15.2 and 1082 of the Civil Code of the Russian Federation which constitute another protective instrument. It, however, differs from the compensation for losses or damages under Chapter 59 of the Civil Code of the Russian Federation.

As discussed above, an encroachment on personality in Europe is considered as part of non-economic or non-pecuniary damages or, in the event of contractual relations, losses. That consideration gives rise to a presumption (that would be difficult to refute), rather than to an assumption of the need to prove the existence and extent of suffering. Conversely, Russian law provides that moral harm is a kind of personal harm that is to be proved, as generally prescribed by the Civil Code of the Russian Federation. However, moral harm, as well as any other harm, may be replaced, at the discretion of a court, with damages (Article 1082 of the Civil Code of the Russian Federation) — for example, in a reasonable amount thereof (Article 393.5 of the Civil Code of the Russian Federation).

Should the victim be allowed to claim damages instead of moral suffering as a more troublesome but stronger remedy, that would release the lock on claims for moral harm as such and reanimate the concept. We believe if that idea gets support from both the legal doctrine and the case law, the institution of moral harm will become more efficient.

Conclusion

The author believes that there are some achievements in the European civil law doctrine on the recovery of non-pecuniary harm that may be applicable to issues of moral harm in Russia. They can be implemented without introducing substantial amendments to the Russian legislation. It is assumed in Europe that a detrimental act infringing on personal rights is sufficient for liability to arise; and there is no requirement to determine the degree of the victim's negative emotions which he or she may or may not have.

a record player with a set of suitable music records, or a TV set, i.e., to pay only those costs (or to take only those actions) that could help at least reduce, if not eliminate, the damage. Such «functional» approach to moral harm is often criticised by those scholars arguing, in particular, that the victim is not at all required to get material benefits that could help improve his or her emotional condition and, therefore, alleviate his or her sufferings (for details, see Yagelnitsky, A. A. K voprosu o nerazryvnoi svyazi prava s lichnostiu: preemstvo v prave trebovat kompensatsii moralnogo vreda i vreda, prichinyonnogo zhizni ili zdoroviu [On the Inextricable Relationship of Law with the Individual: Succession in the Right to Demand Compensation for Moral Damage and Damage Caused to Life or Health] // Bulletin of Civil Law, 2013, Vol. 13, No. 2. P. 68–70).

[14] Personal dignity is a purely subjective characteristic. N. S. Malein defined it as an «internal self-assessment by a person of his or her qualities, abilities, attitudes and social significance» (Malein, N. S. Okhrana prav lichnosti sovetskim zakonodatelstvom [The Protection of Individual Rights by Soviet Law]. M.: Nauka, 1985. P. 32).

REFERENCES

1. Vorobev VV. Institut kompensatsii moralnogo vreda v rossiyskom grazhdanskom prave [Institute of Compensation for Moral Damage in Russian Civil Law]. St. Petersburg; 2008. (In Russ.).
2. Malein N.S. Okhrana prav lichnosti sovetskim zakonom [Protection of personal rights by the Soviet law]. Moscow; 1985. (In Russ.).
3. Sebok AJ. Shtrafnye ubytki v Soedinennykh Shtatakh [Punitive damages in the United States]. In: Koziol H, Wilcox V, editors. Shtrafnye ubytki: perspektivy obshchego prava i grazhdanskogo prava (deliktnoe i strakhovoe pravo, tom 25 [Punitive Damages: Perspectives of Common Law and Civil Law (Tort and Insurance Law, Volume 25)]. Springer; 2009. (In Russ.).
4. Smirnov VT, Sobchak AA. Obshchee uchenie o deliktnykh obyazatelstvakh v sovetskom grazhdanskom prave: uchebnoe posobie [General Doctrine on Tort Liabilities in the Soviet Civil Law]. Leningrad; 1983. (In Russ.).
5. Ulbashev AKh. Osushchestvlenie i zashchita lichnykh prav [Implementation and protection of personal rights]. Zakonodatelstvo [Legislation]. 2017;9:8-13. (In Russ.).
6. Yagelnitskiy AA. K voprosu o nerazryvnoy svyazi prava s lichnostyu: preemstvo v prave trebovat vozmeshcheniya moralnogo vreda i vreda, prichinennogo zhizni ili zdorovyu [On the issue of the inseparable connection of law with personality: Succession in the right to demand compensation for moral harm and harm caused to life or health]. *Vestnik grazhdanskogo prava [Civil Law Review]*. 2013; 1:13. 2013;2:60-65. (In Russ.).
7. Perillo J. Moscow: Unidroit Principles of International Commercial Contracts: The Black Letter Text and a Review. *Fordham L. Rev.* 1994;63:281. Available from: http://ir.lawnet.fordham.edu/flr/vol63/iss2/1 [cited 2019 December 26].
8. Principles of European Tort Law. 2005. Available from: http://www.egtl.org/docs/PETL.pdf [cited 2019 December 25].
9. Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). Munich; 2009.
10. The Principles of European Contract Law. 2002. Part I, II, III. Available from: https://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/portrait.pdf [cited 2019 December 25].

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БИБЛИОГРАФИЯ

1. *Воробьев А. В.* Институт компенсации морального вреда в российском гражданском праве. — СПб., 2008. — 230 с.
2. *Малеин Н. С.* Охрана прав личности советским законом. — М., 1985. — 216 с.
3. *Себок А.* Дж. Штрафные убытки в Соединенных Штатах // Штрафные убытки: перспективы общего права и гражданского права (деликтное и страховое право, том 25) / Х. Козиол, В. Уилкокс (ред.). — Спрингер, 2009. — 159 с.
4. *Смирнов В. Т.*, *Собчак А. А.* Общее учение о деликтных обязательствах в советском гражданском праве : учебное пособие. — Л., 1983. — 152 с.
5. *Улбашев А. Х.* Осуществление и защита личных прав // Законодательство. — 2017. — № 9. — С. 8–13.
6. *Ягельницкий А. А.* К вопросу о неразрывной связи права с личностью: преемство в праве требовать возмещения морального вреда и вреда, причиненного жизни или здоровью // Вестник гражданского права. — 2013. — Т. 1. — С. 13 ; № 2. — С. 60–91.
7. *Perillo J. M.* Unidroit Principles of International Commercial Contracts: The Black Letter Text and a Review // 63 Fordham L. Rev. — 281 (1994). — URL: http://ir.lawnet.fordham.edu/flr/vol63/iss2/1 (cited: 26.12.2019).
8. Principles of European Tort Law. 2005 // URL: http://www.egtl.org/docs/PETL.pdf (cited: 25.12.2019).
9. Principles, Definitions and Model Rules of European Private Law: Draft Common Frame of Reference (DCFR). — Munich, 2009.
10. The Principles of European Contract Law. 2002. Part I, II, III // URL: https://www.jus.uio.no/lm/eu.contract.principles.parts.1.to.3.2002/portrait.pdf (cited: 25.12.2019).