



JUSTIFYING THE AMOUNT OF COMPENSATION FOR NON-PECUNIARY DAMAGE IN A JUDICIAL DECISION: AN ANALYSIS OF LEGISLATION AND JUDICIAL PRACTICE

Asqarov Mirzoxid Mirjalol ugli

Chief Researcher, Centre for the Study of Factors Contributing to Crime,
Research Institute of Criminology of the Republic of Uzbekistan,

Doctor of Philosophy (PhD) in Law.

E-mail: mirzohid.asqarov.1990@gmail.com

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Abstract. This article examines judicial reasoning concerning the amount of compensation for non-pecuniary damage as an independent subject of research. It provides an integrated analysis of the Civil Code and the Code of Civil Procedure of the Republic of Uzbekistan, Resolutions Nos. 7 and 21 of the Plenum of the Supreme Court, and judicial decisions published in 2025–2026. The analysis demonstrates that courts frequently list the statutory criteria but do not fully explain why the amount claimed was reduced or how the specific award was derived. The author proposes a four-stage model of reasoning that requires courts to identify the consequences of the violation, the evidence supporting those consequences, the effect of each relevant criterion on the final amount, and the proportionality of the award.

Keywords: non-pecuniary damage, compensation, judicial decision, judicial reasoning, judicial discretion, reasonableness, fairness, proportionality, judicial practice.

Introduction

Non-pecuniary damage constitutes a loss that cannot be measured precisely in monetary terms. Nevertheless, in order to remedy an infringement of a non-property right, a court must assess such damage in monetary terms. At this point, two requirements converge: on the one hand, each person's mental and physical suffering is individual; on the other, a judicial decision must be comprehensible, reviewable, and capable of providing guidance in comparable cases. The issue, therefore, is not merely how much compensation should be awarded, but whether the court can explain in its decision why it considers that particular amount to be fair.

National legislation grants courts broad discretion in determining the amount of compensation for non-pecuniary damage. Such discretion is necessary because the loss of a loved one, injury to health, an affront to dignity, and unlawful criminal prosecution cannot be assessed by means of a single formula. Judicial discretion – the authority of a judge to choose, within the limits of the law, among legally permissible outcomes – does not, however, entail a right to select an amount without giving reasons. The broader the discretion, the more exacting the requirement to justify its exercise [1; 2].

This article seeks to clarify the requirements applicable to the reasoning of judicial decisions determining compensation for non-pecuniary damage, to assess publicly available judicial practice from 2025–2026 against those requirements, and to propose a straightforward yet reviewable model of judicial reasoning for national practice. The study employs formal legal, comparative legal, and logical methods, together with content analysis of judicial decisions.

Legal Framework for Determining the Amount of Compensation

Article 1021 of the Civil Code provides for monetary compensation for non-pecuniary damage, while Article 1022 stipulates that the amount is to be determined by the court with due regard to the nature of the physical and mental suffering inflicted on the victim, the tortfeasor's degree of fault, and the requirements of reasonableness and fairness [1]. Accordingly, the law does not permit courts to select a final amount arbitrarily; rather, it requires them to assess specific facts and arrive at a reasonable and fair outcome.

Resolution No. 7 of the Plenum of the Supreme Court, dated 28 April 2000, elaborates on this general rule. It requires courts to consider, alongside the victim's subjective assessment, objective information indicating the degree of suffering, the significance of the affected interest to the victim's life, the seriousness and consequences of the violation, the victim's living conditions and individual characteristics, the respective degrees of fault of the parties, and other relevant circumstances [3]. This list of criteria provides a sufficient initial legal basis for reasoning as to the amount of compensation.

Resolution No. 21 of the Plenum of the Supreme Court, dated 24 November 2025, established that the remedy used to protect personal non-property rights must correspond to the nature of the infringed right, the manner of interference, and the circumstances established in the case. It further instructs courts to determine the consequences of the violation, including mental suffering, damage to reputation, interference with private or family life, and other adverse effects [4]. These explanations make it possible to connect the assessment criteria set out in Resolution No. 7 with concrete consequences and supporting evidence.

The Code of Civil Procedure requires the reasoning section of a judgment to set out the circumstances established by the court, the evidence supporting those findings, the reasons for rejecting particular items of evidence, and the legal provisions applied [5]. The phrase "having regard to reasonableness and fairness" is therefore not, in itself, sufficient reasoning. It states the result, but does not disclose the path of reasoning that led to it.

Judicial Practice in 2025–2026: Criteria Are Stated, but the Formation of the Award Is Not Always Apparent

A selective analysis of publicly available judicial decisions reveals two approaches. Under the first, a court recites in detail the criteria set out in the relevant resolution of the Plenum but does not explain their connection to the final award. Under the second, a court identifies the concrete consequences of the violation and adjusts the amount of compensation, yet still does not provide a separate explanation of how the revised amount was derived.

For example, in judgment No. 1-1606-2501/3729 of 7 April 2025, one victim's representative sought UZS 10 billion in compensation for non-pecuniary damage, while another sought UZS 1 billion. The court cited almost all the criteria contained in Resolution No. 7 and awarded UZS 75 million to the first representative and UZS 50 million to the second [6]. The judgment refers to the death of close relatives, the extreme seriousness of the offence, and the representatives' suffering. It does not, however, explain why the respective claims were reduced to UZS 75 million and UZS 50 million, or which individual circumstances accounted for the UZS 25 million difference between the awards. Thus, although the relevant criteria were stated, the intermediate step connecting those criteria to the numerical awards remained unclear.

In a civil case reported on the Supreme Court's website on 6 January 2025, the first-instance court awarded UZS 30 million in compensation for non-pecuniary damage to a claimant who had sustained bodily injuries of moderate severity. Having considered the seriousness of the injuries, the medical treatment received, and the claimant's physical and mental suffering, the appellate court increased the award to UZS 40 million [7]. In this case, the appellate court explained the reason for increasing the compensation more clearly than the first-instance court. Nevertheless, the basis for the precise UZS 10 million increase and the proportionality of the final UZS 40 million award were not fully explained by reference to comparative or individualised evidence.

Appellate ruling No. 1-1009-2603/1556 of 16 June 2026 illustrates another important point. On the basis of documentary evidence, the court separately examined the various expenses constituting pecuniary damage and set out the results of its calculations. As no relevant claim or supporting documents had been submitted in respect of non-pecuniary damage, the person concerned was informed of the right to bring a claim before a civil court [8].

These three examples are insufficient to support an absolute statistical conclusion about judicial practice as a whole. They nevertheless reveal a recurring methodological problem: a judicial decision may contain both the applicable legal criteria and the final figure, while the logical bridge between them is sometimes missing. Consequently, the claimant may be unable to understand fully why that particular amount was awarded, while a higher court may be compelled to assess the proportionality of the award on the basis of general formulations alone.

Determining the amount of compensation is important; from a legal perspective, however, it is no less important for the court to justify why it selected that particular amount.

First, a reasoned decision enables claimants to feel that they have been heard. In cases concerning non-pecuniary damage, claimants seek not only money but also official recognition of the suffering they have endured. If the court fails to address a particular consequence and merely states a lump-sum award, claimants cannot be certain that their most serious loss was taken into account.

Second, unless an appellate or cassation court can identify which facts the lower court regarded as decisive, which evidence it rejected, and what reasoning it used to increase or reduce the award, it cannot fully review not only the lawfulness but also the fairness of the decision. The case law of the European Court of Human Rights likewise treats an adequate response by courts to the parties' essential submissions as an integral requirement of a fair trial [9; 10].

Third, adequate reasoning promotes consistency in comparable cases. This does not mean that identical amounts must be awarded in every case. Rather, it enables differences between awards to be explained. Where substantially different awards are made in comparable circumstances, the court should identify the relevant differences in the individual consequences suffered. Equality is thereby secured not through identical figures, but through a consistent method of assessment.

Fourth, as Aharon Barak observes, judicial discretion operates within a legal domain in which a choice exists, but the choice itself must be supported by legal reasons [11]. Explained discretion is reviewable authority; unexplained discretion, by contrast, may appear to the parties as no more than the selection of an arbitrary figure.

Comparative Approaches

Resolution No. 33 of the Plenum of the Supreme Court of the Russian Federation, dated 15 November 2022, expressly requires the reasoning section of a judicial decision to state the grounds on which the amount of compensation for non-pecuniary damage was determined [12]. This rule is significant because it transforms the requirement to “take the criteria into account” into an obligation to explain how those criteria affected the award.

The judgment of the Leninsky District Court of Ufa, dated 13 September 2023, in the case of F. Iskhakov is also noteworthy in this respect. According to a publicly available commentary, the total award of RUB 31,650,800 was divided into distinct components relating to unlawful criminal prosecution, the applicant’s continuing struggle from release until acquittal, the disruption of family ties, and infringements of constitutional values [13]. Separate monetary assessment of individual consequences is not invariably mandatory, nor can it ever be perfectly precise. Such a structure nevertheless reveals the internal logic of the final amount and facilitates judicial review.

In its practice, the European Court of Human Rights awards compensation for non-pecuniary damage on an equitable basis. This is not a rigid mathematical formula. The Court nevertheless takes into account the nature and duration of the violation, its impact on the individual, and its own awards in comparable cases [14]. The underlying principle is that individualised assessment and consistency in judicial practice are not mutually exclusive: a court can reconcile them by identifying the particular circumstances and, where appropriate, comparing the case with similar decisions.

A Proposed Model for Reasoning as to the Amount of Compensation

National practice does not require a complex mathematical formula. A four-stage model that structures the judge’s reasoning would be more appropriate. The model does not prescribe minimum or maximum awards in advance; its function is to show how the amount selected by the court was derived.

The first stage is to identify the infringed right and distinguish the resulting consequences. The court should not confine itself to a general conclusion that “non-pecuniary damage was caused”. It should identify the non-property right infringed and explain how the consequences manifested themselves, for example through physical pain, fear, loss of a loved one, disruption of family ties, damage to reputation, social isolation, or loss of professional opportunities.

The second stage is to identify the evidence supporting each consequence. The decision should explain which findings are supported by medical records, expert opinions, witness testimony, information from a workplace or educational institution, evidence concerning the extent to which harmful information was disseminated, the duration of the prosecution, or other relevant material. At the same time, mental suffering should not invariably be treated as requiring a medical diagnosis. In cases involving particularly serious violations, it may arise naturally from the event itself [3; 15].

The third stage is to explain the direction in which each criterion affected the assessment. The court should identify which circumstances increased the award and which prevented the claim from being granted in the amount sought. For instance, the prolonged duration of a violation, wide dissemination of harmful information, or irreversible consequences may justify an increase; the claimant’s failure to adduce evidence of certain alleged consequences may justify reducing the relevant part of the claim. The tortfeasor’s financial position should not

negate the victim's suffering and may affect the proportionality assessment only to the extent permitted by law.

The fourth stage is to explain the proportionality of the final amount. The court should state concisely but clearly why the claim was granted in full or in part and why the final award corresponds to the seriousness and consequences of the violation. Where appropriate, publicly available decisions in comparable cases may be cited as guidance. Such decisions should not operate as a rigid tariff, but as a means of explaining substantial divergences.

This model could be reinforced by adding the following paragraph to paragraph 13 of Resolution No. 7 of the Plenum of the Supreme Court: "The reasoning section of the judicial decision shall specify the particular circumstances taken into account in determining the amount of compensation, the evidence substantiating those circumstances, the effect of those circumstances on the final amount, and the reasons for dismissing the claim in whole or in part." This proposal does not create new assessment criteria; it ensures that the application of the existing criteria is visible in the judicial decision.

Conclusion

The analysis demonstrates that the principal shortcoming in determining compensation for non-pecuniary damage lies not in the absence of legal criteria, but in the insufficiently developed practice of explaining in judicial decisions how those criteria are connected to the final award. In the publicly available examples from 2025–2026, courts addressed the consequences of the violations and referred to the criteria established by the Plenum, and in some cases increased the compensation. The internal logic of the precise amount selected, however, was not always fully articulated.

Accordingly, efforts to harmonise judicial practice should begin not with the introduction of a rigid tariff for all cases, but with the establishment of a uniform minimum standard of reasoning. If a judicial decision sequentially identifies the infringed right and its consequences, the supporting evidence, the direction in which each criterion affected the assessment, and the proportionality of the final amount, judicial discretion will be preserved while its outcome becomes comprehensible and reviewable for both the parties and higher courts..

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