

Methods of conducting forensic psychology analysis of moral suffering caused to group of people

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Possibility of conducting an examination of moral suffering on group lawsuits of victims was considered.

This research paper purpose is to present the algorithm of actions of forensic psychologist while analysis of moral suffering of people in group lawsuits taking into account current forensic expert practice and legislation of Ukraine.

For establishing possible infliction of moral suffering on persons who are plaintiffs in class actions, it is proposed to use such an algorithm of action of experts that will: significantly reduce forensic expert time; make forensic psychology analysis of moral suffering accessible to low-income citizens; objectify forensic conclusions that will reduce corruption risks; motivate experts to perform their official duties qualitatively and to improve their professional level. The algorithm will include: interviews with analysis subject for 1-2 hours using video; computer testing of analysis subject; analysis of case materials with minimal citation in the analysis subject; providing a general opinion without a detailed written deployment of the research part of the opinion together with a digital medium containing video recordings of the surveys and the final results of computer testing.

This way will not only solve the issues of moral damage to people who decided to defend their rights in class actions but significantly reduce the cost of relevant analyses for population, make them more accessible, but no less effective and reasonable.

Keywords: *forensic psychology analysis; compensation for moral suffering; class actions; moral damage.*

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Research Problem Formulation

The need for forensic psychology analysis of moral suffering caused to people due to environmental pollution up to environmental disasters is becoming a very important issue in modern Ukraine. The right of a citizen to a safe environment for life and health is enshrined in the Constitution of Ukraine but in legal practice of our country only in recent years compensation for moral damage from the company that pollutes environment began to demand not individual citizens but groups of victims. These are usually locals whose housing is in an industrial area. For example, near a village rich in natural resources, a fur farm was built without the consent of residents, that not only pollutes water bodies and the surrounding soil but spreads a stench that residents say forces them to hide behind closed windows in summer.

Modern legal practice in Ukraine has begun to move in the direction of protecting the rights of such people by filing class lawsuits against companies that violate the environmental rights of citizens.

According to the Instruction on Appointment and Conducting Forensic

Examinations and Researches, establishment of approximate compensation amount for moral suffering caused to any victim belongs to the competence of forensic psychologists, to solve which the following questions can be asked: *“Has the person suffered under the situation circumstances o (indicate situation conditions) under investigation? If a person has suffered, what is the possible amount of monetary compensation for suffering (moral damage)?”*¹.

At the same time, current forensic expert practice indicates that forensic psychology analysis to establish the fact of inflicting moral suffering and the approximate amount of compensation for this suffering is a very voluminous and time-consuming research that requires significant expenditure of forensic expert time.

Analysis of Essential Researches and Publications

Compensation for moral damage was considered by many foreign and domestic (S. M. Antosyk, O. M. Kokun², S. I. Shymon³, K. M. Arslanov⁴, L. S. Mulleniks⁵, V. D. Chernadchuk⁶, O. V. Hryshchuk⁷,

- 1 Інструкція про призначення та проведення судових експертиз та експертних досліджень: затв. наказом Мін'юсту України від 08.10.1998 р. № 53/5 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/z0705-98#Text> (date accessed: 11.11.2021).
- 2 Антосик С. М., Коkun О. М. Відшкодування моральної шкоди: психологічні аспекти. *Адвокат*. 1998. № 4. С. 17–21.
- 3 Шимон С. І. Відшкодування моральної (немайнової) шкоди як спосіб захисту суб'єктивних цивільних прав : дис. ... канд. юрид. наук. Київ, 1998. 199 с.
- 4 Арсланов К. М. Функции правового института возмещения морального вреда при посягательстве на честь, достоинство, деловую репутацию в сфере частной жизни гражданина по законодательству России и Германии : автореф. дис. ... канд. юрид. наук. Казань, 1999. 26 с.
- 5 Палиюк В. П. Возмещение морального (неимущественного) вреда : монография. 2-е изд., испр. и доп. Киев, 2000. 232 с.
- 6 Чернадчук В. Д. Відшкодування моральної шкоди при порушенні трудових прав : автореф. ... дис. канд. юрид. наук. Харків, 2001. 14 с.
- 7 Грищук О. В. Право людини на компенсацію моральної шкоди (загальнотеоретичні аспекти) : дис. ... канд. юрид. наук. Львів, 2002. 188 с.

L. S. Mulleniks, K. Stewart⁸, N. P. Pavlovska⁹, S. Ye. Syrotenko¹⁰, I. M. Zabara¹¹, M. S. Adamu, E. S. Kheil¹², O. M. Erdelevskiy¹³, N. O. Davydova¹⁴, Z. V. Romovska¹⁵, T. V. Lisnycha¹⁶, V. D. Prymak¹⁷, D. O. Ivanov¹⁸, O. H. Karasov, Yu. O. Kolomoiets, A. O. Vyprytskyi¹⁹, O. M. Bukhanevych²⁰ and others) whose opinions are sometimes antagonistic about whether to use the calculation of the formula and what it should be²¹.

Most authors agree that each case of moral suffering should be considered separately, taking into account the unique picture of traumatic events and individual characteristics of the victim. At the same time, Ukrainian and Russian authors also express the opinion that it is possible to determine the average coefficient (average), in particular one that can be applied not to an individual but to a certain group of victims²².

- 8 Mullenix L. S., Stewart K. The September 11th Victims' Compensation Fund: Fund Approaches to Resolving Mass Tort Litigation. *Connecticut Insurance Law Journal*. 2002. № 9 (1). P. 121–152. URL: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2206976 (date accessed: 11.11.2021).
- 9 Павловська Н. П. Теорія та практика захисту моральних благ цивільним законодавством України : дис. ... канд. юрид. наук. Харків, 2002. 198 с.
- 10 Сиротенко С. Є. Деякі теоретико-практичні питання визначення розміру відшкодування моральної (немайнової) шкоди. *Вісник Верховного Суду України*. 2002. № 6. С. 41–44.
- 11 Забара І. М. Відшкодування моральної (немайнової) шкоди в міжнародному приватному праві : дис. ... канд. юрид. наук. Київ, 2002. 195 с.
- 12 Adamou M. C., Hale A. S. PTSD and the Law of Psychiatric Injury in England and Wales: Finally Coming Closer? *The Journal of the American Academy of Psychiatry and the Law*. 2003. № 31 (3). P. 327–332.
- 13 Эрделевский А. М. Компенсация морального вреда: анализ и комментарий законодательства и судебной практики. 3-е изд., испр. и доп. Москва, 2004. 304 с.
- 14 Давидова Н. О. Цивільно-правова охорона особистих немайнових прав фізичної особи, що забезпечують її природне існування : дис. ... канд. юрид. наук. Київ, 2005. 214 с.
- 15 Ромовська З. В. Спірні питання відшкодування моральної шкоди. *Вісник Верховного Суду України*. 2005. № 5. С. 41–44.
- 16 Лісничка Т. В. Захист особистих немайнових прав, що забезпечують природне існування фізичної особи (право на життя, здоров'я, свободу та особисту недоторканність) : дис. ... канд. юрид. наук. Харків, 2007. 208 с.
- 17 Примак В. Д. Теоретичні проблеми відшкодування моральної шкоди на засадах справедливості, розумності й добросовісності у цивільному праві України : автореф. дис. ... д-ра юрид. наук. Київ, 2015. 32 с.
- 18 Иванов Д. А. Моральный вред и вред деловой репутации, причинённый преступлением: формирование единого подхода в юридической терминологии. *Вестник Московского государственного областного университета. Серия: Юриспруденция*. 2016. № 2. С. 70–80. DOI: 10.18384/2310-6794-2016-2-70-80 (date accessed: 11.11.2021).
- 19 Карасьов О. Г., Коломоєць Ю. О., Виприцький А. О. Відшкодування роботодавцем моральної шкоди: трудовий чи цивільно-правовий аспект. *Право і суспільство*. 2019. № 6 (1). С. 155–160. DOI: 10.32842/2078-3736-2019-6-1-26 (date accessed: 11.11.2021).
- 20 Буханевич О. М. Умови виникнення зобов'язань із відшкодування моральної шкоди. *Університетські наукові записки*. 2019. Т. 18. № 3 (71). С. 80–90. DOI: 10.37491/UNZ.71.7 (date accessed: 11.11.2021).
- 21 Палиюк В. П. Ор. cit. ; Эрделевский А. М. Ор. cit.
- 22 Вакулєнко О. Л., Мельник М. Т., Проскурня А. С. Методика визначення глибини моральних страждань та фінансового еквіваленту компенсації завданої шкоди індивіду та групі. Київ, 2019. 62 с. ; Эрделевский А. М. Ор. cit.

For example, O. L. Vakulenko and co-authors, supporting the possibility of establishing the moral suffering of a group of people, proposes to use questionnaire of victims and calculate average group level of moral suffering²³. In our opinion, this approach is unsuccessful due to the fact that interviewing a person on the list of consequences of traumatic exposure becomes a direct clue to the victim. Thus, according to the content of the questionnaire that O. L. Vakulenko proposes to investigate the depth of moral suffering, representatives of the affected group were asked to indicate how the traumatic situation affected everyone health (self-report), family relationships, work relationships etc. Each of the items provides a detailed list of traumatic symptoms. For example, in terms of impact on work, you need to assess your losses on the following indicators (on a 4-point scale): quarrels with colleagues, conflicts with management, reduced efficiency, reduced quality and efficiency of work. It is seen that a person who seeks to compensate financially for the moral suffering he has suffered will to some extent exaggerate his losses. When a person is examined through a guided diagnostic interview, forensic expert does not offer the person options but perceives and analyzes only what is stated, said or emphasized. If a person does not mention any influence (for example, on the sphere of his work), it means “he is not in pain there”, i.e. the destructive influence did not significantly affect that field, or the person did not feel the impact on²⁴.

The analysis of world practice allows us to assert existence of two approaches to determining the amount of compensation for moral suffering. The first approach (“general justice approach”): fixing at the legislative level of specific amounts of monetary benefits for each category of traumatic impact (or limits of such payments) solved by direct reference to the bulletin (act, document, etc.) or a special body, commission, court etc.

The second approach (“individual justice approach”): calculation, calculation, justification of the amount of compensation without reliance on any established limits, but only taking into account the whole set of factors operating in a particular case (including vision of the victim and the defendant’s ability to compensate for moral damages)²⁵. Under this approach, world practice actively uses the institution of mediation or gives the appropriate authority to a responsible person. For example, during the compensation of the families of people killed in the terrorist attack on September 11, the obligation to calculate compensation was performed by a specially created fund, which, despite the alleged single injury (death of a loved one), paid different amounts to families. Official sources indicate that the amount of benefits was set taking into account many parameters (potential earnings of the deceased, his age, education, availability of insurance policies, etc.). The largest compensation was \$ 7.1 million, although the average was \$ 2,082,128²⁶.

23 Вакуленко О. Л., Мельник М. Т., Проскурня А. С. *Op. cit.*

24 *Ibid.*

25 Вакуленко О. Л., Мельник М. Т., Проскурня А. С. Знач. твір ; Колесниченко О. В. Сравнительная характеристика систем возмещения вреда, причиненного здоровью, в зарубежных странах (на примере Италии, Германии, Великобритании). *Финансовое право и управление*. 2018. № 4. С. 37–43. DOI: 10.7256/2454-0765.2018.4.29999 (date accessed: 11.11.2021) ; Палиюк В. П. *Op. cit.* ; Эрделевский А. М. *Op. cit.*

26 Mullenix L. S., Stewart K. *Op. cit.* ; September 11th Victim Compensation Fund. URL: <https://www.vcf.gov> (date accessed: 11.11.2021) ; Understanding the September 11th Victim Compensation Fund. URL: <https://www.napolilaw.com/article/understanding-the-september-11th-victim-compensation-fund> (date accessed: 11.11.2021).

We share the general idea of the possibility and importance of examining the moral suffering of a group of people, but we emphasize that each victim should be treated individually. In our opinion, it is impossible to calculate the average group indicators, because even members of the same group experience traumatic effects differently, have different personal achievements and are at different distances from the traumatic event epicenter.

Article Purpose

This research paper purpose is to present the algorithm of actions of an expert psychologist during the examination of moral suffering of people on group lawsuits taking into account current forensic practice and legislation of Ukraine.

Main Content Presentation

The procedure of conducting a forensic psychology analysis to determine possible cause of moral damage existing in current forensic practice necessitates victim interviewing that usually lasts from 1 to 3 hours. During the diagnostic interview, the expert psychologist analyzes not so much what the person says about the traumatic circumstances, but first of all how he does it: what pantomime reactions accompany the story, how detailed it is, what emotions arise during speech activity, what traumatic circumstances have affected the sphere of life, how a person justifies the amount of compensation claimed by him, etc.²⁷

At the second stage (to establish personal qualities that could affect her perception of traumatic events: sensitivity, vulnerability, optimism, resilience, etc.) a person is tested.

At the last stage, forensic expert processes the results: transcribes interviews, calculates test results, compares results with normative indicators and qualitative criteria, notes the results to the analytical part of the conclusion, where he presents all the results of the survey and emphasizes the most important traumatic factors. That is, the practice of conducting an examination to establish moral suffering shows that the greatest expenditure of expert time falls on the written work of the expert and the direct formation of the conclusion as a written document.

The volume of the expert opinion is usually 20-45 thousand characters, which today is equal to 80-90 hours of expert time. It seems that the establishment of moral suffering of people on group lawsuits cannot be realized by such a voluminous procedure due to the excessive time spent on the research on one person. Such examination of a group of persons with the preservation of the entire research procedure requires years of work of experts.

At the same time, the number of forensic psychologists in each expert institution usually does not exceed four and most often it is 1-2 professionals.

Complex procedure of forensic psychology analysis is research on moral suffering has led to its high cost and

27 Методика психологічного дослідження у справах щодо заподіяння моральних страждань особі та відшкодування моральної шкоди (реєстр. код. 14.1.75). Харків : ХНДІСЕ Мін'юсту України, 2017 / Реєстр методик проведення судових експертиз Міністерства юстиції України, 2019. URL: <https://rmpse.minjust.gov.ua/page/25> (date accessed: 11.11.2021) ; Журавльова М. О. Обґрунтованість використання презюмованої моральної шкоди експертами-психологами. *Слово національної школи суддів України* : фах. загальнодерж. наук.-практ. та наук.-метод. вид. 2020. № 3 (32). С. 170—177. DOI: 10.37566/2707-6849-2020-3(32)-15 (date accessed: 11.11.2021).

inaccessibility for the poor. There was an unacceptable situation for a democratic state, when it became the prerogative of wealthy citizens to protect their violated rights by obtaining an forensic expert conclusion.

Research of forensic psychologists of Odessa Scientific Research Institute of Judicial Expertise of the Ministry of Justice of Ukraine to solve the issue that concerns not only possibility of providing quality forensic psychology analysis of class actions, but general issues of rational spending of expert time, allowed to find obvious and simple solutions: apply modern technologies of video recording of interviews, computer testing and data processing.

For establishing the fact of possible infliction of moral suffering on persons who are plaintiffs in class actions, we suggest that experts use the following algorithm:

1. Interview with a subject under examination for 1-2 hours (exaggeration of time is possible only in difficult cases) that should be recorded by video.
2. Computer testing of analysis subject.
3. Analysis of case files with minimal citations in forensic expert conclusion.
4. Analysis of all obtained data without the corresponding detailed written recording.
4. Fixing in forensic expert conclusion only final result.
5. Adding optical disks (or other digital media) with a recording of interviews and diagnostic data to forensic expert conclusion.

As a result of such algorithm application, forensic expert will be able to quickly process the results, and the court (if necessary); read all the diagnostic data obtained during the examination (meaning the content of media attached to the forensic expert conclusion).

Preliminary calculations indicates that such an algorithm will allow to spend on average 3-4 hours of forensic expert time per 1 sub-expert (i.e. a research on 100 people will require an average of 45 forensic expert working). At the same time, formation of an expert commission of at least 3 forensic experts will allow to prepare a relevant conclusion in less than 1 month. Such terms of examination within the group lawsuits according to the proposed algorithm are quite real.

The use of video recording is also by objectifying forensic expert conclusion. In the work of psychologists (consultants, therapists, etc.) in most developed countries it is mandatory to record the procedure of research or therapy with an audio recording stored in professional archives. If you have any questions about the work of a psychologist, audio recordings may be investigated by a court or control body. There is no licensing of psychologists in Ukraine, so psychologist consultations are not recorded in any way. There are no such requirements for the work of forensic psychologists.

However, use of audio or video recording has extremely positive consequences for the development of forensic psychology analysis (in particular, minimizes corruption risks and motivates the expert to perform their duties and improve their professional skills).

Analyzing the practice of conducting examinations to establish the fact of possible infliction of moral suffering on a person, forensic psychologists of Odessa Scientific Research Institute of Judicial Expertise insist that without the study of each individual victim it is impossible to reach objective conclusions, and most expert hours are written.

At the same time, nowadays, a significant amount of written information is not a good way to provide forensic expert

conclusion, when it is possible to use electronic resources to store data. Use of research video recording will not only significantly reduce the cost of forensic expert time and money of citizens, but bring forensic activity closer to meeting modern demands.

It should be noted that in the modern practice of forensic psychology analysis there are many cases when experts formulate their conclusions very concisely, as a result of which forensic expert opinion (as a document) actually contains general conclusions and has no detailed research part. Acquaintance with such a conclusion does not make it possible to understand exactly how forensic expert came to the conclusions, how his expert conclusion developed. We believe that such work without appropriate video or audio recordings cannot be considered as an authentic source of psychological information, but as forensic expert conclusion.

Conclusions

Modern practice of forensic psychology analysis requires changes, namely involvement of modern technologies in the process of its implementation. This way will help not only to promptly resolve issues related to moral harm to people who have decided to defend their rights in class actions, but also significantly reduce the cost of relevant examinations for population, make them more accessible, but no less effective and reasonable.

Methods of research of moral sufferings caused to a group of people according to the following algorithm of actions of forensic psychologists is offered: interview with analysis subject within 1-2 hours with use of video recording; computer testing of the subject; analysis of case files with minimal

citation in the expert's opinion; providing a general conclusion without a detailed written deployment of its research part together with a digital medium containing video recordings of the surveys and final computer test results.

Методика проведення психологічної експертизи моральних страждань, завданих групі осіб

Маргарита Журавльова

Розглянуто можливість проведення експертизи моральних страждань за груповими позовами постраждалих осіб.

Мета цієї праці — презентувати алгоритм дій експерта-психолога під час проведення експертизи моральних страждань людей за груповими позовами з урахуванням актуальної експертної практики й законодавства України.

Для встановлення можливого заподіяння моральних страждань особам, які є позивачами у групових позовах, пропонується використовувати такий алгоритм дій експертів, який дасть змогу: значно скоротити експертний час; зробити психологічну експертизу моральних страждань доступною для малозабезпечених громадян; об'єктивувати висновки експертів, що зменшить корупційні ризики; мотивувати експертів на якісне виконання ними посадових обов'язків і підвищення їх професійного рівня.

Алгоритм міститиме: інтерв'ю з підекспертною особою протягом 1—2 год із використанням відеозапису; комп'ютерне тестування підекспертної особи; аналіз матеріалів справи з мінімальним їх цитуванням у висновку експерта; надання загального висновку без докладного письмового розгортання дослідницької частини висновку разом із цифровим носієм, що міститиме відеозаписи обстежень і кінцеві результати комп'ютерного тестування.

Такий шлях не лише допоможе розв'язати питання, пов'язані із завданням моральної шкоди людям, які вирішили обстоювати свої права в групових позовах, а й значно зменшить вартість проведення відповідних експертиз для населення, зробить їх більш доступними, але не менш ефективними й обгрунтованими.

Ключові слова: судова психологічна експертиза; компенсація моральних страждань; групові позови; моральна шкода.

**Методика проведения психологической экспертизы моральных страданий, причинённых группе лиц
Маргарита Журавлёва**

Рассмотрена возможность проведения экспертизы моральных страданий по групповым искам пострадавших лиц.

Цель этой работы — представить алгоритм действий эксперта-психолога при проведении экспертизы моральных страданий людей по групповым искам с учётом актуальной экспертной практики и законодательства Украины.

Для установления возможного причинения моральных страданий лицам, являющимся истцами в групповых исках, предложено использовать такой алгоритм действий экспертов, который позволит: значительно сократить экспертное время; сделать психологическую экспертизу моральных страданий доступной для малообеспеченных граждан; объективизировать выводы экспертов, что снизит коррупционные риски; мотивировать экспертов качественно выполнять свои должностные обязанности и повышать свой профессиональный уровень.

Алгоритм будет включать: интервью с подэкспертным лицом в течение 1–2 ч

с использованием видеозаписи; компьютерное тестирование подэкспертного лица; анализ материалов дела с минимальным их цитированием в заключении эксперта; предоставление общего заключения без детального письменного развёртывания исследовательской части заключения вместе с цифровым носителем, содержащим видеозаписи обследований и окончательные результаты компьютерного тестирования.

Такой путь не только позволит решить вопросы, связанные с причинением морального ущерба людям, решившим отстаивать свои права в групповых исках, но и значительно снизит стоимость проведения соответствующих экспертиз для населения, сделает их более доступными, но не менее эффективными и обоснованными.

Ключевые слова: судебная психологическая экспертиза; компенсация моральных страданий; групповые иски; моральный ущерб.

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The author declares that she has no conflict of interest.

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