

Evaluation of moral damage caused by state authorities and their officials in connection with illegal loss of personality in Russia: A comparative legal analysis

Evaluación del daño moral causado por las autoridades estatales y sus oficiales en relación con la pérdida ilegal de personalidad en Rusia: un análisis legal comparativo

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Abstract

It is emphasized that the practice of illegal arrests, detentions and others is widespread in Russia. It analyzes the decisions of the European Court of Human Rights (ECHR) on complaints against Russia. The international legislation on the right to personal freedom and compensation for harm caused by unlawful actions of the state is examined. Compensation criteria are revealed in assessing moral damage in the practice of the ECHR and errors in decisions of the Russian courts.

key words: personal freedom, harm, court, compensation.

Resumen

En este artículo enfatiza que la práctica de arrestos ilegales, detenciones, detención en sitios de reclusión y otros está muy extendida en Rusia. Analiza las decisiones del Tribunal Europeo de Derechos Humanos (TEDH) sobre las denuncias contra Rusia. Se examina la legislación internacional sobre el derecho a la libertad personal y la indemnización por daños causados por acciones ilegales del Estado. Los criterios de compensación se revelan al evaluar el daño moral en la práctica del TEDH y los errores en las decisiones de los tribunales rusos.

Palabras clave: libertad personal, daño, corte, compensación.

1. Introduction

Currently, the person is an object of increased attention from the state, fixing the provision that the person, his rights and freedoms are the highest value. Ensuring the rights and freedoms of the individual is the duty of the state, whose activities should be aimed at creating conditions for the realization of the rights of citizens and establishing responsibility for possible violations of these rights. One of the most effective means of securing obligations imposed on the state is law.

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Over the past century, a number of international and interstate organizations have been created (UN, Council of Europe and others) through which a whole range of international legal acts have been prepared and adopted, establishing the inviolability of human rights and freedoms, as well as regulating the mechanisms for their implementation. Any democratic state undertakes to comply with the requirements of international legal standards by creating guarantees in its domestic (national) legal systems for the realization of human rights and freedoms.

At the same time, with the help of legal norms, the state also creates bodies, on whose officials it imposes certain duties of control, supervision, execution, implementation, etc. human rights. The state provides law enforcement and other bodies and their officials with the means to limit or deprive human rights.

The analysis of the situation in the Russian Federation related to the provision and realization of the rights and freedoms of the individual revealed the abuses on the part of the state, its bodies and officials aimed at unlawfully restricting and depriving a person of his freedom. The practice of unlawful use by government officials of various measures of deprivation of liberty of the person has gained popularity: arrests, detentions, detention, detention in prison and others.

Moreover, there has been a negative practice of evading the state, its bodies and officials from fulfilling their duties to ensure personal freedom and to restore the individual's right to freedom violated by them. A study of appeals, cassation and other court decisions indicates the unwillingness of the Russian courts to take responsibility for compensation for moral damage caused by illegal actions of the same courts, sanctioning the decisions of investigators, interrogators and prosecutors on the application of measures aimed at depriving or restricting human freedom.

Decisions made by Russian courts on compensation for non-pecuniary damage to persons illegally deprived of their liberty do not fully take into account the law enforcement practice of the European Court of Human Rights (ECHR); they do not correctly interpret the criteria for assessing moral damage caused by victims, which leads to a significant underestimation of compensation (monetary) amounts paid to plaintiffs.

The subject of consideration of the ECHR were dozens of complaints filed against the Russian Federation as a state, its authorized bodies and officials, regarding the recognition in their actions of violations of international legal acts, violations of the provisions guaranteed by them on personal freedom, and an increase in the amount of compensation for moral damage .

The consideration of these problematic issues, the analysis of existing international and domestic law enforcement practices, as well as the development of recommendations for improving the legal system of Russia and its judicial practice were the subject of this study.

Ensuring the protection of individual liberty and creating a safe environment for the realization of this right is a priority for the state, and the restoration of violated rights, compensation for material and moral harm, if they are unlawfully infringed, have become particularly relevant.

2. Methodology

The methodological basis of the study is based on the dialectical method of cognition of public relations. In the course of the study, scientific, integrated and organizational-functional approaches to the study of the right to individual freedom were used. The authors also applied legal, sociological and other methods of scientific knowledge: logical and historical, comparative legal and statistical, system analysis and modeling, as well as expert assessment methods.

These methods made it possible to systematically study the international legal framework for securing the right to personal freedom, analyze the domestic laws of Russia establishing the right to personal freedom, and also consider guarantees for the implementation of this right in these legal systems.

The authors relied on the achievements of the following sciences: history, philosophy, sociology, international law, criminal procedure, criminal law and others. In the scientific comprehension of the material obtained and the content of the study, the fundamental scientific research work of scientists in this field was used.

The conclusions and proposals made are based on the provisions of international and domestic legislation of Russia, the law enforcement practice of the ECHR, the federal courts of the Russian Federation, as well as the writings of scientists, taking into account existing trends and prospects for the development of modern science.

Some conclusions (on the compliance of Russian domestic legislation with the requirements of international legal acts; on the criteria necessary for assessing moral damage caused by unlawful deprivation of liberty; on trends in determining the amount of compensation payments imposed by Russian courts, etc.) were based on decisions of the ECHR.

The findings of the study are based on an analysis of 350 court decisions made by courts at various levels of the Russian Federation, as well as an analysis of more than 50 decisions made by the ECHR, both in relation to Russian citizens and to citizens of other countries.

3. Discussions

3.1 International legal framework for the protection of personal freedom and the guarantee of compensation for harm in cases of unlawful violation

The recognition of personal freedom as one of the highest values and the guarantee of its implementation, necessitated the normative consolidation of freedom as an inalienable right that belongs to every person from birth. The guideline of the organization of national legislations of countries is international legal acts ratified by most states and securing the right to freedom of the individual, as well as establishing the grounds for its restriction or deprivation.

One of the fundamental international legal documents is the Universal Declaration of Human Rights (UDHR) (1948), proclaiming the inalienability of the right to freedom (Art. 3), freedom of movement and choice of residence (Art. 13), free choice of work and work (Art. 23). By guaranteeing the right to personal freedom, the UDHR prohibits government bodies and their officials from making arbitrary detentions or arrests (Art. 9)¹.

The universality of the provisions of the UDHR is manifested not only in fixing the fundamental principles of personal freedom and establishing models of criminal violations of this right, but also in assigning obligations to the state and its officials to comply with the norms contained in it (Art. 29)².

Thus, the UDHR presents the statement of a “common understanding” of human rights and a “common standard of achievement for all peoples and all nations”, helping to structure a common approach to understanding human rights for all states, peoples and nations. In addition, UDHR has been and remains an unprecedented educational and cultural force that enables people to become familiar with the idea of human rights (Brown, 2016).

The International Covenant on Civil and Political Rights (ICCPR) (1966) also proclaims personal freedom (Art. 9), freedom of movement and choice of residence (Art. 12). ICCPR rules prohibit arbitrary arrest or detention (Art. 9), obliging the state, its bodies and officials to ensure personal freedom³.

The ICCPR guarantees the possibility of lawful deprivation of liberty, on the grounds and in accordance with the procedure established by law, requiring law enforcement officials to deliver each person arrested or detained to a judge for a trial within a reasonable time or release (Pitcher, 2018).

The ICCPR standards analyzed determine that the detention of persons awaiting trial should not be a general rule, providing for the possibility of selecting other preventive measures against suspects that are not related to deprivation of liberty or isolation from society (Ferguson, 2016).

Article 9 of the ICCPR under review guarantees everyone who is the victim of unlawful arrest or detention the right to compensation. Other norms of the ICCPR under study establish the right to humane treatment and respect for the inherent dignity of the human person (Art. 10), the right to be presumed innocent until proved guilty according to law (Art. 14)⁴ and others.

Emphasizing the commitment to guaranteeing individual freedom and counteracting its illegal and unjustified restrictions and deprivations, in 1950 the Council of Europe adopted the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which guaranteed the right of everyone to freedom, stating that no one can be deprived of liberty except in the following cases and in the manner prescribed by law (Art. 5). In addition, the ECHR has provided grounds under which a person may be lawfully detained or detained⁵.

The provisions of the ECHR secured the right of everyone to a court immediately review the lawfulness of his detention, guaranteeing each person the right to release, as well as the right to compensation in case of illegal actions by the state, its law enforcement bodies or officials (Art. 5)⁶.

The provisions of Art. 5 of the ECHR are among the most used in the practice of the ECHR, which examines complaints about the lawfulness of detention, arrest or detention. The provisions of this article establish the fundamental foundations of domestic laws that provide for the procedures and mechanism for the deprivation of liberty (Xenos, 2018).

Taking into account the evolution of society, the development of social and scientific and technological progress, as well as based on common values for the international community, the states of Western Europe considered it necessary to strengthen the protection of human rights and freedoms and adopted the European Union Charter of Fundamental Rights (CFR) (2007). Putting the person at the center of international activity, the CFR proclaimed freedom of the person (Art. 6), freedom of movement and residence (Art. 44)⁷, based on universal and inseparable values and confirming the continuity of the principles laid down by the international community (Postovalova, 2017).

Since the CFR establishes that the rights established to it must have the same meaning and limits as provided for in the 1950 ECHR,⁸ it is logical to assume that the semantic meaning of the right to freedom (Art. 6) is similar to the previously considered law enshrined in the ECHR (Art. 5).

Thus, the above normative legal acts establish and guarantee the fundamental values of the international community, including freedom of the individual. A feature of its implementation is the assignment of obligations to states, their bodies and officials to ensure legal grounds for his (right to freedom) restrictions or deprivations (O'Conneide, 2008).

The right to personal freedom should not be made dependent on the forms and methods of activity of public authorities and their officials. The abduction, unlawful detention, arrest and imprisonment in several countries prompted the international community (UN General Assembly) to adopt the Declaration on the Protection of All Persons from Enforced Disappearance (DPPED) (1992).

The provisions of the DPPED are aimed at states and their officials as subjects of law enforcement, prohibiting the practice and suppression of enforced disappearances of people (Art. 1). Reaffirming personal freedom as an inalienable human right, the DPPED rules indicate that no order or order of a state, civil, military or other authority can justify an enforced disappearance (Art. 6)⁹. Paying attention to the priority of democratic values in any state, DPPED obliges the member states that have ratified it to assist in the prevention and elimination of enforced disappearances. In addition, DPPED imposes a duty on participating States to ensure strict control over the procedures: detention, arrest, imprisonment, detention, transfer to other places and imprisonment (Art. 12) (Cardenas & Mauricio, 2017).

The content of DPPED testifies to the intention of the world community to eradicate possible facts of restriction or infringement of individual freedom by states, recommending the creation of an effective mechanism for monitoring arrests, arrests, deprivations of liberty, etc., proposing as such (a mechanism) the procedural activity of the judicial authorities (Milic, 2010).

Developing the provisions of DPPED, the UN adopts the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) (2006), the rules of which detail a number of fundamental principles. So, for example, ICPPED imposes an obligation on the states: to carry out appropriate procedures (investigation, judicial review, etc.) when applying deprivation of liberty measures (Art. 11); ensuring the prosecution of perpetrators (Art. 6); the establishment in national laws of criminal liability for such facts (Art. 4); organization of legal assistance and interaction with other states in this area (Art. 13) and others¹⁰.

In addition, ICPPED prohibits the expulsion, transfer or extradition of a person to another state, if he is in danger (Art. 16), secretly holding persons in custody (Art. 17), guaranteeing everyone to be held exclusively in officially recognized and controlled places of detention in accordance with established procedures, legally and providing the necessary legal assistance (Volokitina, 2018).

Of course, we examined only the main international legal acts in this area, since the issues of restriction and imprisonment of an individual, to one degree or another, are other legal acts of both the international level and the national legislations of specific countries. Each of the documents examined by us proclaims the priority of the right to individual freedom, prohibiting illegal detention, arrest and imprisonment.

3.2 Domestic (national) legislation of the Russian Federation in the field of protection of personal freedom and guarantee of compensation for harm in cases of unlawful violation

The Russian Federation ratified most of the above international legal acts, emphasizing the development of national legislation on the priority of human rights and freedoms, including the realization of the right to individual freedom. Without dwelling on the analysis of the results of the realization of the right to personal freedom in the country, as well as not addressing the issues of the legality of restrictions or deprivations of personal freedom in Russia, we pay attention to the normative consolidation of personal freedom as a right and the guarantees of its guarantee in the national legislation of Russia.

The fundamental legal act is the Constitution of the Russian Federation, the norms of which recognize and guarantee universally recognized principles and norms of international law (Art. 17)¹¹.

So, for example, the Constitution of the Russian Federation proclaims the right of everyone to freedom (Art. 22), and as the Constitutional Court of the Russian Federation rightly determined in this Decision, this right implies the possibility of not being subject to restrictions that are associated with the use of coercive measures such as detention, arrest, imprisonment custody or imprisonment in all other forms without legal grounds, court sanction, or beyond established or controlled time limits¹².

The norms enshrined in the Constitution of the Russian Federation oblige the state to protect personal freedom (Art. 21), establishing the procedure for arrest, detention and detention allowing them to be possible only by judicial decision (Art. 22), obliging the regulatory authorities and their officials to immediately release any illegally detained, or deprived of liberty, or detained in custody beyond the period established by law¹³. The norms of the Constitution of the Russian Federation declare the protection of the rights of victims of crime and abuse of power, as well as establish the right of everyone to compensation by the state for harm caused by illegal actions (or inaction) of state authorities or their officials (Art. 52, 53) (Shiryaeva, 2014).

Also, the Constitution of the Russian Federation guarantees everyone the right to move freely, to choose their place of residence and residence, as well as the right to freely travel outside the country and return to it (Art. 27). Freedom of movement, stay and place of residence is an essential element of individual freedom, an important condition for its free development, established both by international law and the Constitution of the Russian Federation. This right, like other fundamental human rights and freedoms, is inalienable and belongs to everyone from birth (Vasilenko, 2007).

At the same time, the Constitution of the Russian Federation allows restriction or deprivation of the right to personal freedom only in cases stipulated by law. One of the national legal acts allowing for the restriction and deprivation of liberty of an individual is the Law of the Russian Federation "On Psychiatric Care and Guarantees of the Rights of Citizens when Provided" (1992). The norms of the analyzed Law are recognized for persons suffering from mental disorders of the rights and freedoms of citizens (Art. 5), providing that if they are recognized as incapable, they may be subjected to forced isolation from society in psychiatric hospitals (Art. 29)¹⁴.

Forced isolation of these persons in psychiatric hospitals is possible on the grounds of their danger to themselves or society, helplessness, the possibility of deteriorating health conditions, the need for a psychiatric examination, and involves restricting the rights to freedom of movement and freedom of person guaranteed by the Constitution of the Russian Federation and international regulatory legal acts, as was emphasized by the Constitutional Court of the Russian Federation¹⁵. Therefore, the analyzed Law provides for a procedure for voluntary hospitalization - at the request of a person (Art. 28), and involuntary hospitalization - at the request of legal representatives of minors (Article 28) and at the request of representatives of a psychiatric institution (Art. 33) (Rynkov, 2014) .

The complexity of assessing the psychiatric state of such persons and the inability to fully protect their rights and freedoms requires obtaining judicial permission to carry out involuntary hospitalization, which is why the provisions of part 4 of art. 28 and part 1 of art. 41 of the Law of the Russian Federation "On psychiatric care and guarantees of the rights of citizens in its provision", providing for the possibility of involuntary hospitalization without a court decision, are recognized as not complying with the Constitution of the Russian Federation and international law¹⁶.

Thus, the Law of the Russian Federation "On Psychiatric Care and Guarantees of the Rights of Citizens when Providing" It provides for the possibility of restricting personal freedom, establishes the grounds and mechanism for such restriction, prohibiting the execution of forced hospitalization without a court decision.

The most extensive list of measures to limit personal freedom by limiting the freedom of movement, communication, certain actions, etc., up to the complete isolation of the individual from society, is provided for by the Code of Criminal Procedure of the Russian Federation, the provisions of which establish the possibility of detention of a suspect (Art. 91), election of preventive measures: recognizance not to leave, house arrest, detention, etc. (chap. 13, 54), as well as other measures of procedural coercion: obligation to appear, time Foot dismissal, etc. (Pomorski, 2006). The legislator regulates in detail the grounds, conditions and procedure for

restricting individual freedom, securing the possibility of coercion only in cases where public interests cannot be achieved by other means.

We also focus on Chapter 18 of the Code of Criminal Procedure of the Russian Federation, which provides for the right to rehabilitation for persons who are unlawfully prosecuted, containing the grounds and procedure for the functioning of the rehabilitation mechanism. In addition, the Code of Criminal Procedure of the Russian Federation establishes the right to compensation for harm to any person who has been unlawfully subjected to procedural coercive measures in a criminal case (Art. 133) (Golovko & Dytchenko, 2018).

The norms of the legal act under review (the Code of Criminal Procedure of the Russian Federation) provide for the possibility of reimbursing rehabilitated property and moral damage, which is determined in accordance with and in the sequence of provisions of civil proceedings - the Civil Code of the Russian Federation.

The norms of the Code of Criminal Procedure of the Russian Federation that we have analyzed indicate the possibility of compensation for damage caused by unlawful actions of the state, its bodies or their officials only in relation to persons recognized by the state in need of rehabilitation.

The Civil Code of the Russian Federation fixes the belonging of individual freedom from birth, points to the inalienability and inexpressibility of this right by any means (Art. 150), and also secures the possibility of compensation for moral harm. Also, the norms of the Civil Code of the Russian Federation establish that if a citizen has suffered non-pecuniary damage (physical or mental suffering) by actions that violate his personal rights or infringe on intangible goods belonging to the citizen, the court may impose on the offender the obligation of monetary compensation for the specified harm (Art. 151) (Grigoryan , 2016).

In determining the amount of compensation for non-pecuniary damage, the court takes into account the degree of guilt of the offender and other noteworthy circumstances, takes into account the degree of physical and moral suffering associated with the individual characteristics of the citizen who has been harmed (Art. 151)¹⁷.

Assuming the possibility of unlawful actions on the part of the state or its bodies, the Civil Code provides for liability for damage caused by state bodies, local authorities, their officials, as well as for damage caused by illegal actions of bodies of inquiry, preliminary investigation, prosecutor's office and court (Art. 1069, 1070) (Petukhova, 2013).

Thus, the norms of the national legislation of the Russian Federation contain a set of legal provisions that form a mechanism for compensation for harm caused by unlawful actions of state bodies and their officials in connection with unlawful deprivation of liberty of an individual.

3.3 Analysis of the international and domestic (national) law enforcement practice of Russia on compensation for harm by illegal actions of state bodies and their officials, in connection with the illegal deprivation of liberty of an individual

The international legal acts and norms of the national legislation of the Russian Federation that we analyzed laid the foundations for the formation of the practice of assessing and compensating for harm caused by unlawful actions of the state, by authorized bodies and their officials.

Analysis of the state of the problem of compensation for harm on the facts of illegal actions of the state, authorized bodies and their officials, in connection with the illegal deprivation of liberty, allows us to draw our attention to the following points: a) criteria for compensation for harm; b) the amount of damages; c) the grounds and subjects of damages; d) violations in resolving claims.

Our analysis of criminal cases in which individuals were unlawfully prosecuted and subjected to unlawful deprivation of liberty indicates that only a third of them (33%) in the course of the preliminary investigation were filed claims for damages. Most of the criminal cases in this category do not contain claims, although the victims were subjected to physical and mental suffering. Similar data are provided by other researchers in related fields of research (Polyakov & Kondakova, 2019).

Despite a sufficient number of normative legal acts regulating the procedure for compensation for damage, the prevailing judicial practice of compensation for harm and international case-law in this area, we note that the criteria underlying the adoption of court decisions in Russia remain subjective and depend on: a) the gravity of the crimes; b) the degree of guilt of the offender; c) the period of unlawful deprivation of liberty; d) the social and material status of victims and criminals; e) other factors (Ivanov, 2015).

The subjectivity and uncertainty of the criteria for determining the amount of non-pecuniary damage, as well as the alleged possibility of appealing court decisions by victims or their representatives, can be traced to a third of the court sentences we studied, in which the courts of the Russian Federation left the claims without consideration. As a rule, in such cases, the courts referred to the possibility of challenging their decisions, since the determination of the amount of the claim required the need for additional settlements¹⁸. Moreover, biased resolution of the statement of claim considered together with the materials of the criminal case entails the annulment of the sentence in the part of the civil lawsuit, with the direction of the materials of the case for re-examination in civil proceedings¹⁹.

The possibility of canceling or reviewing court decisions regarding satisfaction of claims, as well as the vagueness and subjectivity of the criteria for determining the amount of harm, entails the evasion of Russian government bodies and their officials from making informed decisions, and rejection of consideration of claims on far-fetched grounds.

The judicial practice of the consideration of claims in criminal cases, which we studied, where individuals were unlawfully prosecuted and subjected to unlawful deprivation of liberty, indicates that the required (claimed) amounts of compensation for non-pecuniary damage amount to an average of 22000-30000 Euro for the entire period of the victim's detention in custody or in places of deprivation of liberty, and the amount of payments appointed by the courts in Russia is much lower. In the vast majority of court sentences considering claims for compensation for non-pecuniary damage, the amounts claimed were recognized as excessive and, if satisfied, partially. At the same time, the courts took into account the material and social situation of the victims, compensating, for example, to persons without a fixed place of residence (homeless) moral damage in the amount of 735 Euro²⁰.

Of certain interest is the Letter of the Ministry of Finance of the Russian Federation dated September 28, 2009 No. 08-06-08 / 457 "On the Practice of Recovery by the Courts of Non-pecuniary Damage Caused by Unlawful Criminalization", which provides an analysis of the amount of compensation collected by judicial acts for the entire period of illegal deprivation of liberty (without taking into account the terms of imprisonment). According to the document under consideration, in 67% of the total number of judicial acts for the recovery of moral compensation, the amount did not exceed 2200 Euros, in 21% - did not exceed 4500 Euros and only 11% of the amount exceeded 4500 Euros (for the entire period of unlawful deprivation of liberty)²¹. Despite a certain prescription, the information contained in the Letter under study remains relevant at the present time, since the ongoing processes of increasing unemployment in Russia, lower incomes of the population and the economic crisis did not allow increasing the amount of payments.

An analysis of the law enforcement practice of the ECHR indicates that the amount of compensation awarded to the Russian Federation for compensation to victims of unlawful deprivation of liberty increases significantly

compared to decisions of Russian courts and ranges from 2700 Euros to 9000 Euros for each month of unlawful deprivation of liberty.

Regardless of the number of days or months for which a person was deprived of their liberty during which the victim was exploited, regardless of the number of perpetrators (the amount of damage from which, as a rule, was collected in favor of the victim jointly and severally), the courts of the Russian Federation indicated the same wording in sentences substantiation of their decisions: taking into account the "nature of the moral suffering of the victims", "the degree of guilt of the defendants", "reasonableness and justice", etc.²².

So, for example, victim V., by virtue of an incompetent decision of a district court of the Russian Federation, was illegally detained for 472 days, since the court did not take into account the period of V.'s detention in places of detention (the time when the preliminary investigation was conducted crime). Turning to the Blagoveshchensk City Court of the Amur Region, the victim received monetary compensation in the amount of 3320 Euros in respect of non-pecuniary damage (for 472 days of illegal stay in places of deprivation of liberty). Remaining unsatisfied with the amount of compensation, V. filed a complaint with the Amur Regional Court, which upheld the decision of the lower court, indicating that the city court "took into account the case-law of the European Court of Human Rights, but correctly determined the amount of compensation for moral damage, taking into account the requirements of the legislation of the Russian Federation".

The ECHR, having examined V.'s complaint about a violation of his right to compensation for unlawful deprivation of liberty in connection with a small amount of compensation, pointed out violations by the Russian Federation of clause 5 of art. 5 of the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms, requiring Russia to pay B 5,000 Euro²³.

Despite the difference in the procedural forms of deprivation of liberty (detention, arrest, unlawful deprivation of liberty), the practice of the ECHR recommends assessing damage not on formal, but on essential grounds, such as: a) forced stay in a limited space; b) the time of isolation of a person from society, family; c) duration of termination of service; d) the impossibility of free movement; e) the inability to communicate with an unlimited number of people, etc.²⁴.

Thus, the criteria and amounts of compensation for non-pecuniary damage in criminal cases, where persons were illegally prosecuted and subjected to unlawful deprivation of liberty in the Russian Federation are very arbitrary. They do not take into account the number of persons who committed the crime, the time for which the victim was imprisoned or exploited, physical and mental suffering and other signs.

The analysis of the judicial practice of the Russian Federation on the facts of the commission of crimes by which persons were abducted, subjected to labor or sexual exploitation, sold to other persons, etc. indicates that according to these criminal events the basis for damages was the established fact of the crime, which was reflected in the decision to institute criminal proceedings. It is the fact of the commission of the crime, and not the subjective decisions of the officials on recognizing or not recognizing the victim, identifying or not identifying the suspect or accused of committing a crime and not the person's condition (sanity or insanity), should be the basis for the right to compensation for harm (Lukyanenkova, 2015).

Based on the principles of the priority of the person, his rights and freedoms, the subject of compensation for the harm caused should be, first of all, the state guaranteeing the inviolability of the person, the inviolability of his rights and freedoms, and then the person who committed the crime (kidnapping, selling him, etc.). The duty of the state to compensate for damage caused by criminal offenses finds its practical implementation in the activities of a number of foreign states and requires its normative and organizational development in Russia (Kuznetsova, 2015).

A separate aspect of the problem under study is the specifics of compensation for harm during unlawful detention, detention or detention, as well as unlawful conviction, which became possible due to incompetent and illegal actions of state bodies or their officials (investigators, judges, prosecutors, etc.). When committing these illegal actions, compensation for non-pecuniary damage should be carried out regardless of the fault of the state body or its official who issued the illegal decision (Shakunova, 2014).

Paradoxical for Russia is the situation in which, in the process of bringing a person to criminal liability and illegal deprivation of his freedom, the preventive measure in the form of detention was canceled and the proceedings were terminated. Subsequently, the court rejected the applicant for claims of the victim for non-pecuniary damage, motivating his decision by not presenting to him (the plaintiff) evidence of recognition by the court, prosecutor, investigator or investigator (plaintiff, victim) of his right to rehabilitation²⁵. Thus, not only has the state (in the person of law enforcement agencies) illegally deprived a person of freedom, it also (in the face of the court) also refuses compensation for moral damage, offering him (the state) to obtain the right to rehabilitation, which the person did not have provided through the fault of law enforcement agencies (the employee who conducted the proceedings).

Thus, the basis for the right to compensation for harm caused as a result of an unlawful act must be the fact of unlawful deprivation of liberty, unlawful prosecution, unlawful arrest, detention, etc. The subject of compensation for this harm should primarily be the state, which guarantees the priority of the rights and freedoms of the individual and ensures the right to freedom of the individual.

In addition, the ECHR, in its decisions, has repeatedly pointed out doubts that the provisions of the domestic law of Russia guarantee the right of a person in custody to initiate proceedings, during which the court could verify the lawfulness of his detention^{26,27}.

In a number of its decisions, the ECtHR also recognized that the provisions of the legislation of the Russian Federation on detention pending extradition are not accurate or predictable in application and do not comply with the requirements of international law on the "quality of the law"²⁸.

For example, in the course of unlawful actions by law enforcement bodies of the Russian Federation, a citizen N., who was wanted, was arrested and detained by the law enforcement agencies of Uzbekistan and N., while in custody, was awaiting extradition to Uzbekistan. About a month later, the Uzbek authorities sent a request for the extradition of H to Russia, but this request was not accompanied by a decision of the Uzbek court on detention. Thus, N. was illegally detained in Russia from January 23 to March 9, 2007 in the absence of any court decision. Having examined Mr. N.'s complaint, the ECHR ordered the Russian Federation to compensate Mr. N. for non-pecuniary damage in the amount of EUR 7,500²⁹.

The ECHR also noted with concern the inconsistent and mutually exclusive positions of state authorities on the issue of the rules applicable to prisoners awaiting extradition or extradition to other states³⁰.

The law enforcement practice of the ECHR testifies that the mechanism of deprivation of liberty of an individual in the Russian Federation, as well as the regulatory framework that provides it, need to be improved. The domestic (national) legal system of Russia does not provide individuals with protection against arbitrary detention, and the facts of illegal detention in custody (in custody, in prisons, etc.) acquire signs of consistency. The current practice in Russia of compensation for non-pecuniary damage for illegal actions of the state, state authorities and their officials, as well as the amount of this compensation is constantly disputed by the state, which has formed a policy of deliberately understating the amount of payments.

4. Conclusions

An analysis of the cassation and supervisory practice of the Supreme Court of the Russian Federation, as well as the practice of the ECHR in considering cases of unlawful deprivation of liberty in connection with the unlawful actions of state bodies and their officials in Russia, allowed us to note the following significant violations that occurred when resolving claims for compensation for harm: a) non-compliance with international conventions and domestic legislation in the activities of courts and other law enforcement agencies in Russia; b) the groundlessness of the motives for the full or partial satisfaction of claims; c) the lack of justification for the relevant calculations of claims to be satisfied; d) lack of an effective domestic remedy; e) inefficiency in the investigation of criminal assaults; f) weak interaction of law enforcement agencies with each other; g) a number of other problems³¹.

Having examined the law enforcement practice of the ECHR, as well as the established practice of assessing and compensating moral damage in connection with illegal actions of the state, state authorities and their officials, we came to the following most significant conclusions:

(a) The decisions of the ECHR have repeatedly and fairly emphasized that the domestic (national) legal system of Russia does not provide individuals with protection against arbitrary detention. The number of decisions made by the ECHR related to the consideration of compensations for the illegal detention of persons in isolation from society indicates the presence in the Russian Federation of systemic violations of international and domestic law.

b) the provisions of the criminal procedural legislation of the Russian Federation, providing for the grounds, procedure and terms for holding persons in custody until extradition (chap. 13, 54 of the Code of Criminal Procedure of the Russian Federation) need to be adjusted because they are not accurate or predictable in application and do not comply with the requirements of international law on "quality of law," as the ECHR has repeatedly pointed out.

c) the criteria for determining the amount of non-pecuniary damage set forth in the provisions of the civil legislation of Russia (Art. 151, 1101 of the Civil Code of the Russian Federation) are vague, vague and difficult to determine, in connection with which the courts of the Russian Federation appoint an average, and often reduced amount of compensation, guided by the categories of criminal cases, the social status of the victim, and moving away from the principles laid down in law. When determining the amount of compensation by the courts of the Russian Federation, it is advisable to use the experience of the ECHR, which recommends assessing damage not by formal, but by essential features: a) forced stay in a limited space; b) the time of isolation of a person from society, family; c) duration of termination of service; d) the impossibility of free movement; e) the inability to communicate with an unlimited number of people.

d) the practice of refusal by the courts of the Russian Federation to consider a civil claim in criminal proceedings, as the harm to the legitimate interests of the person is caused by a criminal act and transfer its proof (circumstances of the damage, amount of damage, conditions for causing it, etc.) The terms of the civil dispute do not correspond to the purpose of the Russian justice. Legislative mechanisms for compensation of harm must comply with the criteria of justice, proportionality, legal security arising from international law and the Constitution of the Russian Federation and should not be dependent on the subjective decision of an official, guaranteeing personal freedom through fair justice;

e) the basis for compensation for harm in cases of unlawful deprivation of liberty of a person (arrest, detention, imprisonment, etc.) that has become possible due to incompetent and illegal actions of state bodies or their officials is the fact of violation of the law. The subject of compensation for harm is the state represented by the competent authorities and their officials whose decisions (on compensation for harm, compensation) should not

be opposed to the presence or absence of recognition of the right to compensation, as enshrined in Chap. 18 of the Code of Criminal Procedure of the Russian Federation.

The foregoing will improve the legal system of the Russian state, bringing it closer to the requirements of international standards on the rights and freedoms of the individual. The working mechanism, in accordance with generally accepted criteria of the ECHR, of the exercise of the right to personal freedom, will reduce to a minimum the number of facts of unlawful deprivation of personal freedom in Russia (arrests, detentions, detention, etc.) caused by illegal and unjustified actions of the state, its bodies and their officials.

The current practice in Russia of compensation for non-pecuniary damage for illegal actions of the state, state authorities and their officials, as well as the amount of this compensation is constantly disputed by the state, which has formed a policy of deliberately understating the amount of payments.

Footnotes

1. Universal Declaration of Human Rights (UDHR) (1948) adopted by United Nations General Assembly Resolution 217A (III).
2. *Ibid.*, Art. 22.
3. International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.
4. *Ibid.*, Art. 9, 10, 14.
5. European Convention on Human Rights (ECHR)
6. *Ibid.*, Art. 5.
7. Charter of Fundamental Rights of the European Union (CFR). Official Journal of the European Union C 303. Vol. 50. 14 December 2007.
8. *Ibid.*, Art. 52.
9. United Nations General Assembly Session 47 Resolution 133. Declaration on the Protection of All Persons from Enforced Disappearance A / RES / 47/133 18 December 1992.
10. International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)
11. Constitution of the Russian Federation. Meeting of the Legislation of the Russian Federation. 01.26.2009. No. 4. Art. 445.
12. Resolution of the Constitutional Court of the Russian Federation of June 13, 1996 No. 14-P "In the case of the verification of the constitutionality of the fifth part of Article 97 of the Criminal Procedure Code of the RSFSR in connection with the complaint of citizen V.V. Schelukhin. Meeting of the legislation of the Russian Federation. 06.24.1996. No. 26. Art. 3185.
13. Federal Law of July 15, 1995 No. 103-FZ «On the Detention of Suspects and Accused of Crimes». Meeting of the legislation of the Russian Federation. 07.17.1995. No. 29. Art. 2759.
14. The law of the Russian Federation "On psychiatric care and guarantees of the rights of citizens in its provision". Sheets of the Congress of People's Deputies and the Supreme Council of the Russian Federation. 08.20.1992. No. 33. Art. 1913.
15. Decision of the Constitutional Court of the Russian Federation of February 27, 2009 No. 4-P "In the case of the verification of the constitutionality of a number of provisions of Articles 37, 52, 135, 222, 284, 286 and 3791 of the Civil Procedure Code of the Russian Federation and part four of Article 28 of the Law of the Russian Federation" On Psychiatric assistance and guarantees of the rights of citizens in its provision" in connection with complaints by citizens Yu.K. Gudkova, P.V. Shtukaturova and M.A. Yashina". "Bulletin of the Constitutional Court of the Russian Federation." N 2. 2009.
16. Determination of the Constitutional Court of the Russian Federation of January 19, 2011. No. 114-О-П "On the complaint of a citizen Ibragimov Azamat Ishmuratovich on violation of his constitutional rights by the provision of the first part of Art. 41 of the Law of the Russian Federation "On Psychiatric Care and Guarantees of the Rights of Citizens When Provided"; The judgment of the European Court of Human Rights of March 27, 2008 in the case of the Plasterers v. Russia. Bulletin of the European Court of Human Rights. No. 2. 2009.
17. Civil Code of the Russian Federation. Collection of legislation of the Russian Federation. 12.05.1994. No. 32. Art. 3301.
18. Sentence of the Irkutsk Regional Court of the Russian Federation of June 6, 2011 in the case No. 2-77 / 2011.
19. The determination of the judicial board for criminal cases of the Supreme Court of the Russian Federation of July 17, 2012 No. 69-D12-23.
20. Sentence of the Perm Regional Court of July 28, 2010 No. 2-26 / 2010.
21. Letter of the Ministry of Finance of the Russian Federation of September 28, 2009. No. 08-06-08 / 457.
22. Resolution of the Constitutional Court of the Russian Federation of July 14, 2005 No. 8-P "On the Procedure for the Execution by the Ministry of Finance of the Russian Federation of Judicial Acts in Claims against the Treasury of the Russian Federation for Compensation for Damage Caused by Unlawful Actions (Inaction) of State Or Officials of State Authorities". Meeting of the legislation of the Russian Federation. 2005. No. 30. Art. 3199.
23. ECtHR judgment of July 10, 2018 "The Case of Vasilevskiy and Bogdanov v. Russia" (complaints Nos. 74222/14 and 52241/14). Russian Chronicle of the European Court. 2019. No. 3.
24. Decree of the Constitutional Court of the Russian Federation of June 16, 2009 No. 9-P "On the case on the verification of the constitutionality of a number of provisions of Articles 24.5, 27.1, 27.3, 27.5 and 30.7 of the Code of Administrative Offenses of the Russian Federation, paragraph 1 of Article 1070 and paragraph three of Article 1100 Civil Code of the Russian Federation and Article 60 of the Civil Procedure Code of the Russian Federation in connection with complaints by citizens M.Yu. Karelina, V.K. Rogozhkina and M.V. Filandrova". Russian newspaper, No. 4945 (121).
25. Decision of the Rubtsovsky City Court of Altai Territory No. 2-5559 / 2015 ~ M-5176/2015 of October 28, 2015.
26. ECtHR judgment of October 11, 2007. Nasrulloev v. Russia (complaint N 656/06). Russian Chronicle of the European Court. 2008. No. 3.
27. ECtHR judgment of 10.29.2010. Konontsev v. Russia (application N 19732/04). Bulletin of the European Court of Human Rights. 2011. N 3.
28. ECtHR judgment of April 24, 2008, "The Case of Ismoilov and Others v. Russia" (application N 2947/06). Russian Chronicle of the European Court. 2009. N 2.
29. ECtHR judgment of January 10, 2017. "Novoselov v. Russia" (application N 44882/07) // Bulletin of the European Court of Human Rights. Russian edition. 2019. No. 1.

30. ECtHR judgment of January 8. 2009. "Khudyakova v. The Russian Federation" (complaint No. 13476/04). Russian Chronicle of the European Court, 2009, No. 4.
31. ECtHR judgment of 12/18/2012. The case "Aslakhanova and Others v. Russia" (complaints No. 2944/06, 8300/07, 50184/07, 332/08, 42509/10). Bulletin of the European Court of Human Rights. 2015. No. 4 (154).

Bibliographic references

- Ferguson, P.R. (2016). The Presumption of Innocence and its Role in the Criminal Process *Crim Law Forum* 27: 131.
- Golovko I.I., Dytchenko G.V. (2018). Problems of realization of the right to rehabilitation. Scientific notes of the Crimean Federal University named after V.I. Vernadsky. *Jurisprudence*. No. 4.
- Gordon Brown (ed.). (2016). *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World*. Cambridge, UK: Open Book Publishers, <http://dx.doi.org/10.11647/OBP.0091>
- Grigoryan L.O. (2016). Specificity of the terminological apparatus of the legal institute of moral compensation. *Bulletin of the Ural Institute of Finance and Law*. No. 2 (4).
- Ivanov D.A. (2015). The importance of developing a mechanism for compensation for harm caused by a crime in pre-trial criminal proceedings *Bulletin of the Academy of Economic Security of the Ministry of Internal Affairs of Russia*. No 7.
- Kuznetsova A.D. (2015). Recognition of the right to rehabilitation in the criminal process of Russia. *Russian judge*. No 8.
- Lukyanenkova V.V. (2015). Procedural aspects of compensation for harm caused by state bodies and their officials. *Bulletin of the International Law Institute*. No 1 (52).
- Lopez Cardenas, Carlos Mauricio (2017). *Forced Disappearance of People in International Humanitarian Law: a study of the concept, its evolution, and reparation of victims*. Bogota: Editorial Universidad del Rosario.
- Milic, Tatjana. (2010). International Convention for the Protection of All Persons from Enforced Disappearance. *Medjunarodni Problemi*.
- O'Conneide C. (2008). *The New Human Rights Culture*. In: Hazell R. (eds) *Constitutional Futures Revisited*. Palgrave Macmillan, London.
- Petukhova A.V. (2013). Compensation of damage caused by the legal actions of the state authorities and local self-government bodies: a new direction for the development of delict obligations. *Bulletin of the Nizhny Novgorod University. N.I. Lobachevsky*. No. 3-2.
- Pitcher K. (2018). Human Rights Framework. In: *Judicial Responses to Pre-Trial Procedural Violations in International Criminal Proceedings*. International Criminal Justice Series, vol 16. T.M.C. Asser Press, The Hague.
- Polyakov S.B., Kondakova L.V. (2019). Judicial price of human dignity. *Law practice*. No 1.
- Pomorski S. (2006). Modern Russian criminal procedure: The adversarial principle and guilty plea. *Crim Law Forum* 17: 129
- Postovalova T.A. (2017). *European Union law. Short course: study guide*. Moscow: Prospect.

- Rynkov P.V. (2014). Forced hospitalization: criteria and implementation of provisions on forced hospitalization in practice. *Psychiatry, psychotherapy and clinical psychology*. No. 1 (15).
- Shakunova N.E. (2014). The procedure for compensation for harm to individuals and legal entities at the expense of the treasury Scientific works of the North-West Institute of Management. V.5. No 4. (16).
- Shiryayeva T.I. (2014). About some problems of implementation of the protection of rights and legal interests of persons affected by crimes, in the criminal proceedings of Russia. *Theory and practice of social development*. No. 15.
- Vasilenko V.A. (2007). Migration legal procedure: institutional approach. *The philosophy of law*. No. 2 (21).
- Volokitina V.N. (2018). Why does the Russian Federation not accede to the International Convention for the Protection of All Persons from Enforced Disappearances? // Collection of materials of the international scientific-practical conference. "The ratio of Russian and international law." Ufa.
- Xenos D. (2018) The Protection Against Crime as a Human Right: Positive Obligations of the Police. In: Alleweldt R., Fickenscher G. (eds) *The Police and International Human Rights Law*. Springer, Cham.