

BIRCH LEGAL

Legal alert
by Dispute Resolution practice

The Supreme Court clarified the
Rules for compensation of moral
damage



On 15 November 2022, the Plenum of the Supreme Court of the Russian Federation adopted Resolution No. 33 “On the practice of application by courts of the norms on compensation for moral damage” (hereinafter referred to as the “**Resolution**”)^[1].

The new Resolution is voluminous (includes 69 points) and does not contain innovative provisions but rather generalizes the approaches adopted by courts (although the Resolution contains several meaningful clarifications).

We have highlighted some principles set forth in the Resolution that seemed the most interesting to us.

1. Moral damage caused by actions that violate the property rights of a citizen

Moral damage caused by actions (inaction) that violate the property rights of a citizen is not subject to compensation according to general rule, but it is subject to compensation in cases required by law (for example, the law on the protection of consumer rights) (clause 3).

This rule is formalized in law (clause 2 of article 1099 of the Civil Code of the Russian Federation).

! The Plenum of the Supreme Court of the Russian Federation (hereinafter referred to as the Supreme Court) indicated that in a number of cases there is moral damage when property rights are violated: in cases where actions (inaction) directed against the property rights of a citizen violate their personal non-property rights or infringe the intangible benefits belonging to them causing physical or mental suffering to a citizen, compensation for moral damage is recovered on general grounds. For example, compensation is possible when deliberate damage caused by one person to the property of another person which is of non-material value for the latter (a single copy of a family photo album, an inherited household item, etc.) (clause 4).

[1] <https://vsrf.ru/documents/own/3176/>

2.

The Supreme Court indicated many factors that must be taken into account when determining the amount of compensation for moral damage

The Supreme Court lists various factors that courts must take into account when calculating compensation. Some of the factors do not directly indicate the degree and nature of moral damage (moral or physical suffering), and they can be characterized as criteria for the fairness and reasonableness of the amount of compensation.

Examples of the factors the Supreme Court points to

- the behavior of the victim upon exposure to the harm in question, for example, when harm is caused due to the provocation of the victim in relation to the perpetrator (clause 27)
- a single or multiple violation of the rights of a citizen (clause 27)
- difficult financial circumstances of the private defendant proven by the evidence presented in the case file, for example, the defendant's lack of earnings due to long-term incapability or disability, their inability to find a job, minor children, disabled children, disabled spouse or parent dependency, alimony payment; however, the difficult financial circumstances of the defendant is not considered to be acceptable grounds for declining the recovery of compensation for moral damage (clause 29)
- the importance of compensation in relation to the normal standard of living and the general level of income of citizens (clause 30) (according to the position of the Supreme Court, the higher the standard of living of the victim, the higher the amount of compensation should be since it determines the actual elimination of the suffering of the victim or its minimization)

When determining the amount of compensation for moral damage caused by the violation of the personal non-property rights of an author of the result of intellectual work, the court must take into account the following factors (paragraph 3, clause 54):

public assessment of the infringed interest and the violated non-property right (according to the position of the Supreme Court, the amount of payments depends on said public assessment)

the identity and fame of the author (according to the position of the Supreme Court, the more widely known the author, the larger the amount should be)

content and popularity of the object of copyright

According to current judicial practice, claimants, as a rule, only succeed in recovering an award of insignificant amounts as compensation for moral damage (even when there is an obvious and significant moral damage). It does not follow from the Resolution that this practice will change, and the amount of compensation will increase significantly.

3.

It is allowed to assign and inherit only those rights of claims for compensation for moral damage for which there is a court decision on recovery

Assignment of claim for a sum of money as compensation for moral damage is allowed only in cases where such a claim is satisfied by the court. Until the claims are satisfied, the assignment is not allowed (clause 8).

A similar approach also applies to inheritance when the victim died without having time to receive compensation (clause 9).

- 4.** **The presumption of causing moral damage in case of harm to health**
- There is a presumption of causing moral damage in case of harm to health. To recover compensation, the mere fact of causing harm to health is sufficient even if it is not possible to accurately determine its severity (clause 15).
- 5.** **Non-monetary forms of compensation for moral damage are allowed**
- Compensation for moral damage in non-monetary form is allowed.
- In particular, the Supreme Court indicates that compensation may be in the form of providing care for the victim, transferring any property (vehicle, household appliances, etc.), in providing any service, in the performance of actions by the perpetrator of harm or at their expense which are aimed at minimizing (mitigating) the physical and moral suffering of the victim (clause 24).
- 6.** **The Supreme Court has formulated rules for compensation of moral damage in case of poor outcomes of rendering medical care**
- Medical organizations and health care workers are obliged to compensate moral damages caused by poor-quality medical care (paragraph 1, clause 48). The courts must establish certain facts (paragraph 2, clause 48):
- if all necessary and possible measures were taken in rendering of medical care to the patient for his timely and qualified examination for establishing the correct diagnosis
 - if the organization of the examination and the treatment process complied with the established procedures and standards for rendering medical care and clinical guidelines (treatment protocols)
 - if the identified defects in rendering medical care affected the correctness of diagnosis and the appointment of appropriate treatment
 - if the identified violations affected the course of the patient's illness, for example, contributed to the deterioration of the state of health, led to an unfavorable outcome, and, as a result, led to a violation of his rights in the field of health
- 7.** **The medical organization has not only the burden of proving the absence of its guilt, but also the burden of proving the legitimacy of certain actions (inactions) that caused the occurrence of moral damage (paragraph 4, clause 48)**

This Resolution replaces Resolution of the Plenum of the Supreme Court of the Russian Federation of 20 December 1994, No. 10 "Certain issues arising out of application of provisions on compensation for non-pecuniary damage". The Resolution, which has lost its force, was characterized both by its conciseness and its peculiar legal technique – the Supreme Court indicated what rules the judges should follow when resolving disputes on compensation for moral damage (which laws formulate these rules).

For further information please contact



Evgeny Oreshin
Partner, Attorney at law
Dispute resolution

M: +7 903 777 9825
evgeny.oreshin@birchlegal.ru



Galiya Balgabaeva
Junior Associate
Dispute resolution

M: +7 915 314 8121
galiya.balgabaeva@birchlegal.ru

Subscribe to our
Telegram channel



birchlegal.ru

© BIRCH LEGAL 2022. All rights reserved. BIRCH LEGAL LLC's Taxpayer Identification Number (INN) is 7703618107. The information provided in this legal alert may not be considered as professional advice or legal services and is not advice related to a specific situation. This information is intended for the general review of the users in relation to issues that may be of interest to them. BIRCH LEGAL is not liable for incomplete information.